



REPUBLIC OF NAURU

## DISTRICT COURT BILL 2018

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No. of 2018

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A Bill for an Act for the constitution of the District Court, the appointment of magistrates and other officers thereof and for the regulation of their duties and jurisdiction 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 *District Court Act 2018*.

### 2 Commencement

This Act commences on 15 May 2018.

### 3 Definitions

In this Act:

**‘barrister and solicitor’** means a person entitled to practice as a barrister and solicitor under the Legal Practitioners Act 1973;

**‘cause or matter’** includes any 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;

**‘Commissioner for Oaths’** means a person who is a Commissioner for Oaths either by virtue of appointment under the provisions of section 8 of this Act or ex officio under the provisions of any other section of this Act;

**‘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;

**‘Deputy Registrar’** means the person appointed under section 10;

**‘District Court’** means the District Court formerly established under the Courts Act 1972 and which continues under this Act;

**‘Fund’** means the Courts Trust Fund established under the provisions of section 52 of this Act;

**‘heard’** includes tried;

**‘hearing’** includes trial;

**‘judgement, decision or order’** where applicable, includes decree, conviction and sentence;

**‘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 this Act to be the Resident Magistrate, a lay magistrate or a person appointed to act as the Resident Magistrate;

**'Minister'** means the Minister for Justice;

**'Registrar'** means the Registrar of the Courts;

**'Resident Magistrate'** means a person appointed under the provisions of section 7 to be, or to act as, the Resident Magistrate;

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

**'Supreme Court'** means the Supreme Court established under Article 48 of the Constitution.

## **PART 2 – THE DISTRICT COURT**

### **4 The District Court**

- (1) There continues to be a District Court of the Republic under this Act, which is a court of summary jurisdiction.
- (2) The District Court is subordinate to the Supreme Court and consists of:
  - (a) 2 Resident Magistrates; and
  - (b) not less than 3 lay Magistrates.
- (3) The Resident Magistrates and the lay magistrates shall be appointed by the President after consultation with the Chief Justice.
- (4) If either or both Resident Magistrates are unable by reason of illness, absence from the Republic or other cause to perform all or any duties as a Resident Magistrate, the Registrar of Courts shall act as the Resident Magistrate.
- (5) The appointment under subsection (4) may either be for a specified period or for the hearing and determination of a specified cause or matter.

### **5 Seal**

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

## **PART 3 – COMPOSITION OF THE DISTRICT COURT**

### **6 Composition of the District Court**

- (1) The District Court shall be properly constituted in any cause or matter when its powers and jurisdiction are exercised by either:
  - (a) a Resident Magistrate; or
  - (b) any of the 3 lay magistrates.
- (2) The lay magistrates shall not hear or determine or investigate any cause or matter unless a Resident Magistrate is unable to hear or determine or investigate a cause or matter where a Resident Magistrate considers that it would be improper for him or her to hear or determine or investigate a cause or matter.
- (3) The jurisdiction of the District Court may be exercised in any proceedings even if it is being exercised at the same time in other proceedings by another magistrate or other magistrates.

### **7 Qualifications for appointment as magistrate**

- (1) No person shall be appointed to act as a Resident Magistrate unless that person possesses the professional qualifications prescribed by law as the necessary prerequisite for admission to practise as a barrister and solicitor of the Supreme Court and at least 5 years' experience in legal practice or experience as a judicial officer of a similar hierarchy to that of the District Court.
- (2) If a person has been appointed under section 4(4) to act as a Resident Magistrate, that person may continue to act as a Resident Magistrate in hearing and determining any cause or matter which commenced before the District Court constituted by him or her as an acting Resident Magistrate despite a Resident Magistrate resuming duties.
- (3) The appointment of any person to act as a Resident Magistrate shall terminate immediately upon any other person being appointed to be, or to act, otherwise than solely for the hearing and determination of a specified cause or matter, as the Resident Magistrate or upon a Resident Magistrate resuming duties as the case may be.
- (4) If a person has been appointed to act as a Resident Magistrate, the person is taken to have ceased to be acting as a Resident Magistrate 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; and

(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.

(5) Each magistrate other than the Resident Magistrate shall be paid the fees and allowances as determined by the Minister by Gazette notice.

## **8 Magistrates to take oath or affirmation**

(1) A magistrate before entering the office of the District Court, shall take and subscribe before the Minister the oath set out in the Schedule to this Act.

(2) A magistrate, who may not be able to subscribe an oath, shall before entering the office of the District Court, make an affirmation before the Minister with necessary modification to the oath of a magistrate contained in the Schedule to this Act.

## **9 Records and returns**

(1) The District Court shall keep written records and furnish returns of causes and matters heard by the District Court to the Registrar in such manner as determined by the Chief Justice.

(2) A Judge of the Supreme Court shall periodically inspect the records of the District Court and may give instructions as may be deemed necessary.

(3) A Resident Magistrate may, if the Chief Justice so directs, destroy, or cause to be destroyed, any record of any cause or matter in the District Court, including the record of the evidence in that cause or matter, at any time after the expiration of a period of:

(a) in the case of criminal proceedings in which no sentence of imprisonment was imposed, 2 years; and

(b) in the case of any other cause or matter, from the date of final judgment, decision or order in those proceedings:

(i) if the Chief Justice is satisfied that the continued retention of the record of that cause or matter is unlikely to serve any useful purpose and authorises its destruction, 2 years; or

(ii) otherwise, 10 years.

## **10 Magistrates to be justices of the peace and Commissioners for Oaths**

Every magistrate shall be ex officio a justice of the peace and a Commissioner for Oaths and shall have and may exercise, the powers thereof.

## **PART 4 – OFFICERS OF THE DISTRICT COURT**

## **11 Registrar of the District Court**

(1) The Registrar of Courts shall be the Registrar of the District Court.

- (2) The Registrar shall prepare and provide monthly returns of cases filed, heard and disposed of in the respective court to the Minister.

## **12 Deputy Register and other officers of the District Court**

- (1) There shall be a Deputy Registrar of the District Court who shall be the principal administrative officer for the court.
- (2) There shall be such other officers of the court as shall be required for the efficient administration of the system of courts established under this Act.
- (3) The Deputy Registrar and other officers of the court shall be, subject to the general supervision of the Chief Justice, under the immediate direction and control of the Registrar.

## **13 Duties of the Deputy Registrar or other officers**

The duties of the Deputy Registrar and such other officers of the court include:

- (a) attend sittings of the District Court as a Resident Magistrate may direct;
- (b) prepare summonses, warrants, decrees, orders, convictions, recognisances, writs of execution and other documents and to submit them to a Resident Magistrate or if that Resident Magistrate so directs, to another magistrate, for signature;
- (c) issue civil process if authorised by rules of the court;
- (d) maintain case files and registers to record judgments, decisions or orders of the District Court and to make, or cause to be made, copies of proceedings when required to do so;
- (e) receive all fees, fines and penalties, and all other moneys paid or deposited in respect of proceedings in the District Court, and to keep an account of them; and
- (f) perform, or cause to be performed, such other duties connected with the District Court as may be assigned to them by a Resident Magistrate.

## **PART 5 – JURISDICTION**

## **14 Jurisdiction of the District Court**

The jurisdiction of the District Court includes:

- (a) jurisdiction vested in it by the Criminal Procedure Act 1972 and any other written law that it had prior to the commencement of this Act;
- (b) jurisdiction conferred on it by this Act or any other written law;



- (c) power and jurisdiction as may from time to time be vested in it under this Act or any other written law;
- (d) jurisdiction to divide chattels;
- (e) jurisdiction in relation to the recovery of land in limited circumstances provided for under this Act;
- (f) jurisdiction to hear and determine interpleader applications; and
- (g) family related jurisdiction.

## **15 Decisions of the District Court**

Where in any cause or matter the powers and jurisdiction of the District Court are exercised by three lay magistrates together, the decision of the majority of them on questions of fact and of law shall be the judgment, decision order of the District Court.

## **16 Charge of proceedings in the District Court**

- (1) Subject to the provisions of this Act and to any directions given by the Chief Justice, the Resident Magistrate shall determine which magistrates shall exercise the powers and jurisdiction of the District Court in any cause or matter.
- (2) Where the powers and jurisdiction of the District Court are exercised by lay magistrates, the most senior of those magistrates by date of first appointment as a magistrate under this Act shall have charge of the proceedings in the District Court.
- (3) Where two or more of the magistrates were first appointed on the same date, their seniority relative to one another shall be as decided upon by the Chief Justice from time to time.
- (4) Provided that the magistrates agree upon it unanimously, one of them other than the most senior shall have charge of the proceedings in court.

## **17 Civil jurisdiction of the District Court**

Subject to any express limitation of its jurisdiction by any written law for the time being in force, the District Court shall, in addition to any jurisdiction it may have under any other law for the time being in force, have and exercise the following jurisdiction in respect of civil causes:

- (a) to hear and determine any cause or matter founded on contract or on tort where the debt, demand or charge, or value of the chattels, claimed is not more than \$3,000, whether on balance of account or otherwise;

Provided the District Court shall not, except as in this Act provided, have jurisdiction to hear and determine any cause or matter for the recovery of land;

- (b) to hear and determine any cause or matter where the debt or demand claimed consists of a balance not exceeding \$3,000, after a set-off of any debt or demand claimed or recoverable by the defendant from the plaintiff, being a set-off admitted by the plaintiff in the particulars of his claim or demand;
- (c) to hear and determine any cause or matter for the recovery of any penalty, expenses, contribution or other like demand which is recoverable by virtue of any enactment for the time being in force, if:
  - (i) it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other Court; and
  - (ii) the amount claimed in the cause or matter does not exceed the sum of three thousand dollars;

Provided that for the purpose of this section the expression 'penalty' shall not include a fine to which any person is liable on conviction;

- (d) to hear and determine any of the following proceedings, that is to say:
  - (i) proceedings for enforcing any charge or lien, where the amount owing in respect of the charge or lien does not exceed the sum of three thousand dollars;
  - (ii) proceedings for the specific performance, or for the rectification, delivery up or cancellation, of any agreement for the sale, purchase or lease of any property, where in the case of a sale or purchase, the purchase money or, in the case of a lease, the value of the property, does not exceed the sum of \$3,000;
  - (iii) proceedings for the dissolution or winding-up of any partnership, whether or not the existence of the partnership is in dispute, where the whole assets of the partnership do not exceed in amount or value the sum of \$3,000;
  - (iv) proceedings for relief against fraud or mistake, where the damage sustained or the estate or fund in respect of which relief is sought does not exceed in amount or value the sum of \$3,000;
  - (v) proceedings for the recovery of any specific or pecuniary legacy or share of residue not exceeding in value or amount the sum of \$3,000;
- (e) where any chattels not exceeding \$3,000 in value belong to persons in undivided shares and the persons interested in a moiety or upwards apply for an order for division of the chattels or any of them according to a valuation or otherwise, to hear and determine the application and to make such order and give such consequential directions as it thinks fit;

(f) to hear and determine any cause or matter relating to the recovery of land where the rent, if any, payable in respect thereof does not exceed the rate of \$3,000 a year or, if no such rent is payable, where the value of the land in question does not exceed \$24,000 in the following cases:

- (i) where the term and interest of the tenant of any land held by him at will, or for any term, whether the tenant is or is not liable for the payment of any rent, has ended or been determined, either by the landlord or by the tenant, by a legal notice to quit or demand of possession, and the tenant, or, if the tenant does not actually occupy the land, or occupies only a part thereof, any person by whom the same or any part thereof is then actually occupied has neglected or refused to quit and deliver up possession of the land or of such part thereof respectively;
- (ii) where any tenant holding any land under any demise or agreement, either written or verbal, is in arrear in payment of rent for such period that the landlord is entitled to exercise a right of re-entry under the terms of the demise or agreement;
- (iii) where any person without right, title or licence is in possession of any land; and

(g) to hear and determine interpleader applications where:

- (i) the value of the subject matter of any application does not exceed \$3,000; or
- (ii) the application is made by a person who has seized the subject-matter of the application in execution of a process of the District Court, notwithstanding that the value of such subject-matter exceeds \$3,000.

**18 No jurisdiction of District Court where validity of devise, etc., in question**

The District Court shall not have cognisance of any proceedings in which the validity of any devise or bequest is in question or the limitations under any will or settlement are in dispute.

**19 Jurisdiction of District Court where title in question**

Subject to any express limitation of its jurisdiction by any written law for the time being in force, the District Court shall have jurisdiction to hear and determine any proceedings in which the title to any corporeal or incorporeal hereditament comes in question if the proceedings would otherwise be within the jurisdiction of the District Court.

**20 Abandonment of part of claim to give District Court jurisdiction**

- (1) Where a plaintiff has a cause of action for more than \$3,000 in respect of which the District Court would have had jurisdiction had the amount been not

more than \$3,000, the plaintiff may abandon the excess, and thereupon the District Court shall have jurisdiction to hear and determine the action.

- (2) Where any cause or matter in which the plaintiff has abandoned part of his claim under this section is heard in the District Court, the plaintiff shall not recover an amount exceeding \$3,000 together with costs thereon, and the judgment, decision or order of the District Court in the action shall be in full discharge of all demands in respect of the cause of action.

## **21 Extension of jurisdiction of District Court by agreement**

If, but for the amount or value of the subject-matter claimed or in issue, the District Court would have jurisdiction in any cause or matter under section 23 of this Act and the parties, by memorandum signed by them or by their respective barristers and solicitors or pleaders, agree that the District Court shall have jurisdiction to hear and determine that cause or matter, that District Court shall, notwithstanding anything in any enactment save the provisions of sections 24 and 25 of this Act, have jurisdiction to hear and determine the proceedings.

## **22 Division of cause of action not allowed**

A cause of action may not be divided for the purpose of bringing two or more actions or any counterclaim.

## **23 General ancillary jurisdiction of District Court**

The District Court, in relation to any cause of action for the time being within its jurisdiction, shall in any proceedings before it:

- (a) grant such relief, redress or remedy, or combination of remedies, either absolute or conditional; and
- (b) give such and the like effect to every ground of defence or counter-claim equitable or legal; as ought to be granted or given in the like case by the Supreme Court and in as full and as ample a manner.

## **24 Ancillary powers of magistrates**

A magistrate shall have jurisdiction in any proceeding pending to make any order or to exercise any authority or jurisdiction which, if it related to an action or proceeding pending in the Supreme Court, might be made or exercise by a judge of the Supreme Court in chambers.

## **25 Absence of magistrate**

- (1) Where the hearing of any cause or matter has commenced before the District Court constituted by three magistrates and before it has been determined one of the magistrates dies or, because of illness or absence from Nauru, is unable to continue to attend and is unlikely to be able to do so within a reasonable time the two remaining magistrates may, if all the parties to those proceedings, or their barristers and solicitors or pleaders, consent in writing, complete the hearing and determine the cause or matter.

- (2) Where under the provisions of this section two magistrates complete the hearing of a cause or matter their decision, if unanimous, shall determine the cause or matter but, if it is not unanimous, the hearing shall be commenced again ab initio before a properly constituted court.
- (3) Notwithstanding the provisions of section 19, where any hearing has been completed and the cause or matter determined under the provisions of this section, the District Court shall be deemed to have been properly constituted at all times during the hearing and determination of that cause or matter.

**26                   Effect of proceeding or order for dissolution or winding-up of partnership**

No proceeding in the District Court for the dissolution or winding-up of a partnership or order thereon shall prevent any creditor from petitioning for an adjudication of bankruptcy or insolvency against the partnership firm or any member or members thereof.

**PART 6 –POWERS OF THE DISTRICT COURT**

**27                   Power of District Court to refer to arbitration**

- (1) The District 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 District 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 District Court.
- (4) A consent judgment, decision or order of the District Court under subsection (1) may be set aside by the District Court on an application of a party.
- (5) In this section, '*award*' includes interim award.
- (6) This section does not apply to criminal matters.

**28                   Power of District Court to refer to referee**

- (1) In any cause or matter the District 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 District Court, conveniently be made before it;
    - (ii) the question in dispute consists wholly or in part of matters of account;

- (iii) the parties consent; or
- (b) any interlocutory issues arising in the cause or matter to which the parties consent.
- (2) Where any cause or matter or question is referred under subsection (1), the District 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 District 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 a judgment, decision or order on the referee's report.
- (4) This section does not apply to criminal matters.

## **29 General Powers of Magistrates**

A magistrate shall have 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 any written law.

## **30 Power to recuse**

- (1) Where a magistrate has a conflict of interest, he or she shall declare such interest and shall recuse himself or herself from adjudicating the cause or matter.
- (2) A party may seek the recusal of a magistrate from adjudicating in a cause or matter.
- (3) The Chief Justice shall develop and publish guidelines to assist magistrates to properly effect recusals in a cause or matter.

## **31 Power to transfer from District Court to Supreme Court**

- (1) Subject to the provisions of any written law for the time being in force, the District Court may and, where a question arises involving the interpretation or effect of any provision of the Constitution, shall, of its own motion or upon the

application of any party thereto, report to the Supreme Court the pendency of any cause or matter which it considers ought to be transferred to the Supreme Court and a judge shall forthwith direct whether the cause or matter is to be transferred to the Supreme Court or is to be heard and determined in the District Court:

Provided that, where a question has arisen involving the interpretation or effect of any provision of the Constitution and in respect of any civil or criminal matters, the judge shall order that the cause or matter be transferred to the Supreme Court;

And provided further that, where the District Court had no jurisdiction in the proceedings and it appears to the judge that the plaintiff or one of the plaintiffs knew or ought to have known that the District Court had no jurisdiction in the proceedings, the judge may, if he thinks fit, instead of ordering that the proceedings be transferred as aforesaid, order that they be struck out and in such event may award costs to the same extent and recoverable in the same manner as if the District Court had jurisdiction and the claim had not been established;

- (2) Where in any cause or matter reported to the Supreme Court under the provisions of subsection (1) any counterclaim or set-off and counterclaim has been filed by any defendant, the judge may, as he thinks fit, order either:

- (a) that the whole proceedings be transferred to the Supreme Court;
- (b) that the whole proceedings be heard and determined in the District Court;  
or
- (c) that the proceedings on the counterclaim or set-off and counterclaim be transferred to the Supreme Court and that the proceedings on the plaintiff's claim and defence thereto other than the set-off, if any, be heard and determined in the District Court:

Provided that, where an order is made under paragraph (c) of this subsection and judgment for the claim is given for the plaintiff, execution thereon shall, unless a judge at any time orders otherwise, be stayed until the proceedings transferred to the Supreme Court have been determined.

- (3) The practice and procedure for stating a case or referring a matter to the Supreme Court under this section shall be in compliance with section 30 of the Supreme Court Act 2018.

## **32 Power to award cost**

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

## **33 Judgment, decision or order of District Court may be removed into Supreme Court**

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

## **PART 7 – MODE OF CONDUCTING PROCEEDINGS OF THE DISTRICT COURT**

### **34 Mode of conducting proceedings of the District Court**

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

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

### **35 Language of the District Court**

- (1) The proceedings before the District 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 District Court shall provide an interpreter for the purposes of paragraph (a).

### **36 Sittings of the District Court**

- (1) The District Court shall sit for a trial or hearing of a cause or matter or an interlocutory application in the Republic and 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 the Resident Magistrate or rules of the court.



## **PART 8 – WITNESSES**

### **37 Summoning witnesses**

A Resident Magistrate may, either of his or her own motion or on the application of any party summon any person to attend the District Court:

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

### **38 Compelling attendance of witness**

If a person summoned under section 37:

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

### **39 Prisoners may be brought to give evidence**

- (1) A Resident Magistrate 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 for such purpose.

### **40 Refusal to give evidence**

- (1) This section applies to a witnesses who, without reasonable excuse refuses:
  - (a) to give evidence when required;
  - (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 District 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 District 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 under public interest or national security.

**41 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 District Court so orders.

**42 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 District Court may make:

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

**43 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 cause or matter without the leave of the Resident Magistrate.
- (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.

**44 Recording of evidence**

- (1) In every cause and matter the whole of any oral evidence given before the District Court, or so much thereof as the court deems material, shall be taken down in writing by the Resident Magistrate or, where the District Court is constituted by three magistrates, by one of the other two magistrates under his or her supervision, 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 Resident Magistrate may in his or her discretion take down, or cause to be taken down, any particular question and answer.

## **PART 9 – ENFORCEMENT OF JUDGMENTS, DECISIONS OR ORDERS OF THE DISTRICT COURT**

### **45 Powers of the District Court to enforce their judgments, decisions or orders**

- (1) The District Court shall have such powers to enforce their judgments, decisions or orders as may from time to time be provided under this Act, other written law or rules of the Court.
- (2) In the absence of any provision to the contrary, the judgments, decisions and orders of the District Court may be enforced in all or any of the ways in which judgments, decisions and orders of the courts of similar hierarchy in England.

## **PART 10 – EXECUTION OF THE PROCESS OF THE DISTRICT COURT**

### **46 Commissioner of Police to be responsible for execution of process of the District Court**

- (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 District Court or any magistrate to execute and shall make return of every writ, warrant, order, command or process together with the manner of execution thereof to the District Court.
- (2) Where the District 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 District Court considers it undesirable that he 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 absence from Nauru or by illness, from performing his 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.

### **47 Police to obey orders and directions of magistrates**

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

### **48 Execution of process**

It is lawful for a person who is charged by law with the duty of executing the lawful process of the District 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.

**49                    Execution of warrants**

It is a lawful for a person who is charged by law with duty of executing a lawful warrant issued by the District Court or magistrate 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.

**50                    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 a District Court to execute or give effect to that sentence.

**PART 11 – FEES AND FUNDS IN COURT**

**51                    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 to do so.

**52                    Courts Trust Fund and securities deposited in court**

- (1) Subject to subsection (2), all moneys paid into the District Court to stand to the credit of any party in any cause or matter shall be received into and credited to, the Courts Trust Fund established under the Supreme Court Act 2018.
- (2) The Registrar may, if he thinks 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 District Court shall be placed by the Registrar in safe custody or in the Fund.
- (4) The Registrar may recover from the beneficiaries of such account reasonable expenses if it becomes necessary.

**53                    Moneys in the 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 District Court under section 52 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 section 52, 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.

**54 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 this Act.
- (2) If any money paid into, or any security for money deposited in, the District Court under the provisions 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 this Act shall ensure to the benefit of the Republic and the Registrar shall from time to time, at intervals of not more than twelve months, withdraw from the Fund the amount of such interest and pay it into the Treasury Fund.

**55 Rules relating to the Courts Trust Fund**

The Chief Justice may from time to time make rules for giving effect to the provisions of this Act and for regulating the manner in which, subject to the orders of the District Court, moneys and securities shall be dealt with by the Registrar.

**PART 12 – REPRESENTATION OF PARTIES**

**56 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.

**57 Representation of parties**

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

**58 Rules relating to counsel's dress**

The Chief Justice may by order prescribe the dress to be worn by barristers and solicitors or pleaders appearing before the District Court and may direct that wigs be worn.

### **PART 13 – PRACTICE AND PROCEDURE**

#### **59 Practice and procedure**

- (1) The jurisdiction vested in the District 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 or matters 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 matters or by any rule or order of court made pursuant thereto the jurisdiction of the District Court shall be exercised in substantial conformity with the law and practice for the time being observed in England in the county courts.

### **PART 14 – PROTECTION OF MAGISTRATES AND OFFICERS OF THE DISTRICT COURT**

#### **60 Protection of Magistrates and officers of the District Court**

- (1) The Resident Magistrates, a lay magistrate, the Registrar or Deputy 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 District Court shall not be liable to be sued in any court for the proper execution of the same.

### **PART 15 – AFFIDAVITS**

#### **61 Swearing of affidavits outside the Republic**

- (1) An affidavit required for the purpose of the District Court or proceedings in a District Court may be sworn outside the Republic before the Commissioner of Oath or:
  - (a) in any place within any part of the Commonwealth, before a judge, magistrate, justice of peace, notary public, commissioner of oaths, a diplomatic officer of the Republic or 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 diplomatic officer of the Republic.

- (2) The office of the person, date and place shall be stated in the sworn affidavit.
- (3) The District 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 the person whom the affidavit was sworn.
- (4) If the affidavit is not in the English language there shall be annexed to the affidavit:
- (a) a certificate translation of it into the English language; and
  - (b) a certificate signed by a person whom, under the provisions of this section, an affidavit can be sworn that to his or her knowledge that the person who has certified the translation has an adequate knowledge and understanding of the language in which the document was 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 Nauru:
- (a) Ambassador;
  - (b) High Commissioner;
  - (c) Minister;
  - (d) Head of Mission;
  - (e) Consul General;
  - (f) Representative;
  - (g) Commissioner;
  - (h) Charge'd'Affaires; and
  - (i) Counsellor, Secretary or attaché at an Embassy, High Commissioner's office, or other post.

## **PART 16– CONTEMPT OF COURT**

### **62 Contempt of court**

The District Court shall have the power and jurisdiction to try and punish for contempt of court under section 15 of the Administration of Justice Act 2018.

## **PART 17 – MISCELLANEOUS**

### **63 District Court not to be held on certain days**

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

**64 Vacations**

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

**65 Adjournment**

- (1) The District Court may adjourn the hearing of any cause or matter before it from day to day or to any convenient day.
- (2) If the magistrate is not present at the time and place appointed or adjourned for a sitting of the District 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 a District 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.

**PART 18 – RULES OF THE DISTRICT COURT**

**66 Rules of the District Court**

- (1) The Chief Justice may make rules relating to the District Court for all or any of the following purposes:
  - (a) practice and procedure of the court prescribing forms and precedents for the purposes of any proceeding;
  - (b) for regulating the receipt of moneys paid into court, or received and recovered under or by virtue of any process of execution or distress;
  - (c) for regulating the payment out of court of all moneys to the persons entitled thereto;
  - (d) for prescribing the books and forms of accounts to be kept or used in the District Court;
  - (e) for prescribing the acceptance, retention and disposal of fees;
  - (f) for prescribing fees to be received by Commissioners;
  - (g) for regulating the days and the hours of opening and closing the offices of the District Court; or
  - (h) 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 19 - SAVINGS AND TRANSITIONAL PROVISIONS**

### **67 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) A judicial officer to whom this section applies continues to hold his or her judicial office under the conditions of his or her appointment.

### **68 Other officers of court to continue in office**

- (1) This section applies to every person who is an officer of a court 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.

### **69 Proceedings, etc, continue under relevant Act**

- (1) All proceedings pending or incomplete in the District Court immediately before the coming into effect of this Act may be continued, completed, and enforced only under the relevant Act as if that Act had not been repealed by this Act.
- (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.