

REPUBLIC OF NAURU

SUPREME COURT BILL 2018

EXPLANATORY MEMORANDUM

The *Supreme Court Bill 2018* is a Bill for the *Supreme Court Act 2018*.

This memorandum provides an explanation of the Bill and is only intended to indicate the general effect.

EXPLANATION OF CLAUSES

PART 1 – PRELIMINARY

Clause 1 provides that once enacted the short title of the Bill will be the *Supreme Court Act 2018*.

Clause 2 provides that the Act commences on 15 May 2018.

Clause 3 is the definition section of the Act.

PART 2 – THE SUPREME COURT

Clause 4 is consistent with Article 48 (1) and (2) of the Constitution and it ensures that the Supreme Court established under Article 48 of the Constitution continues to exist and that it has the jurisdiction conferred on it by the Constitution, any other written law and inherent jurisdiction. The Supreme Court is a superior court of record.

This clause provides for the divisions of the Supreme Court which are:

- (a) civil;
- (b) criminal;
- (c) commercial;
- (d) family;
- (e) probate;
- (f) appellate;
- (g) miscellaneous; and
- (h) such other divisions which the Chief Justice may deem appropriate.

Clause 5 provides that the Court will have a seal which will have the inscription of ‘Supreme Court of Nauru’ and the Republic’s emblem. The Registrar shall have custody and control of the seal which will be used for all official purposes of the Court where a seal is necessary.

PART 3 – COMPOSITION OF THE SUPREME COURT

Clause 6 provides for the composition of the Supreme Court which shall consist of the Chief Justice and such number of Judges the President in consultation with the Chief Justice deems fit. The Court is deemed to be duly constituted despite a vacancy in the office of the Chief Justice or a Judge.

Clause 7 provides for the exercise of the jurisdiction of the Supreme Court by a single Judge except for when it is provided for under any written law or rules of the Court exercisable by the Master, Registrar or other officer of the Court.

The full Supreme Court comprises of a panel of 3 Judges. The full Supreme Court will only be convened for an opinion under Article 55 of the Constitution. Any applications under Article 54 can be dealt with by a single Judge or if it is a matter of significant public importance, by the full court as may be directed by the Chief Justice.

Clause 8 provides that the judicial power of all the Judges including the Chief Justice is identical. The only distinction is the administrative role and function of the Chief Justice, who is the head of the judicial arm of the Government.

This clause allows sitting of a number of Judges at one time and each will constitute the Supreme Court and will have the same power and jurisdiction of the Supreme Court.

Clause 9 is as provided for under article 49(3) of the Constitution.

Clause 10 clarifies that the age of the Judge is not referred to because it is provided for in the Constitution. The Constitution provides that the appointment of a Judge shall expire upon resignation, retirement or removal from office.

Sub clause (2) provides for the appointment of Judges only on fixed term of contract so that the appointment shall cease on the expiry of the contract or for a specific case.

Sub clause (3) is specifically for the protection of litigants who may be caught in a situation where a case is heard and a judgment, decision or order is not delivered by a retiring Judge. If a Judge's contract comes to an end, this will result in retrials or trial de novo incurring unnecessary costs to litigants.

If a person has been appointed to act as a Judge, the person is deemed to have ceased to be acting as a Judge where the appointment:

- 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
- 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

Clause 11 is retained from the Constitution save to allow for an affirmation by a Judge if for one reason or another he may not be able to take an oath.

PART 4 – OFFICERS OF THE COURT

Clause 12 provides that for the Registrar, the qualification of 5 years is to take into account the fact that the Registrar also exercises judicial functions as the Master of the Queen’s Bench Division of the Royal Court of Justice in England has.

Clause 13 provides that the Registrar is the administrative head of the Department of the Judiciary and his duties are prescribed under the written laws including the Public Service Act 2016.

Sub clause (2) provides for the judicial functions the Registrar will be required to perform from time to time. Due to the population and there being only one court, the Registrar continues to perform the duties of the Master (a judge in chambers), taxing master (taxation of costs), and keeper of records (custodian of records).

Clause 14 provides for the appointment of the Deputy Registrars by the Minister after consultation with the Chief Justice.

Clause 15 requires legally trained people to be appointed as a Deputy Registrar. A Pleader is also eligible to be appointed as Deputy Registrar. To avoid a vacancy, provision is also made for a person to be appointed, who may not be a barrister and solicitor or Pleader, but has experience with the management and administration of the court.

Sub clause (3) means that the Deputy Registrar will be able to perform the duties of the head of department in the absence of the Registrar but will not be able to perform judicial functions.

Clause 16 allows for the appointment for other officers of the Supreme Court after consultation between the Registrar, Chief Justice and Chief Secretary. An officer appointed as an interpreter shall take oath or affirmation as an interpreter before the Chief Justice or a Judge.

PART 5 – JURISDICTION

Clause 17 provides for the jurisdiction of the Supreme Court. The Supreme Court has:

- (a) the jurisdiction vested in it by the Constitution of Nauru and any other written law that it had prior to the commencement of this Act;
- (b) the jurisdiction as conferred upon it by this Act or any other written law;
- (c) to administer its powers and jurisdiction as may from time to time vested in the Supreme Court under the Constitution of Nauru, this Act or any other written law;
- (d) admiralty jurisdiction;
- (e) the power and authority to appoint and control guardians of infants and its estates;
- (f) probate jurisdiction;

- (g) jurisdiction to winding up and bankruptcy proceedings;
- (h) matrimonial, family and adoption related jurisdiction;
- (i) appellate jurisdiction under the Constitution, this Act or any other written law;
and
- (j) inherent jurisdiction.

PART 6 – POWERS OF THE SUPREME COURT

Clause 18 provides for the powers of the Supreme Court to refer causes or matters to arbitration.

Sub clause (1) provides that the Supreme Court may with the consent of the parties to a cause or matter, order that such cause or matter be referred to for arbitration with such directions as may be necessary.

Sub clause (2) provides that if a referral is done under sub clause (1), either party cannot revoke it except with the leave of the Supreme Court.

Sub clause (3) provides that an award made by an arbitrator shall be considered as judgment, decision or order in the cause or matter as if it were granted by the Supreme Court.

Sub clause (4) provides that a consent judgment, decision or order of the Supreme Court made by an arbitrator may not be set aside by the Supreme Court in the same cause or matter except by way of a new cause or matter is filed by a party for the purpose of setting aside the judgment, decision or order.

In this Clause award includes interim award.

This Clause does not apply to criminal causes or matters.

Clause 19 allows the Supreme Court to refer any cause or matter to a referee for inquiry and report. It is not unusual that sometimes the Court is faced with technical issues which the Court does not have any particular expertise. This clause allows the Court to refer it to a referee or to an expert in the particular field so that the issues can be dealt with comprehensively. This includes accounts which may sometimes consume a substantial time of the Court. This clause allows referral of the whole or part of the cause or any particular issue in a cause or matter.

Clause 20 exemplifies the power of the Court to restrain a debtor from leaving the country. This provision complies with the Constitution and is further codification of the common law doctrine '*writ ne exeat Republica*'

Clause 21 provides for the power of Judges to administer oaths or affirmations as prescribed by the Constitution, this Act or any other written law.

Clause 22 provides for a Judge to recuse himself or herself if he or she has a conflict of interest.

Sub clause (1) makes it an obligation for a Judge to recuse himself or herself in the cause or matter whether he or she hears the cause or matter as a single Judge or as a member of the full bench.

Sub clause (2) allows a party to any cause or matter to seek the recusal of a Judge from adjudicating a cause or matter.

Sub clause (3) provides that the Chief Justice shall develop and publish guidelines on recusal to assist Judges to properly effect recusals in a cause or matter.

Clause 23 provides for the transfer of cause or matter from the Supreme Court to the District Court.

The cause or matter can only be transferred from the Supreme Court to the District Court under sub clause (1), if any cause or matter is pending before the Supreme Court but is within the jurisdiction of the District Court, a Judge may in his or her own motion or upon the application by the party direct that the cause or matter be transferred to the District Court for hearing and determination.

Sub clause (2), provides that a criminal cause or matter may not be transferred to the District Court unless a particular cause or matter has first been transferred from the District Court to the Supreme Court for the determination of a question involving the interpretation or effect of the Constitution.

Clause 24 provides that the Supreme Court has the discretion to award costs in a cause or matter as it deems fit.

Clause 25 provides that Supreme Court has the power to adjourn the hearing of a cause or matter.

Sub clause (1) allows the Supreme Court to adjourn a cause or matter for hearing from day to day or any convenient day.

Sub clause (2) provides that if the Judge is not present at the time and place appointed or adjourned for sitting of the Supreme Court, the Registrar may by public notice, written or oral, adjourn the sitting to such time as he or she considers proper.

Sub clause (3), provides that if any sitting of the Supreme Court is adjourned, all persons bound to be present at the sitting so adjourned shall be deemed to be present at the time appointed by the notice of adjournment.

Clause 26 is included to ensure that legal practitioners under the Legal Practitioners Act are admitted in accordance with the laws of the Republic. This ensures an admission of a legal practitioner may be done before the Chief Justice, Judge or the Registrar.

Clause 27 provides that in relation to corporation, the Supreme Court shall exercise all such powers and jurisdiction as vested under the Corporations Act 1972, this Act and any other written law.

PART 7 – CONSTITUTIONAL APPLICATION, INTERPRETATION, EFFECT AND REDRESS

This clause is needed because of continuous applications for interpretation or application of the Constitution. Often these issues are raised in existing proceedings in which the Republic is not a party. Also, applications are made which affects the Republic as ultimately it is the duty of the Republic to uphold the Constitution in particular, Part 2 relating to protection of fundamental rights and freedoms. Articles 54 and 55 of the Constitution specifically vest the Supreme Court with the original jurisdiction to determine any question arising or involving the effect of the provisions of the Constitution. This is a new Part included in the Act to provide for the manner in which the parties and Court should approach the application under the said Articles.

Clause 28 reiterates that the Supreme Court has jurisdiction and powers as provided for under Articles 14, 54 and 55 or any other Articles of the Constitution of Nauru and this can be exercised by a single Supreme Court Judge.

Clause 29 provides that an application for constitution redress shall be by way of originating summons and a supporting affidavit.

In this originating summons it must contain:

- (a) concise nature of the claim;
- (b) concise declaration of relief sought;
- (c) such other order as may be appropriate; and
- (d) relevant provision of the Constitution.

Sub clause (3) provides that if a constitutional redress application is filed, whether or not the Republic is a party, the Secretary for Justice shall be served with a copy of the originating summons and supporting affidavit within 14 days of the filing of the application.

Sub clause (4) provides that if necessary, the Secretary for Justice shall enter an appearance to assist the Supreme Court in the interpretation or application of the Constitution.

Clause 30 provides that the case stated is limited to the interpretation and effect of the constitution only. What is left out is the application of the articles of the Constitution because if the interpretation is not in question, the application is not an issue for the Court to apply the Constitution to a given set of facts in a case.

Sub clause (4)(d) is to cater for a private prosecution undertaken by a person. Otherwise in all other proceedings the ODPP is inevitably a party to the criminal cause or matter.

Clause 31 provides that no application for the interpretation of the Constitution can be made in any proceedings other than under this Part of the Act.

PART 8 – PROBATE CAUSES AND MATTERS

Clause 32 provides that any application for grant of probate or letters of administration or revocation of grants shall be made to the Probate division of the Supreme Court. The grant made by the Supreme Court is to be made under the seal of the Supreme Court.

Sub clause(3) does not allow a grant to be made by the Supreme Court until:

- (a) there is contention or until the contention is disposed of; and
- (b) probate action or proceedings relate to the grant is determined by the Supreme Court.

Clause 33 grants the Supreme Court power and jurisdiction to reseal an overseas grant of probate or letters of administration.

Clause 34 allows a caveat to be entered in the Probate registry against a grant of probate or letters of administration. If a caveat is entered, the grant of probate or letters of administration shall not be granted until the caveat is lifted. A caveat is valid for 6 months and may be extended by the Supreme Court upon application by the person who put the caveat or if a probate action or proceeding has already started.

Clause 35 provides that the Registrar shall keep and maintain the records of all grants under this Part.

Clause 36 provides that the Supreme Court shall summon the person named in the will to prove or renounce a probate of or will and do such things concerning the will as the Supreme Court had power to order such person to do.

PART 9 – SUPERVISORY JURISDICTION

Clause 37 provides that this power is vested to the Royal Court of Justice in England by which the superior court is able to review the prerogative powers. The superior court has the power to grant prerogative reliefs of certiorari, mandamus, prohibitions, injunctions and declarations.

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

Clause 38 provides that an appeal from the District Court in a criminal case lies to the Supreme Court against conviction or sentence or both.

Sub clause (2) provides that in criminal cases once an acquittal is granted, no appeal lies to the Supreme Court without the approval of the Director of Public Prosecutions.

Sub clause (3) provides that if the District Court has convicted and sentenced a person, the Director of Public Prosecutions can appeal to the Supreme Court against sentence only.

Sub clause (4) provides that if the Director of Public Prosecutions or prosecutor is ordered by the District Court to pay costs or compensation, he or she may appeal to Supreme Court against such orders.

Sub clause (5) provides that a person is convicted on trial by the District Court and is not represented, he or she shall be informed by the resident magistrate of his or her right of appeal at the time of sentence.

An appeal to the Supreme Court may be on a question of law or facts or mixed law and facts.

Clause 39 provides that a person who has pleaded guilty of an offence and has been convicted by the District Court cannot appeal without the leave being granted by the Supreme Court but the person can appeal as to the extent or legality of the sentence.

It also provides that no one can appeal against conviction except the Director of Public Prosecutions where in the District Court no sentence for a term of imprisonment was imposed. If the person wants to appeal then he or she needs the leave of the Supreme Court to do so.

No one can appeal against conviction or sentence merely on the grounds that the person convicted is ordered to find surety to maintain peace.

Clause 40 provides that a person who seeks to appeal a judgment, decision or order of the District Court shall file and serve a notice of appeal within 21 days of the delivery of the judgment, decision or order.

Clause 41 provides that a person who seeks to appeal a decision, judgment or order of the District Court under this Part shall file by way of notice of appeal to the Supreme Court.

If a person who seeks to obtain leave to appeal a judgment, decision or order of the District Court under this Part where leave is required, the person shall file a summons for leave to appeal in the Supreme Court.

An appellant is not allowed on a hearing of an appeal to allege or give evidence on, any grounds of appeal not included in the notice of appeal or in the additional grounds without the prior approval of the Supreme Court.

Clause 42 provides that the notice of appeal must contain precisely:

- (a) grounds upon which it is alleged that the District Court has erred; and
- (b) relief sought from the Supreme Court.

Sub clause (2) provides that if 2 or more persons have been jointly tried and convicted and their interests do not conflict, a notice of appeal may be presented on their behalf and the Supreme Court may hear the appeals separately or together as it deems just.

Sub clause (3) provides that if the appeal requires the leave of the Supreme Court than leave can only be granted after endorsement of the notice of appeal.

Clause 43 provides that the respondent, who did not appeal the decision of the District Court but seeks to contend the appeal of the judgment, decision or order of the Court, shall give notice to that effect specifying the grounds that he or she intends to contend and the precise form of order that he or she proposes for the Supreme Court to consider.

Sub clause (2) provides that if the respondent seeks to contend the appeal that the judgment, decision or order of the District Court be affirmed on the ground other than those relied upon by the Supreme Court shall give notice to that effect by specifying the grounds of that contention.

Sub clause (3) provides that a respondent is not entitled to appeal a decision of the District Court to be varied if not specified in the notice as required under this Clause, to apply for relief not so specified or support a decision of the District Court on the grounds not relied upon by the District Court or specified in such a notice.

Under sub clause (4) a respondent's notice shall be filed within 14 days of the service of the notice of appeal to the respondent.

Clause 44 provides that the provisions relating to notice of appeal shall also apply to the respondent's notice with such changes as may be necessary.

Clause 45 provides that a notice of appeal or respondent's notice may be amended and served:

- (a) without the leave of the Supreme Court at any time before 14 days of the date fixed for the hearing of the appeal; or
- (b) with the leave of the Supreme Court at any time less than 14 days of the date fixed for the hearing of the appeal.

The amended appeal or respondent's notice shall be made by way of Supplementary notice of appeal or respondent's notice.

Clause 46 provides that if the appellant is not represented by a legal representative the notice of appeal may be prepared by the Office of the Public Legal Defender.

Sub clause (2) provides that if the appellant is imprisoned and not represented by a legal representative the notice of appeal may be prepared under the supervision of the Chief Correctional Officer and filed in the Supreme Court.

Sub clause (3) provides that in considering or preparing a notice of appeal a person entitled to an appeal or through a legal representative, the Clerk or the Chief Correctional Officer shall be entitled to peruse the original record of the proceedings at such time as the Registrar or the Resident Magistrate may allow.

Clause 47 provides that the Supreme Court may extend the time for filing a notice of appeal beyond the 21 days. The Supreme Court may extend the time:

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

Clause 48 provides for admission to bail and suspension of sentence pending appeal. If after a conviction and sentencing to a term of imprisonment and the appellant files and services a notice of appeal, the Supreme Court may order that the appellant be admitted to bail pending appeal with or without cause.

Sub clause (2) provides that if the appellant is not admitted to bail pending appeal the determination of his or her appeal may, at his or her own request, be treated in like manner as a prisoner awaiting trial.

Sub clause (3) provides that if 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.

Clause 49 provides that if on conviction an order is made by the District Court for:

- (a) payment of compensation;
- (b) restoration of any property to any person; or
- (c) re-vesting of any property to the original owner of any stolen property by operation of any written law,

the judgment, decision or order shall be stayed until the expiry of 21 days from the date of conviction or where a notice of appeal or leave to appeal is given within 14 days after the date of conviction until the determination of the appeal.

Sub clause (2) provides that if on appeal, the judgment, decision or order of the District Court is affirmed by the Supreme Court, the District Court judgment, decision or order shall take immediate effect.

Sub clause (3) provides that if on appeal, the judgment, decision or order of the District Court is reversed or varied by the Supreme Court, the District Court judgment, decision or order shall make proper orders for:

- (a) payment of compensation;
- (b) restoration of any property to any person; and
- (c) re-vesting of any property to the original owner of any stolen property by operation of any written law.

This allows for the maintaining of the status quo as to any properties being passed allowing the appeal to be heard. The maintaining of status quo is relevant for the purposes of the outcome of the Supreme Court and more so if a re-trial is ordered the exhibits may be needed for the re-trial. This clause ensures that the judgment, decision or order of the District Court becomes effective immediately where the Supreme Court affirms the District Court's judgment, decision or order. This provision allows the Supreme Court to make appropriate orders for the compensation, restoration of property and re-vesting of property to the original owner where the judgment, decision or order of the District Court is reversed or varied by the Supreme Court.

Clause 50 provides that the Registrar will enter the appeal for hearing within 42 days of the notice of appeal being filed and record of proceedings by the District Court and served on the parties stating the date and time of hearing the appeal.

Clause 51 provides that subject to the Supreme Courts power to award costs, in determining an appeal the Court shall have jurisdiction and discretion to award costs to one or more parties to the appeal

Clause 52 provides that if an appellant intends to discontinue his or her appeal, the appellant may give notice in writing to the Registrar to discontinue his or her appeal at any time before the date of hearing and upon such discontinuance no further steps can be taken in the appeal and the District Court may proceed to enforce the decision appealed. The Registrar shall send a copy of the notice of discontinuance to the respondent.

Clause 53 provides in a hearing of an appeal at the Supreme Court, the appellant or through the legal representative and the respondent or his or her legal representative can be at the hearing.

Sub clause (2) provides if an appeal is against a conviction, the Supreme Court shall allow the appeal and set aside the conviction if:

- (a) conviction is inconsistent with the finding of facts;
- (b) judgment, decision or order was a consequence of an error of law ; or

(c) substantial miscarriage of justice has occurred.

Sub clause (3) provides that if an appeal against conviction is allowed, the Supreme Court shall quash the conviction and:

- (a) direct a judgment and verdict of acquittal to be entered; or
- (b) where the interest of justice requires, remit the cause or matter to the District Court for retrial.

Sub clause (4) provides that if the appeal is against sentence, the Supreme Court decides that a different sentence ought to have been passed, the Supreme Court shall:

- (a) quash the sentence passed at the trial; and
- (b) in substitution, pass such other sentence which the Supreme Court deems fit under the respective law.

The Supreme Court on an appeal against acquittal shall allow the appeal if it deems that a verdict should be set aside on the ground that:

- (a) the facts found by the District Court have proved established the offence charged or any other offence of which the accused person could have been convicted on the trial of that charge;
- (b) on evidence before it the District Court could not properly have decided that facts establishing any such offence as is referred to in the paragraph above had not been proved;
- (c) the District Court wrongly excluded evidence tendered by the prosecution which, if admitted and believed by the Court, would have been likely to result in the Court finding facts proved as referred to in paragraph (a);
- (d) the District Court wrongly decided at the close of the case for the prosecution that a case had not been made out against the respondent sufficiently to require him or her to make a defence in respect of the charge or any count of that charge; or
- (e) the District Court wrongly decided that the charge was defective and did not record its findings of the facts and in any other case dismiss the appeal.

If the appeal is allowed under paragraph (a) or (b) the Court shall, unless it is a proper case for the charge to be dismissed or the accused person to be discharged under any written law, enter a conviction in respect of the offence of which the accused person has been proven guilty and of which could have been convicted on the trial of the charge.

If the appeal is allowed under paragraph (c), the Court shall order that a new trial be held before the District Court.

If the appeal is allowed on ground under paragraph (d) or (e), if the trial had started, the trial be continued and completed in the District Court or if for any reason the resident magistrate who presided on the case will not be able to continue the trial, a new trial may be held before the District Court.

Clause 54 allows the Supreme Court to correct any errors it may find in the decision of the District Court and impose the respective sentence it deems fit and appropriate without the need for remitting the matter back to the District Court for the hearing.

Sub clause (2) - gives the Supreme Court power to consider the totality of the evidence before it and if it comes to a conclusion that based on the findings of the District Court that it can safely find a person guilty of another offence, the Supreme Court may proceed to convict the person and impose an appropriate sentence.

Clause 55 provides that if the Supreme Court deems it fit or expedient in the interest of justice, it may make one or more of the following orders:

(a) order production of any document, exhibit or matters relating to the proceedings and it is necessary to produce it for the determination of an application or the appeal;

(b) order any witnesses who have been a compelled witness at the trial:

(i) to attend and be examined before the Supreme Court whether they were or were not called at the trial; or

(ii) the examination of any such witnesses to be conducted in the manner provided by the rules of the Court or in the absence of the rules, the Supreme Court may direct the Resident Magistrate to take depositions of the evidence before him or her.

(c) receive the evidence tendered, of any witness who is competent but not compellable witness and any witness who is competent but not compelled witness and if the appellant makes an application for the purpose of the spouse of the appellant who could not give evidence during trial except on such application;

(d) if any question arises in the appeal that involves prolonged examination of documents, accounts or any scientific or local investigation which cannot in the opinion of the Supreme Court can be conducted before a Supreme Court, order the reference of the question in the manner provided by the rules of the Court for inquiry and report to a special commissioner appointed by the Supreme Court and act upon the report of any such commissioner as far as they fit to adopt; and

(e) appoint any person with special expert knowledge to act as an assessor to the Supreme Court where it appears to the Supreme Court that special knowledge is required for the determination of the case.

The Supreme Court shall not increase any sentence by reason of or in consideration of any evidence adduced before it under this clause but was not adduced at the trial.

Clause 56 provides that unless any objection is raised and recorded by the District Court and dismissed, the appellant cannot raise a procedural issue in the Supreme Court in an appeal. The only exception is if the appellant was not represented.

Clause 57 provides that when a case is decided on appeal by the Supreme Court, the Registrar shall certify its judgment, decision or order to the District Court which shall make such orders in conformity with the judgment, decision or order of the Supreme Court.

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

Clause 58 allows an appellant who is in custody to be present at the hearing of his or her appeal under this Part.

Clause 59 provides that the Supreme Court may call for and examine the record of any criminal cause or matter of the District Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings in any District Court.

Clause 60 provides that the Resident Magistrate may call for and examine the record of any criminal cause or matter of the District Court constituted by 3 lay magistrates for the purpose of satisfying himself or herself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of the Court.

If the Resident Magistrate does act as stated above, and considers that any finding, sentence or order is illegal or improper or that any such proceedings are irregular, he or she shall forward the record, with such remarks thereon as he or she deems fit to the Supreme Court.

Clause 61 provides that any District Court records which has been called for or forwarded by the Resident Magistrate under the provisions of clauses 59 and 60 or which otherwise comes to its knowledge, the Supreme Court:

- (a) in the case of conviction, exercise any of the powers conferred upon it as an appellate court and may increase the sentence; and
- (b) in the case of any other order, other than an order of an acquittal, alter or reverse such order.

Subject to Clause 62, no order under this section shall be made to the prejudice of an accused person unless he has an opportunity of being heard either personally or by a legal representative in his or her own defence.

If the Supreme Court quashes the sentence passed by the District Court and passes sentence under this Clause, such sentence shall, for the purpose of this Act, be deemed to be a sentence passed by the District Court, and no other appeal shall be made to the Supreme Court.

There is nothing in this section will be deemed to authorise the Supreme Court to convert a finding of acquittal into one of the conviction.

No proceedings by way of revision shall be entertained at the instance of any party to the proceedings.

If the record of any criminal cause or matter has been called under clause 59 or has been sent or forwarded to the Supreme Court under clause 60 the resident magistrate, judge or Registrar may, if he or she considers that the interest of justice requires:

- (a) suspend any sentence imposed or order made in that cause or matter upon such terms and period as he or she deems fit;
- (b) if a sentence or imprisonment is suspended, he or she may deem fit, to order any person be admitted to bail, with or without sureties; and
- (c) in any such case the time during which that person is at large after being so released shall be excluded in computing the term of the sentence.

Clause 62 provides that no party has any right to be heard either personally or by a legal representative before the Supreme Court when it is exercising its powers of revision. However, the Supreme Court may exercise its powers to require any party personally or by a legal representative to be heard.

Clause 63 provides that all proceedings before the Supreme Court, in the exercise of its revisionary jurisdiction may be heard and any judgment, decision or order may be made or passed by a Judge sitting in Chambers. However, if the Supreme Court decides to require any party personally or by a legal representative to be heard, the Supreme Court may sit in open court.

Clause 64 provides that when a case is revised by the Supreme Court, the Registrar shall certify the judgment, decision or order to the District Court which shall make sure orders in conformity with the judgement, decision or order of the Supreme Court.

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

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

Clause 65 provides for an appeal of a civil cause or matter from the District Court to the Supreme Court. Civil proceedings include all matters that are not criminal proceedings can be appealed to the Supreme Court against the decision of the District Court.

Clause 66 provides that every appeal shall be by way of notice of appeal in writing signed by the appellant or by his or her legal representative. The notice of appeal shall:

(a) state whether the whole or only part of the decision is complained of and if only part of the decision is then it shall specify which part; and

(b) be filed in the Supreme Court and served to the respondent within 21 days of the delivery of the judgment, decision or order.

Sub clause (3) copy of the notice of appeal shall be served by or on behalf of the appellant on all parties to the appeal either before or immediately after the notice of appeal is filed in the Supreme Court.

Clause 67 provides that no appeal from the decision of the District Court shall be brought after the expiration of 21 days from the date of the judgment, decision or order.

The Supreme Court may extend the time for the filing and serving of the notice of appeal provided that the application is made before the expiration of 6 months after the delivery of the judgment, decision or order.

Clause 68 provides that the appellant shall give security for costs for the purpose of the appeal to the satisfaction of the Registrar. The Registrar shall fix an amount for the security for costs which shall be paid within 14 days of the order being made and if the security for costs is not paid or time for payment has not been extended by the Registrar, the appeal shall be deemed to be abandoned.

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

Clause 69 provides that if the Respondent intends on the hearing of the appeal to vary or reverse the judgment, decision or order of the District Court, he or she shall file and serve a respondent's notice within 14 days of the service of the notice of appeal.

Sub clause (2) does not allow the respondent to contend, the decision of the District Court to be varied if the grounds are not specified in the notice of appeal.

Clause 70 provides that the notice of appeal or respondent's notice may be amended and served without the leave of the Supreme Court at any time before 14 days of the date fixed for hearing of the appeal or with the leave of the Supreme Court at any time less than 14 days of the date fixed for the hearing of the appeal.

Sub clause (2) allows the notice of appeal and respondents notice to be amended by way of Supplementary notice of appeal or respondent's notice.

Clause 71 provides that on the hearing of appeal by the Supreme Court, the Supreme Court may:

- (a) order a rehearing of the case in the District Court upon such terms as it deems fit;
- (b) order that the case be referred back to the District court for variation;
- (c) order judgment to be entered in the District Court for either party; or
- (d) make a final or other order on such terms as it deems proper to ensure the determination on the merits of the real questions in dispute between the parties; and
- (e) it may make such order as to costs as it deems proper.

The powers under this Clause may be exercised by the Supreme Court, despite the notice of appeal the appellant sought that part only of the judgement, decision or order be reversed or varied, and such powers may be exercised in favour of all or any of the respondent's or parties even though those respondents or parties may not have appealed from or complained of the judgment, decision or order.

Clause 72 provides that when a case is decided on appeal by the Supreme Court under this Part, the Registrar shall certify its judgment, decision or order to the District Court which shall make such orders in conformity with the judgment, decision or order of the Supreme Court. The District Court shall take such steps as may be necessary to enforce the judgment, decision or order of the Supreme Court.

Clause 73 provides that the Supreme Court has no jurisdiction to admit or allow any evidence or submissions in determining an appeal which are fresh evidence that were not part of the records of the proceedings of a cause or matter before the District Court. However, the Supreme Court may allow any fresh evidence upon application for leave but it is to be 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

must be such as to be believed or credible.

PART 12 – PROCEDURE AND RULES FOR APPEALS FROM DISTRICT COURT

Clause 74 provides that appeals under Parts 10 and 11 shall be by way of a rehearing. Subject to Clause 73 if any question of fact is involved in any appeal, the evidence taken in the District Court bearing on the question shall be brought before the Supreme Court as follows:

- (a) any oral evidence, be by the production of the copy of the written record made by the magistrate or such other materials as deemed expedient by the Supreme Court;
- (b) as to evidence received by written statements or by affidavits and as to any exhibits, by the production of the written statements and affidavits and such of

the exhibits as may be forwarded by the clerk and by production by the parties to the appeal of such exhibits as are in their custody.

Sub clause (3) provides that if the language used by the District Court at the hearing of the cause or matter to which any appeal relates was Nauruan, the record by the resident magistrate and any affidavits and exhibits in the Nauruan language shall be translated into the English language and certified by the Clerk to be the correct translation before the record is transmitted to the Registrar.

Sub clause (4) provides that any party to the appeal may on payment of the prescribed fee obtain a copy of the translation from the Registrar.

Clause 75 provides that if the appellant does not appear on time as appointed for hearing of the appeal and is not represented by a barrister and solicitor or pleader, his or her appeal, shall unless the Supreme Court has good reasons to order otherwise, stand dismissed.

Sub clause (2) provides that if the appellant does not prosecute his or her appeal with due diligence, the respondent may by summons apply to the Supreme Court to dismiss the petition of appeal and the Supreme Court may dismiss the petition accordingly.

Sub clause (3) allows the Supreme Court to decide to order for costs as it deems fit and proper.

Clause 76 the Chief Justice may make rules of the court regarding appeals in the civil proceedings.

Clause 77 provides that if the District Court stay proceedings on grounds of error or possible error after a verdict, the District Court, must on application of the counsel for the prosecution, reserve a case for consideration by the Supreme Court.

Upon hearing of the case, the Supreme Court may affirm or reverse the order arresting judgment.

If the Supreme Court reverses the order the Court must direct that judgment be pronounced on the offender and order the offender to appeal at a stated place and time and any magistrate may issue a warrant for arrest of the offender.

The arrested offender may be admitted to bail by order of the Court or Judge when the Court directs that judgment be pronounced at a later time.

PART 13 – MODE OF CONDUCTING PROCEEDINGS OF THE SUPREME COURT

Clause 78 provides that the proceedings in the Supreme Court shall be conducted as follows:

(a) a trial or hearing of a substantive cause or matter is to be heard and disposed of in the Supreme Court; and

(b) interlocutory hearings and other such matters provided under this Act or rules of the court may be heard and disposed of in the Judge's chambers.

Clause 79 provides that all Supreme Court proceedings is to be conducted in the English language. However sub clause (2) provides that if a person is unable to communicate in English, he or she will be allowed to speak in the language in which he or she can communicate and the Supreme Court shall provide for an interpreter.

Clause 80 provides that the Supreme Court shall sit for a trial or hearing of a cause or matter at such time and place as the Chief Justice may direct. The Registrar will have to issue notices of such sittings to the parties in compliance to the direction of the Judge or rules of the court.

PART 14 – WITNESSES

Clause 81 allows for the summoning of any person by a Judge or the Registrar to attend the Supreme Court.

Paragraph (a) is to subpoena a person to attend Court to testify only

Paragraph (b) is to issue a subpoena sub judicium – to produce documents and give evidence.

Clause 82 is necessary to ensure that witnesses comply with the summons to attend Court as witnesses. The fine is now increased to \$300.

Clause 83 provides that a Judge or Registrar may issue an order for production for serving a prisoner to be brought before the Supreme Court to be examined as a witness in any cause or matter and the Chief Correctional Officer shall comply with order and also shall provide safe custody of the prisoner while he or she is away from prison.

Clause 84 empowers the Court to arrest witnesses who fail to turn up to Court and or to detain them in custody for a period not exceeding 7 days. This is necessary to ensure that the authority and the processes of the Court are not undermined.

Sub clause (4) protects the disclosure of information under the Official Information Act 1976 and under the well-known principles of law on public interest immunity from disclosure or production.

Clause 85 provides that in any civil cause or matter the allowances of witnesses shall be paid by the party on whose behalf the person attended and is recoverable as ordinary costs of the suit if the Supreme Court so orders.

Clause 86 provides that the Supreme Court may make an order for inspection of the site or property by the Judge, the officers of the Court, legal representatives, parties and

witnesses and such direction of the inspection as it deems fit, if the inspection is material to the determination of the cause or matter.

Clause 87 provides that a party to any cause or matter shall be entitled to receive a copy of the record of the evidence given but upon payment of a prescribed fee.

Sub clause (2) does not allow a person to inspect the original record of any proceedings in any pending cause or matter without the leave of the presiding Judge.

Sub clause (3) does not allow a person to inspect the original record of a proceeding to a cause or matter which has been determined and finalised including any appeals without the leave of the Registrar.

Clause 88 is to record oral evidence as the Supreme Court is a court of record. An accurate recording of evidence is necessary to ensure the record of the Court is complete and it will also be used for the purposes of appeal.

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

Clause 89 provides the powers of the Supreme Court to enforce judgments and orders.

Sub clause (2) provides that if there are no laws in place that provides for the Supreme Court to enforce judgments, decisions and orders of the Supreme Court may be enforced in all or any of the ways in which judgments and orders of the High Court of Justice in England could be enforced in England so far as they are applicable to the situation in the Republic and are not inconsistent with the provision of this Act or any other written laws.

PART 16 – EXECUTION OF THE PROCESS OF THE COURTS

Clause 90 provides that the Commissioner of Police is responsible for the execution of all such writs, warrants, orders, commands and process of the Supreme Court by the Court or any Judge to execute and shall make return of every writ, warrant, order, command or process together with the manner of execution to the Court which issued it.

Sub clause (2) provides if the Courts directs or award in any cause, matter or thing in which the Commissioner of Police has a personal interest in and the Courts considers that it is undesirable to be responsible for the execution, the Minister may appoint some other person to execute and return it and the said process shall be directed to the person so appointed.

Sub clause (3) provides that if the Commissioner of Police is prevented by reasons of being absent from the Republic or by illness from performing his duties required under this clause, they may be performed by the next most senior person in the Nauru Police Force present in the Republic.

Sub clause (4) provides that every writ, warrant, order, command and process may be executed according to its intention.

Clause 91 provides that all officers of the Nauru Police Force shall obey the orders and directions of the Supreme Court when exercising its criminal jurisdiction and shall have the powers and authority that is necessary to enable them to obey the directions of the judge and magistrate.

Clause 92 provides that it is lawful for any person who has a duty by law to arrest or detain another person according to the terms of the process and to execute the lawful process of a Supreme Court.

Clause 93 provides that any warrant issued by the Supreme Court is to be executed by a person who is required by law to execute the warrant.

Clause 94 provides that any sentence issued by the Supreme Court is to be executed by a person who is required by law to give effect to the lawful sentence.

PART 17 – FEES AND FUNDS IN THE SUPREME COURT

Clause 95 provides that the Registrar or any other public officer nominated by the Registrar shall receive and demand all fees prescribed by this Act, any other written law or rules of the Court and all fines, costs, forfeitures and penalties imposed by the Supreme Court in any criminal proceedings.

Clause 96 provides that there is to be a Courts Trust Fund and all moneys paid into the Supreme Court shall be received into and credited to that fund and paid by the Registrar into a bank account in a bank in the Republic. The Registrar if he or she deems fit may 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. All the securities for money deposited in the Supreme Court shall be placed by the Registrar in safe custody or in the Fund.

Clause 97 provides that all moneys received into the Fund and all securities for money deposited in the Supreme Court under Clause 96 shall be held in trust by the Registrar to attend to the orders of the Court in which they were paid thereto and subject to the any rules made under this Act.

No money is to be withdrawn from the Fund or securities for money handed over to any person unless with the direction in that regard given by the Court into which they were paid.

Clause 98 provides that 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 Clause 96.

Sub clause (2) provides that if any money or security to money is deposited under clause 96 is lost or destroyed which was held in the trust by the Registrar, the Republic shall be liable to make good to whose credit to the amount of money lost or replace the security cost or destroyed or make good the loss suffered by the party.

If any interest paid by the bank on any moneys of the Fund paid into the interest bearing account by the Registrar under the provisions of Clause 96 shall be for the interest of the Republic, and the Registrar shall from time to time of not more than 12 months interval, withdraw from the Fund the amount of such interest and pay it into the Treasury Fund.

Clause 99 provides that the Chief Justice may from time to time make rules in relation to the Courts Trust Fund.

PART 18 – REPRESENTATIONS OF PARTIES

Clause 100 provides that any civil proceedings against the Republic shall be filed in line with the requirements of the Republic Proceedings Act 1972. If the Republic or any public officer in his or her official capacity is a party to any cause or matter or where any relief is sought affects the revenue of the Republic, the Republic or that officer shall be represented by the Solicitor General or a government lawyer.

Clause 101 provides that a party to any cause or matter in the Supreme Court may appear in person or engage the services of a legal representative.

Clause 102 provides that a Judge shall have the power to transfer a cause or matter to the District as vested under this Act. The civil cause may be transferred either entirely or in part or any procedure required to taken therein. Subject to the law that relates to the procedures for criminal causes or matters, every order that is transferred shall operate as a stay proceedings in the Court from which the cause or matter is transferred and attested copy of the record of proceedings in that Court and all entries in the registers of the Court that is relative to, shall be transmitted to the Court to which it is transferred, but subject to Clause 99 all proceedings in the cause or matter shall be taken in that Court as if the cause or matter had started in that Court.

Any order makes under this Act for the transfer of a cause or matter or refusing such transfer, shall not be subject to appeal.

Clause 103 provides that Judgement of a District Court may be removed into the Supreme Court. If the Judge is satisfied that a person whom judgement has been obtained in the District Court for an amount more than \$500 whether by claim or counterclaim or by way of costs or otherwise, has no goods or chattels within the Republic to be able to seize to satisfy the judgment, may if the Judge deems fit and upon such terms as to costs, the Judge may direct by order and seal of the Supreme Court, to move the judgment into the Supreme Court.

If the Judge removes the matter from the District Court to deal with the matter in the Supreme Court, no further proceedings can be taken under the District Court for that matter and any judgment entered for that matter in the Supreme Court for the amount due and payable plus any costs as per District Court judgment will have the same force and effect as if the proceedings may have been dealt with originally by the Supreme Court.

PART 19 – PRACTICE AND PROCEDURE

Clause 104 provides that the Supreme Court shall follow rules of practice and procedure as prescribed by any written law in the Republic including any rules and orders made by the Court. If there are no written laws in place for procedure relating to any criminal cause or rules or orders of the court the Supreme Court shall follow the laws and practice observed in England in the High Court of Justice.

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

Clause 105 provides that the Chief Justice, Judge or Registrar acting under this Act or any written law shall not be liable for any act done or ordered to be done in discharging their judicial duties and functions, whether or not within the limits of his or her judgment, provided that it was done in good faith.

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

PART 21 - AFFIDAVITS

Clause 106 provides that the Chief Justice may appoint under the seal of the Supreme Court a barrister and solicitor and other person to be Commissioners to take affidavits, declarations and receiving production of documents or taking the examination of witnesses or interrogatories or otherwise necessary to taken in respect to any proceedings in any Court and any order by the Court for witness to attend or produce documents before the Commissioner shall be enforced in the same manner as the order to attend or examine or produce documents before the Court. Any person who is a Commissioner for Oaths shall pay a fee as the Minister prescribes. No action is to be brought against the Commissioner for executing or performing his or her duty in good faith but if such acts was in excess of the powers and jurisdiction required of a Commissioner , it shall be liable to revised, altered, amended or set aside upon application to the Court.

Clause 107 provides that any affidavit required for the purpose of the Supreme Court may be sworn outside the Republic but before a Commissioner appointed under clause 104 or in any place within the Commonwealth before a judge, magistrate, justice of the peace, notary public, commissioner for oaths, commissioner for affidavits, a diplomatic officer of the Republic or person authorised by law to administer oaths or if any other place, before a judge, notary public or diplomatic officer of the Republic.

The person who is witnessing an affidavit shall specify the date, place and where the affidavit was sworn and the Supreme Court will receive such sworn affidavit as evidence. If an affidavit is not in English language there shall be annexed to it a certified translation of it into the English language and a certificate signed by a person before who this section applies, a sworn affidavit that to his or her knowledge the person who has certified the translation has adequate knowledge and understanding of the language in which the document is made and of the English language.

Under this clause, a *diplomatic officer* refers the ambassador, high commissioner, Minister, Head of Mission, Consul General, Representative, Commissioner, Charge d’Affaires and Counsellor, Secretary or Attache at an Embassy, High Commissioner’s office, Legation or other post in a country or place outside the Republic.

PART 22 – CONTEMPT OF COURT

Clause 108 provides that the Supreme Court has the power and jurisdiction to try and punish any person in contempt of court as per section 14 of the Administration of Justice Act 2018.

PART 23 – MISCELLANOUS

Clause 109 provides that the Supreme Court shall not sit on Christmas Day, Good Friday, Independence Day, Constitution Day, Angam Day or any Sunday.

Clause 110 provides that the Chief Justice may declare the vacation of the Supreme Court not more than 30 consecutive days in any one year by notice published in the Gazette.

Clause 111 provides that the common law and law of equity of England continues to apply to the Republic to the extent of any inconsistency with any written law.

PART 24 – RULES OF COURT

Clause 112 provides that the Chief Justice may make rules relating to the Supreme Court relating to the following purposes:

- (a) constitutional redress;
- (b) grant, revocation or resealing and such other matters for the purpose of Part 7 and until such rules are made, the non – contentious probate rules of England continue to apply;
- (c) regulating the receipt of moneys paid into court, or received or recovered under or by virtue of any process of executions or distress;
- (d) regulating the payment out of court of all moneys to the persons entitled to;
- (e) prescribing the books and forms of accounts to be kept or used in the Court;

- (f) prescribing the acceptance, retention and disposal of fees;
- (g) prescribing fees to be received by Commissioners;
- (h) regulating the days and hours of opening and closing the offices of the Court;
- (i) for the better carrying into effect of the provisions, objects and intentions of this Act.

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

PART 25 – SAVINGS AND TRANSITIONALS PROVISIONS

Clause 113 any imperial enactment which was party or wholly replaced by any legislation in the Republic shall cease to apply.

Clause 114 provides that any other officer of a court apart from a judicial officer who holds office under the relevant Act immediately before the commencement of this Act will continue to hold office subject to this Act.

Clause 115 provides that other officers of court continue in office.

Clause 116 provides all proceedings pending or incomplete in the Supreme Court immediately before the commencement of this Act may be continued, completed and enforced under the relevant Act including the rules of the Court as if that Act had not been repealed.

Also 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 shall continue and have full effect as if they originated under the corresponding provisions of this Act and if necessary must be treated as it originated from this Act.

PART 26 – CONSEQUENTIAL AMENDMENTS AND REPEALS

Clause 117 provides for the consequential amendments and repeals to other written laws.

Clause 118 provides that any reference to the Courts Act 1972 is a reference to:

- (a) in the case of the Supreme Court, is the Supreme Court Act 2018;
- (b) in the case of the District Court, is the District Court Act 2018;
- (c) in the case of High Court of Australia, is the Nauru Court of Appeal Act 2018.

Clause 119 repeals the Courts Act 1972.