

## REPUBLIC OF NAURU

### SUPREME COURT (AMENDMENT) No. 2 BILL 2020

#### EXPLANATORY MEMORANDUM

The *Supreme Court (Amendment) No. 2 Bill 2020* is a Bill for the *Supreme Court (Amendment) No. 2 Act 2020*.

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

#### EXPLANATION OF CLAUSES

**Clause 1** provides that, once enacted, the short title of the Bill will be the *Supreme Court (Amendment) No. 2 Act 2020*.

**Clause 2** sets out when the Bill's provisions will commence which is on 15 November 2020.

**Clause 3** is the enabling provision for the amendment of the *Supreme Court Act 2018*.

**Clause 4** amends Section 4 of the Act. In subsection (2), the insertion of 'this Act' is to remove uncertainty and clarify the jurisdiction of the Supreme Court under the *Supreme Court Act*. In subsection (4), a new paragraph is inserted to include a constitutional and administrative division as was recommended in the judgment of the Nauru Court of Appeal in **Republic v Batsiua & Ors Criminal Appeal No. 02/18** - *See paragraph 46 of the judgment*.

**Clause 5** amends Section 37 of the Act by inserting a new subclause (5). The supervisory jurisdiction of the Court is to review in the manner and the process of which a decision is reached by an inferior tribunal or administrative decision making body. It is not an appeal as such the decision on merit is not often considered by the Court nor can the Court substitute its own opinion. In a criminal cause or matter, often challenge is made to a decision on merits. Under the various written laws, this is fully covered by the appeals process from the District Court to the Supreme Court, and to the final appellate court, the Nauru Court of Appeal.

**Clause 6** amends Section 38 of the Act by deleting subsection (4). This subsection is deleted to make it consistent with the *Criminal Procedure Act 1972* which provides that no costs are to be awarded in criminal causes or matters against the Republic or an accused person. The subsections are also renumbered.

**Clause 7** deletes and substitutes Section 39 of the Act. Section 39 is deleted and substituted by this new Clause to clarify the circumstances in which there is no appeal from the judgment, decision or order of the District Court. These are:

- (a) where a person pleads guilty, there is no appeal against the court entering conviction based on the guilty plea. However, the appeal is permissible with the leave of the Supreme Court as to the sentence. For example, where a person is convicted of an

offence of theft on his or her own plea of guilty, he or she cannot appeal that conviction. However, if he or she is sentenced to imprisonment, he or she can appeal that decision on the sentence;

(b) cases which are not serious. In the Republic, a serious offence is where there is a penalty in excess of 12 months imprisonment. An appeal is not permitted where there is no custodial sentence but only a fine of less than \$100 is imposed; or

(c) where one is required to provide surety for keeping peace.

**Clause 8** amends Section 48 of the Act by inserting a new subclause (4). This subclause is added to provide that for the purposes of consideration of a bail application pending appeal, the provisions of the *Bail Act 2018* apply.

**Clause 9** amends Section 79 of the Act to allow interpreters to interpret from outside the Republic. This amendment is necessary to complement the amendment to the *Criminal Procedure Act*. It will also apply to civil proceedings.

**Clause 10** amends *Section 80* of the Act by inserting new subclauses (3), (4),(5) and (6). Subclauses (3) and (4) are included to allow for Judges to hear or make orders for a cause or matter from outside the Republic in exceptional or urgent circumstances. This amendment is made in anticipation of the difficulties which may be caused due to unforeseen circumstances such as Coronavirus COVID-19. Subclause (6) is added to ensure that rules or practice directions are made by the Chief Justice to allow for the process of an exceptional or urgent circumstance is very limited. The Court must sit in the Republic at all times even in an audio visual link, the parties must be required to attend Court and the procedure for hearing shall be conducted in the Court with the Registrar controlling the operations of the proceedings.

**Clause 11** amends Section 81 of the Act to allow witnesses to testify from outside the Republic.

**Clause 12** amends Section 88 of the Act by inserting new subclauses (4), (5), (6), (7), (8), (9) and (10). Subclause (4) allows the recording of any evidence adduced through audio visual link by the Court only and the records are kept by the Court. Currently, all court proceedings are recorded by audio tapes and are retained in digital form.

Subclause (5) provides for ensuring that any evidence recorded is not in any manner or form edited, altered, modified or erased. Also, it must be retrievable only by the Court. The Court will have security passwords for any permission to allow access to the recordings. Not only that, there will be counsels involved, the Court will have inherent jurisdiction to deal with any unlawful recording by any party. The *Administration of Justice Act 2018* itself prohibits recording of court proceedings as such no further restrictions are necessary.

Subclauses (6) and (7) are additional safeguards to ensure that court proceedings are not unnecessarily interfered with by party. Subclause (8) authorises the electronic systems and technology to be implemented by the Court to ensure no recording of the proceedings take

place. Subclause (9) allows the Judge to suspend proceedings where he or she becomes aware that the proceedings are being unlawfully recorded. Subclause (10) provides the means and mechanisms for the Court to maintain the proceedings similar to a court sitting physically. A breach of any of the rules or procedure will constitute a contempt of court in the face of it.