

## REPUBLIC OF NAURU

### CRIMES (AMENDMENT) No. 2 BILL 2020

#### EXPLANATORY MEMORANDUM

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

**Clause 2** sets out when the Bill's provisions will commence which is upon certification by the Speaker.

**Clause 3** is the enabling provision for the amendment of the *Crimes Act 2016*.

**Clause 4** amends Section 8 of the Act by inserting the word 'intimidation' or 'intimidates' and its definition. This is necessary for the new offence of intimidation in the Bill. This is also necessary to clarify the ingredients of the offence of intimidation. This is related to the offence of intimidating or threatening a police officer in the execution of the police officer's duties.

**Clause 5** amends Section 77 of the Act. Section 77 provides for the offence of causing harm to a police officer. The current penalty for this offence is if aggravating circumstances apply, 10 years imprisonment and in any other case, 8 years imprisonment. The proposed penalty for such offence committed against a police officer reflects the severity of the offences. Where there are aggravating circumstances, life imprisonment with a non-parole and non-probationary period of 12 years imprisonment. In any other case, 20 years imprisonment of which imprisonment term at least one third to be served, without any parole or probation.

**Clause 6** inserts a new Clause 77A. This Clause is to provide for the offence of intimidating or threatening, a police officer. The penalty for this offence is 5 years imprisonment of which at least one third is to be served, without any parole or probation.

**Clause 7** amends Section 105 of the Act which relates to the offence of rape. The current penalty is: if aggravating circumstances apply – 25 years imprisonment; or in any other case – 20 years imprisonment. The penalty proposed is life imprisonment of which at least 15 years imprisonment to be served, without any parole or probation.

**Clauses 8 to 14** amend the sentence or penalty provisions of Sections 106, 107, 109, 110, 111, 112, 113 and 114 of the Act. These Sections relate to sexual offences.

<b>Offence</b>	<b>Current penalty</b>	<b>Proposed penalty</b>
Section 105 – Rape	<ul style="list-style-type: none"> <li>• If aggravating circumstances apply, <b>25 years</b>; or</li> <li>• In any other case <b>20 years imprisonment</b></li> </ul>	Life imprisonment of which at least 15 years imprisonment to be served, without any parole or probation.
Section 106 - Indecent Acts	<ul style="list-style-type: none"> <li>• If aggravating circumstances apply <b>8 years imprisonment</b>; or</li> <li>• In any other case <b>5 years</b></li> </ul>	<p style="text-align: center;"><b>20 years</b></p> <p style="text-align: center;"><b>10 years</b></p>
Section 107 - Engaging Person to Provide Commercial Sexual Services	<ul style="list-style-type: none"> <li>• If aggravating circumstances apply <b>7 years imprisonment</b></li> <li>• In any other case <b>5 years</b></li> </ul>	Life imprisonment of which at least 12 years imprisonment to be served, without any parole or probation.
Section 109 - Compelling prostitution and giving of earnings from prostitution	<b>25 years imprisonment</b>	Life imprisonment of which at least 15 years imprisonment to be served, without any parole or probation.
Section 110 – Observing private acts	<b>5 years imprisonment</b>	A maximum term of 10 years imprisonment of which imprisonment term at least half to be served, without any parole or probation.
Section 111 – Taking images of private acts without consent	<b>5 years imprisonment</b>	Life imprisonment of which at least 15 years imprisonment to be served, without any parole or probation.
Section 112 – Taking images of private parts without consent	<b>5 years imprisonment</b>	Life imprisonment of which at least 15 years imprisonment to be served, without any parole or probation.
Section 113 – Installing device to facilitate observation or image taking	<b>5 years imprisonment</b>	Life imprisonment of which at least 15 years imprisonment to be served, without any parole or probation.
Section 114 – Incest	<b>10 years imprisonment</b>	Life imprisonment of

	<ul style="list-style-type: none"> <li>• This section applies only if the defendant and the other person are both 16 years old or older.</li> <li>• Consent of the other person is not a defence to an offence under this section.</li> <li>• A person does not commit an offence under this section if the person did not consent to the sexual intercourse.</li> </ul>	which at least 15 years imprisonment to be served, without any parole or probation.
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**Clause 15** deletes and substitutes Section 114(1)(b) of the Act. This provision relates to incestuous relationships. The amendment clarifies that incest can be committed in case of relationship by which a person may marry another person of different gender under the *Births Deaths and Marriages Act 2017*.

**Clauses 16 to 24 and 26 to 28** amend the sentence or penalty provisions of Sections 116, 117, 118, 120, 121, 122, 123, 124, 125, 141, 142 and 143 of the Act. These Sections of the Act relate to sexual offences perpetrated against children.

Offence	Current penalty	Proposed penalty
Section 116 – rape of child under 16 years old	<ul style="list-style-type: none"> <li>• If child is under 13 years old or aggravating circumstances apply, <b>life imprisonment</b>; or</li> <li>• In any other case, <b>25 years imprisonment</b>.</li> </ul>	Life imprisonment of which at least 15 years imprisonment to be served, without any parole or probation.
Section 117 – Indecent acts in relation to child under 16 years old	<ul style="list-style-type: none"> <li>• If the child is under 13 years old or aggravating circumstances apply, <b>15 years imprisonment</b>; or</li> <li>• In any other case <b>12 years imprisonment</b>.</li> </ul>	A maximum term of 30 years imprisonment of which imprisonment term at least one third to be served, without any parole or probation
Section 118 – Causing child under 16 years old to engage in sexual activity	<ul style="list-style-type: none"> <li>• If the child is under 13 years old or aggravating circumstances apply, <b>15 years imprisonment</b>; or</li> <li>• In any other case <b>12 years imprisonment</b></li> </ul>	Life imprisonment of which at least 15 years imprisonment to be served without any parole or probation.
Section 119 – Engaging child to provide sexual services	<ul style="list-style-type: none"> <li>• If the child is under 13 years old or aggravating circumstances apply, life imprisonment; or</li> <li>• In any other case, 25 years imprisonment</li> </ul>	Life imprisonment of which at least 15 years imprisonment to be served, without any parole or probation.
Section 120 – Obtaining benefits from commercial sexual services with child	<ul style="list-style-type: none"> <li>• If the child is under 13 years old, <b>17 years imprisonment</b>; or</li> </ul>	Life imprisonment of which at least 15 years imprisonment to be served

	<ul style="list-style-type: none"> <li>• In any other case, <b>12 years imprisonment</b></li> </ul>	without any parole or probation.
Section 121 – Observing private acts of child	<ul style="list-style-type: none"> <li>• if the child is under 13 years old, <b>15 years imprisonment</b>; or</li> <li>• In any other case, <b>10 years imprisonment</b></li> </ul>	A maximum term of 20 years imprisonment of which imprisonment term at least half to be served, without any parole or probation.
Section 122 – Taking images of private acts of child	<ul style="list-style-type: none"> <li>• if the child is under 13 years old, <b>15 years imprisonment</b>; or</li> <li>• In any other case, <b>10 years imprisonment</b></li> </ul>	A maximum term of 25 years imprisonment of which imprisonment term at least one third to be served, without any parole or probation.
Section 123 – Taking images of private acts of child	<ul style="list-style-type: none"> <li>• if the child is under 13 years old, <b>15 years imprisonment</b>; or</li> <li>• in any other case, <b>10 years imprisonment</b></li> </ul>	A maximum term of 25 years imprisonment of which imprisonment term at least one third to be served, without any parole or probation.
Section 124 – Installing device to facilitate observation or image-taking of child	<ul style="list-style-type: none"> <li>• if the child is under 13 years old, <b>15 years imprisonment</b>; or</li> <li>• in any other, case <b>10 years imprisonment</b></li> </ul>	A maximum term of 25 years imprisonment of which imprisonment term at least one third to be served, without any parole or probation.
Section 125 – Promoting or organising travel for unlawful sexual activity with child under 16 years old	<ul style="list-style-type: none"> <li>• if the child is under 13 years old, <b>10 years imprisonment</b>; or</li> <li>• in any other case, <b>7 years imprisonment</b></li> </ul>	Life imprisonment without any parole or probation.
Section 141 – Involving child to produce or perform in offensive material	<ul style="list-style-type: none"> <li>• if the child is under 13 years old, <b>20 years imprisonment</b>; or</li> <li>• in any other case <b>15 years imprisonment</b></li> </ul>	A maximum term of 25 years imprisonment of which imprisonment term at least one third to be served, without any parole or probation.
Section 142 – Dealing with offensive material involving child	<ul style="list-style-type: none"> <li>• if the child is under 13 years old, <b>15 years imprisonment</b>; or</li> <li>• in any other case, <b>10 years imprisonment</b></li> </ul>	A maximum term of 25 years imprisonment of which imprisonment term at least one third to be served, without any parole or probation.
Section 143 – Exposing child	<ul style="list-style-type: none"> <li>• if the child is under 13</li> </ul>	A maximum term of 25 years

to offensive material	years old, <b>10 years imprisonment</b> ; or <ul style="list-style-type: none"> <li>• in any other case, <b>7 years imprisonment</b></li> </ul>	imprisonment of which imprisonment term at least one third to be served, without any parole or probation.
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**Clause 25** inserts a new Clause 125A. This Clause is principally for the protection of children who may be vulnerable to sexual abuse and exploitation from persons who are in a position of trust or authority over such children. This Clause aims to punish a person in a relationship of trust with a child who crosses the line and breaches that child’s trust.

**Clause 30** deletes and substitutes Section 211 of the Act. This Clause makes it very clear that it is not lawful for any person to possess a firearm.

**Clause 31** deletes and substitutes Section 212 of the Act. This Clause clarifies that it is an offence for a person to possess a firearm in a public place. This Clause however does not apply to a police officer or any other person authorised by the Cabinet to possess or carry a firearm.

**Clause 32** inserts a new Clause 215A. This new Clause authorises the Minister to make a Declaration for an amnesty period to provide for the surrender of firearms by persons who have firearms in their possession. A person who surrenders a firearm during an amnesty period shall not be prosecuted for possessing such firearm. Any form of compensation may be prescribed by the Minister for persons who own and surrender their firearms under this Clause.

**Clause 33** inserts a new Clause 215B. This new Clause is an offence provision which makes it an offence to manufacture, sell, import or supply a firearm. The penalty for an offence under this Clause is 10 years imprisonment.

**Clause 34** amends Section 279 of the Act by inserting a new subclause (3). This subclause requires the court to impose a sentence or make an order against a convicted offender that is appropriately severe having regard to all the circumstances of the offence.

**Clause 35** inserts a new Clause 282A. This Clause provides for the court when sentencing an offender to not take into account the time served in custody by an offender before the trial. This Clause applies to sexual offences in Part 7.