

**REPUBLIC OF NAURU**

**DISTRICT COURT (AMENDMENT) BILL 2020**

**EXPLANATORY MEMORANDUM**

The *District Court (Amendment) Bill 2020* is a Bill for the *District Court (Amendment) 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 *District Court (Amendment) Act 2020*.

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

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

**Clause 4 deletes and substitutes Section 7 of the Act** to clarify the provisions for the appointment of magistrates including Resident Magistrates. The Clause now provides for the minimum qualification requirement for the appointment of a Resident Magistrate. It also provides for the tenure of the appointment of magistrates including the retirement age. Provision is also made for the purposes of considering complaints of misconduct or inability on the part of the magistrate to perform the duties and functions of the office. The Clause is similar to that of a Judge of the Supreme Court. Currently, there is no provision for the Resident Magistrates' termination of employment for misconduct. Equally, there is no provision for a disciplinary process for dealing with any complaints of misconduct by a magistrate. A Judicial Complaints Tribunal is now established. There is no need for the appointment of a person on a full time basis. However, the Chief Justice has the power to appoint such person if and when needed. The Chief Justice is also given power to make rules for the jurisdiction, powers, practice and procedure of the Judicial Complaints Tribunal. It is anticipated that these rules will provide an opportunity for a complaint against a judicial officer to be heard and a fair hearing process observing the rules of natural justice be adhered to.

**Clause 5** deletes and substitutes Section 31 of the Act. This now clarifies the provisions relating to the transfer of a cause or matter from the District Court to the Supreme Court where the cause or matter is outside the jurisdiction of the District Court or, where an issue arises involving the interpretation or effect of any provision of the Constitution including it being part of one or more issues in any civil or criminal cause or matter.

**Clause 6** amends Section 35 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 7** amends Section 37 of the Act to allow witnesses to testify from outside the Republic.

**Clause 8** amends Section 44 of the Act by adding 7 additional subclauses. Subclause (4) allows the recording of any evidence tendered 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.

Subclause (6) is an offence provision. 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 any party.

Subclause (8) authorises the implementation of electronic systems and technology by the court to ensure no recording of the proceedings take place.

Subclause (9) allows the Magistrate 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.

**Clause 9** deletes and substitutes Section 64 of the Act. This clarifies that the judicial vacation does not apply to the District Court as such, it remains open for normal business.

**Clause 10** is the savings and transitional clause. This Clause allows a magistrate to continue to hold his or her office under the conditions of his or her appointment.