

## REPUBLIC OF NAURU

### BAIL BILL 2018

#### EXPLANATORY MEMORANDUM

The *Bail Bill* is a Bill for the *Bail Act 2018*.

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

#### EXPLANATION OF CLAUSES

##### PART 1 – PRELIMINARY

**Clause 1** provides that once enacted, the short title of the Act will be the *Bail Act 2018*.

**Clause 2** provides that the Act commences upon certification by the Speaker.

**Clause 3** defines key terms that are used in the Bill.

##### PART 2 – GENERAL PROVISIONS IN RELATION TO BAIL

**Clause 4** provides that every accused person has a right to be released on bail. However, it is not an unlimited right.

Clause 4 (1) provides that bail may be denied if a court or a police officer of the rank of sergeant or above hold that is not in the interests of justice that bail be granted.

Clause (4) (3) provides that there is a rebuttable presumption in favour of bail; that is, bail is to be granted as of right but the Republic is entitled to oppose the grant of bail and may produce evidence in court to show cause why bail should not be granted to an accused person. The ultimate decision in respect of bail rests with the police office or the court responsible for determining bail.

Clause (4) (4) provides instances where the presumption in favour of bail is displaced; that is, those instances the burden shifts to an accused person to show cause why he or she ought to be granted bail.

**Clause 5** provides that if a police officer or a court grants bail, the accused person is free to remain at liberty, except that he or she must appear before the court in answer to his or her charges in accordance with his or her bail undertaking.

Clause 5 (2) provides that if a person is in custody for some other matter; or is otherwise incarcerated or not entitled to be at liberty pursuant to some other lawful order; he or she must remain in custody.

**Clause 6** applies to criminal offences for which no term of imprisonment is prescribed. In these instances, an accused person is entitled to be released on bail unless the conditions set out in Clause 2 (a) are met. In that instance, the entitlement to bail is displaced and it will be for the accused person to show cause why he or she should receive bail.

**Clause 7** provides that in certain instances, a court may dispense with any requirement for bail.

**Clause 8** provides that where a court has decided to exercise its power under Clause 6, the accused person has the right to be at liberty until he or she is required to appear in court in respect of the offence for which he or she is charged.

### **PART 3- ADMINISTRATION OF BAIL BY POLICE**

**Clause 9** provides that where an accused person has been arrested for a cognizable offence and is taken to a police station, a police officer of the rank of sergeant or above has the power to grant bail to the accused person; except that the police officer must not grant bail and must keep the accused person in custody if a court has already made a determination in respect of bail; the person has been arrested, or is being investigated, or has been charged for *contempt of court*; or the offence is a serious one, that is – an offence for which the maximum penalty is imprisonment for 3 years or more.

In addition, pursuant to Clause 9 (3), a police officer of the rank of sergeant or above is granted the power to release a person arrested on suspicion that they committed an offence; if after their investigations they determine the evidence against that person is insufficient.

**Clause 10** establishes the procedure in relation to bail that the police officer must follow after arresting and charging an accused person for an offence.

**Clause 11** establishes the procedure in relation to bail that the police officer must follow when he or she is considering whether to release a person on bail.

**Clause 12** establishes the procedure in relation to bail that the police officer must follow after arriving at a decision to refuse bail to an accused person in his or her custody.

### **PART 4 – POWER OF THE COURT TO GRANT BAIL**

**Clause 13** gives Resident Magistrates, Judges and Justices of Appeal the power to grant bail to an accused awaiting trial or awaiting a decision on appeal.

**Clause 14** sets out the procedure to be followed by a court in instances where a court has declined to grant bail to an accused person.

**Clause 15** grants accused persons the right to apply for bail pending trial or appeal; and grants the court the power to refuse to entertain an application for bail if the court is satisfied that the bail application is frivolous and vexatious.

**Clause 16** provides that an accused person granted bail must provide detail of his or her residential address to the police and to the court. In addition, he or she must reside at the address given and is not permitted to be absent from that address more than 24 hours without permission of the police or the court.

#### **PART 5 – BAIL DETERMINATION**

**Clause 17** provides that the time a person may have to spend in custody awaiting trial is an important consideration but that the primary consideration for bail pending trial is whether or not an accused person will turn up to court to answer the charges laid against him or her. In addition, Clause 17 sets out the important considerations for bail pending appeal.

**Clause 18** briefly sets out the important considerations the Republic must deal with when opposing an application for bail; and **Clause 19** sets out in detail what the police or court must consider in arriving at a decision not to grant bail.

**Clause 20** requires that when a police officer or a court has decided to refuse bail, they must record in writing their reasons for refusing bail; communicate those reasons to an accused person within 24 hours; and must inform the accused person of his or her right of review.

#### **PART 5 – BAIL CONDITIONS**

**Clause 21** and **Clause 22** make comprehensive provision for the undertakings and conditions that an accused person must make and be subject to if granted bail.

**Clause 23** provides that Clause 22 can only operate to ensure the person's surrender to custody and appearance in court; to protect the welfare of the community; or to protect the welfare of any specially affected person. In addition, Clause 23 provides that a police officer or court should not impose conditions of bail unless the police or court is satisfied that those conditions should be imposed to protect the community; protect the welfare of specially affected persons or to protect the accused person.

**Clause 24** provides that the monies deposited or security offered by accused persons or their sureties as part of a bail undertaking or condition remains the property of the accused person or surety unless it has been forfeited to the Republic under the Bail Act.

**Clause 25** establishes that when granted bail, the accused person must present himself to an authorized officer of the court each and every time his or her case is called and he or she is deemed to remain in the custody of the authorized officer until he or she has been formally released from that scheduled appearance by the resident magistrate, judge or justice of appeal.

#### **PART 7 – OFFENCES AND PENALTIES**

**Clause 26** provides that a court has the power to issue a warrant for the arrest of a person who having been released on bail does not surrender to the custody of the court

when required; breaches a condition of bail; absents himself or herself from the court without the court's leave after he or she has surrendered to custody; or is found to have given a false residential address to the police or to the court.

In addition, Clause 26 empowers a police officer of the rank of sergeant or above to arrest an accused person who has been released on bail in circumstances where the police officer has reasonable cause to believe that the accused person is unlikely to surrender to custody; or the police officer reasonably believes that the accused person has broken his or her bail conditions or is likely to break his or her bail conditions.

**Clause 27** creates the following crimes of strict liability:

- (a) failure to surrender, without reasonable cause; to the custody of the court;
- (b) giving a false residential address to the police or to the court; or
- (c) otherwise breaches a bail condition without reasonable cause.

The maximum penalty that a court may impose upon conviction is a fine of \$2000.00 or 12 months imprisonment or both.

**Clause 28** provides for the forfeiture of security in circumstances where an accused person has failed to surrender to custody or has otherwise breached a bail condition.

**Clause 29** provides for the lawful discharge of a surety under the Bail Act.

## **PART 8 – CONTINUATION OR GRANT OF BAIL ON ADJOURNMENT ETC.**

**Clause 30** provides for the continuation of bail.

## **PART 9 – REVIEW OF AND APPEALS ON BAIL DECISIONS**

**Clause 31** provides for the review of any decision made in respect of bail by a police officer, the Resident Magistrate of the District Court; a Judge of the Supreme Court; and a Justice of Appeal.

**Clause 32** provides for an appeal to the Supreme Court or to the Court of Appeal where an accused person or the Director of Public Prosecutions is not satisfied with a decision to refuse or grant bail; or is not satisfied with any orders, conditions or limitations imposed in respect of bail.

## **PART 10 – MISCELLANEOUS**

**Clause 33** empowers the Cabinet to make regulations prescribing all matters necessary or convenient to be prescribed for giving effect to this Act. The regulations relating to how applications for bail should be made; which summary offences will entitle a person to bail as of right; and giving better effect to the provisions of the Act.

**Clause 34** repeals sections 21, 80, 81, 82, 83, 84, 85, 86, 87, 88 and 89 of the Criminal Procedure Act 1972; preserves any regulations which may have been made in respect of

bail; and preserves any decisions made in respect of bail prior to the commencement of this Act.