

REPUBLIC OF NAURU

CRIMINAL PROCEDURE (AMENDMENT) NO. 2 BILL 2020

EXPLANATORY MEMORANDUM

The *Criminal Procedure (Amendment) No. 2 Bill 2020* is a Bill for the *Criminal Procedure (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 *Criminal Procedure (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 *Criminal Procedure Act 1972*.

Clause 4 inserts a new **PART 5A** to provide for *Evidence by Audio Visual Link*. The new **Clause 149A** provides for testimony of witnesses outside the jurisdiction. It is a constitutional right of an accused person to have a fair and expeditious hearing. Often some cases are delayed as a result of the non-availability of witnesses who live outside the jurisdiction of the Republic. In most cases, these are expert witnesses. This includes drug analysts, health practitioners or forensic scientists. It may also include ordinary witnesses who for one reason or another may not be available in the Republic for the purposes of the trial.

Technology has developed to a stage where the requirement of witnesses to be physically present can be dispensed with in any manner whatsoever, without prejudicing any party. An audio-visual link will connect the witnesses virtually and in real time for the purposes of tendering documents, reports and other exhibits. They can also take oaths or affirm in the same manner as they are required to do so from a witness box in the court. Appropriate amendment is proposed to the *Oaths, Affirmations and Statutory Declarations Act 1976* for this purpose. Equally, they can be examined in chief, cross examined and re-examined. All these elements being present will permit the court to assess the evidence in its entirety to ensure fairness of a trial. More so now, this will allow trials to proceed without prolonged adjournments or reliance on airlines or travel availability of the witnesses. The fundamental requirements of *Article 10* of the *Constitution* will be fully complied. Also, the victims' concerns of a trial materialises, in that the non-availability of a prosecution witness may result in a discharge or an acquittal without a trial.

Clause 149B provides for interpreters. This Clause will now allow for interpreters to be appointed and perform the duties and functions of an interpreter from a foreign jurisdiction

through an audio visual link. In order to ensure that the processes of the trial is strictly maintained, the interpreter will be required to take oath or affirm before a presiding magistrate, Judge or any judicial officer during the court proceedings and in the presence of the parties and their legal representatives. Appropriate amendment is proposed to the *Oaths, Affirmations and Statutory Declarations Act 1976* for this purpose. In allowing this, it is the duty of the Registrar of the Courts to ensure that the interpreters are fully briefed of their functions and duties.

Interpreters will be paid for their services in the same manner as they would have been paid if they were required to attend to the court proceedings in the Republic.

Clause 149C provides for remand or serving prisoners. This Clause allows for the court in certain circumstances to allow a remand or serving prisoner to be able to participate or appear in court through a virtual link from the Correctional Centre. The Correctional Centre will be able to provide a fully virtual attendance of a remand or serving prisoner. The Department of Justice has the facilities to facilitate this Clause.

Clause 149D provides for a situation when there is failure of an audio visual link. This Clause allows the court to either adjourn the proceeding or make such other orders as appropriate as if the person on the other end of the audio visual link was present in the court.

Clause 149E provides for Rules for the purposes of this Part. This Clause allows the Chief Justice to make procedural Rules to implement the provisions of this Part.

Clause 5 amends the numbering of the Parts of the Act from Roman numerals to the regular numbers used daily such as 1, 2, 3, 4, etc.