

**REPUBLIC OF NAURU**  
**CRIMES (AMENDMENT) BILL 2020**  
**EXPLANATORY MEMORANDUM**

The *Crimes (Amendment) Bill 2020* is a Bill for the *Crimes (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 *Crimes (Amendment) 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** inserts a new Clause 55A for an offence of attempted murder as there is no separate offence for attempted murder in the Act. This new clause as such creates the offence of attempted murder.

The offence of attempted murder is necessary to control violent acts designed or planned to kill someone. It will not be accidental but a premeditative attempt to kill. There may not be any physical harm or injury done to the victim by the act due to any action by the victim. However, the intent of the person is clear that he or she intended to kill the victim but does not succeed in killing which would then constitute murder. An example of this would be a jilted lover who attempts to kill his or her partner for cheating by running a car over him or her.

**Clause 5** deletes and substitutes the title of Part 12 of the Act with 'Crimes Against the Republic and Parliament'.

**Clause 6** deletes and substitutes Section 238 of the Act. This Section is substituted because the current provision requires a very high standard of proof which makes the offence redundant. There is a requirement for proving the *mens rea* twice. That is, 'intention of the conduct' and 'the conduct must be intended to interfere'.

The amendment now makes any conduct which, actually interferes or has the propensity to interfere, with the performance of the duties and responsibilities of a member of Parliament. This will include situations such as forcing the Parliament to be adjourned in addition to the offence of disturbing the Parliament.

The penalty is also increased to reflect the seriousness of the offence. The interference with the duties and responsibilities of the members of Parliament has a direct impact on the functioning and operations of the Legislative branch of the Government.

**Clause 7** deletes and substitutes Section 239. This Clause clarifies and prescribes the offence with clarity. Also, the issue of ‘*session*’ or ‘*sitting*’ of Parliament has Constitutional meaning. This has caused difficulties in establishing the offence of disturbing Parliament. A Parliament in ‘*session*’ does not have to be ‘*sitting*’. Ordinarily, it is when the Parliament is sitting that it can be disturbed in its immediate view or presence. On the other hand, the ‘*session*’ of the Parliament is from the election of new members of Parliament to the period when Parliament is dissolved. The Parliament is not in session after it is dissolved and upon election of members after a general election or where earlier dissolved.

The inclusion of the word ‘power’ in subclause (1)(c)(ii) is necessary to ensure that the Constitutional authority of the Parliament under *Article 27* is also appropriately referenced.

The word ‘interrupting’ is substituted with ‘disrupting’. Disrupting describes the conduct in a much more explicit way in that it means ‘*to prevent a system, process or event from continuing as usual or as expected*’.

**Clause 8** deletes and substitutes Section 240. The phrase ‘offensive weapon’ is defined in this Act. For the purposes of this Clause, an additional weapon is added which includes ‘*an object that is capable of being used to cause injury or incapacitate a person*’. Also, the definition of ‘precincts of Parliament’ from the *Parliamentary Powers Privileges and Immunities Act 1976* is included for ease of reference.

The penalty is also increased to reflect the seriousness of the offence.

**Clause 9** inserts a new Part 12A which deals with sedition.

In the *Criminal Code 1899* there was an offence for seditious acts. Under the current *Crimes Act 2016*, there is no provision for this offence and no reason is provided as to why it has been removed. This offence is an integral form of crime against the Republic, Sovereignty, Government and Constitution.

Clause 243A reinstates the offence to ensure that the vital institutions of the Republic are not tampered with by people with seditious intentions, that of hatred, ill-will, to overthrow the Government and so forth.

A seditious offence is committed if a person does any of the following with seditious intention:

- does or attempts to do, or makes any preparation to do, or conspires with any person to produce any seditious material;
- utters or livestreams any seditious words or information including through the media or any other digital or electronic form;

- prints, publishes, posts or messages any seditious words in the media in print, digital or electronic form;
- imports, sells, offers for sale, transmits, distributes or reproduces any seditious printing, publication, posts or messages by any device, equipment, digitally, electronically or any other medium or form of communication.

The penalty for such offences is 10 years imprisonment.

The words which are key in the offences such as ‘media’, ‘seditious’ and ‘seditious material’ are clearly defined.

Clause 243B defines seditious intention to mean an intention to effect any of the following:

- to bring into hatred or contempt or to incite disaffection against the Government or the Constitution of the Republic as established by law or against the administration of justice;
- to incite the citizens of or the persons ordinarily resident in the Republic to attempt to procure the alteration of any matter in the Republic as by law established;
- to raise discontent or disaffection amongst the citizens or the persons ordinarily resident in the Republic; and
- to promote feelings of ill-will and enmity between the different classes of persons in the Republic.

Clause 243C provides for innocent intentions which are defences to an alleged seditious offence. It shall be lawful for any person to:

- in good faith show that the Government of the Republic has been mistaken or misled in any of its measures taken;
- point out in good faith errors or defects in the Government or Constitution of the Republic as by law established or in legislation or in the administration of justice, with a view to the reformation of such errors or defects;
- persuade the citizens or the persons ordinarily resident in the Republic to procure by lawful means the alteration of any matter in the Republic as by law established; or
- point out in good faith with a view to their removal any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of persons in the Republic.

Clause 243D provides for the commission of an offence by person whether or not the conduct constituting the alleged offence occurs in the Republic and whether or not the result of the conduct constituting the alleged offence occurs in the Republic.

The definition of Seditious Conspiracy is provided in Clause 243E as follows:

- a conspiracy under this Part means an arrangement entered into by one or more persons with the intention of carrying out a seditious act;
- seditious words are words expressive of a seditious intention; and
- the term '*seditious publication*' includes anything intended to be read, and any sign or visible representation, which is expressive of a seditious intention.

**Clause 10** amends Section 245 by increasing the penalty from 2 years imprisonment to 10 years imprisonment to reflect the seriousness of the offence.