

## REPUBLIC OF NAURU

### BAIL (AMENDMENT) BILL 2020

#### EXPLANATORY MEMORANDUM

The *Bail (Amendment) Bill 2020* is a Bill for the *Bail (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 *Bail (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 *Bail Act 2018*.

**Clause 4** amends Section 3 of the Act by amending the definition of the word 'court'. The words 'and includes a Resident Magistrate, Judge or Justice of Appeal' are deleted. The reference to Judicial Officers is not necessary to define the court. The power under the Act is given to the court and not to individual Judicial Officers as distinct from the court.

**Clause 5** deletes and substitutes Section 4 of the Act. It is trite law that an accused person is innocent unless and until he or she is proven guilty. It is on this basis there is a general presumption for grant of bail which subclause 4 (1) restates. This subclause is also subject to the provisions of the Act which provides for circumstances in which this presumption is displaced.

Subclause 4(2) gives the court power to grant bail under the provisions of the Act.

In subclause 4(3), there is a presumption in favour of bail for a person charged with an offence. The non-custodial measures are part of requirements of the UN Standard Minimum Rules for Non-Custodial measures commonly called as 'the Tokyo Rules'.

**Clause 6** inserts a new Clause 4A. There are certain offences for which bail is not granted. This Clause has been retained. However, there are new offences added to it which includes the offence of sedition, sexual offences under Part 7, Divisions 7.2 and 7.3 of the *Crimes Act 2016* which relate to:

- Rape;
- Indecent acts;
- Engaging person to provide commercial sexual services;
- Holding interest in premises used for commercial sexual services;

- Compelling prostitution and giving of earnings from prostitution;
- Observing private acts;
- Taking images of private acts without consent;
- Taking images of private parts without consent;
- Installing device to facilitate observation or image-taking;
- Incest;
- Bestiality;
- Rape of child under 16 years old;
- Indecent acts in relation to child under 16 years old;
- Causing etc child under 16 years old to engage in sexual activity;
- Engaging child to provide commercial sexual services;
- Observing private acts of child;
- Taking images of private acts of child;
- Taking images of private parts of child;
- Installing device to facilitate observation or image-taking of child; and
- Promoting or organising travel for unlawful sexual activity with child under 16 years old.

The addition of offences under this Clause is a matter of necessity. This is a policy driven amendment to control the rising crimes in those offences which relates to children and women. They are designed to ensure there is protection of the society and the victims as is permitted under Clause 6 of the Tokyo Rules.

**Clause 7** inserts a new Clause 4B. Subclause (1) now creates a category of offences for which bail will not be granted except in exceptional circumstances. The onus of proving ‘exceptional circumstances’ now rest on the accused person. This limitation on bail is for a period of 3 months within which the prosecution must commence. If the prosecution does not commence within the prescribed 3 months, the accused person may apply for bail without the need for establishing any ‘exceptional circumstance’.

This amendment is necessitated as a result of increasing number of offences in the offences contained in this Clause.

The inclusion of this provision is to balance the right of a person’s liberty and at the same time a social justice provision to address the increase in those offences. Equally, a speedy trial is necessary to ensure that a person’s liberty is not unreasonably interfered with where a trial will be unduly delayed. It also balances the right of a victim for an early trial so that the impact of any crime committed against the victim does not prolong unnecessarily. They are designed to ensure there is protection of the society and the victims as is permitted under Clause 6 of the Tokyo Rules.

There are amendments made to the Criminal Procedure Act to facilitate a speedy trial by use of virtual technology for tendering evidence of expert witnesses including also engagement of

an interpreter if the accused person or any of the witnesses need assistance of an interpreter in court.

Exceptional circumstances do not include hardship.

Subclause (5) allows a person remanded in custody to apply for bail on any grounds or reasons other than exceptional circumstances, where his or her trial has not commenced within 3 months of the date on which the charge or information was filed in court.

Subclause (6) allows for the Parliament to review this clause after 5 years. The reason for this is to ensure that the current increase in the nature of offences covered in subclause (1) is arrested. Thereafter the presumption of bail will apply.

**Clause 8** deletes and substitutes Section 13 of the Act. This clause clarifies the jurisdiction of the Registrar to consider applications for bail. The Registrar has no jurisdiction to consider bail where there is in the country, a Resident Magistrate, Judge of the Supreme Court of Justice of Appeal respectively. Granting of bail before the court is a judicial and not an administrative act. However, the Registrar is given the power to consider bail applications in the absence of any Judicial Officers from the country.

**Clause 9** is a consequential amendment to the *Administration of Justice Act 2018*. This Clause amends Section 30(1) of the *Administration of Justice Act 2018* by deleting and substituting a new provision so that the provision in the *Bail Act* and the *Administration of Justice Act* are consistent.