

REPUBLIC OF NAURU

**OATHS, AFFIRMATIONS AND STATUTORY DECLARATIONS (AMENDMENT)
BILL 2020**

SECOND READING SPEECH

Honourable Maverick Eoe MP

22 October 2020

Mr Speaker Sir,

I introduce to the House today the Oaths, Affirmations and Statutory Declarations (Amendment) Bill 2020.

Mr Speaker, this Bill is complementary to the *Criminal Procedure (Amendment) No. 2 Bill*. It seeks to amend Sections 4 and 13 of the *Oaths, Affirmations and Statutory Declarations Act 1976*. In order to allow for witnesses or interpreters to testify from overseas, it is important that the manner in which that the oath is taken by the witnesses and interpreters is appropriately rectified. I again stress that this goes to a fair trial of cases.

Currently, Section 4 of the Act provides that an oath by a witness can only be administered in open court. An open court is not defined, but in practice, it refers to a court which is open to the public during its sitting. It is a fundamental requirement that the public must have access to all court sittings unless and until there is an order by the court for ‘a closed sitting’.

The Act was enacted in 1976 and understandably at the time, there was no electronic or digital technology or the current audio-visual technology. With the requirement of open court hearings, naturally the witnesses would only testify in court from the witness box. With the advancement in technology now, the witnesses do not have to attend in person or be physically present in court to testify. With the audio visual technology certainly they can still testify in open court, except through an audio visual link. A television monitor or screen is now available in court through which the witness may be able to testify in open court and is capable of being examined, cross examined or any other issues which the court may need clarification. This still meets the requirement of an open court hearing and all members of the public will be able to see and hear from the witness including the Judge or Resident Magistrate.

For long, where professional or expert witnesses such as doctors, drug analysts and pathologists who are required to give evidence, come from abroad. This has resulted in delays of criminal proceedings in particular. Also, accused persons have been acquitted for the inability to tender such evidence of professional or expert witnesses as the defence normally requires them to be present in court for cross examination. The logistics and costs of bringing witnesses to the Republic is another matter.

With the advancement in technology, it is now time for the Republic to adapt and change its court practice to accommodate open court hearings through audio visual link. For long, affidavit evidence deposed by a person in an overseas jurisdiction has been permitted in our courts. Normally, these affidavits are deposed in front of a notary public or commissioner for oaths. Therefore, the introduction of a person giving evidence from outside the Republic is not absolutely alien to our practice of admitting evidence deposed and given from outside the jurisdiction. The affidavit evidence which is a written document, will now be converted into the form of oral testimony in court through audio visual link. The inherent advantage of audio visual link is that the witness will be capable of being cross examined by the opposing parties. The court will also be able to may clarify any evidence almost similar to a witness giving evidence physically in court.

Of course, Sir, the rules will be made to allow for parties to seek leave of the court to allow for the use of audio visual technology for the purposes of testimony. Ultimately, this will be in the hands of the court to manage it, in order to ensure every party to a proceeding has a fair trial and that the trial is completed within sufficient time to avoid any delay or prejudice to meet the requirement of Article 10(3) of the Constitution.

One of the issues of testifying from outside the Republic is the administration of the oath. A witness who is required to give evidence in court must take oath or an affirmation before he or she is permitted to give evidence. The provisions of the Act are amended by this Bill to allow for such testimonies.

The other issue which the Bill addresses is the difficulty of getting interpreters. It is a constitutional right of a person to have an interpreter present in court under Article 10(3)(d) of the Constitution. Without an interpreter, the court cannot proceed or even if it proceeds, the whole proceeding will be declared unconstitutional and a nullity.

The interpreters are also required to take oath before performing the duties and responsibilities as an interpreter. With the technology in place, the interpreters are also capable of performing the duties of an interpreter from outside the Republic. The only issue for them is the oath. This Bill amends the Act to allow for that.

For example, in case of the Chinese community if they are charged, often, interpreters are brought from Fiji, who can speak the Mandarin language. This will also become important because of people of different languages residing in the Republic including the asylum seekers and refugees. This Bill will accommodate for interpreters to be able to interpret from outside the jurisdiction. The advantage of this is, is that the court will have access to interpreters from more countries as well. The administration of this will be with the Registrar of Courts.

Mr Speaker, this Bill also amends Section 13, which relates to statutory declarations that are made in the Republic. This Bill will clarify the office holders who may administer statutory declarations for the purposes of the Act. Statutory declarations are required for many

different purposes. It has always been difficult looking for commissioner for oaths to witness statutory declarations, which are required for many different purposes. This amendment now allows persons identified to administer oath. As a result of this amendment, it is anticipated that the public will have broader access for the purposes of any declarations made.

Mr Speaker, the explanatory memorandum details the provisions of the Bill. Sir, I request that the explanatory memorandum be read and recorded in the Hansard Report.

I commend the Bill to the House.