



REPUBLIC OF NAURU

CRIMINAL PROCEDURE (AMENDMENT) ACT 2020

No. 11 of 2020

An Act to amend the *Criminal Procedure Act 1972*.

Certified: 4th June 2020

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Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *Criminal Procedure (Amendment) Act 2020*.

2 Commencement

This Act commences on certification of the Speaker.

3 Amendment of the Criminal Procedure Act 1972

The *Criminal Procedure Act 1972* is amended by the provisions of this Act.

4 Amendment of Section 98

Section 98 is deleted and substituted as follows:

98 Records of criminal and other convictions

- (1) The Registrar of Courts shall establish, keep and maintain a Register of Records of Criminal Convictions and such other convictions which may be prescribed by regulations.
- (2) The Register shall contain the following information of a person whose convictions are required to be kept and maintained:
 - (a) full name and address;
 - (b) date of birth;
 - (c) a photograph or photo identity, where available;
 - (d) the court in which the person was convicted;
 - (e) case reference number given by the court;
 - (f) nature of offences for which he or she was convicted;
 - (g) date when charge was filed;
 - (h) date of conviction, whether after pleading guilty or trial;
 - (i) date of sentence; and

- (j) sentence.
- (3) Where a person has been convicted for offences in more than one cause or matter, the information required to be recorded in subsection (2) shall be:
 - (a) recorded separately by reference to the number of causes or matters; and
 - (b) when required for any purpose, the Registrar shall, subject to subsection (5), provide a consolidated record.
- (4) The records shall be provided under the hand of the Registrar, which shall when required for any proceeding, be admissible as evidence.
- (5) Any records in excess of fifteen years is deemed to be a spent conviction.
- (6) The records kept by the Registrar shall without any charge or fees, be made available to:
 - (a) Nauru Police Force;
 - (b) Director of Public Prosecutions;
 - (c) Director of the Office of the Public Legal Defender; and
 - (d) any other official purpose of the Government.
- (7) An individual, by himself or herself or any other authorised body or person may request the Registrar to provide a certificate of the record of any conviction, for a fee to be prescribed by regulations, which certificate shall be conclusive record of any such conviction.
- (8) Any certificate of record issued by the Registrar is confidential and shall only be used for any lawful purpose requested or given.
- (9) For the purposes of this section and section 98A:
 - (a) '*spent conviction*' means a previous conviction for which an accused person has been sentenced in the past and which must not be referred to in court for any purpose or where it is so referred, it shall be disregarded by the court in its deliberations;

(b) *'record of convictions'* means Record of Criminal and other convictions kept by the Registrar under subsection (1).

5 Insert new Section 98A

A new section 98A is inserted as follows:

98A Proving previous convictions

- (1) A certificate of the record of convictions kept by the Registrar shall be admitted in evidence unless it is objected to by any party, in which case the party objecting shall give 10 days' notice of such objection.
- (2) A prescribed certificate issued by a person appointed by the Minister to compare fingerprints of a person with a previous conviction shall be admissible evidence unless it is objected to by any party, in which case the party must give 30 days' notice of grounds or reasons for objections.
- (3) A record of criminal conviction in any place outside the Republic may be proved by:
 - (a) the production of a certificate given under the hand of a police officer or the person who keeps and maintains such records in the country where the person was convicted;
 - (b) a certified copy of the sentence or order under the hand of the officer in charge of the court in which the person was convicted; or
 - (c) a certified copy of the records of fingerprints or photographs of the fingerprints of the person kept by any authority in the country where the person was convicted.
- (4) Where an objection is made under subsections (1) and (2), a person in charge of such records may be required to attend court as a witness or provide an affidavit duly sworn before a Commissioner for Oaths to be filed in court.
- (5) Where an objection is made under subsection (3) for the admissibility of the evidence, the contents of the certificate shall be proven by an affidavit of a police officer or person in charge of such records, duly sworn before a Commissioner for Oaths, of the truth of the contents of conviction and the details.

6 **Insert new Section 147A**

A new Section 147A is inserted as follows:

147A General admissibility of hearsay statement

- (1) A hearsay statement is admissible in any proceeding, where the circumstance relating to the statement provides reasonable assurance of the reliability of the statement and the:
 - (a) maker of the statement is unavailable to attend court to testify as a witness; or
 - (b) court considers that undue expense and delay would be caused if the maker of the statement is required to attend as a witness to testify in court.
- (2) For the purposes of this section, ***'hearsay statement'*** means a written statement that:
 - (a) was made by a person other than a witness; and
 - (b) is offered in evidence at the proceeding to prove its contents.
- (3) No hearsay statement may be offered in evidence by a party proposing to rely on the hearsay statement unless:
 - (a) the party proposing to rely on the hearsay statement has given a notice at least 14 days before the date fixed for trial to the other party of the intention to rely on the statement;
 - (b) the other party may object to the tendering of such evidence by giving a notice of objection to the party intending on relying on such statement; or
 - (c) where there is an objection, the court shall have the residual discretion to admit such statement.
- (4) In this section, ***'circumstance'***, in relation to the statement by a person who is not a witness, includes:
 - (a) the nature of the statement;
 - (b) the contents of the statement;
 - (c) the time of the making of the statement;
 - (d) the reasonable credibility of the statement; and

- (e) any circumstance that relate to the accuracy of the observation of the person.
- (5) For the purposes of this section, a person is unavailable as a witness to attend court to testify in a proceeding if he or she:
 - (a) is deceased;
 - (b) is outside the Republic and it is not reasonably practicable for him or her to attend court as a witness or tender evidence in person or through digital or electronic means including audio or visual link;
 - (c) is certified by a health practitioner that the person is unfit to give evidence due to age, physical or mental condition or impairment; or
 - (d) with reasonable diligence cannot be traced.
- (6) Subsection (1) shall not apply to a witness, whose unavailability is caused or occasioned by the party, which is seeking to adduce such statement.
- (7) The court shall have the residual discretion to give any weight to evidence capable of being adduced under this section.

7 Amendment of Section 154

Section 154 is deleted and substituted as follows:

154 Adjourment in the District Court

- (1) On the date fixed for the commencement or continuation of a trial, the resident magistrate may not allow an adjournment to commence or continue with the trial on the application of the prosecution, without any good cause or reason.
- (2) For the purposes of subsection (1), **'good cause or reason'** may not include multiple applications for adjournment under subsection (1) by the prosecution.
- (3) Where the resident magistrate is satisfied that good cause or reason is shown for adjournment, he or she may adjourn the trial as he or she deems appropriate.
- (4) In adjourning a trial, the resident magistrate may:

- (a) where the accused person is on bail, extend the bail with or without varying the bail conditions;
 - (b) where the accused person is remanded, extend the period of remand or where it is permissible, grant bail with or without any conditions;
 - (c) where the accused person is a serving prisoner, issue an order for the prisoner to be brought to court at a later date; or
 - (d) make any other orders as he or she deems fit.
- (5) Where an application for an adjournment by the prosecution, on the day fixed for the commencement or continuation of a trial is dismissed, the resident magistrate shall:
- (a) order the prosecution to proceed with the trial; and
 - (b) where the prosecution is unable to proceed with the trial, may order the accused person be discharged or acquitted.

8 Amendment of Section 158

Section 158 is amended by inserting '189' and '189A' immediately after '187' where it appears.

9 Amendment of Section 176

Section 176 is amended as follows:

176 Disclosure and notice to be given

- (1) The prosecution shall provide the disclosure documents, witness statements, expert reports, photographs and other disclosure documents to the accused person as soon as practicable after the accused person is charged and appears in court in the first instance.
- (2) The prosecutor shall, 14 days before the trial commences, notify and provide to the accused person or his or her legal representative:
 - (a) a list of names and number of witnesses in subsection (1), that the prosecution will require to testify in the trial; and
 - (b) a list of names and number of witnesses in subsection (1), that the prosecution will not require to testify in the trial.

- (3) The prosecution may be permitted to tender as exhibits in a trial an expert report, forensic accounts, photographs, maps or plans drawn by surveyors, electronically or digitally stored or transmitted data or record and such other professional reports without requiring the maker of such report, photographer or the keeper of the records to personally appear in court to testify, provided:
- (a) a notice in the prescribed form is served to the accused person or his or her legal representative twenty one days before the date fixed for the trial; and
 - (b) the accused person or his or her legal representative did not issue a notice in the prescribed form to the prosecution requiring one or more of the persons to be available for cross examination 14 days before the commencement or continuation of the trial.
- (4) The evidence intended to be tendered in subsection (3) shall be for the purposes of establishing:
- (a) the existence of such evidence; and
 - (b) the contents of such evidence,
- but the weight of such evidence shall be in the residual discretion of the court.
- (5) Notwithstanding subsection (3), the court has the discretion to allow admission of any evidence as it deems fit.

10 Insert new Section 189A

A new Section 189A is inserted as follows:

189A Accused avoiding trial

Where:

- (a) an accused person on multiple occasions, fails to attend court on the day fixed for the trial, without any reasonable excuse; and

- (b) as a consequence the court adjourns the trial,

the court may remand the accused person to ensure his or her attendance for the trial until such time it is necessary or the final determination of the cause or matter.

11 Repeal of Section 191

Section 191 is repealed.

12 Amendment of Section 196

Section 196 is deleted and substituted as follows:

Section 196 Adjourment in the Supreme Court

- (1) On the date fixed for the commencement or continuation of a trial, a Judge may not allow an adjournment to commence or continue with the trial on the application of the prosecution, without any good cause or reason.
- (2) For the purposes of subsection (1), *'good cause or reason'* may not include multiple applications for adjournment under subsection (1) by the prosecution.
- (3) Where the Judge is satisfied that good cause or reason is shown for adjournment, he or she may adjourn the trial as he or she deems appropriate.
- (4) In adjourning a trial, the Judge may:
 - (a) where the accused person is on bail, extend the bail with or without varying the bail conditions;
 - (b) where the accused person is remanded, extend the period of remand or where it is permissible, grant bail with or without any conditions;
 - (c) where the accused person is a serving prisoner, issue an order for the prisoner to be brought to court at a later date; or
 - (d) make any other orders as he or she deems fit.
- (5) Where an application for an adjournment by the prosecution, on the day fixed for the commencement or continuation of a trial is dismissed, the Judge shall:
 - (a) order the prosecution to proceed with the trial;
or

(b) where the prosecution is unable to proceed with the trial, may order the accused person be discharged or acquitted.