



REPUBLIC OF NAURU

# CRIMINAL PROCEDURE (AMENDMENT) ACT 2016

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No. 20 of 2016

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An Act to amend the *Criminal Procedure Act 1972*

Certified: 12<sup>th</sup> May 2016

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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 2016*.

**2 Commencement**

This Act commences upon certification by the Speaker.

**3 Amendment of Criminal Procedure Act 1972**

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

**4 Amendment of section 2**

Section 2 is amended as follows:

(a) the following definition is omitted:

*'preliminary inquiry'* means an inquiry into a criminal charge held by the District Court under Part VII of this Act with a view to the committal of the accused person for trial before the Supreme Court;

(b) the definition of 'sentence' is amended by omitting the words 'Part IV of the Motor Traffic Act 1937' and substituting with the words '*Motor Traffic Act 2014*'.

**5 Amendment of section 21**

The words 'it is reasonable and' are inserted after the words 'as soon as' and before the word 'practicable'.

**This portion of the clause will now read:**

...where any person is detained in custody he shall be brought before the District Court as soon as it is reasonable and practicable.'

**6 Insert new section 50A**

**50A Office of the Public Legal Defender**

(1) There shall be an office of the Public Legal Defender.

(2) The President may appoint a barrister or solicitor to hold the position of Director of the office of the Public Legal Defender.

**7 Insert new section 50B**

**50B Other staff of the office of the Public Legal Defender**

There may be other employees appointed to the office of the Public Legal Defender on such terms and conditions approved by the Chief Secretary after consultations with the Secretary for Justice and Border Control.

**8 Insert new section 50C**

**50C Functions of the Public Legal Defender**

(1) The functions of the Public Legal Defender are to provide legal aid, advice and assistance to persons:

(a) in need who may be charged or have been charged with a criminal offence; or

(b) who need such aid, advice and assistance in respect of legal proceedings under any other Act; or

(c) subject to the availability of resources and staffing, when requested to do so by the Supreme Court or the District Court.

(2) The Director may, after consultation with the Secretary for Justice and Border Control, establish guidelines setting out eligibility criteria for receiving legal aid, advice or assistance.

**9 Amendment of section 61**

Section 61 (5) is amended by omitting '*Motor Traffic Act 1937*' and substituting with '*Motor Traffic Act 2014*'.

**10 Amendment of section 73**

Section 73 is amended by omitting the words 'Superintendent of the prison' as it appears twice in this section and substituting with the words 'Chief Correctional Officer'.

**11 Insert new section 80A**

**80A Considerations for bail**

A person charged with an offence is entitled to bail, either conditionally or unconditionally, and the Court in considering whether to grant bail or remand a person in custody will take into consideration the following:

(a) the strength of the prosecution's case;

- (b) the circumstances, nature and seriousness of the charge;
- (c) the likelihood that the person may continue to commit offences if granted bail;
- (d) the protection of the person from the public; and
- (e) the public interest and the protection of the community.

**12 Amendment of section 82**

- (1) Omit the word 'prison' and substitute with the word 'correctional centre' as it appears twice in the section.
- (2) Omit the word 'Superintendent' and substitute with the words 'Chief Correctional Officer' as it appears twice in the section.

**13 Amendment of section 84**

Omit the word 'prison' as it appears in the section and substitute with the word 'correctional centre'.

**14 Amendment of section 87A**

Repeal the current section 87A(3) and substitute with a new subsection (3) as follows:

- (3) If the Court, upon consideration of the documents provided by the police in subsection (1), is of the opinion that a prima facie case is made out against the person, the Court may:
  - (a) revoke the person's bail and remand the person in custody; or
  - (b) release the person on new bail recognisance with conditions.

**15 Amendment of section 112**

Repeal the current section and substitute with a new section as follows:

**112 Resumption of trial**

Where any trial is postponed under the provisions of section 109 of this Act, the Court may at any time resume the trial and require the accused to attend or be brought before it and, if the Court then considers him capable of making his defence, the trial shall proceed; but, if the Court considers the accused to be still incapable of making his defence, it shall act as if the accused were brought before it for the first time.

**16 Amendment of section 114**

Section 114(1)(b) is amended as follows:

- (a) omitting the words 'a preliminary inquiry the District Court and of' in subsection (b)(i); and
- (b) repealing subsection (b)(ii).

**17 Amendment of section 146**

Amend section 146(1) by omitting the words 'other than a preliminary inquiry,' as it appears in the section.

**18 Amendment of section 148**

Section 162(8) is amended by omitting the current definition of 'the prescribed period' and the definition of 'the prosecutor' and substituting with the following:

- (a) '**the prescribed period**' means the period of 7 days from the date the information is filed;
- (b) '**the prosecutor**', where the information has been filed by a public prosecutor, means the Director of Public Prosecutions.

**19 Amendment of section 160**

Repeal current section 160 and substitute with the following:

**160 Power to stop summary trial and transfer proceedings to the Supreme Court**

- (1) If before or at any stage of a trial by the District Court before the accused is required to make a defence it appears to the Court that the case is one which ought to be tried by the Supreme Court or if before the commencement of the trial an application in that behalf is made by the prosecutor or the accused that it shall be so tried, the District Court may, if it thinks, not proceed with the trial but in lieu thereof transfer the proceedings to the Supreme Court.
- (2) No appeal shall lie from a decision of the District Court upon any application made under this section.

**20 Amendment of heading for Part VII**

Current heading is omitted and substituted with the following:

'Part VII – TRANSFER OF ACCUSED PERSONS TO THE SUPREME COURT FOR TRIAL'

**21 Repeal of sections**

The following sections are hereby repealed:

- (a) Section 163 (Charge to be read over to accused);
- (b) Section 164 (Depositions);
- (c) Section 165 (Variance between evidence and charge);
- (d) Section 166 (Written statements before the District Court);
- (e) Section 167 (Adjournment);
- (f) Section 168 (Provisions as to taking statement or evidence of accused person);
- (g) Section 169 (Evidence and address in defence);
- (h) Section 170 (Committal for trial);
- (i) Section 171 (Discharge of accused);
- (j) Section 172 (Power to apply to Supreme Court for committal in certain cases where accused person discharged);
- (k) Section 173 (Summary adjudication);
- (l) Section 174 (Accused entitled to copy of depositions);
- (m) Section 175 (Taking the depositions of persons dangerously ill);
- (n) Section 176 (Notice to be given);
- (o) Section 177 (Transmission of statements);
- (p) Section 178 (Use of statement in evidence); and

**22 Amendment of section 179**

Repeal the current section 179 substitute with the following:

**179 Transmission of records to Supreme Court and Director of Public Prosecutions**

In the event of a transfer for trial or sentencing in the Supreme Court the charge, the depositions, the statement of the accused person, the recognisances of bail, if any, and any documents, matters or things which would assist the trial or sentencing in the Supreme Court, shall be transmitted without delay by the Clerk to the Registrar and a copy of the depositions and statements certified by Registrar shall be

supplied to the Director of Public Prosecutions by the Registrar.

**23 Amendment of section 181**

Section 181(2) is amended by omitting the following:

‘Provided that, where the District Court is constituted for the trial by the same magistrate or magistrates as presided at the preliminary inquiry, the provisions of subsection (3) of section 173 of this Act shall apply;’

**24 Amendment of section 199**

Section 199 is amended as follows:

(a) *Omit each mention of*

deposition

*substitute*

statements

(b) *Omit each mention of*

Signed

*Substitute*

Certified

(c) *Omit*

‘who attended and who deposition was recorded by the District at the preliminary inquiry into any offence’

(d) Omit ‘by whom it purports to have been taken’ from section 199(b)

*Substitute*

‘who transferred the matter to the Supreme Court’

**25 Repeal of section 200**

Section 200 is hereby repealed.

**26 Transitional and savings**

(1) The current office of the Public Legal Defender in operation before the commencement of this Act continues in operation.



(2) Any appointment to the office of the Public Legal Defender made before the commencement of this Act continues until its expiration upon which the provisions of appointment in this Act will apply.