



REPUBLIC OF NAURU

DISTRICT COURT (AMENDMENT) ACT 2020

No. 28 of 2020

An Act to amend the *District Court Act 2018*.

Certified: 23rd October 2020

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Enacted by the Parliament of Nauru as follows:

1 Short title

This Act may be cited as the *District Court (Amendment) Act 2020*.

2 Commencement

This Act commences on 15 November 2020.

3 Amendment of the District Court Act 2018

The *District Court Act 2018* is amended by the provisions of this Act.

4 Amendment of Section 7

Section 7 is deleted and substituted as follows:

'7 Appointment, termination, etc of magistrate

- (1) No person shall be appointed to be or to act as a Resident Magistrate, unless that person:
 - (a) is qualified to be admitted as a legal practitioner to practice as a barrister and solicitor under the *Legal Practitioners Act 2019*; and
 - (b) has at least 5 years' experience in legal practice or experience as a judicial officer in the Republic or a court with similar jurisdiction to that of the District Court.
- (2) If a person has been appointed to act as a Resident Magistrate, the person is taken to have ceased to be acting as a Resident Magistrate, where the appointment:
 - (a) is for a specified period, in respect of the hearing and determination of all causes or matters of which the hearing is commenced within the specified period of appointment; and
 - (b) is made for the hearing and determination of a specific cause or matter, in respect of the hearing and determination of that cause or matter only.
- (3) The remuneration and other terms and conditions of appointment of a magistrate shall be fixed by the President:

- (a) in consultation with the Chief Justice; and
 - (b) with the approval of the Cabinet.
- (4) Where a magistrate is appointed to act as a Resident Magistrate or for the purposes of a specific cause or matter, he or she shall be paid equivalent remuneration or allowances that is paid to a Resident Magistrate, unless any higher remuneration is to be paid in accordance with the requirements of subsection (3).
- (5) Subsection (3) does not apply to lay magistrates and the Registrar where he or she is required to perform the functions of a Resident Magistrate or acts as a Resident Magistrate.
- (6) The retirement age for a Resident Magistrate shall be 70 years.
- (7) A magistrate may be appointed for a fixed term contract or until he or she attains the retirement age.
- (8) Subject to subsection (9), a Resident Magistrate continues to hold office until:
- (a) resignation from that office;
 - (b) retirement under subsection (6); or
 - (c) removal from that office.
- (9) Where a magistrate is appointed for a fixed term contract, his or her appointment lapses on the last day of the contract unless the appointment is earlier extended.
- (10) Subject to subsection (10), the appointment of a magistrate may be terminated by the Chief Justice on the grounds of misconduct or inability to perform the functions of the office of a magistrate.
- (11) A Judicial Complaints Tribunal is hereby established for the purposes of conducting an investigation and making recommendations based on the findings of such investigation to the Chief Justice in respect of any complaints against a magistrate and such other judicial officers which the Chief Justice may prescribe.

- (12) The Chief Justice shall appoint a person with at least 10 years legal practice to be the Judicial Complaints Tribunal if and when needed.
- (13) The Chief Justice shall make rules governing the jurisdiction, powers, practice and procedure of the Judicial Complaints Tribunal.'

5 Amendment of Section 31

Section 31 is deleted and substituted as follows:

'31 Power to transfer from District Court to Supreme Court

- (1) Subject to any other written law, the District Court may, of its own motion or upon the application of any party to a proceeding:
 - (a) report to the Supreme Court the pendency of any cause or matter which it considers, is outside the jurisdiction of the District Court or ought to be transferred to the Supreme Court for any other reason; and
 - (b) a Judge shall forthwith consider the report in paragraph (a) and direct whether the cause or matter is to be heard in the Supreme Court or is to be remitted to the District Court for hearing and determination.
- (2) Where an issue arises involving the interpretation or effect of any provision of the *Constitution*, including it being part of one or more issues in any civil or criminal cause or matter, the Resident Magistrate shall report the cause or matter to the Supreme Court for the determination of the issue or the entire cause or matter.
- (3) Where the District Court has no jurisdiction in the proceeding referred to in subsection (2) and it appears to the Judge that one or more of the plaintiffs knew or ought to have known that the District Court had no jurisdiction in the proceeding, the Judge may, instead of ordering that the proceeding be transferred under subsection (2), order that the proceeding be dismissed and order costs in the same manner as if the District Court had jurisdiction and the claim had not been established.
- (4) Where in any cause or matter reported to the Supreme Court under the provisions of subsection (1), any

counterclaim or set-off and counterclaim has been filed by any defendant, the Judge may:

- (a) order that the whole proceeding be transferred to the Supreme Court;
- (b) order that the whole proceeding be heard and determined in the District Court; or
- (c) order that the proceeding be transferred to the Supreme Court to hear and determine any specific issue and remit the cause or matter to the District Court, with such directions as may be necessary for the hearing and determination of such cause or matter.

(5) For the purposes of subsection (4)(c), where a judgment, decision or order for a claim or issue is given in favour of a party, execution shall be stayed until the proceeding transferred to the Supreme Court has been determined, unless leave is granted by the Judge to execute any such judgment, decision or order.

(6) The practice and procedure for stating a case or referring a matter to the Supreme Court under this Section, shall be in compliance with Section 30 of the *Supreme Court Act 2018*.

6 Amendment of Section 35

Section 35 is amended by inserting a new subsection (3) as follows:

‘(3) For the purposes of subsection (2), an interpreter may interpret any proceedings through audio visual link, on such orders and directions of the court.’

7 Amendment of Section 37

Section 37 is amended by:

- (a) renumbering the existing clause as subsection (1); and
- (b) inserting two new subsections (2) and (3) as follows:

‘(2) A witness may give evidence from outside the Republic through audio visual link on such orders and directions of the court.

(3) For the purposes of subsection (2), the party who wishes to summon a witness to give evidence through audio visual link shall ensure that the witness is able to comply with the orders and directions of the court.’

8 Amendment of Section 44

Section 44 is amended by inserting the following new subsections (4), (5), (6), (7), (8), (9) and (10) as follows:

- '(4) For the purposes of subsection (2), oral evidence is deemed to be adduced through audio visual link or any other electronic or digital form, and shall be recorded by the court and form part of the records of the proceeding.
- (5) The Registrar shall keep the record in subsection (4) in such form that it is:
 - (a) not capable of being in any manner or form edited, altered, modified or erased; and
 - (b) capable of being retrieved and produced when required.'
- (6) No person, including a party, legal representative or witness shall:
 - (a) record any such proceeding; and
 - (b) permit or make provision to allow any other person to record such proceeding.
- (7) A person who contravenes subsection (6), commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 5 years or to both.
- (8) The Registrar shall ensure that the electronic or digital system used for the purposes of this Section, prohibits any form of audio visual recording, photographing, screen shots or sharing of any links of the proceeding, by any person.
- (9) A magistrate shall immediately order any virtual proceeding to be adjourned where he or she becomes aware that the proceeding is being unlawfully recorded by a party, legal representative, witness or any other person except the Registrar for the purposes of subsection (4).
- (10) A contravention of the provisions of this Section constitutes a contempt of court in the face of the court under Section 8 of the *Administration of Justice Act 2018*.'

9 Amendment of Section 64

Section 64 is deleted and substituted as follows:

'64 Judicial vacation does not apply

A judicial vacation declared by the Chief Justice shall not apply to the District Court.'

10 Amendment of Section 67

Section 67 is amended by inserting a new subsection (3) as follows:

‘(3) Subsections (1) and (2) shall continue to apply to a person appointed or holding office as a magistrate prior to the commencement of this amendment to the Act.’