



REPUBLIC OF NAURU

ADMINISTRATION OF JUSTICE ACT 2018

No. 16 of 2018

An Act to provide for the protection of the administration of justice, the dignity of the courts and for related purposes

Certified: 10th May 2018

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Enacted by the Parliament of Nauru as follows:

PART 1 – PRELIMINARY

1 Short Title

This Act may be cited as the *Administration of Justice Act 2018*.

2 Commencement

This Act commences on 15 May 2018.

3 Objectives of this Act

The objectives of this Act include:

- (a) upholding the dignity and authority of the courts in the public interest;
- (b) maintaining public confidence in the administration of justice and authority of the courts;
- (c) ensuring the observance and respect of due process of the law, judgments, decisions and orders of the courts;
- (d) the codification and clarification of the applicable common law on contempt of court meeting the challenges of technology and other developments;
- (e) ensuring the sustainability of an independent, fair and impartial justice system; and
- (f) providing a balance between freedom of expression and the protection of the public by preserving the machinery, integrity, dignity and authority of the courts.

4 Interpretation

(1) In this Act:

‘association of persons’ means 2 or more persons associating with each other for a common purpose, objective and goal;

‘cause or matter’ includes an action, suit or proceeding;

‘Chief Justice’ means the Chief Justice appointed under Article 49 of the Constitution;

‘civil contempt’ means wilful disobedience of any judgment, decision or order or other processes of a court or, wilful breach of an undertaking given to a court by any act or omission;

‘committal’ means imprisonment;

'contempt of court' includes the types of contempt contained in Parts 2 and 3 of this Act;

'contemnor' means a person or body which has committed a contempt of court;

'corporation' means any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law;

'courts' includes District Court, Family Court, Supreme Court and Court of Appeal;

'Judge' means any person appointed under Article 49 of the Constitution;

'judicial officer' includes the Chief Justice, Justices of Appeal, Judges of the Supreme Court, Resident Magistrate, Registrar or any other person or body vested with judicial power to adjudicate disputes between or amongst persons;

'Justice' means a person appointed under Article 57 of the Constitution and section 9 of the Nauru Court of Appeal Act 2018;

'offence of contempt of court' includes all such conduct contained in Part 3 of this Act;

'online host' means the person who has control over the part of the electronic retrieval system, such as the internet site or online application, on which the information is posted and is accessible by internet users;

'publication' means the dissemination, distribution, exhibition, provision or communication including any speech, writing, broadcasting, cable program service in whatever form including electronic, digital or social media or by way of newspaper, radio, television, internet, social media or online communication to the public at large or one or two persons or groups of persons;

'Rules' means rules made by the Chief Justice pursuant to this Act;

'strict liability rule' means the rule of law whereby conduct may be treated as a contempt of court which tends to interfere or has interfered with the administration of the course of justice under Parts 2 and 3 of the Act and includes undermining the dignity and authority of the courts regardless of any intention to do so.

- (2) In this Act, a court proceeding is pending from the time that it commences to the time it is finally decided, struck out, discontinued or terminated which includes any potential or actual appeals.
- (3) A court proceeding commences:
 - (a) in the case of an offence, from the earliest of the following events:

- (i) the issue of a warrant for arrest of a person for an offence;
 - (ii) the issue of a notice to attend court;
 - (iii) summons to appear before the court to answer any charge or of an offence; or
 - (iv) the arrest of a person by the Nauru Police Force or any authorised officers under a written law;
- (b) in other cases, from the time the application for leave, other application before the originating process or the originating process is filed in court;
- (c) in the case of a proceeding on appeal or for a revision of a judgment, decision or order of a court in any proceeding:
- (i) an application for leave to appeal is made;
 - (ii) the filing of the notice of appeal; or
 - (iii) from the time the court on its own motion undertakes the revision under any written law;
- (d) in any other case, from the time a proceeding is filed in court.
- (4) A proceeding is finally decided:
- (a) in the case of a pending appeal or revision, the determination of such appeal or revision unless any appeal is filed against such determination;
 - (b) in the case where no appeal is filed, until the expiry of the time for appeal and resolution of the issues including costs are resolved; or
 - (c) in any other case, where a proceeding and any right to appeal has come to an end with no further orders.

PART 2 – CIVIL CONTEMPT OF COURT

5 Disobedience of court order or undertaking

- (1) A civil contempt of court is committed under this Part where a person:
- (a) wilfully disobeys any judgment, decision, direction or other process of a court; or
 - (b) wilfully breaches an undertaking given to a court.
- (2) A judgment, decision or order shall be sealed by the Registrar of the Courts and served personally, by way of substituted service or in any other manner prescribed by the court on person or persons against which or to whom the judgment, decision or order relates.

- (3) The judgment, decision, order or the sealed order shall be indorsed with a penal clause in accordance with the rules of the Court.

6 Enforcement of orders

- (1) A party who has obtained a judgment, decision or order under this Part may apply for an order to compel the other party to comply with orders of the court in the manner provided for in the rules of the court.
- (2) The court may issue an order for attachment of the contemnor to show cause as to why he or she shall not be liable for contempt under this Part.
- (3) The standard of proof shall be beyond reasonable doubt.
- (4) The burden of proof rests on the party seeking to enforce any breach of non-compliance of a judgment, decision or order of the court.
- (5) For the purposes of this Part, the Criminal Procedure Act 1972 applies.
- (6) Where a person is found guilty of contempt of court under Part, the court may if it considers that a fine will not meet the ends of justice and that imprisonment is necessary direct that the person be imprisoned for a period not exceeding 2 years.
- (7) The jurisdiction of the court to order costs against the contemnor in favour of the party seeking to enforce an order of the court under this Part shall not be affected nor shall be considered as double jeopardy.

PART 3 – OFFENCES OF CONTEMPT OF COURT

7 Scandalising the court

- (1) A contempt of court under this Part is committed where a person:
 - (a) scandalises or tends to scandalise, or lowers or tends to lower the judicial authority or dignity of the courts by publication or doing any act that:
 - (i) imputes improper motives to or impugns the integrity, propriety or impartiality of the courts;
 - (ii) has the potential to undermine public confidence in the justice system;
 - (b) prejudices or interferes or tends to prejudice or interfere with the course of any pending judicial proceeding;
 - (c) interferes or tends to interfere with or obstructs or tends to obstruct the administration of justice;

- (d) intentionally offers an insult, causes any interruption or obstructs a judicial officer at any stage of a court proceeding including a judgment, decision or order delivered by such judicial officer;
 - (e) publishes, picturises, utters or ridicules a judgment, decision or order of the Court whether on appeal or not;
 - (f) scandalises a judge or judicial officer in relation to any court proceedings; or
 - (g) scandalises or undermines the authority of the courts or the justice system in any manner whatsoever.
- (2) No person shall in relation to a pending court proceeding:
- (a) criticise any witness, parties, judicial officers, legal representatives; or
 - (b) attempt to or predict outcomes of court proceedings in the media.
- (3) A statement or publication made under this section, on behalf of the Republic about the subject matter of or an issue in a court proceeding that is pending, is not contempt of court, if the Republic believes that such statement is necessary in the public interest, national security or administration of justice.
- (4) For the purposes of this section and section 16, any publication published in any form of media or internet by or attributed to an author or producer of such an publication, the author or producer shall be liable for contempt under Part 3 of this Act whether or not the publication was made with the approval of the proprietor of the media or internet service provider or online host.

8 Contempt in the face of the court

A contempt in the face of the court is committed where a person:

- (a) assaults, threatens, intimidates, or wilfully insults a judicial officer, interpreter or a witness, during a sitting or attendance in a court, or in going to or returning from the court to whom any relevant proceedings relate or immediately after the delivery of a judgment, decision or order;
- (b) wilfully interrupts or obstructs the proceedings of the court; or
- (c) wilfully disobeys an order or direction of the court.

9 Contempt of unauthorised audio and visual recording

(1) A contempt of court is committed where a person:

- (a) uses in court any recording device, including mobile phones, laptops, tablets, tape recorders or other instruments for recording without the prior leave of the court;

- (b) publishes, transmits or disseminates any recording of court proceedings made by means of any such instrument under paragraph (a);
 - (c) plays in the hearing of the public or disposes of such recording with a view that such a recording may be played or published to the public; or
 - (d) use any such recording in contravention of any conditions granted under subsection (2).
- (2) Leave under subsection (1)(a) may be granted or refused by the court, and where such leave is granted, it may be subject to such conditions as the court deems fit.
- (3) Without prejudice to any other power to deal with an act of contempt under subsection (1)(a), the court may order:
- (a) the instrument or device or recording made with it or both, to be forfeited;
 - (b) any such instrument or device or recording shall not be returned to the person without the prior leave of the court which ordered the forfeiture; and
 - (c) any such recording to be deleted, erased, destroyed and removed permanently from the instrument or device by the Registrar of the Courts.
- (4) Where the owner of any instrument or device forfeited under subsection (3) seeks its release or return, the court shall make an order that the instrument or device be disposed of in such manner as the court may direct.
- (5) This section shall not apply to the making or use of sound recordings for purposes of official transcripts of proceedings.
- (6) For purposes of this section, '*recording*' includes any visual or audio recording.

10 Contempt of court prohibited

- (1) Any person, corporation, unincorporated body, partnership or association of persons who conducts or does any act which constitutes a contempt of court under this Part, commits an offence.
- (2) Where a person, corporation, unincorporated body, partnership or association of persons contravenes subsection (1), that person, corporation, unincorporated body, partnership or association of persons shall be guilty of an offence of contempt of court and shall be liable to a penalty prescribed under this Act.

11 Penalty for contempt of court

- (1) Save as otherwise expressly provided in this Act or in any other written law, a person who is convicted of contempt of court is liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 years or to both.

- (2) Where an offence of contempt is committed under section 8, the court may order:
- (a) the contemnor or alleged contemnor to be remanded in custody until the rising of the court; or
 - (b) any other orders the court may deem fit.

PART 4 –CONTEMPT BY CORPORATIONS AND OTHER BODIES

12 Contempt by corporations

- (1) Where, in a proceeding for contempt of court under this Act it is necessary to prove the state of mind of the corporation in relation to a particular contemptuous conduct, evidence that:
- (a) an officer, agent or employee of the corporation engaged in that conduct within the scope of his or her apparent or ostensive authority; and
 - (b) the officer, agent or employee had that state of mind, -

is evidence that the corporation had that state of mind.
- (2) Where a corporation commits a contempt of court under Part 2, in respect of any breach of a court order or undertaking given to a court by the corporation, the corporation shall be guilty of contempt and shall be liable to:
- (a) a fine not exceeding \$5,000;
 - (b) such other orders the court may make not limited to an order for compensation and costs to a party to such proceedings; and
 - (c) comply with any undertaking given by the corporation.
- (3) Where a corporation commits an offence of contempt under Part 3, the corporation shall be guilty of the contempt and shall be liable to a fine not exceeding \$50,000.
- (4) A person who, at the time the contempt was committed under subsections (2) and (3), was in charge of and was responsible to the corporation for the conduct of business of the corporation, as well as the corporation, shall be deemed to be guilty of the contempt and such person shall be liable:
- (a) to a fine not exceeding \$5,000 or to a term of imprisonment not exceeding 2 years or both; and
 - (b) such other orders the court may deem fit.
- (5) A person under subsection (1) may not be liable to punishment if the person proves to the satisfaction of the court that:

- (a) the contempt was committed without his or her knowledge; or
- (b) he or she exercised all due diligence to prevent its commission.

13 Contempt by unincorporated body, partnership or association of persons

- (1) Where in proceedings for contempt of court of an unincorporated body, partnership or association of persons, it is necessary to prove the state of mind of such unincorporated body, partnership or association of persons in relation to a particular conduct, evidence that:
 - (a) the employee, agent or a partner of the unincorporated body, partnership or a member of association of persons engaged in that conduct within the scope of his or her apparent or ostensible authority; and
 - (b) the employee, agent, partner or member had that state of mind, -

is evidence that the unincorporated body, partnership or association of persons had that state of mind.
- (2) Where an unincorporated body, partnership or association of persons commits an offence of contempt under Part 3, the unincorporated body, partnership or association of persons shall be guilty of the contempt and shall be liable to a fine not exceeding \$50,000.
- (3) For the avoidance of doubt, a person, partner or member of an unincorporated body, partnership or association of person respectively may be liable severally or jointly for any fine imposed under subsection (2).
- (4) Where a unincorporated body, partnership or association of persons commits a contempt of court under Part 2, in respect of any breach of a court order or undertaking given to a court by the unincorporated body, partnership or association of persons, the unincorporated body, partnership or association of persons shall be guilty of contempt and shall be liable to:
 - (a) a fine not exceeding \$5,000;
 - (b) such other orders the court may make not limited to an order for compensation and costs to a party to such proceedings; and
 - (c) comply with any undertaking given by the unincorporated body, partnership or association of persons.
- (5) Where an unincorporated body, partnership or association of persons commits contempt of court under this Act, a person:
 - (a) who is:
 - (i) an officer of the unincorporated body;

(ii) a partner in the partnership; or

(iii) a spokesman or leader for the association of persons; and

(b) who:

(i) consented or connived or conspired with others to effect the commission of the contempt of court;

(ii) whether by act or omission knowingly concerned or is party to the commission of the contempt of court; or

(iii) knew or ought reasonably to have known by obtaining legal or any other appropriate advice that a contempt of court is likely to be or is committed and failed to take all reasonable steps to prevent or prohibit the commission of the contempt of court, -

shall be guilty of the same contempt of court as is the unincorporated body, partnership or association of persons and shall be liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 2 years or both.

(6) In this section, '*state of mind*' of a person includes:

(a) the knowledge, intention, opinion, belief or purpose of the person; or

(b) the reasons for the intention, opinion, belief or purpose.

PART 5 – JURISDICTION OF THE COURTS

14 Jurisdiction of the Supreme Court

(1) The Supreme Court shall have the power and jurisdiction to try and punish for contempt of court committed:

(a) in the face of the court under section 8;

(b) under sections 7 and 9 of Part 3; and

(c) under Part 2;

(2) The Supreme Court shall continue to exercise its inherent jurisdiction in respect of contempt of court

15 Jurisdiction of District Court to punish for contempt of court

(1) The District Court shall have the power and jurisdiction to punish for contempt of court committed in the face of the court under section 8.

(2) The District Court shall have the power and jurisdiction to punish for contempt of court for any non-compliance with its judgment, decision, direction or order

under the Domestic Violence and Family Protection Act 2017 or any other written law vesting such power.

16 Jurisdiction over certain publications, acts and omissions outside the Republic

- (1) For the purposes of this section, the Supreme Court shall exercise the jurisdiction and power conferred under this Act or any other written law, to try any contempt of court and to impose such punishment under this Act:
 - (a) where the publication in relation to contempt of court was published through the internet, or other electronic media regardless of whether it was first published in the Republic or elsewhere, the publication is deemed to be published in the Republic if it was accessible, capable of being accessed or accessed by the members of the public or a section of the public in the Republic;
 - (b) where the publication in relation to contempt of court was published, other than by internet or electronic media under paragraph (a), regardless of whether it was first published in the Republic or elsewhere, if the publication was published, disseminated, offered for sale or not or made accessible to the public or a section of the public in the Republic;
 - (c) where the person who commits contempt of court under Part 2 is legally bound to obey or comply with the judgment, decision or order or other process of a court or an undertaking given to a court, regardless of whether the disobedience or failure to comply occurred in the Republic or elsewhere; and
 - (d) where the act in relation to contempt of court under sections 6 (1)(c),(d),(e) and (f) regardless of whether it occurred wholly or partly outside the Republic has the potential to interfere with, obstruct or pose a risk of interference with or obstruction of the administration of justice in the Republic.
- (2) The court may hear and determine an alleged offence of a contempt of court in the absence of the party:
 - (a) who was served with the necessary documents personally or by way of substituted service pursuant to an order of the court; and
 - (b) who has failed to attend the court personally or by a legal representative on the date and time ordered or indorsed on any document issued by the court.
- (3) Where a fine is imposed and remains unpaid, it can be recovered as a debt against a person or corporation whether within or outside the Republic.

PART 6 – PROCEDURAL MATTERS

17 Summary procedure where contempt is in face of court

- (1) Where it appears to a court that a person has committed contempt in the face of the court and, that court is satisfied that it is necessary for immediate steps to be taken for the protection of the administration of justice, that court may cause such person to be detained in custody and shall as soon as practicable:
 - (a) cause the person to be informed in writing of the contempt with which he or she is charged with;
 - (b) afford the person an opportunity to make his or her defence to the charge;
 - (c) after taking such evidence as may be necessary or as may be offered by the person and after hearing the person, proceed either immediately or after the adjournment, to determine the matter of the charge; and
 - (d) make such order for the punishment or discharge of the person as the court deems fit.
- (2) Despite subsection (3), the court may direct that a person charged with contempt in the face of the court be remanded in such custody as the court may specify pending the determination of the charge or be released on bail on his or her own bond.
- (3) The provisions of the Bail Act 2018 apply to any person charged with contempt of court under Parts 2 and 3.

18 Procedure for commencement of civil contempt

- (1) The procedure for the commencement of civil contempt of court shall be prescribed by the civil procedure rules of the court.
- (2) In the absence of such rules under subsection (1), Order 52 of the English Supreme Court Practice 1999 shall apply.

19 Investigation of contempt of court under Part 3

- (1) Where under Part 3 of this Act, the Secretary for Justice:
 - (a) receives a complaint of an alleged contempt of court; or
 - (b) has reasonable grounds to believe that contempt of court has been committed, -

the Secretary for Justice may request the Commissioner of Police in writing to investigate the alleged contempt.
- (2) The Commissioner of Police may receive and investigate complaints of contempt of court from any person and submit a report to the Secretary for Justice for the purposes of commencing proceedings for contempt of court.
- (3) For any investigation undertaken for the purposes of an alleged contempt of court under Part 3, the Commissioner of Police shall submit a report with all

the evidence to the Secretary for Justice for his or her consideration for the purposes of commencing proceedings under section 20.

20 Procedure for commencement of contempt under Part 3

- (1) Proceedings for contempt of court under Part 3 shall not be instituted except:
 - (a) by the Director of Public Prosecutions;
 - (b) on the motion of a court having jurisdiction to deal with contempt in the face of the court; or
 - (c) by the Secretary for Justice.
- (2) A proceeding for contempt of court shall be commenced by way of an information or summons.
- (3) The information or summons under subsection (2) shall be served on the alleged contemnor by a Police officer or by way of substituted service where it is necessary.
- (4) The information or summons for the purposes of this section may be prescribed by regulations.

21 Application of the Criminal Procedure Act 1972

- (1) For the purposes of an investigation and any proceedings, the Criminal Procedure Act 1972 shall apply.
- (2) The court in any proceedings for contempt of court may award costs to be paid by or to any party as it deems fit.
- (3) The Chief Justice may make rules for the procedure for proceedings for contempt of court and punishment for contempt of court.
- (4) An originating process for the commencement of contempt of court proceedings under this Act:
 - (a) be served personally;
 - (b) by way of substituted service;
 - (c) by leave of the court outside the jurisdiction of the Republic; or
 - (d) in any manner prescribed by the Criminal Procedure Act 1972 or the rules of the court.

PART 7 – APPLICATION OF STRICT LIABILITY

22 The strict liability rule

- (1) A person who commits a contempt of court shall be strictly liable for committing one or more offences of contempt of court under this Act.
- (2) The burden of proof of any fact establishing a defence under this section to any person rests upon that person.

PART 8 – DEFENCE TO CONTEMPT OF COURT

23 Defence of good faith

In any proceedings for contempt of court, it shall be a defence if it is proved to the satisfaction of the court that the conduct in issue:

- (a) is an objective and fair comment made in good faith with no vested interest in the outcomes of the decision of the court;
- (b) is a fair comment made in good faith on the merits of a judgment, decision or order of the court and not attributed personally or as to the conduct of a judicial officer;
- (c) is a publication of a fair and substantially accurate report of any judicial proceeding;
- (d) is a relevant observation made in judicial capacity by an appellate court on an appeal or revision or application for transfer of a case or by a court in court proceedings against a judge or judicial officer;
- (e) is a relevant observation or comment made by a party or his or her legal representative in written or oral submissions filed or made for the sole purpose of a court proceeding; or
- (f) pertains to any other matter exempted from constituting a commission of an offence of contempt of court under any other written law.

24 Defence of innocent publication or distribution

- (1) A person is not guilty of contempt of court under the strict liability rule if that person has published any matter which interferes or tends to interfere with, or obstructs or tends to obstruct, the course of justice in connection with any civil or criminal proceedings pending at the time of publication, if at that time, with reasonable enquiries or advice that person had no reason to believe that the proceedings were pending.
- (2) A person shall not be guilty of contempt of court under the strict liability rule if that person distributed a publication containing any matter referred to in subsection (1), if at the time of distribution that person did not know or had no reason to believe that it contained such matter or was likely to contain any such matter.
- (3) The burden of proof of any fact establishing a defence under this section to any person lies upon that person.

25 Fair and accurate report of judicial proceeding not contempt

- (1) A person is not guilty of contempt of court for publishing a fair and accurate report of court proceedings held in public, published contemporaneously and in good faith.
- (2) In any court proceedings under subsection (1), the court may, where it appears necessary to avoid the risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court determines is necessary for that purpose.

26 Complaint against judicial officers not contempt

A person is not guilty of contempt of court in respect of any complaint made in good faith by that person concerning a judicial officer or any person acting as such to:

- (a) a competent authority; or
- (b) the Chief Justice.

27 Discussion of public affairs

- (1) A publication made in good faith as part of a discussion of public affairs or other matters of general public interest is not contempt of court under the strict liability rule if such discussion makes no express or implied reference or connection to any pending court proceedings.
- (2) For the purposes of subsection (1), the defence of innocent or unintentional reference or connection to any pending court proceeding shall not apply.

28 Sources of information

- (1) A person, who is a custodian of or has access to the source of information contained in a publication, shall not be guilty of contempt of court for refusing to disclose such information where it is established that restrictions on disclosure is necessary under the Official Information Act 1976, in the interests of justice, national security, public interest or for the prevention of a crime.
- (2) In the case of the Republic under subsection (1), a certificate issued by the Secretary for Justice under this section shall be conclusive evidence of restrictions from disclosure of such information or the source of such information.

29 Publication of matters exempted from disclosure in court

Where a court, having power to do so, allows a name or other matter to be withheld from publication in relation to proceedings before the court, the court may give

such directions prohibiting the publication of that name or matter as appear to the court to be necessary for the purpose for which it was so withheld.

PART 9 – PRACTICE AND PROCEDURE

30 Bail in contempt proceedings

- (1) When any person appears before a court in proceedings for contempt of court under Parts 2 and 3, the person may be released on bail by that court.
- (2) A court may grant bail to a person who has filed an appeal against any judgment, decision or order in accordance with Part 11.

31 Standard of proof for contempt of court

The standard of proof for establishing contempt of court is that of beyond reasonable doubt.

32 Burden and standard of proof for defences

The burden of proof for proving the existence of circumstances bringing the case within any of the defences to contempt of court under Part 3 is upon the person relying on the defence and the standard of proof is on the balance of probabilities.

33 Consent of Secretary for Justice

- (1) No proceedings for contempt of court shall be instituted under sections 7 and 8 of Part 3 without the consent of the Secretary for Justice.
- (2) Proceedings for contempt of court in the face of the court under section 8 and any other proceedings shall be commenced by the District Court, Supreme Court or the Court of Appeal on its own motion, do not require consent under subsection (1).
- (3) The court may give directions under subsection (2) as to the manner in which the proceedings under the Part shall be constituted, adjudicated and determined.

34 Summary proceedings for offence of contempt of court

- (1) Subject to subsection (2), contempt of court under Part 3 shall be tried summarily and the court shall keep a record of the proceedings.
- (2) Any proceedings to try criminal contempt of court provided for under any other written law shall not take away the right of any person to a fair trial.

35 Enforcement of fines

Payment of a fine for contempt of court imposed by any court may be enforced upon the order of the court in like manner as a fine imposed by a court in criminal proceedings under the Criminal Procedure Act 1972.

PART 10 –POWER OF THE SECRETARY FOR JUSTICE

36

Power of Secretary for Justice to issue non publication directions

- (1) The Secretary for Justice may, if he or she is satisfied that it is in the public interest to do so and with the leave of the Supreme Court under subsection (7), seek an order directing the internet service provider, publisher, broadcaster or distributor of any matter to refrain from or cease the publication, broadcasting or distribution of such matter.
- (2) A direction given under this section may be subject to such conditions as the court may deem fit.
- (3) A direction under this section may be:
 - (a) served by personal, electronic or any other substituted service as the court may order; and
 - (b) in case of electronic or other substituted service, it is deemed to be served within 3 days of the communication of the direction to the person to whom the direction relates to.
- (4) A direction under this section takes effect in respect of the person to whom such a direction applies:
 - (a) from the time such direction is served or deemed to have been served; or
 - (b) any other time the Secretary for Justice may specify.
- (5) A person who fails without reasonable excuse to comply with the direction under this section shall be guilty of an offence and shall be liable to a fine not exceeding \$50,000 or to a term of imprisonment not exceeding 2 years or to both.
- (6) The leave of the Supreme Court under subsection (1) shall be granted if the Supreme Court is satisfied that:
 - (a) on the basis of a prima facie case, that the person to whom the proposed direction apply has published the contemptuous matter;
 - (b) on the basis of a prima facie case, that the publication of such matter:
 - (i) imputes an improper motive or impugns the integrity, propriety or impartiality of any court and poses a risk that public confidence in the administration of justice may be undermined;
 - (ii) prejudices an issue in a court proceeding that is pending and such prejudgment prejudices or likely to prejudice, interferes with or poses a risk of prejudice to or interference with, the course of any court proceeding that is pending;

- (iii) otherwise prejudices, interferes or poses a risk of prejudice to or interference with the course of any court proceeding that is pending;
- (c) any exceptions or conditions in the proposed direction are just and equitable.
- (7) An application for leave under subsection (1) shall be made by an ex parte originating motion and affidavit and the application shall be heard without the presence of the person to whom the proposed direction applies or the internet service provider, publisher, broadcaster or distributor specified in the proposed direction.
- (8) The person to whom the direction applies may apply to the Supreme Court to set aside or vary the direction on notice to the Secretary for Justice.
- (9) On an application under subsection (8), the Supreme Court may vary or discharge the direction in whole or in part if it is satisfied beyond reasonable doubt that:
 - (a) the person to whom such direction applies did not publish the matter specified in the direction; or
 - (b) the publication of such matter did not in any manner whatsoever was in contradiction or contravention of subsection (6)(b).
- (10) An application under subsection (8) shall not operate as a stay of the direction given under subsection (1) unless the Supreme Court directs otherwise.
- (11) No criminal, civil or administrative liability is to be incurred or to be assumed for anything done or omitted to be done with reasonable care and in good faith by the Secretary for Justice and such other officers in compliance with the direction given under this section.
- (12) An application under this section shall not bar or limit the commencement or continuation of proceedings for contempt of court in respect of a matter which is the subject of the direction.
- (13) The Chief Justice may make rules for the purposes of this section.

37 Court powers in relation to online publications

- (1) Where it appears to a court that it is necessary for avoiding a risk or prejudice to the administration of justice in any court proceedings, pending or imminent, order that any material related to the proceedings, or any part of the proceedings, may direct the removal of such material from websites and or the disabling of public access to that material for such period as the court thinks necessary for that purpose.

- (2) Where it appears to a court that it is necessary for avoiding a risk or prejudice to the administration of justice in any court proceedings, pending or imminent, order that any material related to the proceedings, or any part of the proceedings, may make such order directing websites to take such steps as the court sees as being reasonably necessary to prevent the publication of such material for such period as the court thinks necessary for that purpose.
- (3) For the purposes of this section, the court may make orders on an interim basis, prior to or during the currency of court proceedings.
- (4) The court may review orders made under subsections (1) and (2) at any stage of the court proceedings.
- (5) A failure to comply with a court order made under subsections (1) and (2) will be a contempt of court on the part of the website, despite the fact it was not responsible for the publication of the material.
- (6) Where the orders under subsections (1) and (2) were not complied with, the courts may order online hosts or internet service providers to disable public access to specified sections of websites for such period as the court thinks necessary for the purpose.
- (7) Failure by online hosts or internet service providers to comply with the order under subsection (6) shall be a contempt of court on the part of internet providers.
- (8) It shall be a defence that websites or online hosts had no knowledge that the publication contained the offending material and they had taken reasonable care.
- (9) The burden of proof of any fact tending to establish a defence afforded by subsections (5) and (6) rests upon the defence.

PART 11 — APPEALS

38 Appeals from District Court to the Supreme Court

- (1) An appeal lies from any judgment, decision or order of the District Court under this Act to the Supreme Court as provided for under the Supreme Court Act 2018.
- (2) An appeal under this section does not operate as a stay of any judgment, decision or order of the District Court unless the Supreme Court orders a stay.
- (3) At the hearing of the appeal, the Supreme Court may exercise the jurisdiction under this Act and the Supreme Court Act 2018.

39 Appeals from the Supreme Court to the Court of Appeal

- (1) An appeal shall lie from a judgment, decision or order from the original jurisdiction of the Supreme Court for contempt of court to the Court of Appeal.

- (2) An appeal from a judgment, decision or order of the Supreme Court in appellate or revisionary jurisdiction for contempt of court shall be by leave of the Supreme Court and only on a question of law.
- (3) An appeal under this section shall not operate as a stay of any judgment or decision of the Supreme Court unless the Supreme Court orders a stay.
- (4) At the hearing of the appeal under this section, the Court of Appeal shall exercise its jurisdiction under this Act and the Nauru Court of Appeal Act 2018.

PART 12 — MISCELLANEOUS

40 Inherent power of the Supreme Court

This Act does not restrain or limit the inherent powers of the Supreme Court to:

- (a) commence contempt proceedings on its own motion;
- (b) require a person to provide security in compliance with an order, payment of any money or performance or otherwise of any act;
- (c) remove a person from the court;
- (d) grant an injunction to restrain contempt of court; and
- (e) detain a person in custody until the court's order or directions is complied with, for a period not exceeding 12 months.

41 Limitations of actions for contempt

No court shall initiate any proceedings for contempt of court either on its own motion or otherwise after the expiry of a period of 12 months from the date on which the contempt of court is alleged to have been committed.

42 Proceedings not to issue against Speaker or Members of Parliament

A Court shall not initiate proceedings for contempt of court:

- (a) in relation to a decision made or directions given by a Speaker of House of Parliament in the performance of his or her official responsibilities; or
- (b) in relation to matters contained in the Parliamentary Powers, Privileges and Immunities Act 1976.

43 Protection of officers of the Republic

No servant or agent of the Republic shall be convicted of contempt of court for the execution of his or her duties in good faith.

44 Common law rules on contempt

- (1) This Act prevails over any common law rule on contempt to the extent of inconsistency with the provisions of this Act.
- (2) The common law rules in this section refer to both the substantive and procedural laws on contempt of court.

45 Application

- (1) This Act shall apply to the publications which were in existence before the coming into effect of this Act only to the extent that the publisher, internet service provider, distributor or any such person who has control over such publication has failed to remove the publication.
- (2) Subsection (1) applies to publications on social media which includes blog sites, vlog sites, Facebook, Twitter, Instagram, Snapchat, Viber, IMO and so forth.

46 Regulations

The Cabinet may make regulations prescribing all matters necessary or convenient to be prescribed for giving effect to this Act.

47 Rules

The Chief Justice may make rules of the court for the purposes of this Act.