



REPUBLIC OF NAURU

BAIL BILL 2018

No. of 2018

A Bill for an Act to provide a legislative framework as to whether a person who is accused of an offence is required to appear before a court, be detained or released and for related purposes

Certified: []

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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 *Bail Act 2018*.

2 Commencement

This Act commences on 15 May 2018 .

3 Definitions

(1) In this Act:

‘accused person’ or **‘person accused of an offence’** means a person who has been arrested for, or charged with, an offence and –

(a) who is awaiting trial before the District Court;

(b) who has been committed for trial before the Supreme Court;

(c) whose trial has been adjourned;

(d) who has been convicted and –

(i) who has been committed for sentence;

(ii) whose case has been adjourned for sentence;

(iii) who is appealing against conviction or sentence; or

(iv) whose conviction or sentence is stayed;

(e) who is under arrest for a breach of bail or a breach of a bail condition;
or

(f) who has applied for a writ of *habeas corpus*;

‘appeal’ includes an application for leave to appeal and a proceeding by way of appeal;

‘authorised officer’ means the Registrar of the Courts, Deputy Registrar of the Courts, the clerk of the District Court, or any officers of the court so designated;

‘bail’ for a person accused of an offence means authorisation for the person to be at liberty instead of in custody, on condition that the person appears for trial, for sentence, for hearing for an application or appeal relating to the offence, or for an adjournment of any of those matters, and includes bail granted by a police officer;

'bail condition' means a condition imposed under section 22;

'bail undertaking' means an undertaking given under section 21;

'cognisable offence', in relation to bail, means cognisable offence as defined under section 10 of the Criminal Procedure Act 1972;

'close relative' of a person means a parent, spouse, *de facto* partner, sibling, child or grandparent of the person, or any member of the person's family, clan, or kin identified by the police officer or the court as a close relative;

'continued', in relation to bail, means continued under section 31;

'conviction' includes:

- (a) a finding of guilt;
- (b) a finding that a person is not guilty by reason of insanity;
- (c) a conviction of an offence for which an order is made placing the offender on probation or discharging him or her absolutely or conditionally following a finding that the facts of the charge were proved;

'court' includes the District Court, Supreme Court or Court of Appeal and includes a Resident Magistrate, Judge or Justice of Appeal;

'grant of bail' includes continuation of bail under section 31;

'minor' means a person under the age of 18 years;

'offence' includes an alleged offence;

'police officer' means a police officer of the rank of sergeant or above, and any reference to the police officer is a reference to any police officer of the rank of sergeant or above;

'review' means a review of a bail decision under section 31;

'serious offence' means an offence for which the maximum penalty includes imprisonment for 3 years or more;

'specially affected person' means:

- (a) a person against whom an alleged offence has been committed;
- (b) a close relative of any such person; or
- (c) any other person who in the opinion of the police officer or the court warrants special consideration because of the circumstances of the case;

'surety' means a person, other than the accused person or a person under 18 years, whom a police officer or court determines to be acceptable to

provide confirmation of the accused person's bail undertaking, or security that such undertaking will be complied with; and

'surrender into custody' in relation to a person released on bail, means the person surrendering into the custody of the court or of a police officer as the case may be, at the time and place appointed for doing so.

- (2) In this Act, a reference to '*the police officer*' or '*the court*' means the police officer who or the court which has granted bail or is considering granting bail to a person under this Act.
- (3) In this Act, a reference to a form is a reference to the forms prescribed by regulations.

PART 2 – GENERAL PROVISIONS IN RELATION TO BAIL

4 Entitlement to bail

- (1) Every accused person has a right to be released on bail unless it is not in the interests of justice that bail should be granted.
- (2) Bail may be granted by a court or by a police officer under section 9(2).
- (3) There is a presumption in favour of the granting of bail to a person but a person who opposes the granting of bail may seek to rebut the presumption.
- (4) The presumption in favour of the granting of bail is displaced where the accused person:
 - (a) is charged with an offence of '*murder*', '*treason*', or '*contempt of court*';
 - (b) seeking bail has previously breached a bail undertaking or bail condition;
 - (c) is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury, self-harm or in need of protection;
 - (d) is a fugitive offender arrested under the Extradition Act 1973, Mutual Legal Assistance in Criminal Matters Act 2004 or Counter Terrorism and Transnational Crime Act 2004; or
 - (e) has been convicted and has appealed against the conviction.
- (5) Bail shall be granted to an accused person who is a minor, unless:
 - (a) he or she has a previous criminal conviction;
 - (b) he or she has previously breached a bail undertaking or bail condition;
 - (c) the offence in question is a serious one; or
 - (d) he or she is incapacitated by intoxication, injury or use of a drug or is otherwise in danger of physical injury, self-harm or in need of protection.