



# **Nauru (High Court Appeals) Act 1976**

## **Act No. 151 of 1976 as amended**

This compilation was prepared on 10 July 2008  
taking into account amendments up to Act No. 73 of 2008

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,  
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# An Act relating to Appeals to the High Court from the Supreme Court of Nauru

## 1 Short title [see Note 1]

This Act may be cited as the *Nauru (High Court Appeals) Act 1976*.

## 2 Commencement [see Note 1]

This Act shall come into operation on a date to be fixed by Proclamation, being a date not earlier than the date on which the Agreement comes into force.

## 3 Interpretation

In this Act, **Agreement** means the agreement between the Government of Australia and the Government of the Republic of Nauru relating to appeals to the High Court of Australia from the Supreme Court of Nauru that was signed on 6 September 1976, being the agreement a copy of the text of which is set out in the Schedule.

## 4 Approval of Agreement

The Agreement is approved.

## 5 Appeals to High Court

- (1) Appeals lie to the High Court of Australia from the Supreme Court of Nauru in cases where the Agreement provides that such appeals are to lie.
- (2) The High Court has jurisdiction to hear and determine appeals mentioned in subsection (1).
- (3) Where the Agreement provides that an appeal is to lie to the High Court of Australia from the Supreme Court of Nauru with the leave of the High Court, the High Court has jurisdiction to hear and determine an application for such leave.

## **6 Procedure**

The power of the Justices of the High Court or of a majority of them to make Rules of Court under section 86 of the *Judiciary Act 1903* extends to making Rules of Court in relation to matters referred to in paragraph 1 of Article 3 of the Agreement.

## **7 Quorum**

The jurisdiction of the High Court to hear and determine an appeal or an application for leave to appeal under section 5 shall be exercised by a Full Court consisting of not less than 2 Justices.

## **8 Form of judgment on appeal**

The High Court in the exercise of its appellate jurisdiction under section 5 may affirm, reverse or modify the judgment, decree, order or sentence appealed from and may give such judgment, make such order or decree or impose such sentence as ought to have been given, made or imposed in the first instance or remit the case for re-determination by the court of first instance, by way of a new trial or rehearing, in accordance with the directions of the High Court.

## **9 Decision in case of difference of opinion**

Where the Justices sitting as a Full Court in accordance with section 7 are divided in opinion as to the decision to be given on any question, the question shall be decided as follows:

- (a) if there is a majority of the one opinion, the question shall be decided in accordance with the opinion of the majority; or
- (b) in any other case:
  - (i) in the case of an application for leave to appeal—the application shall be refused; or
  - (ii) in the case of an appeal—the decision appealed from shall be affirmed.

## **10 Right of appearance**

- (1) Subject to this section, a party to a proceeding in the High Court under this Act may appear personally or be represented by a person:

- (a) who is entitled to practise in any federal court as a barrister or solicitor, or as both, in pursuance of section 55A of the *Judiciary Act 1903*;
  - (b) whose name is on the Register of Practitioners kept in accordance with section 55C of the *Judiciary Act 1903*; or
  - (c) who is enrolled as a barrister and solicitor (whether he or she is entitled to practise generally or only in respect of specified causes or matters) under the law of the Republic of Nauru relating to legal practitioners.
- (2) A party to an appeal in a criminal case who has been sentenced to imprisonment in the proceeding to which the appeal relates or in any other proceeding before a court of the Republic of Nauru, and has not served the sentence or so much of the sentence as he or she is required to serve under the law of the Republic of Nauru, is not entitled to appear personally at the hearing of the appeal.
- (3) The High Court may hear and determine appeals and applications for leave to appeal notwithstanding that a party to the appeal or the applicant for leave to appeal, as the case may be, is not present in person and is not represented at the hearing of the appeal or application.

## **11 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Schedule

Section 3

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF THE REPUBLIC OF NAURU RELATING TO  
APPEALS TO THE HIGH COURT OF AUSTRALIA FROM THE SUPREME  
COURT OF NAURU

The Government of Australia and the Government of the Republic of Nauru,

Recalling that, immediately before Nauru became independent, the High Court of Australia was empowered, after leave of the High Court had first been obtained, to hear and determine appeals from all judgments, decrees, orders and sentences of the Court of Appeal of the Island of Nauru, other than judgments, decrees or orders given or made by consent,

Taking into account the desire of the Government of the Republic of Nauru that suitable provision now be made for appeals to the High Court of Australia from certain judgments, decrees, orders and sentences of the Supreme Court of Nauru, and

Conscious of the close and friendly relations between the two countries,

Have agreed as follows:

### ARTICLE 1

Subject to Article 2 of this Agreement, appeals are to lie to the High Court of Australia from the Supreme Court of Nauru in the following cases:

A. In respect of the exercise by the Supreme Court of Nauru of its original jurisdiction—

- (a) In criminal cases—as of right, by a convicted person, against conviction or sentence.
- (b) In civil cases—
  - (i) as of right, against any final judgment, decree or order; and
  - (ii) with the leave of the trial judge or the High Court of Australia, against any other judgment, decree or order.



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B. In respect of the exercise by the Supreme Court of Nauru of its appellate jurisdiction—

In both criminal and civil cases, with the leave of the High Court.

#### ARTICLE 2

An appeal is not to lie to the High Court of Australia from the Supreme Court of Nauru—

- (a) where the appeal involves the interpretation or effect of the Constitution of Nauru;
- (b) in respect of a determination of the Supreme Court of Nauru of a question concerning the right of a person to be, or to remain, a member of the Parliament of Nauru;
- (c) in respect of a judgment, decree or order given or made by consent;
- (d) in respect of appeals from the Nauru Lands Committee or any successor to that Committee that performs the functions presently performed by the Committee; or
- (e) in a matter of a kind in respect of which a law in force in Nauru at the relevant time provides that an appeal is not to lie to the High Court.

#### ARTICLE 3

1. Subject to paragraph 2 of this Article and to Article 4 of this Agreement, procedural matters relating to appeals from the Supreme Court of Nauru to the High Court of Australia are to be governed by Rules of the High Court.

2. Applications for the leave of the trial judge to appeal to the High Court of Australia in civil matters are to be made in accordance with the law of Nauru.

#### ARTICLE 4

1. Pending the determination of an appeal from the Supreme Court of Nauru to the High Court of Australia, the judgment, decree, order or sentence to which the appeal relates is to be stayed, unless the Supreme Court of Nauru otherwise orders.

2. Orders of the High Court of Australia on appeals from the Supreme Court of Nauru (including interlocutory orders of the High Court) are to be made binding and effective in Nauru.

ARTICLE 5

This Agreement shall come into force on the date on which the two Governments exchange Notes notifying each other that their respective constitutional and other requirements necessary to give effect to this Agreement have been complied with.

ARTICLE 6

1. Subject to paragraph 2 of this Article, this Agreement shall continue in force until the expiration of the ninetieth day after the day on which either Government has given to the other Government notice in writing of its desire to terminate this Agreement.

2. Termination of this Agreement is not to affect—

- (a) the hearing and determination of an appeal from the Supreme Court of Nauru instituted in the High Court before the date of the termination; or
- (b) the institution, hearing and determination of an appeal from the Supreme Court of Nauru in pursuance of leave of the trial judge or of the High Court of Australia given before the date of the termination.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective governments have signed the present Agreement.

DONE at Nauru this Sixth day of September One thousand nine hundred and seventy-six in two originals in the English language.

A. L. FOGG  
For the Government of  
Australia

A. BERNICKE  
For the Government of the  
Republic of Nauru

**Table of Acts****Notes to the *Nauru (High Court Appeals) Act 1976*****Note 1**

The *Nauru (High Court Appeals) Act 1976* as shown in this compilation comprises Act No. 151, 1976 amended as indicated in the Tables below.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Nauru (High Court Appeals) Act 1976</i>	151, 1976	9 Dec 1976	21 Mar 1977 (see <i>Gazette</i> 1977, No. S46)	
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 4 (items 395, 396): 4 July 2008	—



**Table of Amendments**

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**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

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Provision affected	How affected
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S. 10.....	am. No. 73, 2008
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