

2. Sources of law for Nauru

2.1 Relevant legislation (including amendments)

- [Custom and Adopted Laws Act 1971](#)
- [District Court Act 2018](#) (DCA)
- [Interpretation Act 2011](#)
- [Nauru Court of Appeal Act 2018](#)
- [Supreme Court Act 2018](#) (SCA), [Supreme Court \(Amendment\) Act 2019](#) (SCAA 2019), [Supreme Court \(Amendment\) Act 2020](#) (SCAA 2020), [Supreme Court \(Amendment\) No 2 Act 2020](#) (SCAA No 2 2020)
- [The Constitution of Nauru 1968](#)

2.2 Introduction

The sources of law for Nauru, include:

- the Constitution
- Acts of Parliament
- customary law
- the rules and principles of common law and equity.

2.3 The Constitution of Nauru (the Constitution)

The Constitution is the supreme law of Nauru and any other law that is inconsistent with this Constitution, is void, to the extent of the inconsistency: Art [2\(1\)](#) and [\(2\)](#).

This means any law passed before or after the Constitution, including legislation, customary law and the common law, which is inconsistent with the Constitution, is void.

The Supreme Court interprets and decides the meaning of any provisions in the Constitution in the first instance and then the Court of Appeal, so the Constitution is affected by developments in the common law. The Supreme Court has original jurisdiction to determine any question arising under or involving the interpretation or effect of any provision of the Constitution: Art [54](#).

The Constitution (apart from the Fifth Schedule and any provisions specified in it) may only be amended by a vote of not less than two-thirds of all members of Parliament after a 90-day interval between the introduction of the proposed law in Parliament and the passing of the proposed law by Parliament: Art [84\(1\)-\(2\)](#).

The Fifth Schedule and any of the provisions specified in that Schedule may only be amended, after it has been passed by Parliament, if it has also been approved by not less than two-thirds of all the votes validly cast on a referendum held: Art [84\(3\)](#).

A person who, at the time the referendum is held, is qualified to vote at an election of members of Parliament, is entitled to vote at a referendum held for the purposes of this Article and no other person is so entitled: Art [84\(4\)](#).

A proposed law to alter this Constitution shall not receive the certificate of the Speaker under Article [47](#), unless it is accompanied by a certificate:

- under the hand of the Clerk of Parliament that Article [84\(2\)](#) has been complied with; or
- if relevant, under the hand of a person prescribed by law stating that it has been approved as provided for by Article [84\(3\)](#).

2.4 Statute law

Parliament has the power to make laws for the peace, order and good government of Nauru subject to the Constitution. Laws so made may have effect outside as well as within Nauru: Art [27](#).

A proposed law becomes law on the date when the Speaker certifies that it has been passed by Parliament: Art [47](#).

The legislation passed by Parliament is the next superior law after the Constitution.

The laws that are prescribed by Parliament, in the form of statutes, are binding on the courts and can only be changed by Parliament.

The courts may also, in certain circumstances, recommend changes to the law, or they may declare parts of or the whole statute void to the extent that it is inconsistent with the Constitution.

It is the role of the courts to interpret and apply statutes.

2.5 Understanding and interpreting legislation

When interpreting statutes in the Republic of Nauru, you must consider:

- the Constitution,
- any definitions or rules of interpretation that are provided in the specific Act, and
- common law rules of statutory interpretation.

You must recognise and understand the terms used in statutes to convey a particular meaning, for example when an Act says:

- you “may” do something, that means the power may be exercised or not, at your discretion,
- you “shall” do something, this means you “must”. You have no choice.

Please note that the meaning of words and phrases in a statute is a question of law and not a question of fact. You should follow the following process to determine the meaning of words within the statute and refer to:

1. the definition section of the relevant statute,

2. part 8 (Construction of laws) of the Interpretation Act 2011,
3. relevant Nauru cases which may have given a definition for that word or phrase,
4. overseas case law (UK and Australia) in some instances where relevant eg: when interpreting UK or Australian statutes that have been adopted by Nauru or very similar legislation, and
5. a respected legal dictionary or legal textbook. This should only be used as a reference and may not be relevant to the particular statute or the context of Nauru.

The [Custom and Adopted Laws Act 1971](#) (CALA) provides for the adoption of UK common law, equity and the statutes (including rules and regulations), which were in force in England on 31 January 1968: s [4\(1\)-\(2\)](#) CALA. This is subject to the provisions of sections 3, 5 and 6 of this Act. This adoption of UK laws applies only so far as:

- the circumstance of Nauru and the limits of its jurisdiction permit; and
- they are not repugnant to or inconsistent with the provisions of this Act or of any Ordinance or Act in force at the commencement of this Act or from time to time with any law enacted hereafter by Parliament or with any Act, statute, Ordinance, law, rule or regulation of the Commonwealth of Australia, the State of Queensland, the Territory of Papua or the Territory of New Guinea for the time being expressly applied in, or adopted as the law of, Nauru by any Act or Ordinance: s [5](#) CALA.

Certain English laws are not adopted as specified in the First Schedule: s [6](#) CALA.

2.6 Customary law

Customary law that existed before the Custom and Adopted Laws Act 1971 has effect as part of the law of Nauru relating to the following matters:

- (a) title to, and interests in, land, other than any title or interest granted by lease or other instrument or by any written law not being an applied statute;
- (b) rights and powers of Nauruans to dispose of their property, real and personal, inter vivos and by will or any other form of testamentary disposition;
- (c) succession to the estates of Nauruans who die intestate; and
- (d) any matters affecting Nauruans only: s [3\(1\)](#) CALA.

But any custom or usage **is abolished** by which any person is or maybe entitled or empowered to: s [3\(2\)](#) CALA:

- (a) take or deal with the property of any other person without that person's consent; or
- (b) deprive the parents of a child of its custody and control without their consent,

The only place in the criminal law where cultural practices are taken into account is in the [Child Protection and Welfare Act 2016](#) (CPWA 2016), specifically in section [5](#) (Guiding Principles when dealing with the CPWA 2016) which provides in part:

- (1) The core principle for administering this Act is that the safety, wellbeing and best interests of a child are paramount.

- (2) This Act must be applied, implemented and enforced in accordance with Nauruan tradition, culture and community values, except where such matters conflict with the rights of children as provided for in this Act.

This principle is applicable in offences relating to the disciplining of children, defined as persons under the age of 18 years: s [3\(1\)](#).

2.7 Common law

The principles and rules of the common law and equity have effect as part of the law of Nauru if they are not:

- inconsistent with the Constitution or any Act of Parliament: Art [2\(1\)](#) and [\(2\)](#).
- inconsistent with any existing customary law applying to the matter: s [3\(1\)](#) CALA.

The common law is law made and developed by judges and magistrates. Judges and magistrates can make and develop the law by:

- interpreting existing legislation
- interpreting the Constitution
- covering matters which are not dealt with by statute.

The development of the common law does not mean that judges can make arbitrary decisions.

They must follow the Doctrine of Judicial Precedent and must give reasons for their decision.

2.8 Doctrine of Judicial Precedent

The Doctrine of Judicial Precedent means that judges and magistrates in lower courts are bound to follow decisions of higher courts.

Binding authority means that lower courts are “bound to” or must apply the legal principles announced in the decision of a higher court.

Persuasive authority means that the court may apply the decision of another court but are not required to do so. You should always carefully consider the decision of the other court but if the reasoning of the decision does not persuade you, do not apply it.

The courts are not bound by any decision of a foreign court. However, they may consider decisions from foreign jurisdictions to develop the common law of Nauru. These decisions would have persuasive value only.