

## 3. The District Court

### 3.1 Introduction

The [District Court Act 2018](#) (DCA) including amendments establishes the District Court and grants both criminal and civil jurisdiction on the District Court.

### 3.2 Criminal legislation

Criminal procedures followed in the District Court are:

- as set out in the [Criminal Procedure Act 1972](#) (CPA) including amendments,
- the [Criminal Procedure \(Forms\) Rules 1972](#), and
- the common law (rules of practice in the UK courts which are adopted pursuant to sections 4, 5 and 6 of the [Custom and Adopted Laws Act 1971](#)).

Other relevant criminal legislation includes:

- [Anti-Money Laundering and Targeted Financial Sanctions Act 2023](#)
- [Bail Act 2018 \(BA\)](#)
- [Constitution of Nauru](#)
- [Crimes Act 2016 \(CA\)](#)
- Criminal Code (Amendment) Acts (Criminal Code is the [First Schedule](#) to the Criminal Code Act 1899 of the State of Queensland)
- [Criminal Justice Act 1999 \(CJA\)](#)
- [Cybercrime Act 2015](#)
- [District Court Act 2018](#) (DCA); [District Court \(Amendment\) Act 2020](#) (DCAA 2020)
- [Domestic Violence and Family Protection Act 2017](#)
- [Evidence \(Confidential Information\) Act 1976](#)
- [Illicit Drugs Control Act 2004](#)
- [Motor Traffic Act 2014](#)
- [Nauru Court of Appeal Act 2018](#)
- [Supreme Court Act 2018](#)

### 3.3 Civil legislation

The [Civil Procedure Act 1972](#) including amendments sets out civil procedures in the District Court. Under section 76 of the CPA, the Chief Justice may make rules of court to regulate the practice and procedure of the Supreme Court and the District Court. Accordingly, the [Civil Procedure Rules 1972](#) and amendments apply to civil cases.

Other relevant civil legislation includes:

- [Child Protection and Welfare Act 2016](#)
- [Civil Evidence Act 1972](#)
- [District Court Act 2018](#)
- [Interpretation Act 2011](#)
- [Nauru Court of Appeal Act 2018](#)
- [Supreme Court Act 2018](#)

### 3.4 Composition of the court

#### 3.4.1 Magistrates

The District Court is presided over by the Resident Magistrate or three lay magistrates: s [6\(1\)](#) DCA. All matters in the District Court are currently dealt with by the Resident Magistrate. A Resident Magistrate, must:

- (a) be qualified to be admitted as a legal practitioner to practice as a barrister and solicitor under the Legal Practitioners Act 2019; and
- (b) have at least five 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: s [7](#) DCAA (2020).

When the powers and jurisdiction of the District Court are exercised by three lay magistrates together, it is by majority decision: s [15](#) DCA.

Subject to the provisions of this Act and to any directions given by the Chief Justice:

- the Resident Magistrate determines which magistrates shall exercise the powers and jurisdiction of the District Court;
- where the powers and jurisdiction of the District Court are exercised by lay magistrates, the most senior of those magistrates by date of first appointment as a magistrate oversees the proceedings in the District Court;
- where two or more of the magistrates were first appointed on the same date, the Chief Justice will decide their seniority relative to one another, unless the magistrates agree that one of them other than the most senior will oversee proceedings: s [20](#) DCA.

If a matter has started in the District Court before three magistrates, but before being determined one magistrate dies or, or is unable to continue due to illness or absence from Nauru and is unlikely to be able to do so within a reasonable time, the two other magistrates may with the parties' consent in writing, complete the hearing and make a determination. If they are unanimous, this is final but if not, then the hearing has to start afresh before a properly constituted court: s [25](#) DCA.

#### 3.4.2 Registrar of the District Court

s [11](#) DCA

The Registrar of Courts shall be the Registrar of the District Court. The Registrar provides monthly returns of cases filed, heard and disposed of in the respective court to the Minister for Justice.

### 3.4.3 Deputy Register and other officers of the District Court

ss [12](#) and [13](#) DCA

The Deputy Registrar of the District Court is the principal administrative officer for the court. Other officers of the court may be appointed as required to administer the District Court efficiently. The Deputy Registrar and other officers of the court are supervised by the Chief Justice, under the immediate direction and control of the Registrar: s [12](#) DCA.

Their duties are to:

- attend sittings of the District Court as a Resident Magistrate may direct;
- prepare summonses, warrants, decrees, orders, convictions, recognisances, writs of execution and other documents and to submit them to a Resident Magistrate or if that Resident Magistrate so directs, to another magistrate, for signature;
- issue civil process if authorised by rules of the court;
- maintain case files and registers to record judgments, decisions or orders of the District Court and to make, or cause to be made, copies of proceedings when required to do so;
- receive all fees, fines and penalties, and all other moneys paid or deposited in respect of proceedings in the District Court, and to keep an account of them; and
- perform, or cause to be performed, such other duties connected with the District Court as may be assigned to them by a Resident Magistrate: s [13](#) DCA.

### 3.5 General jurisdiction

The Resident Magistrate has jurisdiction to hear cases within any district throughout Nauru.

The lay magistrates have limited jurisdiction to hear and determine (s [6\(2\)](#) DCA):

- traffic offences contained under the [Motor Traffic \(Traffic Infringement Notices\) Regulations 2018](#),
- bail applications for offences for which the maximum term of imprisonment is 12 months,
- matters for which jurisdiction is vested in the District Court under section [14\(g\)](#) of the Act, and
- such other matters which the Chief Justice may from time to time assign or vest to the lay magistrates.

The jurisdiction of the District Court includes (s [14](#) DCA):

- jurisdiction vested in it by the [Criminal Procedure Act 1972](#) and any other written law that it had prior to the commencement of this Act;
- jurisdiction conferred on it by the DCA or any other written law;
- power and jurisdiction as may from time to time be vested in it under the DCA or any other written law;
- jurisdiction to divide chattels;

- jurisdiction in relation to the recovery of land in limited circumstances provided for under this Act;
- jurisdiction to hear and determine interpleader applications; and
- family related jurisdiction.

The District Court has ancillary jurisdiction to (s [23](#) DCA):

- grant relief, redress or remedy, or combination of remedies; and
- give effect to defence on equitable or legal grounds or counter-claim as could be granted or made by the Supreme Court.

### 3.6 Criminal and sentencing jurisdiction

An offence is taken to be committed in Nauru, whether or not the person charged with the offence was in Nauru at the time the conduct was engaged in or the event took place, if:

- conduct which is part of an offence is undertaken within Nauru, or
- an event necessary to complete an offence took place in Nauru,

Subject to this, conduct engaged in outside Nauru is not an offence except as provided by this or another Act: s [5](#) CA.

The District Court has authority to cause to be brought before it any person who is in Nauru and is charged with an offence committed within, or which may be inquired into or tried within, Nauru and to deal with him or her according to its jurisdiction: s [43](#) CPA.

The criminal jurisdiction of the District Court under section [14](#) of the DCA, is amended by the limits of its sentencing jurisdiction set out in section 7 of the Criminal Procedure Act (as amended by ss [4](#) and [5](#) of the Criminal Procedure (Amendment) No 2 Act 2018). The District Court may try any offence, subject to the provisions of any written law relating to children or young persons and other provisions of this Act under:

- the Crimes Act if it is punishable with imprisonment for not more than ten years: s [4](#) CPA
- any written law other than the Crimes Act 2016 and it does not state the Court by which that offence may be tried (or even if does), if it is punishable with imprisonment for not more than ten years: s [5](#) CPA.

The sentencing provisions are set out in Div 15.3 (ss [277-282A](#)) of the Crimes Act 2016 as amended by the [Crimes \(Amendment\) No. 2 Act 2020](#).

The District Court may pass any sentence and make any order authorised by the Crimes Act 2016 or in any other written law except for (s [7](#) CPA):

- a sentence of death,
- a term of imprisonment exceeding five years in respect of any one offence,
- a fine in an amount exceeding \$50,000 in respect of any one offence, or

- any written law which expressly provides that the District Court has no jurisdiction; or the Supreme Court has the original jurisdiction over the criminal cause or matter.

Any person who has, on at least two previous occasions been convicted of any sexual offence (whether similar or not) shall be declared a habitual sexual offender and shall be sentenced to life imprisonment without eligibility for parole: s [7A](#) CPA.

You may pass any lawful sentence combining any two or more of the sentences which the District Court is authorised by law to pass, subject to the provisions of the Crimes Act 2016 and of any other written law: s [8\(1\)](#) CPA.

In determining the extent of the jurisdiction of the District Court under section 7 of this Act, any term of imprisonment which is, or may be imposed in default of payment of a fine, costs or compensation shall be deemed not to be a sentence of imprisonment passed in respect of the offence for which the fine was imposed: s [8\(2\)](#) CPA.

Where a person is convicted at one trial of two or more offences you must pass sentence separately in respect of each offence. If a sentence of imprisonment is passed for either of these offences, the sentences shall run consecutively in such order as the Court directs, unless that Court directs that they run concurrently: s [9\(1\)](#) and [\(2\)](#) CPA.

The maximum aggregate sentences of imprisonment and fine which may be imposed by the District Court on any one person at one trial are 10 years imprisonment and \$75,000 fine: s [9\(3\)](#) CPA.

For deciding if there is a right of appeal, the aggregate of fines imposed on one person at one trial shall be deemed to be a single sentence: s [9\(4\)](#) CPA.

### 3.7 District Court may transfer charges and proceedings to the Supreme Court

You may transfer the charge and proceedings to the Supreme Court if:

- a charge has been brought against any person of an offence not triable by the District Court; or
- you think that that it ought to be tried by the Supreme Court: s [162](#) CPA.

### 3.8 Civil jurisdiction

District Courts may hear and determine all civil cases involving not more than \$3,000. This includes (s [17](#) DCA):

- any cause or matter founded on contract or on tort but not, except as provided, have jurisdiction to hear and determine any cause or matter for the recovery of land,
- any claim where the debt or demand up to a balance of \$3,000 after set off (admitted by the plaintiff),
- any cause or matter for the recovery of any penalty (not including a fine on conviction), expenses, contribution or other like demand under any laws, if it is not expressly provided that the demand shall be recoverable only in some other court,

- proceedings for enforcing any charge or lien,
- proceedings for the specific performance, or for the rectification, delivery up or cancellation, of any agreement for the sale, purchase or lease of any property,
- proceedings for the dissolution or winding-up of any partnership, or
- proceedings for relief against fraud or mistake.

A plaintiff may abandon part of their claim for more than \$3,000, to bring it within the jurisdiction of the District Court and, if so, the judgment will be in full discharge of all demands in respect of that application: s [20](#) DCA.

If the parties agree by signed memorandum under section [23](#) DCA, that the District Court has jurisdiction to hear and determine any cause or matter, then it has that extended jurisdiction subject to sections 24 and 25: s [21](#) DCA.

A cause of action may not be divided for the purpose of bringing two or more actions or any counterclaim: s [22](#) DCA.

For any (preliminary) proceeding that is pending, a magistrate may make any order or exercise jurisdiction which, if it related to an action or proceeding pending in the Supreme Court, might be made by a judge of the Supreme Court in their chambers: s [24](#) DCA.

### 3.9 Powers of the District Court

The District Court has the following powers:

- refer any cause or matter except for criminal matters, to arbitration with the consent of the parties: s [27](#) DCA.
- refer any cause or matter except for criminal matters, to a referee for inquiry and report if:
  - the matter requires any prolonged examination of documents or any scientific or local investigation; or
  - the question in dispute consists wholly or in part of matters of account;
  - the parties consent; or
  - any interlocutory issues arising in the cause or matter to which the parties consent: s [28](#) DCA.

### 3.10 General powers of magistrates

A magistrate has several powers including to:

- administer oaths and take affirmations and declarations; make such decrees and orders; and issue such process and exercise such powers judicial or administrative as authorised by any written law: s [29](#) DCA;
- recuse themselves (or if one of the parties apply) where a magistrate has a conflict of interest: s [30](#) DCA;

- transfer a cause or matter relating to the Constitution from the District Court to Supreme Court: s [31](#) DCA;
- award costs in a cause or matter as they deem fit and expedient: s [32](#) DCA. But s [7](#) of the Criminal Procedure (Amendment) No. 2 Act 2018 inserted a new s [118A](#) to the CPA that prohibits the award of costs against prosecution or defence in any criminal matter;
- have a formal charge prepared and signed for criminal complaints: s [51](#) CPA;
- issue summonses and warrants for the arrest of accused, and penalise them for non-attendance: ss [52](#), [63](#) and [150](#) CPA;
- issue summonses and warrants for the arrest of witnesses, or to produce documents and penalise them for non-attendance or refusal to give evidence without a reasonable excuse: ss [37-40](#) DCA, ss [100](#) and [102](#) CPA; and
- require various people, including accused and witnesses, to enter into a recognisance, with or without sureties: s [65](#) CPA and s [22](#) BA.