

# REPUBLIC OF NAURU

## Counter Terrorism and Transnational Organised Crime Act 2004

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# REPUBLIC OF NAURU

## A BILL

### FOR AN ACT

*To prevent terrorists from operating in Nauru and to prevent persons in Nauru from taking part in or supporting terrorist and related activities.*

[No. 14 of 2004]

(Certified : 3rd November, 2004)

Enacted by the Parliament of Nauru as follows:

#### Part 1 Preliminary

##### 1 Principal objects

The principal objects of this Act are:

- (a) to implement United Nations Security Council Resolution 1373 and Conventions dealing with terrorism and transnational organised crime; and
- (b) to prevent terrorists from operating in Nauru; and
- (c) to prevent persons in Nauru from taking part in terrorist activities or supporting terrorism.

##### 2 Definitions

- (1) In this Act, unless the contrary intention appears:

*act of violence* means an act or omission outside Nauru that, if done or omitted in Nauru would constitute a criminal offence.

*Administrator* has the meaning given in the Proceeds of Crime Act 2004

*aircraft* means any aircraft, whether or not a Nauru-controlled aircraft, other than an aircraft in the military, customs or police services.

*authorised officer* means:

- (a) the Director of Police; or
- (b) a police officer authorised by the Director of Police for a provision of this Act; or
- (c) a person authorised by the Minister for Justice for a provision of this Act.

*child* means a person under 20 years.

*commander*, for an aircraft, means the person who is for the time being in command of the aircraft.

**commercial carrier** includes a company, or the owner, operator, or person in charge of any means of transport that engages in the transport of goods or people for commercial gain.

**consular officer** means a consular officer of Nauru, including a consul-general, consul, pro-consul and consular agent of Nauru.

**Convention country** means a country that is declared by Cabinet, by Order published in *the Gazette*, to be a party to a Convention.

**counter terrorism convention** means an instrument mentioned in Schedule 1.

**Nauru-controlled aircraft** means any of the following:

- (a) an aircraft that is for the time being registered in Nauru; or
- (b) an aircraft based in Nauru from time to time; or
- (c) an aircraft chartered by a Nauruan or a resident of Nauru or by a company registered in Nauru.

**Court** means the District Court of Nauru.

**craft** includes any aircraft, ship, boat or other machine or vessel used or capable of being used for the carriage or transportation of persons or goods, or both, by air or water or over or under water.

**detection agent** means a substance mentioned in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention.

**entity** means a person, group, trust, partnership, fund or an unincorporated association or organisation.

**exploitation** includes all forms of sexual exploitation (including sexual servitude and exploitation of another person's prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

**explosive or other lethal device** means:

- (a) an explosive or other incendiary weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage; or
- (b) a weapon or device that is designed or has the capability to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents, toxins or similar substances or radiation or radioactive materials.

**financial institution** means a person that carries on a business of any of the following:

- (a) accepting deposits and other repayable funds from the public;
  - (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions;
  - (c) financial leasing;
  - (d) providing money transmission services;
  - (e) issuing and administering means of payment (for example, credit cards, travellers' cheques and bankers' drafts);
  - (f) entering into guarantees and commitments;
  - (g) trading for the institution's own account, or for account of customers, in money market instruments (for example, cheques, bills and
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- certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
- (h) underwriting share issues and participation in such issues;
  - (i) giving advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;
  - (j) money-broking;
  - (k) providing portfolio management and advice;
  - (l) safekeeping and administration of securities;
  - (m) providing credit reference services;
  - (n) providing safe custody services;
  - (o) insurance, insurance intermediation, securities dealing or futures broking;
  - (p) trustee administration or investment management of a superannuation scheme, other than a closed-end scheme;
  - (q) dealing in bullion;
  - (r) operating a gambling house, casino or lottery, including over the Internet;
  - (s) a trustee or manager of a unit trust;
  - (t) a trust or company service provider;
  - (u) a legal practitioner when helping to plan or execute, for his or her client, any of the following transactions:
    - (i) depositing or investing funds;
    - (ii) buying or selling real property or a business entity;
    - (iii) managing assets;
    - (iv) opening or managing an account with a financial institution;
    - (v) managing contributions necessary for the creation, operation or management of a company;
    - (vi) creating, operating or managing a trust or company; or
  - (v) a legal practitioner when acting for a client in a financial or real estate transaction, to the extent that he or she receives funds in the course of his or her business for deposit or investment, or to settle a real estate transaction;
  - (w) an accountant, to the extent that he or she receives funds in the course of his or her business for deposit or investment;
  - (x) dealing in real estate or high value items including antiques;
  - (y) any other prescribed business.

*Financial Intelligence Unit* has the meaning given by the Anti Money Laundering Act.

*fixed platform* means an artificial island, installation or structure permanently attached to the sea bed for the purposes of exploration or exploitation of resources or for other economic purposes.

*forfeiture order* means an order made by the Court under section 24.

**fraudulent travel or identity document** means a travel or identity document that:

- (a) has been made, or altered in any way, by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country; or
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being used by a person other than the lawful holder.

**Hague Convention** means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.

**Hostage Convention** means the International Convention Against the Taking of Hostages adopted by the General Assembly of the United Nations on 17 December 1979.

**illegal entry** means entering Nauru or any other country without complying with the requirements for lawful entry of that country.

**international nuclear transport** means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the country where the shipment originates:

- (a) beginning with the departure from a facility of the shipper in the country; and
- (b) ending with the arrival at a facility of the receiver within the country of ultimate destination.

**international organisation** means any organisation of States or Governments of States or any organ or any agency of any organisation of that kind.

**internationally protected person** means:

- (a) any of the following persons while in a foreign country, including a member of the person's family accompanying him or her:
  - (i) a Head of State (including any member of a collegial body performing the functions of a Head of State);
  - (ii) a Head of Government;
  - (iii) a Minister responsible for Foreign Affairs; or
- (b) a representative or official of a country or an official or other agent of an international organisation of an inter-governmental character who, when and where a crime against the person or the person's official premises, private accommodation or means of transport is committed, is entitled under international law to special protection from attack on the person's freedom or dignity, as well as on the person's family forming part of that person's household.

**landing** includes alighting on water.

**material benefit** includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service.

**military aircraft** means a aircraft of the naval, military or air forces of any country.

**military device** includes a shell, bomb, projectile, mine, missile, rocket, charge, grenade or perforator, lawfully manufactured exclusively for military or police purposes.

**military service** includes naval and air force service.

**Minister** means the Minister for Justice

**Montreal Convention** means the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971.

**Mutual Assistance in Criminal Matters Act** means the Mutual Assistance in Criminal Matters Act 2004

**New York Convention** means the Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, done at New York on 14 December 1973.

**nuclear material** means any of the following:

- (a) plutonium with an isotopic concentration of not more than 80% in plutonium-238;
- (b) uranium-233;
- (c) uranium containing uranium-233 or uranium-235 or both;
- (d) uranium with a naturally occurring isotopic concentration, other than uranium in the form of ore or ore residue;
- (e) a substance containing nuclear material.

**Nuclear Material Convention** means the Convention for the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980.

**operator**, for a craft, means the owner, operator or person having for the time being command or charge of the craft, other than a pilot of a ship, a harbour master or a law enforcement officer acting in the course of his or her duties.

**organised criminal group** means a group of at least 3 persons, existing for a period of time, that acts together with an objective of obtaining material benefits from the commission of offences that are punishable by a maximum penalty of at least 4 years imprisonment.

**people smuggling** means the arranging or assisting of an unauthorised person's illegal entry into any country.

**People Smuggling Protocol** means the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organised Crime.

**People Trafficking Protocol** means the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organised Crime.

**plastic explosive** means an explosive that:

- (a) is formulated with 1 or more high explosives that in their pure form have a vapour pressure less than  $10^{-4}$  Pa at a temperature of 25°C; and
- (b) is formulated with a binder material; and
- (c) when mixed, malleable or flexible at normal room temperature.

**Plastic Explosives Convention** means the Convention on the Marking of Plastic Explosives for the Purpose of Identification, done at Montreal on 1 March 1991.

**Principal Immigration Officer** has the same meaning given in the Immigration Act 1999.



**privileged communication** means a confidential communication, whether made directly or indirectly through an agent:

- (a) between:
  - (i) a lawyer in his or her professional capacity and another lawyer in the same capacity; or
  - (ii) a lawyer in his or her professional capacity and his or her client; and
- (b) to obtain or give legal advice or assistance; and
- (c) not for the purpose of committing or assisting the commission of an illegal or wrongful act.

**property** includes:

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and
- (b) legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

**public official** includes a person who is a member of the public service or provides a public service.

**receiving country** means:

- (a) for people smuggling — the country into which the unauthorised person's entry is arranged; or
- (b) for people trafficking — the country into which a trafficked person is brought as part of an act of trafficking in persons.

**registrable property** means property the title to which is passed by registration on a register kept under a law in force in Nauru.

**ship** means a vessel that is not permanently attached to the sea bed:

- (a) including a hovercraft, hydrofoil, submarine or other floating craft; but
- (b) not including a warship, a ship owned or operated by a state and being used as a naval auxiliary or for customs or police purposes or a ship that has been withdrawn from navigation.

**specified entity** means a person or entity:

- (a) that is prescribed under section 4; or
- (b) for which a declaration under section 5 has been made.

**specified means:** includes any of the following:

- (a) threat;
- (b) use of force or other forms of coercion;
- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) abuse of power or of a position of vulnerability;
- (g) giving or receiving payments or benefits to achieve the consent of a person having control over another person.

**terrorist act** has the meaning given by section 3.

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**terrorist group** means:

- (a) an entity that has as one of its activities or purposes committing, or facilitating the commission of, a terrorist act; or
- (b) a group that is a specified entity.

**terrorist property** means:

- (a) property that has been, is being, or is likely to be used to commit a terrorist act; or
- (b) property that has been, is being, or is likely to be used by a terrorist group; or
- (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity.

**Tokyo Convention** means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on 14 September 1963.

**trafficked person** means a person who is the victim of trafficking in persons.

**trafficking in persons** means the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation.

**unauthorised person**, for a country, means a person who is not a citizen of the country or is not in possession of all the documents required by the law of the country for the person's lawful entry into the country.

**unlawful employee**, for an employer, means a person whom the employer knows, or ought reasonably to know, is not entitled under The Immigration Act 1999 to undertake employment in the employer's service.

**unmarked plastic explosive** mean a plastic explosive that:

- (a) does not contain a detection agent; or
- (b) at the time of manufacture, does not contain the minimum concentration level of a detection agent mentioned in the table to Part 2 of the Technical Annex to the Plastic Explosives Convention.

**weapon** includes a firearm, chemical, biological or nuclear weapon.

(2) For this Act:

- (a) the period during which an aircraft is in flight is taken to include:
  - (i) any period from the moment when all its external doors are closed following embarkation until the moment when any door is opened for disembarkation; and
  - (ii) for a forced landing — any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and
- (b) an aircraft is taken to be in service:
  - (i) during the whole of the period that begins with the pre-flight preparation of the aircraft for a flight and ends 24 hours after the aircraft lands having completed that flight; and
  - (ii) at any time (outside that period) while, in accordance with paragraph (a), the aircraft is in flight.

(3) For this Act, a reference to an aircraft in flight includes a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.

- (4) For this Act, unless the context otherwise requires, a reference to a country or the territorial limits of a country is taken to include a reference to the territorial waters, if any, of the country.

### 3 Definition of *terrorist act*

- (1) For this Act:

*terrorist act* means an act or omission in or outside Nauru that:

- (a) constitutes an offence within the scope of a counter terrorism convention; or
- (b) is mentioned in subsection (2).
- (2) For paragraph (1) (b), the act or omission:
- (a) must:
- (i) involve death or serious bodily injury to a person; or
  - (ii) involve serious damage to property; or
  - (iii) endanger a person's life; or
  - (iv) create a serious risk to the health or safety of the public or a section of the public; or
  - (v) involve the use of weapons; or
  - (vi) involve introducing into the environment, distributing or exposing the public to any:
    - (A) dangerous, hazardous, radioactive or harmful substance; or
    - (B) toxic chemical; or
    - (C) microbial or other biological agent or toxin; or
  - (vii) involve serious disruption to any system or the provision of services directly related to essential infrastructure (such as water or electrical power supply); and
- (b) must be intended or, by its nature and context, reasonably be regarded as being intended:
- (i) to intimidate the public or a section of the public; or
  - (ii) to compel a government or an international organisation to do, or refrain from doing, any act; and
- (c) must be made for the purpose of advancing a political, ideological, or religious cause.
- (3) However, an act or omission mentioned in subsection (2) does not include an act or omission that:
- (a) is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in paragraph (2) (i), (ii), (iii) or (iv); or
- (b) occurs in a situation of armed conflict and, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

## Part 2 Specified entities

### 4 Regulations specifying certain entities

The *Minister for Justice* may make regulations prescribing as a specified entity a person or group if:

- (a) the Security Council of the United Nations has made a decision under Chapter 7 of the Charter of the United Nations relating wholly or partly to terrorism; and
- (b) the entity is identified in the decision, or using a mechanism established under the decision, as an entity to which the decision relates.

### 5 Declarations that certain entities are specified entities

- (1) The Minister for Justice may apply to the Court for a declaration under subsection (3) if the Minister has reasonable grounds to believe that:
  - (a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act, or
  - (b) an entity is knowingly acting on behalf of, at the direction of or in association with an entity mentioned in paragraph (a); or
  - (c) an entity (other than an individual) is wholly owned or effectively controlled directly or indirectly by an entity mentioned in paragraph (a) or (b).
- (2) The Court:
  - (a) may make orders for service of the application; and
  - (b) may deal with the application *ex parte*.
- (3) If the Court is satisfied that there is evidence to support the application, the Court may:
  - (a) declare the entity to be a specified entity; and
  - (b) require the Minister for Justice to give notice of the declaration to any person who may be affected by the declaration.
- (4) The declaration must be published in the Gazette.

### 6 Revocation of declarations

- (1) If the Court has made a declaration under section 5 in relation to an entity, the Court may, on application by the Minister for Justice or the specified entity, revoke the declaration.
- (2) If the application is made by the specified entity:
  - (a) the specified entity must give reasons in written form of the application to the Minister for Justice; and
  - (b) before deciding on the application, the Court must hear from the Minister for Justice.
- (3) The Court must:
  - (a) if the Court decides that there are reasonable grounds to do so, revoke the declaration; or

- (b) if the Court decides that there are no reasonable grounds to revoke the declaration, refuse the application.
- (4) If the Court revokes the declaration, the Minister for Justice shall:
- (a) if practicable, tell the entity in writing; and
  - (b) publish a notice of revocation in the Gazette.

## **7 Procedure**

- (1) For a hearing under this Part, the Court:
- (a) may hear any evidence or information presented by the Minister for Justice in the absence of the entity or counsel representing the entity, or the public, if the Court thinks that disclosure of the information would prejudice national security or endanger the safety of any person; and
  - (b) may receive in evidence anything that would not otherwise be admissible as evidence (including information from the government or institution or agency of a foreign country or an international organisation), that the Court thinks is reliable and relevant.
- (2) For a hearing under section 5 or 6, the Court must give the entity a statement summarising the information available to the Court, without disclosing any information that the Court thinks could prejudice national security or endanger the safety of any person.

## **8 Review of declarations**

- (1) The Minister for Justice shall review all declarations made under subsection 5 (3) every 12 months to determine whether there are still reasonable grounds, as set out in subsection 5 (1), for the declarations to continue to apply to specified entities.
- (2) If the Minister for Justice determines that there are no reasonable grounds for a declaration to continue to apply to a specified entity, the Minister for Justice must apply to the Court that the declaration be revoked in relation to the specified entity.

## **9 Appeal**

The Minister for Justice or an entity in relation to which a declaration is made may appeal to the Supreme Court against a decision made by the Court under this Part.

## **Part 3 Offences**

### **10 Terrorism financing**

A person must not provide or collect, by any means, directly or indirectly, any property, intending, knowing, or having reasonable grounds to believe, that the property will be used in full or in part to carry out a terrorist act.

Maximum penalty: imprisonment for life.

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**11 Provision of property or services to specified entity**

- (1) A person must not, directly or indirectly, knowingly make available property or financial or other related services to, or for the benefit of, a specified entity, other than for the purposes of humanitarian aid or legal services.

Maximum penalty: imprisonment for 20 years.

- (2) Subsection (1) does not apply if the provision of the property or service is of a kind that is authorised by a resolution of the United Nations Security Council.

**12 Dealing with terrorist property**

- (1) A person must not knowingly:
- (a) deal, directly or indirectly, in any terrorist property; or
  - (b) collect or acquire or possess terrorist property; or
  - (c) enter into, or facilitate, directly or indirectly, any transaction in respect of terrorist property; or
  - (d) convert, conceal or disguise terrorist property.

Maximum penalty: imprisonment for 20 years.

- (2) A person does not commit an offence under paragraph (1) (a), (b) or (c) if the person:
- (a) tells the Minister for Justice, in writing, as soon as the person becomes aware that the property is terrorist property; and
  - (b) acts in accordance with any directions of the Minister for Justice for the property.

**13 Harbouring of persons committing terrorist acts**

A person must not harbour or conceal, or prevent, hinder or interfere with the apprehension of, any other person knowing or having reason to believe that the other person:

- (a) has committed or is planning or likely to commit a terrorist act; or
- (b) is a member of a specified entity.

Maximum penalty: imprisonment for life.

**14 Provision of weapons to terrorist groups**

A person must not knowingly offer to provide, or provide, a weapon to:

- (a) a specified entity; or
- (b) a member of a specified entity; or
- (c) any other person for use by, or for the benefit of, a specified entity or a member of a specified entity.

Maximum penalty: imprisonment for life.

**15 Recruitment of persons to be members of terrorist groups or to participate in terrorist acts**

A person must not knowingly agree to recruit, or recruit, another person:

- (a) to be a member of a terrorist group; or
- (b) to participate in the commission of a terrorist act.

Maximum penalty: imprisonment for life.

**Part 4 Management and forfeiture of property of specified entities**

**Division 1 Management**

**16 Direction to take control of property**

- (1) The Minister for Justice may apply to the Court for a direction under subsection (3) for property in Nauru if the Minister for Justice has reasonable grounds to believe that the property is terrorist property.
- (2) The Court:
  - (a) may make orders for service of the application; and
  - (b) may deal with the application *ex parte*.
- (3) If the Court is satisfied that there is evidence to support the application, the Court may direct the Administrator to take custody and control of the property.
- (4) The direction:
  - (a) must specify the property concerned; and
  - (b) may be subject to conditions.
- (5) A person who has custody or control of property mentioned in the direction must allow the Administrator to take custody and control of the property in accordance with the direction.

**17 Notice of direction**

- (1) Notice of the making of a direction under section 16 must be given:
    - (a) as soon as possible to the person who owns or controls the property, if practicable, if the person or a representative of the person is in Nauru; and
    - (b) to any other person that the Minister for Justice thinks may have an interest in the property.
  - (2) Failure to comply with subsection (1) does not affect the validity of the direction.
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**18 Variation, revocation, or expiry of direction**

- (1) If the Court has made a direction under section 16, the Court may, on application by the Minister for Justice or the person who owns or controls the property:
  - (a) make another direction under section 16 varying the conditions of the direction or the property that is subject to the direction; or
  - (b) revoke the direction.
- (2) If the application is made by the person who owns or controls the property:
  - (a) the person must give reasonable written notice of the application to the Minister for Justice; and
  - (b) before deciding on the application, the Court must hear from the Minister for Justice.
- (3) The Court must:
  - (a) if the Court decides that there are reasonable grounds to do so, revoke the direction; or
  - (b) if the Court decides that there are no reasonable grounds to revoke the direction, refuse the application.
- (4) If the Court revokes the direction, the Minister for Justice must:
  - (a) tell the person who owns or controls the property in writing; and
  - (b) publish a notice of revocation in the Gazette.
- (5) If not earlier revoked, a direction under section 16 about property of a specified entity expires if:
  - (a) for property of a specified entity — the entity ceases to be a specified entity; or
  - (b) a forfeiture order is made under section 24 in relation to the property.

**19 Appeal**

The Minister or a person whose property is subject to a direction may appeal to the Supreme Court against a decision made by the Court under this Part.

**20 Further provisions on management of property of specified entities**

Part 3 of the *Proceeds of Crime Act* apply, with the following (and all other necessary) modifications, to property that is the subject of a direction under section 16.

**21 Third parties may apply for relief**

- (1) A person other than the person who owns or controls the property, who claims an interest in property that is subject to a direction under section 16 (not being property to which subsection (2) applies) may apply to the Court for an order under section 22.
- (2) The person must give written notice of the application to the Minister, who is a party to any proceedings on the application.



## 22 Court may grant relief to third party

- (1) Subsection (2) applies if:
  - (a) a person makes an application under section 21; and
  - (b) the Court is satisfied that the person's claim to the interest is valid.
- (2) The Court must make an order:
  - (a) declaring the nature, extent, and value of the person's interest in the property; and
  - (a) declaring that the interest is no longer subject to the order under section 16; and
  - (b) if the interest is held by the Administrator:
    - (i) directing the Administrator to transfer the interest to the person; or
    - (ii) declaring that there is payable by the Administrator to the person an amount equal to the value of the interest declared by the Court.
- (3) However, the Court may, if it thinks fit, refuse to make an order if it is satisfied that:
  - (a) the person was knowingly involved in any way in the carrying out of the terrorist acts that are the basis of the designation of the entity as a specified entity, or is an entity that is wholly owned or effectively controlled, directly or indirectly, by the specified entity; or
  - (b) if the person acquired the interest at the time of or after the designation of the entity as a specified entity, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to a direction under section 16.

## Division 2 Forfeiture

### 23 Application for forfeiture order

- (1) The Minister may apply to the Court for a forfeiture order against terrorist property.
  - (2) The Minister shall:
    - (a) name as respondents to the application only those persons who are known to own or control the property the subject of the application; and
    - (b) give notice of the application to each respondent in the manner directed by the Court.
  - (3) The Court may, at any time before the final determination of the application, make orders for:
    - (a) service of the application on any person whom the Court thinks has an interest in the property; and
    - (b) publication of notice of the application.
  - (4) Any person who claims an interest in the property may appear and present evidence at the hearing of the application.
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**24 Making forfeiture order**

- (1) If the Court is satisfied, on the balance of probabilities, that the property the subject of the application is terrorist property, the Court must order that the property be forfeited to Nauru.
- (2) If the Court is satisfied that a person mentioned in paragraph 23 (2) (a) or (3) (a):
  - (a) has an interest in the property the subject of the application; and
  - (b) has exercised reasonable care to ensure that the property is not terrorist property; and
  - (c) is not a member of a specified entity;the Court must order that the interest is not affected by the order and declare the nature and extent of the interest.
- (3) If the Court makes a forfeiture order, the Court may give any directions that are necessary or convenient to give effect to the order.
- (4) If the Court refuses to make a forfeiture order, the Court must make an order that describes the property and declare that it is not terrorist property.

**25 Effect of forfeiture order**

- (1) If the Court makes a forfeiture order against property, the order vests the property absolutely in the State.
- (2) If the Court makes a forfeiture order against registrable property:
  - (a) the order vests the property in the State in equity, but does not vest it in the State at law until the applicable registration requirements have been complied with; and
  - (b) the State is entitled to be registered as owner of the property; and
  - (c) the Minister for Justice may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the State as owner, including the execution of any necessary instrument; and
  - (d) the Minister for Justice may do anything necessary or convenient to give notice of, or otherwise protect, the State's equitable interest in the property; and
  - (e) anything done by the Minister for Justice under paragraph (d) is not a dealing for paragraph (3) (a).
- (3) If the Court makes a forfeiture order against property :
  - (a) the property must not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the State, before 6 months after the forfeiture order was made; and
  - (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Minister for Justice directs, at 6 months after the forfeiture order was made.

**26 Protection of third parties**

- (1) A person who claims an interest in property that has been forfeited and who has not been given notice under paragraph 23 (2) (a) or (3) (a) may apply to

the Court, within 6 months after the forfeiture order was made, for an order under subsection (4).

- (2) The person must give reasonable written notice of the application to the Minister for Justice.
- (3) The Minister for Justice:
  - (a) is a party to the proceedings in an application under subsection (1); and
  - (b) may make an application under subsection (1) for a person.
- (4) If a person applies to the Court for an order about the person's interest in property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied in accordance with subsection 24 (2).
- (5) An appeal lies to the Supreme Court from an order under subsection (4).

## **27 Return of property**

- (1) The Minister must, on application by a person who has obtained an order under subsection 26 (4), if the period for appeals has expired and any appeal from that order has been determined or has lapsed:
  - (a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or
  - (b) if the interest in the property is no longer vested in Nauru, pay an amount equal to the value of the interest of the applicant, as declared in the order, to the applicant.
- (2) Subsection (1) does not apply to any property returned, or amount paid, to the person under section 22.

## **28 Appeal**

The Minister or a person affected by a decision made by the Court under this Part may appeal to the Supreme Court against the decision.

## **Division 3 Information**

### **29 Disclosure of information**

- (1) A financial institution must immediately tell the Secretary for Justice about the existence of any property in its possession or control:
    - (a) that is owned or controlled, directly or indirectly, by or for a specified entity, including property derived or generated from that property; or
    - (b) for which there are reasonable grounds to suspect is property of a kind mentioned in paragraph (1).
  - (2) The Secretary for Justice may tell the financial intelligence authority or other appropriate authority of a foreign country about any information it has about any property of the kind mentioned in subsection (1), if the authority thinks the information would be relevant to the foreign country.
  - (3) Information may be given under subsection (2) subject to any conditions that the Secretary for Justice determines.
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- (4) A financial institution must tell the Financial Intelligence Unit about every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to the commission of a terrorist act.
- (5) No civil or criminal proceedings lie against a person for making a disclosure or report, in good faith, under subsection (1), (2) or (4).
- (6) Nothing in subsection (1) or (4) requires a lawyer to disclose a privileged communication, other than information about a financial transaction recorded for a trust account of the lawyer within the meaning of *The Legal Practitioners Act*.
- (7) A person who receives information under subsection (1), (2) or (4) must not disclose the information or its source except:
  - (a) for the purposes of:
    - (i) the enforcement of this Act; or
    - (ii) the detection, investigation or prosecution of an offence under this Act; or
    - (iii) providing assistance under the Mutual Assistance in Criminal Matters Act; or
  - (b) in accordance with an order of a court.
- (8) A person must not contravene subsection (1) or (4).  
Maximum penalty: imprisonment for 15 years.

## Part 5                      General powers

### 30                      Controlled delivery of property

- (1) This section applies to an authorised officer who has reasonable grounds to believe that a person has committed, is committing or is about to commit an offence under this Act.
- (2) The authorised officer may allow property, that the authorised officer reasonably suspects has been, is being or may be used to commit an offence under this Act, to enter, leave or move through Nauru for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.
- (3) An authorised officer does not commit an offence under this Act if:
  - (a) the authorised officer is engaged in investigation of a suspected offence under this Act; and
  - (b) the offence involves property that the authorised officer reasonably suspects has been, is being or may be used to commit an offence under this Act; and
  - (c) the authorised officer does not take action that the authorised officer would otherwise be required to take under this Act, for the purpose of the investigation.

**31 Provision of information relating to persons, goods or craft entering or leaving the country**

- (1) The operator of a craft:
  - (a) arriving in or departing from Nauru; or
  - (b) registered in Nauru, departing from any place outside Nauru;must give the Secretary for Justice any information in his or her possession, relating to persons or goods on board, or expected to be on board, the craft.
- (2) A person must not contravene subsection (1).

Maximum penalty: 10 years.
- (3) The Secretary for Justice may give the competent authority in a foreign country any information:
  - (a) in his or her possession relating to persons entering or leaving Nauru; and
  - (b) that is required by the laws of the foreign country.
- (4) The provision of information under subsection (1) or (3) is taken not to be a contravention of any provision of law prohibiting the disclosure of the information.
- (5) No information provided to the Secretary for Justice under subsection (1) may be used or disclosed by the Secretary for Justice except for the purpose of protecting border security, national security or public safety.
- (6) The *Minister* may make regulations generally to give effect to the purposes of this section, including regulations prescribing the types or classes of information that may be:
  - (a) provided under this section; or
  - (b) disclosed to the competent authority of a foreign country.
  - (c) Such regulations may include the following information:
    - a. details of craft movements, including name of the craft, registration number or identifier, estimated time of arrival or departure and place or origin and destination; and or
    - b. personal information including the persons name, date of birth, gender, passport number, nationality and travel documents.

**32 Power to prevent entry and order the removal of persons**

- (1) An authorised officer must not grant an endorsement or other authority permitting a person to enter Nauru if he or she has reasonable grounds to suspect that that person has been, is, or will be, involved in the commission of a terrorist act.

If the Secretary for Justice has reasonable grounds to suspect that a person, other than a citizen of Nauru, has been, is or will be, involved in the commission of a terrorist act, he or she, in consultation with the Principal Immigration Officer, may make an order requiring the person to leave Nauru and to remain out of Nauru.
- (3) A person against whom an order under subsection (2) is made shall leave Nauru and must, so long as the order is in force, remain out of Nauru.

- (4) A person whom an order under subsection (2) is made, may appeal such order to the Supreme Court.
- (5) A person against whom an order under subsection (2) is made may be:
  - (a) detained in such manner as may be directed by the Secretary for Justice for no more than 7 days, or any longer period that is reasonably needed to arrange for the person's removal from Nauru; and
  - (b) placed on a craft leaving Nauru.

### **33 Exchange of information relating to terrorist groups and terrorist acts**

The Secretary for Justice may disclose to the appropriate authority of a foreign country any information in its possession relating to any of the following:

- (a) the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;
  - (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
  - (c) traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts;
  - (d) the use of communication technologies by terrorist groups; and
- if the disclosure is not prohibited by any provision of law and will not, in the Secretary for Justice's view, prejudice national security or public safety.

### **34 Regulations**

The Minister may make regulations in relation to all matters for which regulations are required or authorised to be made by this Act, including the power to add or omit items to or from Schedule 1.

## **Part 6 Counter-terrorism conventions**

### **Division 1 Tokyo Convention — aircraft**

#### **35 Application of criminal law to aircraft**

- (1) An act or omission taking place on board a Nauru-controlled aircraft while in flight other than in or over Nauru that, if taking place in Nauru would constitute an offence under the law in force in Nauru, constitutes that offence.
- (2) Subsection (1) does not apply to an act or omission that would, if committed in Nauru be an offence but that is expressly or impliedly authorised under the law in force in Nauru when taking place outside Nauru.

#### **36 Specified aircraft**

If the Minister is satisfied that the requirements of Article 18 of the Tokyo Convention have been satisfied, the Minister may, by notification published

in the Government Gazette, declare that a specified aircraft is taken to be registered in a specified Convention country.

### **37 General powers of commander of aircraft**

- (1) The commander of an aircraft in flight may take any reasonable measures necessary for the purposes mentioned in subsection (2) in relation to any person on board the aircraft, including restraint of the person and the use of force, if the commander has reasonable grounds to believe:
  - (a) that the person has done or is about to do any act on the aircraft while it is in flight that jeopardises or may jeopardise:
    - (i) the safety of the aircraft or of persons or property on board the aircraft; or
    - (ii) good order and discipline on board the aircraft; or
  - (b) that the person has done on the aircraft while in flight any act that in the opinion of the commander is a serious offence under a law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination.
- (2) The purposes mentioned in subsection (1) are:
  - (a) to protect the safety of the aircraft or of persons or property on board the aircraft; or
  - (b) to maintain good order and discipline on board the aircraft; or
  - (c) to enable the commander to disembark or deliver that person in accordance with subsection (5).
- (3) For paragraph (1) (b), a Nauru -controlled aircraft is taken to be registered in Nauru whether or not it is so registered and whether or not it is registered in another country.
- (4) A member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and a member must if required by the commander, render assistance in restraining any person whom the commander is entitled under subsection (1) to restrain.
- (5) At any time when the aircraft is in flight, a member of the crew of the aircraft or any other person may, without obtaining the authority of the commander, take any measures mentioned in subsection (1) in relation to any person on board the aircraft that the member or other person has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

### **38 Restraint of persons on aircraft**

- (1) Any restraint imposed on a person on board an aircraft under section 37 may be continued after the time when the aircraft first ceases to be in flight only if:
    - (a) the aircraft first ceases to be in flight in the territory of a country that is not a party to the Tokyo Convention and its authorities refuse to permit the disembarkation of the person in order to deliver that person to the competent authorities of the country; or
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- (b) the aircraft makes a forced landing and the commander is unable to deliver that person to the competent authorities; or
  - (c) the person agrees to continued restraint for onward carriage.
- (2) The commander must as soon as is reasonably practicable, and if possible before landing in a country's territory, cause notification to be given to the appropriate authority of the country where the aircraft ceases to be in flight of the fact that a person on board the aircraft is under restraint, and of the reasons for the restraint.
- (3) Subject to the notification mentioned in subsection (2), restraint may be continued after the aircraft first ceases to be in flight:
- (a) for any period (including the period of any further flight) between that time and the first occasion on which the commander is able with any requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with section 39; or
  - (b) if the person under restraint agrees to continue his or her journey under restraint on board that aircraft.

### 39 Disembarkation and delivery of person

- (1) The commander of an aircraft may disembark any person on board an aircraft in any country in which the aircraft may be if, for any person on board the aircraft, the commander:
- (a) has reasonable grounds to believe that the person is about to do any act mentioned in paragraph 37 (1) (a); and
  - (b) believes that it is necessary to do so in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft.
- (2) For any person on board the aircraft that the commander of an aircraft has reasonable grounds to believe as mentioned in paragraph 37 (1)-(b), the commander may deliver the person:
- (a) in Nauru to a police officer; or
  - (b) in any other country that is a party to the Tokyo Convention, to an officer having functions corresponding to the functions of either a police officer or of an immigration officer in Nauru.

### 40 Reporting and notification obligations

- (1) The commander of an aircraft:
- (a) if he or she disembarks a person under subsection 39 (1), for a Nauru - controlled aircraft, in any country or, for any other aircraft, in Nauru, must report the fact of, and the reason for, the disembarkation to:
    - (i) an appropriate authority in the country of disembarkation; or
    - (ii) the appropriate diplomatic or consular office of the country of nationality of that person; and



- (b) if he or she intends to deliver a person under section 39 in Nauru or, for a Nauru -controlled aircraft, in any other country that is a Convention country, must, before or as soon as reasonably practicable after landing, give notification of his or her intention and of the reasons:
    - (i) if the country is Nauru, to a police officer or immigration officer or, for any other country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in Nauru; and
    - (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of the person.; and
  - (c) must give to the appropriate authority evidence in his or her possession about the person's behaviour.
- (2) A commander of an aircraft who, without reasonable cause, fails to comply with the requirements of this section commits an offence.

Maximum penalty: imprisonment for 10 years.

- (3) If the person is delivered to a police officer:
- (a) the police officer must take the person into custody unless he or she has reasonable grounds to believe that the person has not committed the offence; and
  - (b) if the police officer refuses to take the person into custody — give written reasons for the refusal.

#### 41 Indemnity for actions under this Division

A person who exercises a power, including restraint, on another person in accordance with this Division in good faith is not guilty of an offence and is not liable to civil proceedings for the exercise of that power.

### Division 2 Hague Convention — hijacking

#### 42 Offence of hijacking

- (1) Subject to subsections (2) and (3), a person on board an aircraft in flight must not unlawfully, by the use of force or by threats of any kind, seize the aircraft or exercise control of it, whether the aircraft is in Nauru or not.
- Maximum penalty: imprisonment for life.
- (2) Proceedings may be brought for an offence under subsection (1) only if:
- (a) the offence is committed on board an aircraft registered in Nauru; or
  - (b) the offence is committed on board an aircraft owned by Nauru; or
  - (c) the offence is committed on board an aircraft owned by a company or corporation registered in Nauru; or
  - (d) the aircraft on board which the offence is committed lands in Nauru's territory and the alleged offender is on board; or
  - (e) the offence is committed on board an aircraft leased without crew to a lessee who has his or her principal place of business in Nauru or, if the lessee has no principal place of business in Nauru, if the lessee is a permanent resident of Nauru.
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- (3) Subsection (1) applies to an act committed in relation to an aircraft used in military, customs or police service only if:
- (a) the act is committed in or over Nauru; or
  - (b) if the act is committed outside Nauru, the person committing the act is a citizen of Nauru.

### **Division 3 Montreal Convention and Protocol — civil aviation**

#### **43 Offence to destroy, damage or endanger safety of aircraft**

- (1) A person must not unlawfully and intentionally:
- (a) destroy an aircraft in service or so damage an aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight; or
  - (b) commit on board an aircraft in flight an act of violence that is likely to endanger the safety of the aircraft.

Maximum penalty: imprisonment for life.

- (2) A person must not unlawfully and intentionally place or cause to be placed on an aircraft in service a device or substance that is likely to destroy the aircraft or is likely to damage it so as to render it incapable of flight or so as to be likely to endanger its safety in flight.

Maximum penalty: imprisonment for life years.

- (3) Subsections (1) and (2) applies to an act committed in relation to an aircraft used in military, customs or police service only if:
- (a) the act is committed in or over Nauru; or
  - (b) if the act is committed outside Nauru, the person committing the act is a citizen of Nauru.

#### **44 Offences involving other acts endangering or likely to danger the safety of aircraft**

- (1) A person must not unlawfully and intentionally destroy or damage any property to which this section applies or interfere with the operation of that property, if the destruction, damage or interference is likely to endanger the safety of aircraft in flight.

Maximum penalty: imprisonment for life.

- (2) Subsection (1) applies to any property used for the provision of air navigation facilities including any land, building, ship, apparatus or equipment, whether it is on board an aircraft or elsewhere.

- (3) A person must not intentionally communicate any information which he or she knows to be false, misleading or deceptive in a material particular, if the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight.

Maximum penalty: imprisonment for life years.

- (4) Subsections (1) and (3) applies to the commission of an act only if:
- (a) the act is committed in Nauru, or
  - (b) if the act is committed outside Nauru:
    - (i) the person committing the act is a citizen of Nauru; or
    - [(ii) the commission of the act endangers or is likely to endanger the safety in flight of an aircraft registered in Nauru or chartered by demise to a lessee whose principal place of business, or (if none) whose permanent residence, is in Nauru; or
    - (iii) the act is committed on board an aircraft that is registered or chartered in Nauru; or
    - (iv) the act is committed on board an aircraft that lands in Nauru with the person who committed the act still on board; or
    - (v) the person is present in Nauru.
- (5) Subsection (1) also applies to an act committed outside Nauru and that is committed in relation to property that is situated outside Nauru and is not used for the provision of air navigation facilities in connection with international air navigation, only if the person committing the act is a citizen of Nauru.

#### **45 Offences involving acts of violence at airports serving international civil aviation**

A person must not unlawfully and intentionally, using any device, substance or weapon:

- (a) perform an act of violence, against a person at an airport serving international civil aviation, that causes or is likely to cause serious injury or death; or
- (b) destroy or seriously damage the facilities of an airport serving international civil aviation or an aircraft not in service located there or disrupt the services of the airport;

if the act endangers or is likely to endanger safety at the airport.

Maximum penalty: imprisonment for life years.

### **Division 4 Internationally protected persons**

#### **46 Offences against internationally protected person**

A person must not intentionally:

- (a) commit murder, kidnapping or other attack on the person or liberty of an internationally protected person; or
- (b) commit a violent attack on the official premises, private accommodation or means of transport, of an internationally protected person likely to endanger that person or that person's liberty; or
- (c) threaten to commit an attack.

Maximum penalty: imprisonment for life.

## **Division 5                    Hostages**

### **47            Offence of taking hostage**

A person must not:

- (a) seize or detain another person; and
  - (b) threaten to kill, injure or continue to detain the other person;
- with intent to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person.

Maximum penalty: imprisonment for life.

## **Division 6                    Nuclear material**

### **48            Movement of nuclear material**

- (1) A person must not knowingly import or export nuclear material to or from Nauru except in accordance with a license or written permit given by Cabinet.

Maximum penalty: imprisonment for life and fine of no less than \$500,000.

- (2) A person must not knowingly, without written permission from Cabinet, transport nuclear material:
  - (a) over the territory of Nauru; or
  - (b) through any of its seaports or airports.

Maximum penalty: imprisonment for life and fine of no less than \$500,000.

- (3) A person must not knowingly transport nuclear material between 2 places in Nauru, through international waters or airspace, without written permission from Cabinet.

Maximum penalty: imprisonment for life and fine of no less than \$500,000.

- (4) A licence or written permission mentioned in subsection (1), (2) or (3) may be given only if Cabinet has received a written assurance from the person that the material will, during international nuclear transport, be protected at the levels mentioned in the Nuclear Material Convention.

- (5) A person must not knowingly make a false statement or provide a false assurance to Cabinet under subsection (1), (2) or (3).

Maximum penalty: imprisonment for 20 years and fine of no less than \$150,000.

### **49            Offences relating to nuclear material**

A person must not intentionally:

- (a) without lawful authority receive, possess, use, transfer, alter, dispose of or disperse nuclear material in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property; or
- (b) steal nuclear material; or
- (c) embezzle or fraudulently obtain nuclear material; or

- (d) demand nuclear material by threat or use of force or any other form of intimidation; or
- (e) threaten:
  - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to any property; or
  - (ii) to steal nuclear material to compel a person, state or an international organisation to do or refrain from doing any act.

Maximum penalty: imprisonment for 20 years, and fine of no less than \$150,000.

## Division 7 Maritime safety

### 50 Offences

- (1) A person must not unlawfully and intentionally:
  - (a) seize, or exercise control over, a ship or fixed platform by force or threat of force or other form of intimidation; or
  - (b) commit an act of violence, against a person on board a ship or fixed platform, that is likely to endanger the safe navigation of the ship or safety of the fixed platform; or
  - (c) destroy a ship or fixed platform; or
  - (d) cause damage, to a ship or its cargo or a fixed platform, that is likely to endanger the safe navigation of the ship or safety of the fixed platform; or
  - (e) place, or cause to be placed, on a ship or fixed platform a device or substance, likely:
    - (i) for a ship — to destroy the ship, or to cause damage to the ship or its cargo likely to endanger the safe navigation of the ship; or
    - (ii) for a fixed platform — to destroy the fixed platform or to endanger its safety; or
  - (f) destroy or seriously damage maritime navigational facilities or seriously interfere with their operation in a way that is likely to endanger the safe navigation of a ship; or
  - (g) communicate information, that he or she knows to be false, endangering the safe navigation of a ship; or
  - (h) injure or kill a person in connection with the commission, or attempted commission, of an offence mentioned in paragraph (a), (b), (c), (d), (e), (f), or (g).

Maximum penalty: imprisonment for life.

- (2) A person must not, with the intention of compelling another person to do or to refrain from doing any act, threaten to commit an offence mentioned in paragraph (2) (b), (c), (d) or (f) in relation to a ship or fixed platform, if the threat is likely to endanger the safety of the ship or fixed platform.

Maximum penalty: imprisonment for life.

**51. Arrest and delivery**

- (1) The master of a ship registered in Nauru who has reasonable grounds to believe that a person has committed an offence under section 46 against, or on board, any ship may:
  - (a) arrest and detain the person; and
  - (b) deliver the person to the appropriate authorities in any other Convention State.
- (2) The master of the ship must:
  - (a) notify the authorities in the other Convention State before delivering the person; and
  - (b) give to the authorities evidence in his or her possession that the person has committed the offence.

Maximum penalty: imprisonment for life.
- (3) If the person is delivered to a police officer:
  - (a) the police officer must take the person into custody unless he or she has reasonable grounds to believe that the person has not committed the offence; and
  - (b) if the police officer refuses to take the person into custody — give written reasons for the refusal.

**Division 8 Plastic explosives****52. Plastics explosives offences**

- (1) A person must not manufacture unmarked plastic explosives, knowing that they are unmarked.

Maximum penalty: imprisonment for 15 years.
- (2) A person must not possess or transport unmarked plastic explosives, knowing that they are unmarked.

Maximum penalty: imprisonment for 15 years.
- (3) Subject to subsection (5), it is not an offence under subsections (1) or (2) if:
  - (a) the person manufactures or holds unmarked plastic explosives in a quantity approved in writing by Cabinet solely for use:
    - (i) in research, development or testing of new or modified explosives; or
    - (ii) in training in explosives detection or in the development or testing of explosives detection equipment; or
    - (iii) for forensic science purposes; or
  - (b) the unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military devices in Nauru within 3 years after the coming into force of the Plastic Explosives Convention in Nauru.

- (4) It is not an offence under subsection (2) if the person possesses or transports unmarked plastic explosives in a quantity approved in writing by Cabinet solely for a use mentioned in subsection (3).
- (5) If unmarked plastic explosives have been manufactured in, or imported into, Nauru before the commencement of this Act:
  - (a) if they are held by authorities performing military or police functions and are not incorporated as an integral part of a military device, they must be destroyed, marked or rendered permanently ineffective within 15 years after the commencement of this Act; and
  - (b) if they are held by any other person, they must be destroyed, marked or rendered permanently ineffective within 3 years after the commencement of this Act.
- (6) A person must not import or export unmarked plastic explosives.  
Maximum penalty: imprisonment for 15 years.

### 53 Power of entry

- (1) An officer authorised in writing by the court may, at all hours enter premises where he or she has reasonable grounds to believe that explosives are being manufactured, kept or stored and do any of the following:
  - (b) investigate and make inquiries on the premises to find out whether an offence under section 49 is being committed;
  - (c) inspect any records, documents or equipment found on the premises;
  - (d) take copies of, or extracts from, the records or documents.
- (2) A person must not:
  - (a) resist or obstruct an officer authorised for subsection (1) exercising the powers mentioned in subsection (1); or
  - (b) knowingly give false information in response to an inquiry under subsection (1); or
  - (c) suppress any material information in response to an inquiry under subsection (1).  
Maximum penalty: imprisonment for 5 years.

## Division 9 Terrorist bombing

### 54 Terrorist bombing offences

- (1) Subsection (2) applies to an action that is intended by a person:
  - (a) to cause death or serious bodily injury; or
  - (b) to cause extensive damage to a place mentioned in paragraph (2) (a) or (b), a facility mentioned in paragraph (2) (c) or a system mentioned in paragraph (2) (d), if the damage results in or is likely to result in major economic loss.

- (2) The person must not unlawfully and intentionally deliver, place, discharge or detonate an explosive or other lethal device in, into or against:
- (a) a part of a building, land, street or waterway or other location that is accessible or open to members of the public, whether continuously, periodically or occasionally, including a commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place; or
  - (b) a facility or conveyance that is used or occupied, in connection with his or her official duties, by:
    - (i) a representative of any Government; or
    - (ii) the Head of State of any country; or
    - (iii) the Prime Minister or a Minister of any country; or
    - (iv) a member of the legislature of any country; or
    - (v) a judge of any country; or
    - (vi) an official or employee of a Government or public authority or an inter-governmental organisation; or
  - (c) a facility, conveyance or instrumentality, whether public or privately owned, that is used in or for a publicly available service, for the transportation of persons or cargo; or
  - (d) a publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel or communications.

Maximum penalty: imprisonment for life.

## Part 7 Transnational organised crime

### 55 Participation in organised criminal group

- (1) A person must not participate (whether as a member, associate member or prospective member) in an organised criminal group, knowing that it is an organised criminal group:
- (a) knowing that his or her participation contributes to the occurrence of criminal activity; or
  - (b) reckless as to whether his or her participation contributes to the occurrence of criminal activity.

Maximum penalty: imprisonment for 20 years.

- (2) A group of people is capable of being an organised criminal group\* for the purposes of this section whether or not:
- (a) some of them are subordinates or employees of others; or
  - (b) only some of the people involved in it at a particular time are involved in the planning, arrangement or execution at that time of any particular action, activity, or transaction; or
  - (c) its membership changes from time to time.



**56 Corruption**

- (1) A person must not intentionally promise, offer or give to a public official, directly or indirectly, an undue advantage, for the official or for another person, for the official to act or refrain from acting in the exercise of his or her official duties.

Maximum penalty: imprisonment for 5 years.

- (2) A public official must not intentionally solicit or accept, directly or indirectly, an undue advantage, for the official or for another person, for the official to act or refrain from acting in the exercise of official duties.

Maximum penalty: imprisonment for 5 years.

**Part 8 People trafficking****57 Offence of trafficking in persons**

A person must not engage in trafficking in a person or be involved in the arranging of trafficking in a person, knowing that the person's entry into Nauru or any other state is or was arranged by specified means.

Maximum penalty: imprisonment for 15 years.

**58 Offence of trafficking in children**

A person must not intentionally engage in trafficking in a person who is a child or be involved in the arranging of trafficking in a person who is a child, regardless of whether the child's entry into Nauru or any other state is or was arranged by specified means.

Maximum penalty: imprisonment for 15 years.

**59 Exploitation of people not legally entitled to work**

- (1) An employer who allows an unlawful employee to undertake employment in the employer's service must not take an action with the intention of preventing or hindering the employee from:
- (a) leaving Nauru; or
  - (b) ascertaining or seeking that person's entitlement under the law of Nauru; or
  - (c) disclosing to any person the circumstances of that person's employment by the employer.
- (2) Without limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection:
- (a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets;
  - (b) preventing or hindering a person from:
    - (i) having access to a telephone; or
    - (ii) using a telephone; or
    - (iii) using a telephone privately; or

- (iv) leaving premises; or
- (v) leaving premises unaccompanied;

Maximum penalty: imprisonment for 5 years.

**60 Consent of trafficked person**

For sections 57 and 58 it is not a defence:

- (a) that the trafficked person consented to the intended exploitation; or
- (b) that the intended exploitation did not occur.

**61 Offence relating to fraudulent travel documents**

A person must not knowingly, in order to obtain a material benefit:

- (a) produce a fraudulent travel or identity document; or
- (b) procure, provide or possess a fraudulent travel or identity document.

Maximum penalty: imprisonment for 10 years.

**62 Protection for trafficked persons**

- (1) A trafficked person is not liable to criminal prosecution for:
  - (a) the act of trafficking in persons or being a party to an offence of trafficking in persons; or
  - (b) the person's illegal entry into Nauru, in connection with the act of trafficking in person if Nauru is the receiving country; or
  - (c) the person's period of unlawful residence in Nauru after being trafficked, if Nauru is the receiving country; or
  - (d) the person's procurement or possession of any fraudulent travel or identity documents that the person obtained, or with which the person was supplied, for the purpose of entering the receiving country in connection with the act of trafficking in persons.
- (2) Subsection (1) does not prevent the removal of a trafficked person in accordance with *Immigration Act 1999*.

**63 Obligation on commercial carriers**

- (1) A commercial carrier must not transport a person into a receiving country if, on entry into the receiving country, the person does not have the travel documents required for lawful entry into that country.

Maximum penalty: fine of \$5,000.

- (2) A commercial carrier is not guilty of an offence under subsection (1) if:
  - (a) the commercial carrier had reasonable ground to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country; or
  - (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or

- (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.
- (3) A commercial carrier that is guilty of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

## **Part 9 People smuggling**

### **64 Offence of people smuggling**

- (1) A person must not, in order to obtain a material benefit, engage in people smuggling either knowing or being reckless as to the fact that the entry of the person being or to be smuggled into the country is illegal.

Maximum penalty: imprisonment for 15 years.

- (2) Subsection (1) applies whether or not the person being smuggled enters or arrives in the receiving country.

### **65 Offence to facilitate stay of an unauthorised person**

A person must not knowingly facilitate the continued presence of an unauthorised person in a receiving country in order to obtain a material benefit.

Maximum penalty: imprisonment for 15 years.

### **66 Offence related to fraudulent travel or identity documents**

A person must not knowingly, in order to obtain a material benefit:

- (a) produce a fraudulent travel or identity document; or  
(b) procure, provide or possess a fraudulent travel or identity document.

Maximum penalty: imprisonment for 15 years.

### **67 Aggravated offences**

- (1) A person commits an aggravated offence of any of the offences mentioned in subsection (2) who commits that offence in 1 or more of the following circumstances:

- (a) the unauthorised person is subjected to torture or to any other cruel, inhuman or degrading treatment (including exploitation);  
(b) the life or safety of the person being smuggled is, or is likely to be, endangered.

- (2) The offences are offences against sections 64, 65 and 66.

Maximum penalty: imprisonment for 15 years.

**68 Protection for smuggled persons**

- (1) An unauthorised person is not liable to prosecution for an offence under this Part, by reason only of the fact that the person is the object of the following conduct:
  - (a) people smuggling;
  - (b) when committed for the purpose of enabling people smuggling, an offence under section 66;
  - (c) an offence under section 65.
- (2) For the avoidance of doubt, nothing in subsection (1) prevents proceedings being taken against an unauthorised person for an act or omission that constitutes an offence under any other law.

**69 Obligation on commercial carriers**

- (1) A commercial carrier must not transport a person into a receiving country if, on entry into the receiving country, the person does not have the travel documents required for lawful entry into that country.

Maximum fine: \$15,000

- (2) A commercial carrier is not guilty of an offence under subsection (1) if:
  - (a) the commercial carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country; or
  - (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
  - (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.
- (3) A commercial carrier that is guilty of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

**70 Boarding, search and detention of craft**

- (1) This section applies to a craft that is a ship, boat, or other machine or vessel used or capable of being used for the carriage of persons by water or over water, except for a foreign warship.
- (2) An Immigration and Customs Officer or Police Officer, may stop and board the craft within Nauru if the authorised officer has reasonable grounds to believe the craft:
  - (a) is being used to commit an offence against section 64; and
  - (b) the craft is in:
    - (i) Nauru; or
    - (ii) the contiguous zone of Nauru.

- (3) The Immigration and Customs Officer or Police Officer may, when reasonably necessary for the exercise of his or her functions in connection with an offence against section 64:
- (a) direct the craft to stay where it is, or direct it to be taken to a suitable place in Nauru, for the purpose of search; and
  - (b) search and detain the craft, anyone on it and anything on it; and
  - (c) question any person on board the craft; and
  - (d) require the production of any documents relating to the craft or any travel or identity documents of a person on the craft; and
  - (e) take a copy of any documents produced; and
  - (f) seize and detain anything found on the craft that appears to him or her to be evidence of an offence against this Act; and
  - (g) remain on the craft for such period as is reasonably necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence against section 64.
- (4) If the craft fails to stop at the request of an authorised officer, the officer may pursue it into international waters and take any action that is reasonably necessary to stop the craft to enable it to be boarded (other than in the territorial sea of another country).
- (5) The authorised officer may require the person in charge of the craft, a member of the crew or any person on board to take any action that may be directed by the officer for paragraph (3) (a).
- (6) The person in charge of the craft must give any authorised officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.
- (7) A person must comply with a direction of the authorised officer under paragraph (3) (a).

Maximum penalty: imprisonment for 15 years.

## Part 10 General provisions

### 71 Jurisdiction

Proceedings may be brought for an offence under this Act:

- (a) if the act or omission:
    - (i) is committed in Nauru; or
    - (ii) is committed on board a ship or aircraft registered in Nauru; or
    - (iii) is committed by a person who is in Nauru; and
  - (b) whether or not the act or omission constituting the offence is committed in or outside Nauru; if the act or omission:
    - (i) is committed by a citizen of Nauru or a citizen of any country who is ordinarily resident in Nauru; or
    - (ii) is committed in order to compel the Government of Nauru to do or abstain from doing any act; or
    - (iii) is committed against a citizen of Nauru; or
-

- (iv) is committed by a person who is, after the commission of the offence, present in Nauru; or
- (v) is intended to be committed in Nauru; or
- (vi) originates in or transits Nauru.

## **72 Aiding, abetting etc commission of an offence**

- (1) A person who aids, abets, counsels or procures the commission of an offence under this Act by another person is taken to have committed the offence and is punishable as if the offence had been committed by that person.
- (2) A person does not commit an offence under subsection (1) if, before the offence was committed, the person:
  - (a) terminated the person's involvement; and
  - (b) took all reasonable steps to prevent the commission of the offence.

## **73 Incitement to commit an offence**

- (1) A person who urges the commission of an offence under this Act commits an offence.

Maximum penalty: imprisonment for 20 years.

- (2) A person commits an offence under subsection (1) even if committing the offence incited is impossible.

## **74 Conspiring to commit an offence**

- (1) A person who conspires with another person, whether inside or outside Nauru, to commit an offence under this Act commits the offence of conspiracy and is punishable as if the offence to which the conspiracy relates had been committed.
- (2) A person is not guilty of conspiracy to commit an offence if, before the taking of action under the agreement, the person:
  - (a) withdrew from the agreement; and
  - (b) took all reasonable steps to prevent the commission of the offence.
- (3) A person is not guilty of conspiracy to commit an offence if:
  - (a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or
  - (b) the person is a person for whose benefit or protection the offence exists.

## **75 Attempting to commit an offence**

A person who attempts to commit an offence under this Act commits an offence and is punishable as if the offence attempted had been committed, provided that the person's conduct is more than merely preparatory to the commission of the offence.

**76 Liability of a company**

- (1) This Act applies to a company in the same way as it applies to an individual and a company may be found guilty of any of the offences set out in this Act, in addition to the liability of any person for the same offence.
- (2) For an offence under this Act, the conduct or state of mind of an employee, agent or officer of a company is taken to be attributed to the company if that person is acting:
  - (a) within the scope of the person's employment; or
  - (b) within the scope of the person's actual or apparent authority; or
  - (c) with the consent or agreement (express or implied) of a director, servant or agent of the company, and giving that consent is within the actual or apparent authority of the director, servant or agent.
- (3) A reference in this section to the state of mind of a person includes the person's knowledge, intention, opinion, belief or purpose, and the person's reasons for that intention, opinion, belief or purpose.

**77 Obligation to extradite or prosecute**

If the Minister refuses a request from another country to extradite a person, and the extradition request relates to an act or omission which is an offence in this Act or the Anti-Money Laundering Act 2004, or the Proceeds of Crime Act 2004, the Minister must submit the matter to Director of Public Prosecutions for prosecution.

**78 Consent of the Minister**

- (1) Proceedings for any offence under this Act, for which jurisdiction is claimed under subparagraph 71 (a) (ii) for an offence committed on board an aircraft while in flight, or a vessel, elsewhere than in or over Nauru or for any other offence committed outside Nauru may only be instituted with the consent of the Minister.
- (2) Subsection (1) do not prevent the arrest, or the issue of a warrant for the arrest, of any person for any offence, or the remanding in custody or on bail of any person charged with any offence.

**79 Restricted grounds for refusal to extradite or provide mutual assistance**

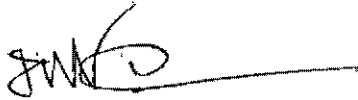
- (1) Despite anything in the Mutual Assistance in Criminal Matters Act 2004, an offence under this or any other Act, where the act or omission constituting the offence also constitutes a terrorist act, is taken, for the purposes of extradition or mutual assistance, not to be:
  - (a) an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or
  - (b) a fiscal offence.
- (2) Despite anything in the Mutual Assistance in Criminal Matters Act 2004, no request for mutual assistance in relation to an offence under this Act may be declined solely on the basis of bank secrecy.

## Schedule 1 Counter terrorism conventions

- 1 Convention on Offences and certain Other Acts committed on Board Aircraft done at Tokyo on 14 September 1963
- 2 Convention for the Suppression of Unlawful Seizure of Aircraft done at The Hague on 16 December 1970
- 3 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971
- 4 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973
- 5 International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979
- 6 Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980
- 7 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988
- 8 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at the Rome on 10 March 1988
- 9 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988
- 10 Convention on the Marking of Plastic Explosives for the Purposes of Detection, done at Montreal on 1 March 1991
- 11 International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997
- 12 International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999



I hereby certify that the above is a fair print of a Bill for an Act entitled **Counter Terrorism and Transnational Organised Crime Act 2004**, has been passed by Parliament of Nauru and is presented to the Speaker for his certificate under Article 47 of the Constitution.



**Clerk of Parliament  
3rd November 2004**

Pursuant to Article 47 of the Constitution, **I, VASSAL GADOENGIN**, Speaker of Parliament, hereby certify that **Counter Terrorism and Transnational Organised Crime Act 2004** has been passed by Parliament of Nauru.



**Speaker  
3rd November 2004**