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2004, No. 10

An Act to provide for the suppression of terrorism

(1 June 2004)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

PART 1
PRELIMINARY

1. Short Title - This Act may be cited as the Terrorism Suppression Act 2004.
2. Objects of this Act – The principal objects of this Act are –
 - (a) to implement United Nations Security Council Resolution 1373 and Conventions dealing with terrorism; and
 - (b) to prevent terrorists from operating in the Cook Islands; and
 - (c) to prevent persons in the Cook Islands from taking part in terrorist activities or supporting terrorism.
3. Definitions – (1) In this Act, unless the context otherwise requires, -

“Administrator” has the same meaning as in section 3 of the Proceeds of Crime Act 2003;

“authorised officer” means any constable, or customs official or immigration official;

“Convention country” means a country that is a party to a counter terrorism convention;

“Cook Islander” has the same meaning as in section 2 of the Entry, Residence and Departure Act 1971-72;

“counter terrorism convention” means an instrument mentioned in the Schedule;

“Court” means the High Court of the Cook Islands;

“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” includes a person (which includes a body corporate), group, trust, partnership, fund or an unincorporated association or organisation;

“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 Intelligence Unit” means the Financial Intelligence Unit established under section 20 of the Financial Transactions Reporting Act 2004;

“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 25;

“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;

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

“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;

“permanent resident” has the meaning given in section 2 of the Entry, Residence and Departure Act 1971-72;

“person” has the meaning given in section 4 of the Acts Interpretation Act 1924;

“plastic explosive” means an explosive that -

- (a) is formulated with one 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) is, 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 meaning given in section 2 of the Entry, Residence and Departure Act 1971-72;

“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 any person who is an employee of the Crown, or a director, member, or employee of any agency of the Crown or any statutory or other body or corporation substantially owned or controlled by the Crown, or a member of an Island Council;

“registrable property” means property the title to which is capable of being registered on a register kept under a law in force in the Cook Islands;

“relevant border authority” means the Principal Immigration Officer or the Collector of Customs;

“reporting institution” has the same meaning given by section 2 of the Financial Transactions Reporting Act 2004;

“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 referred to in section 5; or
- (b) for which an order under section 6 has been made;

“terrorist act” has the meaning given by section 4;

“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;

“unmarked plastic explosive” means 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, 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.

4. Definition of terrorist act – (1) In this Act “terrorist act” means an act or omission in or outside the Cook Islands 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 which includes any place used as a harbour or place used for the

- storage or supply of water, gas or the supply of electricity;
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 subparagraph (2) (a)(i), (ii), (iii) or (iv); or
 - (b) occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

PART 2 **SPECIFIED ENTITIES**

5. UN listed entities to be specified entities - (1) For this Act, the entities listed from time to time by the Security Council of the United Nations as terrorist entities are specified entities.

(2) A list of United Nations terrorist entities prepared and certified by the Secretary of Foreign Affairs for the Cook Islands is deemed to be prima facie evidence that the list is a correct list of the entities listed by the United Nations as terrorist entities.

6. Orders that certain entities are specified entities - (1) The Solicitor-General may apply to the Court for an order under subsection (3) if the Solicitor-General 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 may -
- (a) make orders for service of the application; and
 - (b) deal with the application ex parte.

(3) If the Court is satisfied that there is evidence to support the application, the Court may -

- (a) order that the entity is to be a specified entity; and
- (b) require the Solicitor-General to give notice of the order to any person who may be affected by the order.

(4) The order must be published in a newspaper published and circulating in the Cook Islands.

7. Revocation of orders - (1) If the Court has made an order under section 6(3) in relation to an entity, the Court may, on application by the Solicitor-General or the specified entity, revoke the order.

(2) If the application is made by the specified entity -

- (a) the specified entity must, within 2 days of the filing of the application, give written notice of the application to the Solicitor-General; and
- (b) before deciding on the application, the Court must hear from the Solicitor-General.

(3) The Court must -

- (a) if the Court decides that there are reasonable grounds to do so, revoke the order; or
- (b) if the Court decides that there are no reasonable grounds to revoke the order, refuse the application.

(4) If the Court revokes the order, the Solicitor-General must -

- (a) if the entity has not been served with the application, tell the entity in writing; and
- (b) publish a notice of revocation in a newspaper published and circulating in the Cook Islands.

8. Procedure - (1) For a hearing under this Part, the Court may -

- (a) hear any evidence or information presented by the Solicitor-General 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) 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 6 or 7, 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.

9. Review of order – (1) The Solicitor-General may review from time to time all orders made under subsection 6(3) to determine whether there are still reasonable grounds, as set out in subsection 6 (1), for the order to continue to apply to specified entities.

(2) If the Solicitor-General determines that there are no reasonable grounds for an order to continue to apply to a specified entity, the Solicitor-General must apply to the Court that the order be revoked in relation to the specified entity.

10. Appeal – The Solicitor-General or an entity in relation to which an order is made may, within 21 days of the order being made, appeal to the Court of Appeal against a decision made by the Court under this Part.

PART 3 **OFFENCES**

11. Terrorism financing – (1) 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.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of up to 14 years imprisonment.

12. Provision of property or services to terrorist group – (1) A person must not, directly or indirectly, knowingly make available property or other financial or other related services to, or for the benefit of, a terrorist group, other than for the purposes of humanitarian aid or legal services.

(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.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of up to 14 years imprisonment.

13. 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.

(2) A person does not commit an offence under subsection (1)(a), (b), or (c) if that person –

- (a) tells the Solicitor-General, 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 Solicitor-General for the property.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of up to 14 years.

14. Harbouring of persons committing terrorist acts – (1) A person must not harbour, 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 is likely to commit a terrorist act;
or

(b) is a member of a terrorist group.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of up to 14 years.

15. Provision of weapons to terrorist groups - (1) A person must not knowingly offer to provide, or provide, a weapon to –

(a) a terrorist group; or

(b) a member of a terrorist group; or

(c) any other person for use by, or for the benefit of, a terrorist group or a member of a terrorist group.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of up to 14 years.

16. Recruitment of persons to be members of terrorist groups or to participate in terrorist acts – (1) 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.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of up to 14 years.

PART 4

MANAGEMENT AND FORFEITURE OF PROPERTY OF SPECIFIED ENTITIES

Management

17. Order to take control of property – (1) The Solicitor-General may apply to the Court for an order under subsection (3) for property in the Cook Islands if the Solicitor-General 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 order the Administrator to take custody and control of the property.

(4) The order -

(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 order must allow the Administrator to take custody and control of the property in accordance with the order.

18. Notice of order - (1) Notice of the making of an order under section 17 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 the Cook Islands; and
- (b) to any other person that the Solicitor-General thinks may have an interest in the property.

(2) Failure to comply with subsection (1) does not affect the validity of the order.

19. Variation, revocation, or expiry of direction - (1) If the Court has made an order under section 17, the Court may, on application by the Solicitor-General or the person who owns or controls the property –

- (a) make another order under section 17 varying the conditions of the order or the property that is subject to the order; or
- (b) revoke the order.

(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 Solicitor-General; and
- (b) before deciding on the application, the Court must hear from the Solicitor-General.

(3) The Court must -

- (a) if the Court decides that there are reasonable grounds to do so, revoke the order; or
- (b) if the Court decides that there are no reasonable grounds to revoke the order, refuse the application.

(4) If the Court revokes the order, the Solicitor-General must -

- (a) tell the person who owns or controls the property in writing; and
- (b) publish a notice of revocation in any newspaper published and circulating in the Cook Islands.

(5) If not earlier revoked, an order under section 17 about property of a terrorist group 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 25 in relation to the property.

20. Appeal – The Solicitor-General or a person whose property is subject to an order under section 17 may, within 21 days of the date of the order, appeal to the Court of Appeal against a decision made by the Court under this Part.

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 the property that is subject to an order under section 17 (not being property to which subsection (2) applies) may apply to the Court for an order under section 22.

(2) The person must, within 2 days of the filing of the notice of application, give written notice of the application to the Solicitor-General, who is a party to the 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
- (b) declaring that the interest is no longer subject to the order under section 17; and
- (c) 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 an order under section 17.

Forfeiture

23. Certain property excluded from forfeiture order – A forfeiture order must not be made against property that is native freehold land under the Cook Islands Act 1915 or that is an occupation right under section 50 of the Cook Islands Amendment Act 1946.

24. Application for forfeiture order – (1) The Solicitor-General may apply to the Court for a forfeiture order against terrorist property.

(2) The Solicitor-General must -

- (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.

25. 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 the Crown.

(2) If the Court is satisfied that a person mentioned in section 24(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 terrorist group,

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.

26. Effect of forfeiture order – (1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the Crown.

(2) If the Court makes a forfeiture order against registrable property -

- (a) the order vests the property in the Crown in equity, but does not vest it in the Crown at law until the applicable registration requirements have been complied with; and
- (b) the Crown is entitled to be registered as owner of the property; and
- (c) the Solicitor-General may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Crown as owner, including the execution of any necessary instrument; and

- (d) the Solicitor-General may do anything necessary or convenient to give notice of, or otherwise protect, the Crown's equitable interest in the property; and
 - (e) anything done by the Solicitor-General under paragraph (d) is not a dealing for paragraph (3)(a).
- (3) If the Court makes a forfeiture order against property (including registrable 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 Crown, before 6 months after the forfeiture order was made or such other time as the Court may allow; and
 - (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Solicitor-General directs, after 6 months after the forfeiture order was made or such other time as the Court may allow.

27. 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 section 24(2)(b) 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, within 2 days of the filing of the notice of application, give written notice of the application to the Solicitor-General.

(3) The Solicitor-General -

- (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 section 25(2).

28. Return of property – (1) The Solicitor-General must, on application by a person who has obtained an order under section 27(4), if the period for appeals has expired or 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 the Crown, 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.

29. Appeal – The Solicitor-General or a person affected by a decision made by the Court under this Part may, within 21 days of the date of any order, appeal to the Court of Appeal against the decision.

Information

30. Disclosure of information – (1) A reporting institution must immediately tell the Solicitor-General about the existence of any property in its possession or control –

- (a) that is owned or controlled, directly or indirectly, by or for a terrorist group, 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 (a).

(2) The Solicitor-General may tell the Financial Intelligence Unit 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 Solicitor-General thinks the information would be relevant to the foreign country.

(3) Information may be given under subsection (2) subject to any conditions that the Solicitor-General determines.

(4) A reporting 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 subsections (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 Law Practitioners Act 1993-94.

(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 2003; or
- (b) in accordance with an order of a court.

(8) A person who contravenes subsections (1) or (4) commits an offence and is liable on conviction to a term of imprisonment of up to 7 years.

PART 5 **GENERAL POWERS**

31. 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 the Cook Islands 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.

32. 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 the Cook Islands; or
- (b) registered in the Cook Islands, departing from any place outside the Cook Islands;

must give the relevant border authority any information requested by the authority or information required under any enactment in his or her possession, relating to persons or goods on board, or expected to be on board, the craft.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of up to 7 years.

(3) The relevant border authority may give the competent authority in a foreign country any information -

- (a) in his or her possession relating to persons entering or leaving the Cook Islands; 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 relevant border authority under subsection (1) may be used or disclosed by the relevant border authority except for the purpose of protecting border security, national security or public safety.

(6) The Queen's Representative may, from time to time by Order in Executive Council, 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.

33. Power to prevent entry and order the removal of persons - (1) The Principal Immigration Officer must not grant an endorsement or other authority permitting a person to enter the Cook Islands 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.

(2) If the Principal Immigration Officer has reasonable grounds to suspect that a person, other than a Cook Islander or permanent resident of the Cook Islands, in the Cook Islands has been, is or will be, involved in the commission of a terrorist act, he or she may make an order requiring the person to leave the Cook Islands and to remain out of the Cook Islands.

(3) A person against whom an order under subsection (2) is made must leave the Cook Islands and must, so long as the order is in force, remain out of the Cook Islands.

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

34. Exchange of information relating to terrorist groups and terrorist acts – The Solicitor-General may disclose to the appropriate authority of a foreign country any information in his or her 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 Solicitor-General's view, prejudice national security or public safety.

PART 6

COUNTER-TERRORISM CONVENTION OFFENCES

Nuclear material

35. Movement of nuclear material – (1) A person commits an offence and is liable on conviction to a term of imprisonment of up to 10 years who knowingly imports or exports nuclear material to or from the Cook Islands except with a license or written permit given by the Prime Minister acting with the concurrence of Cabinet.

(2) A person commits an offence and is liable on conviction to a term of imprisonment of up to 10 years who knowingly, without written permission from the Prime Minister with the concurrence of Cabinet, transports nuclear material -

- (a) over the territory of the Cook Islands; or
- (b) through any of its seaports or airports.

(3) A person commits an offence and is liable on conviction to a term of imprisonment of up to 10 years who knowingly transports nuclear material between 2 places in the Cook Islands, through international waters or airspace, without written permission from the Prime Minister acting with the concurrence of Cabinet.

(4) A licence or written permission mentioned in subsection (1), (2) or (3) may be given only if the Prime Minister acting with the concurrence of 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 commits an offence and is liable on conviction to a term of imprisonment of up to 10 years who knowingly makes a false statement or provides a false assurance to the Prime Minister under subsection (1), (2) or (3).

36. Offences relating to nuclear material – (1) 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.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a term of imprisonment of up to 14 years.

Maritime safety

37. 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).

(2) A person commits an offence and is liable on conviction to a term of imprisonment of up to 14 years who, with the intention of compelling another person to do or to refrain from doing any act, threatens to commit an offence mentioned in subsection (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.

38. Arrest and delivery – (1) The master of a ship registered in the Cook Islands who has reasonable grounds to believe that a person has committed an offence under section 37 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 country.
- (2) The master of the ship must -
- (a) notify the authorities in the other Convention country before delivering the person; and
 - (b) give to the authorities evidence in his or her possession that the person has committed the offence.
- (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.

(4) A master of a ship who contravenes subsection (2), commits an offence and is liable on conviction to a term of imprisonment of up to 7 years.

Plastic explosives

39. Plastic explosives offences – (1) A person commits an offence and is liable on conviction to a term of imprisonment of up to 7 years who manufactures plastic explosives knowing that they are unmarked.

(2) A person commits an offence and is liable on conviction to a term of imprisonment of up to 7 years who possesses or transports unmarked plastic explosives knowing that they are unmarked.

(3) 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 the Prime Minister acting with the concurrence of 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 the Cook Islands within 3 years after the coming into force of the Plastic Explosives Convention in the Cook Islands.

(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 the Prime Minister solely for a use mentioned in subsection (3).

(5) A person commits an offence and is liable on conviction to a term of imprisonment of up to 7 years who imports or exports unmarked plastic explosives.

Terrorist bombing

40. 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 subsection (2)(a) or (b), a facility mentioned in subsection (2)(c) or a system mentioned in subsection (2)(d), if the damage results in or is likely to result in major economic loss.

(2) A 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) a public 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.
- (3) A person who contravenes subsection (2), commits an offence and is liable on conviction to a term of imprisonment of up to 14 years.

PART 7

GENERAL PROVISIONS

41. Jurisdiction – Proceedings may be brought for an offence under this Act –
- (a) if the act or omission –
 - (i) is committed in the Cook Islands; or
 - (ii) is committed on board a ship or aircraft registered in the Cook Islands; or
 - (iii) is committed by a person who is in the Cook Islands; or
 - (b) whether or not the act or omission constituting the offence is committed in or outside the Cook Islands, if the act or omission –
 - (i) is committed by a Cook Islander or permanent resident of the Cook Islands or a citizen of any country who is ordinarily resident in the Cook Islands; or
 - (ii) is committed in order to compel the Government of the Cook Islands to do or abstain from doing any act; or
 - (iii) is committed against a Cook Islander or a permanent resident of the Cook Islands; or
 - (iv) is committed by a person who is, after the commission of the offence, present in the Cook Islands; or
 - (v) is intended to be committed in the Cook Islands; or
 - (vi) originates in or transits the Cook Islands.
42. Regulations – The Queen’s Representative may, from time to time by Order in Executive Council, 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 from the Schedule.

43. Liability of a body corporate - (1) This Act applies to a company in the same way as it applies to an individual and a body corporate 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 body corporate is taken to be attributed to the body corporate 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 body corporate, 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.

44. Obligation to extradite or prosecute - (1) If the Attorney-General refuses a request from another country to extradite a person under the Extradition Act 2003, and the extradition request relates to an act or omission that may constitute an offence listed in subsection (2), the Attorney-General must submit the matter to the Solicitor-General for prosecution.

(2) The offences referred to in subsection (1) are those set out in sections 11, 12, 13, 14, 15, 16, 35, 36, 37, 38 and 40.

45. Restricted grounds for refusal to extradite or provide mutual assistance - (1) Despite anything in the Extradition Act 2003 or the Mutual Assistance in Criminal Matters Act 2003, 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 and 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 a political motives; or
- (b) a fiscal offence.

(2) Despite anything in the Mutual Assistance in Criminal Matters Act 2003, no request for mutual assistance in relation to an offence under this Act may be declined solely on the basis of bank secrecy.

46. Consent of the Attorney-General – (1) Proceedings for any offence under this Act for which jurisdiction is claimed under section 41(a)(ii) for an offence committed on board a ship elsewhere than in the Cook Islands or for any other offence committed outside the Cook Islands may only be instituted with the consent of the Attorney-General.

(2) Subsection (1) does 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.

This Act is administered by the Crown Law Office

SCHEDULE**Section 3 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