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An Act to amend the Terrorism Suppression Act 2004

The Parliament of the Cook Islands enacts as follows—

(23 June 2017)

1 Title

This Act is the Terrorism Suppression Amendment Act 2017.

2 Commencement

This Act comes into force on the day after the date on which it receives the Queen's Representative's assent.

3 Principal Act amended

This Act amends the Terrorism Suppression Act 2004.

*Amendments to Part 1***4 Section 1 amended**

Section 1 is amended by omitting "Terrorism Suppression" and substituting "Countering Terrorism and the Proliferation of Weapons of Mass Destruction".

5 Section 2 amended

Paragraphs (a), (b) and (c) of section 2 are repealed and the following paragraphs substituted—

- “(a) to make provision in law for countering—
 - “(i) terrorism and the financing of terrorism; and
 - “(ii) the unlawful proliferation of nuclear, chemical, and biological weapons and their means of delivery; and
- “(b) to implement in law—
 - “(i) obligations under the United Nations Security Council Resolution, Conventions, and Protocols; and
 - “(ii) standards of the Financial Action Task Force dealing with the countering of financing of terrorism and proliferation of weapons of mass destruction.”

6 Section 3 amended

(1) Section 3(1) is amended by inserting the following definitions in their appropriate alphabetical locations—

- “**aircraft** means any aircraft, whether or not registered in the Cook Islands, other than an aircraft is use by military, customs, or police services
- “**classified security information** has the meaning in section 34B
- “**commander**, in relation to an aircraft, means the person for the time being in command of the aircraft
- “**child** means a person under 18 years of age
- “**proliferation** means the transfer or export of weapons of mass destruction
- “**recruit** includes induce, incite, and encourage
- “**specified Cook Islands person** means any individual who is—
 - “(a) a Cook Islander; or
 - “(b) a permanent resident of the Cook Islands; or
 - “(c) a citizen of any country who is ordinarily resident in the Cook Islands; or
 - “(d) a stateless person who is ordinarily resident in the Cook Islands
- “**weapon of mass destruction** has the meaning in section 37A
- “**UNSC** means the United Nations Security Council”.

- (2) Section 3(1) is amended by repealing the definition of **authorised officer** and substituting the following definition—
“authorised officer means—
 “(a) the Commissioner of Police; or
 “(b) a police officer; or
 “(c) the Head of FIU; or
 “(d) the Head of the Revenue Management Division
 “(e) the Principal Immigration Officer; or
 “(f) any other person authorised by the Attorney-General”.
- (3) Section 3(1) is amended by repealing the definition of **specified entity** and substituting the following definition—
“specified entity means an entity that is either or both of the following—
 “(a) a **UN specified entity**, being an individual or entity designated by the UNSC acting under resolutions relating to terrorism or proliferation:
 “(b) a **CI specified entity**, being an individual or entity declared by the Attorney-General under section 5 to be a CI specified entity”.
- (4) Section 3(1) is amended by repealing the definition of **terrorist group** and substituting the following definition—
“terrorist group means a specified entity, and any other individual or entity that—
 “(a) carries out a terrorist act, or assists in carrying out a terrorist act, or attempts, conspires, or threatens to carry out a terrorist act; or
 “(b) counsels, incites, or procures another entity to do anything referred to in paragraph (a); or
 “(c) acts on behalf of a specified entity, knowing that the specified entity has done anything referred to in paragraph (a); or
 “(d) is wholly owned or effectively controlled (directly or indirectly) by a specified entity”.
- (5) Section 3(1) is amended by repealing the definition of **terrorist property** and substituting the following definition—
“terrorist property means property that—
 “(a) is, has been, or is likely to be used to carry out a terrorist act; or
 “(b) is, has been, or is likely to be used by a terrorist group; or
 “(c) is owned, held, or controlled (directly or indirectly) by or on behalf of a terrorist group, whether wholly or jointly and whether legitimately or illegitimately”.

7 Section 4 amended

- (1) Section 4(2) is amended by omitting from paragraph (b)(ii) the expression “any act; and” and substituting “any act.”
- (2) Section 4(2)(c) is repealed.

Amendment to Part 2

8 Sections 5 to 10 replaced

Sections 5 to 10 are repealed and the following sections are substituted—

“5 Specified entities

- “(1) The Attorney-General may, on his or her own initiative or at the request of another country, declare an entity to be a specified entity (a **CI specified entity**) if satisfied on reasonable grounds that the entity—
- “(a) has carried out a terrorist act, or assisted in carrying out a terrorist act, or attempted, conspired, or threatened to carry out a terrorist act; or
 - “(b) has counselled, incited, or procured another entity to do anything referred to in paragraph (a); or
 - “(c) has acted on behalf of another specified entity, knowing that that specified entity has done anything referred to in paragraph (a); or
 - “(d) is wholly owned or effectively controlled (directly or indirectly) by another specified entity.
- “(2) The Attorney-General may make a declaration under this section without prior notice to the entity concerned.
- “(3) If the Attorney-General makes a declaration under subsection (1), he or she must—
- “(a) give a public notice of the declaration that includes the names, descriptions, and other identifying details of the entity, and any other information the Attorney-General considers appropriate; and
 - “(b) provide a copy of the notice to the entity, at its last known point of contact; and
 - “(c) advise the UNSC that the entity has been declared to be a specified entity in the Cook Islands.
- “(4) Any entity designated by the UNSC acting under a resolution relating to terrorism or proliferation is a specified entity (a **UN specified entity**), whether or not it is also a CI specified entity.
- “(5) A list, prepared and certified as correct by the Secretary of the Ministry of Foreign Affairs, that identifies the entities designated by the UNSC acting under resolutions relating to terrorism or proliferation is prima facie evidence that the entity is a UN specified entity.
- “(6) The Attorney-General must ensure an up-to-date list of all specified entities (both CI specified entities and UN specified entities) is publicly available.

“6 Revocation or variation of declaration that entity is specified entity

- “(1) The Attorney-General may revoke a declaration made under section 5(1) if he or she considers that the entity no longer meets the criteria in section 5(1) for being a CI specified entity.
- “(2) The Attorney-General may vary a declaration made under section 5(1) if he or she considers that any information given in the notice of the declaration is wrong, inaccurate, or incomplete.
- “(3) Public notice, and notice to the entity, of a revocation or variation must be given in the same manner as required by section 5(3).
- “(4) The Attorney-General may act under this section—
- “(a) on his or her own initiative; or
 - “(b) following a review under section 6; or
 - “(c) following a request by the specified entity; or

“(d) following proceedings for judicial review.

“7 **Periodic review of declarations**

- “(1) Within 2 years after public notice of a declaration is given under section 5(3), the Attorney-General must review the declaration to determine whether it should remain in force in light of the criteria in section 5(1).
- “(2) Before completing the review, the Attorney-General must—
- “(a) give public notice of the start of the review; and
 - “(b) give notice to the specified entity, at its last known point of contact, of the start of the review; and
 - “(c) advise the specified entity that it may make written submissions on the review, giving it a reasonable time to prepare and submit any information relevant to the review; and
 - “(d) consider any relevant written submissions received from the entity, along with any other information the Attorney-General considers relevant; and
 - “(e) decide whether to—
 - “(i) confirm the declaration; or
 - “(ii) vary the declaration under section 6; or
 - “(iii) revoke the declaration under section 6.
- “(3) Public notice, and notice to the entity, of the outcome of a review must be given in the same manner as required by section 5(3).
- “(4) A failure to do a review under this section does not in itself invalidate a declaration under section 5(1).

“8 **Judicial review**

- “(1) Any CI specified entity may apply to the court for judicial review of any decision of the Attorney-General under section 5, 6, or 7.
- “(2) A decision of the UNSC to designate a person or group under resolutions related to terrorism is not reviewable by the court.
- “(3) The Attorney-General or a CI specified entity may, within 21 days after a decision of the Court on an application for judicial review, appeal to the Court of Appeal against the decision.

“9 **UN specified entities applying for review**

- “(1) Any UN specified entity may request the Ministry of Foreign Affairs and Immigration, in writing, to submit information to the relevant UN sanctions committee on their behalf in respect of an application for delisting as a UN specified entity.
- “(2) If the Ministry receives a request, the request must be submitted to the relevant UN sanctions committee as soon as practicable, using any procedures specified by the UNSC.
- “(3) The obligation on the Ministry under subsection (2) does not include an obligation to support the request of the entity for delisting.

- “10 Obligation to provide information to UNSC**
- “(1) The Ministry of Foreign Affairs and Immigration must submit to the UNSC the names and details of any person or group that the Attorney General considers meets the criteria established by the UNSC (or any relevant Committee of the UNSC) for designating an entity as a UN specified entity, whether or not the entity has been, or is proposed to be, declared to be a CI specified entity.
- “(2) The submission must—
- “(a) be made in accordance with any procedures specified by the UNSC for such a request; and
- “(b) include all information (including classified security information) that the Attorney-General considers relevant to the designation; and
- “(c) specify whether the relevant committee of the UNSC may disclose that the Attorney-General has made the submission.

“10A Obligation to provide information about possible designation

If an authorised officer at any time receives or possesses information that he or she considers relevant to the designation, or possible designation, by the Attorney-General or UNSC of an entity as a specified entity, the authorised officer must immediately pass on that information to the Attorney General.”

Amendment to Part 3

9 Sections 11 to 16 replaced

Sections 11 to 16 are repealed and the following sections substituted—

- “11 Financing terrorist acts**
- “(1) A person must not provide or collect, directly or indirectly, any property intending, knowing, or being reckless as to whether—
- “(a) the property will be used to carry out a terrorist act; or
- “(b) the property will be benefit an entity that the person knows is a terrorist group or a group that plans, carries out, or participates in carrying out terrorist acts.
- “(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
- “(b) in any other case, a fine not exceeding \$1,000,000.
- “(3) In a prosecution for an offence under this section, it is not necessary for the prosecutor to prove that the property collected or provided was actually used, in full or in part, to carry out a terrorist act.
- “(4) On the conviction of a person (other than an individual) for an offence under this section, the court may order the cancellation of any registration (such as registration as a company or bank) or licence held by the person under Cook Islands law.

“12 Providing property or services to terrorist groups

- “(1) A person must not, directly or indirectly, knowingly make available (whether wholly or jointly) any property or other financial or related services to, or for the benefit of, a terrorist group or related entity, knowing, intending, or being reckless as to whether the entity is a terrorist group or related entity.
- “(2) Subsection (1) does not apply if the provision of the property or service—
- “(a) is of a kind that is authorised by a resolution of the UNSC; or
- “(b) is, or is of a kind that is, authorised by the Attorney-General under section 16C.
- “(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
- “(b) in any other case, a fine not exceeding \$1,000,000.
- “(4) In this section, **related entity** means an entity that is owned or controlled, directly or indirectly, or acting on behalf of or at the direction of, a terrorist group.

“13 Dealing with terrorist property

- “(1) A person must not, knowing that or being reckless as to whether, property is terrorist property—
- “(a) deal, directly or indirectly, in the property; or
- “(b) collect, acquire, or possess the property; or
- “(c) enter into or facilitate, directly or indirectly, any transaction in respect of the property; or
- “(d) convert, conceal, or disguise the property.
- “(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
- “(b) in any other case, a fine not exceeding \$1,000,000.
- “(3) Subsection (1) does not apply—
- “(a) if the activity or transaction is, or is of a kind that is, authorised by the Attorney-General under section 16C; or
- “(b) if, on taking possession or control of the property, the person notifies the Attorney-General that the property and acts in accordance with any directions of the Attorney-General, or otherwise takes steps to freeze the property.

“14 Harboursing terrorists

- “(1) A person must not harbour or conceal, or prevent, hinder, or interfere with the apprehension of, any other person, knowing or being reckless as to whether the other person—
- “(a) has committed, is planning to commit, 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) in the case of an individual, a term of imprisonment of up to 20 years; and
- “(b) in any other case, a fine not exceeding \$1,000,000.

“15 Providing weapons to terrorist groups

- “(1) A person must not knowingly provide, or offer to provide, a weapon (including a weapon of mass destruction) 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) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.

“16 Participating in terrorist group

- “(1) A person must not participate (whether as a member, associate, or prospective member) in a terrorist group, knowing it is a terrorist group.
- “(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
 - “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.

“16A Committing terrorist acts

- “(1) A person must not commit a terrorist act.
- “(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
 - “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.

“16B Recruiting people to participate in terrorism

- “(1) A person must not knowingly recruit, or agree to 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) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.
- “(3) Subsection (1) does not apply if the person proves that he or she took all reasonable steps to cease participation in the group as soon as practicable after the person knew that the entity was a terrorist group.

“16C Authorisations by Attorney-General

- “(1) The Attorney-General may, by notice in writing, permit any activity or transaction, or class of activity or transaction, that would otherwise be prohibited by section 12(1) or 13(1).
- “(2) Any authorisation—
- “(a) may be made subject to terms and conditions specified by the Attorney-General; and
- “(b) may be amended, revoked, or revoked and replaced by the Attorney-General.
- “(3) If a person has obtained authorisation under this section, the exemption to section 12(1) and 13(1) provided by this section applies to any other person carrying out any activity or transaction covered by the authorisation.”

*Amendments to Part 4***10 Section 19 amended**

Section 19(5) is amended by omitting “property of a terrorist group entity” and substituting “terrorist property”.

11 Section 22 amended

Section 22 is amended by repealing subsection (3) and substituting the following subsection—

- “(3) However, the Court may refuse to make an order if it is satisfied that—
- “(a) the person was knowingly involved in a specified entity; or
- “(b) the person acquired the interest in the property—
- “(i) otherwise than in good faith and for value; or
- “(ii) knowing or having reason to believe that the property was, at the time of acquisition, subject to an order under section 17.”

12 Section 30 repealed

Section 30 (Disclosure of information) is repealed.

*Amendment to Part 5***13 New sections 34A and 34B inserted**

The following sections are inserted after section 34—

“34A Proceedings involving classified security information

- “(1) This section applies if, in any proceedings under this Act, the Attorney-General proposes to present information that is classified security information.
- “(2) If this section applies,—
- “(a) the proceedings must be heard (except by the Court of Appeal) by the Chief Justice, or one or more judges nominated by the Chief Justice, or both; and
- “(b) the information must not be received or heard in the presence of—
- “(i) any specified entity or member of a specified entity; or

- “(ii) any legal representative of a specified entity or member of a specified entity; or
- “(iii) members of the public.
- “(3) However, if a specified entity is a party to the proceedings,—
 - “(a) the Attorney-General must prepare a summary of the classified security information, except to the extent that a disclosure of even a summary of any particular part of the information would itself prejudice the interests referred to in section 34B(3); and
 - “(b) the court must approve the summary and provide a copy of it to the specified entity.
- “(4) If a decision is made at any time during the proceedings to withdraw classified security information,—
 - “(a) the information must be kept confidential, must not be disclosed by the court, and must be returned to the relevant agency; and
 - “(b) the court must continue to make the decision or determine the proceedings—
 - “(i) without regard to the classified security information; and
 - “(ii) in the case of an appeal or review of proceedings, as if the information had not been available in making the decision subject to the appeal or review.

“34B Meaning of classified security information

- “(1) In this Act, **classified security information** means information that—
 - “(a) is relevant to whether there are or may be grounds for declaring an entity to be a CI specified entity; and
 - “(b) is held by the Commissioner of Police; and
 - “(c) is confirmed in writing, by the Commissioner of Police, to be information—
 - “(i) of a kind specified in subsection (2); and
 - “(ii) disclosure of which would be or a kind specified in subsection (3).
- “(2) Information falls within subsection (1)(c)(i) if it—
 - “(a) might lead to the identification of, or provide details of, the source of the information, the nature, content, or scope of the information, or the nature or type of assistance or operational methods available to the Police; or
 - “(b) is about particular operations that have been undertaken, or are being or are proposed to be undertaken, by the agency; or
 - “(c) has been provided to the agency by the government or an agency of another country, or by an international organisation, and the government, agency, or organisation does not consent to its disclosure.”
- “(3) Disclosure of information falls within subsection (1)(c)(ii) if the disclosure would be likely to—
 - “(a) prejudice the security or defence of the Cook Islands or the international relations of the Government of the Cook Islands; or

- “(b) prejudice the entrusting of information to the Government of the Cook Islands on a basis of confidence by the government of another country or any agency of such a government, or by any international organisation; or
- “(c) prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial; or
- “(d) endanger the safety of any person.”

Amendments to Part 6

14 Sections 35 and 36 replaced

Sections 35 and 36 are repealed and the following section is substituted—

“35 Radioactive and nuclear material and devices

- “(1) A person must not, without lawful authority, do any of the following with any radioactive or nuclear material or devices (include nuclear facilities), knowing that the material is, or the devices are, radioactive or nuclear—
 - “(a) make, import, acquire (by any means), possess, have control over, use, send, transport, steal, damage or interfere with the material or device, intending to use, or being reckless as to whether the material or device is used, to cause death or serious injury to any person or substantial damage to property or the environment:
 - “(b) use, interfere with, or damage the material or device in a manner that releases or risks the release of radioactive material in a manner likely to cause death or serious injury to any person or substantial damage to property or the environment:
 - “(c) do anything described in paragraph (a) (or (b) with the intention of—
 - “(i) compelling any person, government, or international organisation to do or refrain from doing any act; or
 - “(ii) intimidating any person, government, or international organisation:
 - “(d) demand, by force, threat, or intimidation, possession of, or access to, the material or device.
- “(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
 - “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.”

15 Section 37 amended

- (1) Section 37(1) is amended repealing paragraph (h) and substituting the following paragraphs—

- “(h) discharge from a ship or fixed platform any oil, liquefied natural gas, or other hazardous or noxious substance in quantities or concentrations that causes or is likely to cause death or serious injury or damage; or

- “(i) uses a ship in a manner that causes death or serious injury or damage; or
 - “(j) threatens to do either act referred to in paragraph (h) or (i); or
 - “(k) injures or kills a person in connection with committing an offence under this section, or assists a person to commit an offence under this section.”
- (2) Section 37 is amended by repealing subsection (2) and substituting the following subsections—
- “(2) A person must not do, threaten (with the intention of intimidating a population or compelling a government or international organisation to do, or refrain from doing, any act) to do, or attempt, conspire or assist in doing, any act referred to in subsection (1).
 - “(3) A person who contravenes subsection (2) commits an offence and is liable on conviction to—
 - “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.”

New Part 5A inserted

16 New Part 5A inserted

The following Part is inserted after section 37—

“Part 5A

“Weapons of Mass Destruction

“37A Definitions for Part

“(1) In this Part,—

“**ancillary material** includes any of the following—

- “(a) any source material, special fissionable material, or equipment or material specially designed or prepared for the processing, use, or production of special fissionable material;
- “(b) any equipment, materials, or software and related technology that significantly contributes to the design, manufacture, or delivery of a weapon of mass destruction

“**weapon of mass destruction** means any of the following—

- “(a) any nuclear, chemical, or biological weapon;
- “(b) any other device that contains explosive or radioactive material and is capable of causing death or serious injury to many people or significant damage to property or the environment;
- “(c) the means of delivery of anything mentioned in paragraph (a) or (b)”.

“37B Offences relating to proliferation

“(1) A person must not do any of the following—

- “(a) transport, facilitate the transport of, or cause to be transported, on a ship or aircraft—
 - “(i) anything that is a weapon of mass destruction, knowing that the thing is a weapon of mass destruction; or

- “(ii) anything that is explosive or radioactive material, knowing that the material is intended to be used in a nuclear explosive activity or other activity not under safeguard pursuant to an International Atomic Energy Agency comprehensive agreement, and in a manner that causes or is likely to cause death or serious injury or damage: or
- “(iii) any equipment, materials, or software and related technology, knowing that it is ancillary material:
- “(b) use any weapon of mass destruction or any explosive or radioactive material on or against a ship, aircraft, or fixed platform in a manner that causes or is likely to cause death or serious injury or damage:
- “(c) discharge a weapon of mass destruction, or any explosive or radioactive material, from a ship, aircraft, or fixed platform in a manner that causes or is likely to cause death or serious injury or damage:
- “(d) injure or cause the death of any person in connection with doing any act described in paragraph (a) to (c):
- “(e) threaten to do any of the things described in paragraphs (a) to (c) with the intention of intimidating a population or compelling the government or an international organisation to do or refrain from doing any act:
- “(f) threaten to do an act described in paragraphs (a) to (e); or
- “(g) unlawfully and intentionally cause any person to receive such a threat, under circumstances that indicate that the threat is credible; or
- “(h) attempt, organise, or direct any person to do an act described in any of paragraphs (a) to (e); or
- “(i) unlawfully and intentionally assists any person to evade investigation, prosecution, or punishment, knowing that the person has done an act described in this subsection, or knowing that the person is wanted for criminal prosecution by law enforcement authorities in relation to that action or has been sentenced for related offence.
- “(2) Subsection (1)(a) to (e) applies to an aircraft used in military, customs, or police service only if—
 - “(a) the act is done in or over the Cook Islands; or
 - “(b) in any other case, the person is a specified Cook Island person.
- “(3) A person who does any act described in subsection (1) commits an offence and is liable on conviction to—
 - “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.
- “(4) A person does not commit an offence under this section relating to transport if the transport is consistent with, or is for a use or activity that is consistent with, the person’s rights, responsibilities, and obligations under the applicable multilateral non-proliferation treaty to which the Cook Islands is a State Party.”

“37C Financing proliferation

- “(1) A person must not provide or collect, directly or indirectly, any property intending, knowing, or being reckless as to whether—
- “(a) the property will be used to transport or export weapons of mass destruction; or
 - “(b) the property will benefit an entity that the person knows is an entity that engages in, or plans or participates in, the transport or export of weapons of mass destruction.
- “(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.
- “(3) In a prosecution for an offence under this section, it is not necessary for the prosecutor to prove that the property collected or provided was actually used, in full or in part, for purposes associated with the transport or export of weapons of mass destruction.
- “(4) On the conviction of a person (other than an individual) for an offence under this section, the court may order the cancellation of any registration (such as registration as a company or bank) or licence held by the person under Cook Islands law.

“37D Providing property and services to entity involved in proliferation

- “(1) A person must not, directly or indirectly, knowingly make available (whether wholly or jointly) any property or other financial or related services to, or for the benefit of,—
- “(a) an entity that the person knows, or is reckless as to whether, is an entity that engages in, or plans or participates in, the transport or export of weapons of mass destruction; or
 - “(b) an entity that the person knows, or is reckless as to whether, is owned or controlled, directly or indirectly, or is acting on behalf of or at the direction of an entity described in paragraph (a).
- “(2) Subsection (1) does not apply if the provision of the property or service—
- “(a) is of a kind that is authorised by a resolution of the UNSC; or
 - “(b) is, or is of a kind that is, authorised by the Attorney-General under section 37F.
- “(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.

“37E Dealing with property of entity involved in proliferation

- “(1) A person must not do anything described in subsection (2) with property if the person knows, or is reckless as to whether, the property is property of—
- “(a) an entity that the person knows, or is reckless as to whether, is an entity that engages in, or plans or participates in, the transport or export of weapons of mass destruction; or

- “(b) an entity that the person knows, or is reckless as to whether, is owned or controlled, directly or indirectly, or is acting on behalf of or at the direction of an entity described in paragraph (a).
- “(2) The things a person must not do are—
 - “(a) deal, directly or indirectly, in the property; or
 - “(b) collect, acquire, or possess the property; or
 - “(c) enter into or facilitate, directly or indirectly, any transaction in respect of the property; or
 - “(d) convert, conceal, or disguise the property.
- “(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
 - “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.
- “(4) Subsection (1) does not apply—
 - “(a) if the activity or transaction is, or is of a kind that is, authorised by the Attorney-General under section 37F; or
 - “(b) if, on taking possession or control of the property, the person notifies the Attorney-General that the property and acts in accordance with any directions of the Attorney-General, or otherwise takes steps to freeze the property.

“37F Authorisations by Attorney-General

- “(1) The Attorney-General may, by notice in writing, permit any activity or transaction, or class of activity or transaction, that would otherwise be prohibited by section 37D or 37E.
- “(2) Any authorisation—
 - “(a) may be made subject to terms and conditions specified by the Attorney-General; and
 - “(b) may be amended, revoked, or revoked and replaced by the Attorney-General.
- “(3) If a person has obtained authorisation under this section, the exemption to sections 37D and 37E provided by this section applies to any other person carrying out any activity or transaction covered by the authorisation.

“38G Management and forfeiture of property

“In order to apply Part 4 to property relating to proliferation, references in that Part to “terrorist property” may be read to be references to property that the Solicitor-General has reasonable grounds to believe is used, has been used, or is intended to be used (directly or indirectly) for purposes associated with proliferation.”

17 Section 40A repealed
Section 40A is repealed.

18 New heading and sections 40B to 40J inserted
The following heading and sections are inserted after section 40—

“International civil aviation

“40B Application of criminal law to aircraft

- “(1) If an act or omission that is an offence in the Cook Islands takes place on board a Cook Islands aircraft while it is in flight elsewhere than over the Cook Islands, the act or omission is an offence under the law of the Cook Islands.
- “(2) However, subsection (1) does not apply if the law of the Cook Islands expressly or impliedly authorises it when taking place outside the Cook Islands.

“40C Destroying, damaging, or endangering safety of aircraft

- “(1) A person must not unlawfully and intentionally—
- “(a) perform an act of violence against a person on board an aircraft in flight if the act is likely to endanger the safety of the aircraft; or
 - “(b) destroy an aircraft in service, or cause damage to such an aircraft, that renders it incapable of flight or which is likely to endanger its safety in flight; or
 - “(c) place, or cause to be placed, on an aircraft in service, by any means whatsoever, a device or substance that is likely to destroy the aircraft or cause damage to it that—
 - “(i) renders it incapable of flight; or
 - “(ii) is likely to endanger its safety in flight; or
 - “(d) destroy or damage air navigation facilities or interfere with their operation, if the act is likely to endanger the safety of the aircraft in flight; or
 - “(e) communicate information that the person knows to be false, thereby endangering the safety of an aircraft in flight; or
 - “(f) use an aircraft in service for the purpose of causing death, serious injury, or significant damage to property or the environment.
- “(2) A person must not—
- “(a) threaten to do an act described in subsection (1); or
 - “(b) unlawfully and intentionally cause any person to receive such a threat, under circumstances that indicate that the threat is credible; or
 - “(c) attempt, organise, or direct any person to do an act described in subsection (1); or
 - “(d) unlawfully and intentionally assists any person to evade investigation, prosecution, or punishment, knowing that the person has done an act described in subsection (1), or knowing that the person is wanted in connection with an offence related to such an act, or has been sentenced for such an offence.
- “(3) Despite the definition of aircraft in section 3, subsections (1) and (2) apply to an aircraft used in military, customs, or police service if—
- “(a) the act is done in or over the Cook Islands; or
 - “(b) in any other case, the person doing the act is a specified Cook Islands person.
- “(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to—

- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.
- “(5) A person does not commit an offence under this section if the transport of the items or material is consistent with, or is for a use or activity that is consistent with, the person’s rights, responsibilities, and obligations under the applicable multilateral non-proliferation treaty to which the Cook Islands is a State Party.

“40D Protection of aircraft in flight

- “(1) If the commander of an aircraft has reasonable grounds to believe that anything referred to in subsection (2) is being, has been, or is likely to be done by a person, the commander may—
- “(a) restrain the person, using reasonable force if necessary; and
 - “(b) detain the person pending disembarkation, whether the aircraft is in flight or not; and
 - “(c) disembark the person and deliver him or her to an authorised officer in the Cook Islands or any equivalent official in any other country that is a signatory to the Tokyo Convention.
- “(2) The things that justify the exercise of powers under subsection (1) are any of the following—
- “(a) any act on an aircraft in flight that may jeopardise—
 - “(i) the safety of the aircraft or of persons or property on board; or
 - “(ii) good order and discipline on board the aircraft;
 - “(b) any act that, in the opinion of the commander, is a serious offence under the law of the country in which the aircraft is registered, not being a law of a political nature or based on racial, religious or sexual discrimination.
- “(3) If the commander exercises or proposes to exercise any power under subsection (1) and asks any other person on board to assist,—
- “(a) if the person is a member of the crew, the person must assist; and
 - “(b) any other person may assist.
- “(4) At any time while an aircraft is in flight, any person on board may, without obtaining the authority of the commander, take steps to restrain another person, using reasonable force if necessary, if the person has reasonable grounds to believe those steps are immediately necessary to protect the safety of the aircraft or persons or property on board.
- “(5) Before disembarking a person detained under subsection (1), the commander must notify the appropriate authorities of the country where disembarkation is proposed, and the notification must explain why the person is being detained.

“40E Protection of aircraft not in flight

- “(1) The commander of an aircraft that is not in flight may disembark a person who is on board, in any country in which the aircraft may be, if the commander—

- “(a) has reasonable grounds to believe that the person is about to do anything mentioned in section 40C(1)(a) or (b); and
 - “(b) believes that it is necessary to disembark the person in order to protect the safety of the aircraft or of persons or property on board, or to maintain good order and discipline on board the aircraft.
- “(2) If a person is disembarked under subsection (1), the commander may deliver the person to an authorised person in the Cook Islands or any equivalent official in any other country that is a signatory to the Tokyo Convention.
- “(3) Before disembarking a person under subsection (1), the commander must notify the appropriate authorities of the country where disembarkation is proposed.
- “(4) The notification must explain why the person is being detained, and the commander must provide evidence about the person’s behaviour.
- “(5) After disembarking a person under this section, the commander must report the fact of disembarkation to the appropriate authority in the country of disembarkation, or to the appropriate diplomatic or consular office of the country of the nationality of person.
- “(6) A commander who, without reasonable cause, fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding \$5,000.

“40F Offences relating to airports serving international civil aviation

- “(1) A person must not, unlawfully and intentionally, and using any device, substance, or weapon,—
- “(a) perform an act of violence against a person at an airport serving international civil aviation which causes or is likely to cause death or serious injury; or
 - “(b) destroy or seriously damage the facilities of an airport serving international civil aviation, or aircraft not in service but located thereon, or disrupt the services of the airport, if the act endangers or is likely to endanger safety at the airport.
- “(2) A person must not—
- “(a) threaten to commit an offence under this section; or
 - “(b) unlawfully and intentionally cause any person to receive such a threat, under circumstances that indicate that the threat is credible; or
 - “(c) attempt, organise, or direct any person to commit an offence under this section; or
 - “(d) unlawfully and intentionally assists any person to evade investigation, prosecution, or punishment, knowing that the person has committed an act that constitutes an offence, or knowing that the person is wanted for criminal prosecution by law enforcement authorities for such an offence or has been sentenced for such an offence.
- “(3) If the person performing the act is specified Cook Island person, subsection (1) applies to an act committed outside the Cook Islands in relation to property situated outside the Cook Islands even if the

property is not used for the provision of air navigation facilities with international air navigation.

- “(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
- “(b) in any other case, a fine not exceeding \$1,000,000.

“40G Specified aircraft

“If the Attorney General is satisfied that the requirements of Article 18 of the Tokyo Convention (which Article makes provision as to the country which is to be treated as the country of registration of aircraft operated by joint air transport operating organisations or international operating agencies established by 2 or more Convention countries) are satisfied, he or she may by notification in the *Gazette*, declare that a specified aircraft is taken to be registered in a specified Convention country.

Hijacking

“40H Offence of hijacking

- “(1) A person must not, when on board an aircraft in flight, unlawfully and by the use of force or by threats of any kind, seize the aircraft or exercise control of it, whether the aircraft is in the Cook Islands or elsewhere.
- “(2) However, proceedings for an offence against subsection (1) may be brought only if—
- “(a) the offence is committed on board a Cook Islands aircraft; or
- “(b) the aircraft on board which the offence is committed lands in the Cook Islands and the alleged offender is on board; or
- “(c) the offence is committed on board an aircraft leased without crew to a lessee who has the Cook Islands his or her principal place of business, or the lessee is a permanent resident of the Cook Islands.
- “(3) Despite the definition of aircraft in section 3, subsection (1) applies to an act committed in relation to an aircraft used in military, customs, or police service if—
- “(a) the act is committed in or over the Cook Islands; or
- “(b) the act is committed elsewhere but the person committing the act is a specified Cook Islands person.
- “(4) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
- “(b) in any other case, a fine not exceeding \$1,000,000.”

Internationally protected persons

(2)

“40I Offences against internationally protected persons

- “(1) In this section, **internationally protected person** means—

- “(a) any of the following persons while in a foreign country, and any 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; and
 - “(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, and any member of the person’s family forming part of that person’s household.
- “(2) A person must not intentionally—
- “(a) kill, kidnap, or otherwise attack an internationally protected person; or
 - “(b) violently attack, the official premises, private accommodation, or means of transport of an internationally protected person in a manner likely to endanger the person; or
 - “(c) threaten any action described in paragraph (a) or (b).
- “(3) A person who contravenes subsection (1) commits an offence and is liable on conviction to—
- “(a) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.”

Hostages

“40J Offence of taking hostage

- “(1) A person must not seize or detain another person and threaten to kill, injure, or continue to detain the person, having the intention, as an explicit or implicit condition for the safety or release of the person, of compelling the government of a country, an international organisation, or a person or group of persons, 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) in the case of an individual, a term of imprisonment of up to 20 years; and
 - “(b) in any other case, a fine not exceeding \$1,000,000.”

Amendments to Part 7

19 New section 41 substituted

Section 41 is repealed and the following section substituted—

“41 Jurisdiction

- “(1) Proceedings may be brought for an offence against this Act if the act or omission is committed—
 - “(a) in the Cook Islands; or

- “(b) on board a ship or aircraft that is registered in the Cook Islands;
or
 - “(c) by a person who is in the Cook Islands.
- “(2) Proceedings may be brought for an offence against this Act whether or not the act or omission constituting the offence is committed in or outside the Cook Islands, if the act or omission—
- “(a) is committed by—
 - “(i) a specified Cook Islands person; or
 - “(ii) a body corporate incorporated under Cook Islands law;
or
 - “(iii) a body corporate operating in the Cook Islands; or
 - “(b) is committed in order to compel the Government of the Cook Islands to do or refrain from doing any act; or
 - “(c) is committed against—
 - “(i) a specified Cook Islands person
 - “(ii) a body corporate incorporated under Cook Islands law;
or;
 - “(iii) a body corporate operating in the Cook Islands; or
 - “(d) is committed by a person who, after the commission of the offence, is present in the Cook Islands; or
 - “(e) is intended to be committed—
 - “(i) in the Cook Islands; or
 - “(ii) against a facility of the Government of the Cook Islands abroad, including diplomatic or consular premises of the Government of the Cook Islands; or
 - “(f) is committed, or is intended to be committed, on board a ship or aircraft operated by the Government of the Cook Islands or registered in the Cook Islands; or
 - “(g) originates in or transits the Cook Islands.”

20 Section 42 amended

Section 42 is repealed and substituted with the following section—

“42 Regulations

The Queen’s Representative may, by Order in Council, make regulations for all or any of the following purposes—

- “(a) prescribing measures to prevent specified entities and persons suspected of committing offences under this Act from entering or departing the Cook Islands;
- “(b) to add or omit items from the Schedule;
- “(c) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.”

21 New section 43A inserted

The following section is inserted after section 43—

“43A Protection from liability

“No person is subject to any civil or criminal liability, action, claim, or demand for anything done or omitted to be if the act or omission was done in good faith under, or for the purposes of, this Act.”

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