

Hon. Teariki Heather

[Placeholder for Crest]

Crimes Bill 2017

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An Act to reform the criminal law of the Cook Islands and to provide for related purposes.

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Crimes Act 2017.

2 Commencement

This Act comes into force on the day after the date on which it receives the assent of the Queen’s representative.

Part 1

Preliminary matters

Subpart 1—Interpretation

3 Interpretation

In this Act, unless the context otherwise requires,—

Act means an Act of the Parliament of the Cook Islands together with the existing law as that is defined by Article 1 of the Cook Islands Constitution, and includes all regulations, rules and instruments made under the Act

agent, of a person or entity (a **principal**)—

- (a) means another person or entity (a **subsidiary**) authorised by the principal to provide services for, or act on behalf of, the principal; and
- (b) includes any other person or entity authorised by the subsidiary to provide services for, or act on behalf of, the subsidiary in providing services for, or acting on behalf of, the principal

aircraft means any machine that can derive support in the atmosphere from the reactions of the air other than by the reactions of the air against the surface of the earth

assault means an act—

- (a) done intentionally or recklessly by a person (**person A**); and
- (b) that results in—
 - (i) a direct or indirect application of force to another person (**person B**); or
 - (ii) a threat to person B, by words or gestures, of a direct or indirect application of force that—
 - (A) person A intends person B to apprehend; and
 - (B) person B believes on reasonable grounds is able to be carried out by person A; and
- (c) to which person B—
 - (i) does not consent; or
 - (ii) consents because of a dishonest misrepresentation by person A

Attorney-General has the extended meaning provided for by section 2 of the Crown Law Office Act 1980

cause, in relation to an outcome, means substantially contribute to the outcome

child—

- (a) means a living child that is physically separate from the body of its mother whether or not the child has—
 - (i) breathed; or
 - (ii) an independent circulatory system; or
 - (iii) had its umbilical cord cut; and
- (b) generally in this Act, means a person who is under 18 years old; but

- (c) for subpart 13 of Part 6 (Child abuse and other indecent material), means a person who is under 16 years old

commercial sexual services means any of the following (**sexual services**) provided for money or other valuable consideration regardless of whether the money or other valuable consideration is, or is to be, provided to the person who provides the sexual services or another person—

- (a) sexual connection; or
- (b) masturbation; or
- (c) any other activity that involves the use of 1 person by another for his or her sexual satisfaction involving physical contact

company means a company registered under the Companies Act 1970-1971, or under equivalent legislation of a foreign jurisdiction

conduct—

- (a) means an act, an omission to do an act, or a state of affairs; and
- (b) includes a series of acts or omissions to do acts

Cook Islands has the meaning given by Article 1 of the Constitution and includes the territorial sea and the exclusive economic zone of the Cook Islands (*see* section 4 of the Acts Interpretation Act 1924, which defines the extent of the land mass of the Cook Islands)

Cook Islands aircraft means an aircraft—

- (a) ordinarily operating in the Cook Islands; and
- (b) registered under the Civil Aviation Act 2002

Cook Islands public official includes—

- (a) a person in the service of the Head of State of the Cook Islands, whether serving—
 - (i) in an honorary capacity or otherwise; or
 - (ii) within the Cook Islands or elsewhere; and
- (b) a Minister of the Crown; and
- (c) a member of the Parliament of the Cook Islands; and
- (d) a member of an Island Council; and
- (e) a Judge, Justice, Coroner or Commissioner of a court established under Part IV of the Constitution, or a law of the Cook Islands; and
- (f) a member of a tribunal authorised to administer oaths and take evidence on oath under a law of the Cook Islands; and
- (g) a law enforcement officer; and
- (h) a person employed in the Cook Islands Public Service under the Public Service Act 2009 (a **public servant**); and
- (i) a person, other than a public servant, who (whether on an elected, appointed, temporary, permanent, paid or unpaid basis)—
 - (i) is a member of the staff of the Queen’s Representative, the Speaker of the Parliament of the Cook Islands or a Minister of the Crown; or

- (ii) holds a position described within the definition of “Crown servant” in the Constitution, Article 1; or
- (iii) is employed under an instrument of the Cook Islands government to serve in any department as defined under section 4 of the Public Service Act 2009; or
- (iv) is retained to provide services to the Cook Islands government or a Cook Islands government agency; or
- (v) performs a public function for the Cook Islands government or a Cook Islands government agency, including any legal entity in which the Cook Islands government has a controlling interest, in a position of authority

Cook Islands ship means a ship—

- (a) ordinarily operating in the Cook Islands; and
- (b) required to be registered under the Ship Registration Act 2007

document—

- (a) in this Act generally, means any record of information (other than a stamp or seal), and includes—
 - (i) anything on which there is writing; and
 - (ii) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for people qualified to interpret them; and
 - (iii) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else; and
 - (iv) a drawing, map, photograph or plan; and
 - (v) electronic data; and
 - (vi) anything attached to a thing mentioned in subparagraphs (i) to (v); and
- (b) in Part 17 (People smuggling and human trafficking), has the meaning given by section 297

employer, means—

- (a) a person who engages another person as their worker; or
- (b) a person’s agent who engages a person as a worker of the agent

engage in conduct means—

- (a) do an act; or
- (b) omit to do an act; or
- (c) exercise control over a state of affairs

evidential burden, in relation to a matter, means the burden on an accused of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist

exclusive economic zone, of the Cook Islands, has the same meaning as in section 2 of the Territorial Sea and Exclusive Economic Zone Act 1977

fail includes refuse

foreign country includes—

- (a) a territory whose international relations are the responsibility of a foreign government; and
- (b) an organised foreign area or entity including an autonomous territory or a separate customs territory

foreign government includes—

- (a) local, regional, and national levels of government of a foreign country; and
- (b) the various parts of a level of government of a foreign country; and
- (c) any departments or entities established by a level of government of a foreign country

foreign public agency means any person or body that carries out a public function under the laws of a foreign country either inside or outside the country

foreign public enterprise means—

- (a) a company, wherever incorporated, that—
 - (i) a foreign government is able to control (whether by reason of its ownership of shares in the company, its voting powers in the company, or its ability to appoint 1 or more directors (however described), or by reason that the directors (however described) are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and
 - (ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (b) (i) apply; or
- (b) a person or body (other than a company), wherever situated, that—
 - (i) a foreign government is able to control (whether by reason of its ability to appoint the person or 1 or more members of the body, or by reason that the person or members of the body are accustomed or under an obligation to act in accordance with the directions of that government, or otherwise); and
 - (ii) enjoys subsidies or other privileges that are enjoyed only by companies, persons, or bodies to which subparagraph (i) or paragraph (a) (i) apply

foreign public official includes—

- (a) a member or officer of the executive, judiciary, or legislature of a foreign country; and
- (b) a person who is employed by a foreign government, foreign public agency, foreign public enterprise, or public international organisation; and
- (c) a person, while acting in the service of or purporting to act in the service of a foreign government, foreign public agency, foreign public enterprise, or public international organisation

genitalia includes surgically constructed or altered genitalia

government entity, in relation to a function, means an entity that—

- (a) exercises the function subject to the control of a government (including a senior officer of the government); or

(b) is otherwise an agent of a government in exercising the function
grossly negligent, in relation to conduct, means conduct that is a major departure from the standard of care expected of a reasonable person in the circumstances

harm includes—

- (a) unconsciousness; and
- (b) pain; and
- (c) disfigurement; and
- (d) infection with a disease; and
- (e) any physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time)

injury, in relation to a person's body,—

- (a) means actual bodily harm; but
- (b) does not include psychological or emotional harm

Justice means a Justice of the Peace having jurisdiction in the Cook Islands

land has the meaning given by section 4 of the Acts Interpretation Act 1924

law means any of the following in force in the Cook Islands—

- (a) an Act; or
- (b) an Imperial Act; or
- (c) the common law

law enforcement officer means—

- (a) a member of the Police; or
- (b) a person employed in the detection, prosecution, or punishment of offenders

legal burden, in relation to a matter, means the burden of proving the existence of the matter

marriage means the union of a man and a woman to the exclusion of all others voluntarily entered into for life and solemnised in or outside the Cook Islands

material benefit includes a permanent or temporary—

- (a) gain in property; or
- (b) gain in services; or
- (c) right, advantage, benefit, privilege, or valuable consideration; or
- (d) appointment to office or position of employment

material loss includes a permanent or temporary—

- (a) loss in property; or
- (b) loss in services; or
- (c) loss of right, advantage, benefit, privilege, or valuable consideration; or
- (d) loss of office or employment; or
- (e) inability to obtain what one might have obtained

mental illness—

- (a) means an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary; and
- (b) may include a condition resulting from the reaction of a healthy mind to extraordinary external stimuli, but only if the condition involves some abnormality and is prone to recur

mental impairment includes—

- (a) senility; and
- (b) intellectual disability; and
- (c) mental illness; and
- (d) brain damage; and
- (e) severe personality disorder

oath has the meaning given by section 4 of the Acts Interpretation Act 1924

offensive item means—

- (a) a weapon, including—
 - (i) anything made or adapted for use for causing injury to or incapacitating a person or animal; and
 - (ii) anything capable of being used to threaten or cause injury or incapacitation of another person; and
 - (iii) a firearm, or anything that may reasonably be taken in the circumstances to be a firearm; and
 - (iv) a knife, or anything that may reasonably be taken in the circumstances to be a knife; and
 - (v) an explosive, or anything that may reasonably be taken in the circumstances to be or contain an explosive; or
- (b) any substance capable of anaesthetising or disabling a person; or
- (c) any other thing prescribed for this definition

officer, of a corporation, means—

- (a) a director or secretary of the corporation; or
- (b) a person—
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation; or
 - (ii) who has the capacity to affect significantly the corporation's financial standing; or
 - (iii) in accordance with whose instructions or wishes the directors of the corporation are accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person's professional capacity or their business relationship with the directors or the corporation); or
- (c) a receiver, or receiver and manager, of the property of the corporation; or
- (d) an administrator of the corporation; or
- (e) a liquidator of the corporation; or

- (f) a trustee or other person administering a compromise or arrangement made between the corporation and another person or entity

person includes a corporation sole and also a body of persons, whether corporate or unincorporated

Police means the Cook Islands Police Service mentioned in section 4 of the Police Act 2012

property includes—

- (a) real or personal property; and
- (b) a legal or equitable estate, right or interest; and
- (c) an intangible personal property right or thing in action recognised and protected by law; and
- (d) electricity

prostitution means the provision of commercial sexual services

public international organisation means any of the following organisations, wherever situated—

- (a) an organisation of which 2 or more countries or 2 or more foreign governments are members, or represented in the organisation; and
- (b) an organisation constituted by—
 - (i) an organisation mentioned in paragraph (a); or
 - (ii) the representatives of 2 or more organisations mentioned in paragraph (a); and
- (c) an organisation that is part of an organisation referred to in paragraph (a) or (b)

public place means—

- (a) a road; or
- (b) a place, or public resort, open to or used by the public as of right; or
- (c) a wharf or jetty; or
- (d) a church or other building where religious worship is held for the public; or
- (e) any hall or room in which any public entertainment is held; or
- (f) a market place

Queen's Representative—

- (a) has the meaning given by Article 1 of the Constitution; or
- (b) if the office of the Queen's Representative is vacant, or the holder of the office is absent or unable to perform the functions of the holder—means a person mentioned in Article 7 of the Constitution required to perform the functions of the Queen's Representative

senior officer, of an employer, means—

- (a) for an employer that is a government, or an entity so far as it is a government entity,—
 - (i) a Minister in relation to the government or government entity; or

- (ii) a person occupying a chief executive officer position (however described) in relation to the government or government entity; or
- (iii) a person occupying an executive position (however described) in relation to the government or government entity who makes, or takes part in making, decisions affecting all, or a substantial part, of the functions of the government or government entity; or
- (b) for an employer that is a corporation (including a corporation so far as it is not a government entity), an officer of the corporation; or
- (c) for an employer that is another entity,—
 - (i) a person occupying an executive position (however described) in relation to the entity who makes, or takes part in making, decisions affecting all, or a substantial part, of the functions of the entity; or
 - (ii) a person who would be an officer of the entity if the entity were a corporation

serious injury—

- (a) means harm (including the cumulative effect of more than 1 instance of harm) that—
 - (i) endangers, or is likely to endanger, human life; or
 - (ii) causes destruction of a fetus of a pregnant woman (other than in the course of a medical procedure) whether or not the woman suffers any other harm; or
 - (iii) is, or is likely to be, significant and longstanding; but
- (b) does not include psychological or emotional harm

serious offence means engaging in conduct that—

- (a) if engaged in within the Cook Islands, amounts to an offence punishable by imprisonment for 12 months or more, or a fine of more than \$5 000, or both; or
- (b) if engaged in outside the Cook Islands—
 - (i) amounts to an offence against a law of a foreign country; and
 - (ii) would, if engaged in within the Cook Islands, amount to an offence mentioned in paragraph (a)

sexual connection means an activity, or the continuation of an activity, that involves—

- (a) inserting to any extent, other than for genuine medical purposes, an object or a part of a person's body into another person's genitalia or anus; or
- (b) a person's mouth or tongue touching another person's genitalia or anus

ship means a maritime vessel powered by any means used in navigation, and includes—

- (a) a barge, lighter, dinghy, or raft; and
- (b) a vessel used or intended for use by the armed forces of another country

statutory duty means a duty mentioned in subpart 6.3 (Statutory duties tending to preservation of life)

territorial sea, of the Cook Islands, has the same meaning as in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977

thing in action means—

- (a) debts; and
- (b) negotiable instruments; and
- (c) shares and options; and
- (d) rights under a trust, lease, licence, or agreement; and
- (e) copyright; and
- (f) the right to sue under a contract

worker—

- (a) means a person who provides services under an oral or written agreement, whether paid or unpaid; and
- (b) includes an independent contractor.

4 Meaning of dishonest and dishonestly

- (1) For this Act, a person is **dishonest** if the person—
 - (a) is dishonest according to the standards of ordinary people; and
 - (b) knows he or she is being dishonest by the standards of ordinary people.
- (2) For this Act, a person acts **dishonestly** if the person—
 - (a) engages in conduct that is dishonest; or
 - (b) engages in conduct with a dishonest intent.
- (3) In a proceeding for an offence against this Act, the question of whether a person is dishonest or acts dishonestly is a matter for the trier of fact.

5 Meaning of menace for this Act

- (1) For this Act, a **menace** includes—
 - (a) an express or implied threat of action that is detrimental or unpleasant to someone else, including—
 - (i) an accusation against any person (whether living or dead); and
 - (ii) a disclosure of something about any person (whether living or dead); and
 - (iii) causing serious damage to property or endangering the safety of any person; and
 - (b) a general threat of detrimental or unpleasant action that is implied because the person making the demand is a public official or in a position of authority over the other person.
- (2) A threat against an individual is a **menace** only if—
 - (a) the threat would be likely to cause an individual of normal stability and courage to act unwillingly; or
 - (b) the threat would be likely to cause the individual to act unwillingly because of a particular vulnerability of which the maker of the threat is aware.
- (3) A threat against an entity other than an individual is a **menace** only if—
 - (a) the threat would ordinarily cause an unwilling response; or
 - (b) the threat would be likely to cause an unwilling response because of a particular vulnerability of which the maker of the threat is aware.

6 Meaning of ordinarily resident for this Act

For this Act, a person is **ordinarily resident** in a place if—

- (a) the person's home is at the place; or
- (b) the person resides at the place and intends doing so indefinitely; or
- (c) for a person who is not in the jurisdiction where the place is located, the person—
 - (i) previously had a home at the place or resided there with the intention of doing so indefinitely; and
 - (ii) has an intention of, in the near future, re-establishing the person's home at the place or residing at the place indefinitely.

Subpart 2—Application of Act

7 Act binds the Crown

This Act binds the Crown.

8 Criminal responsibility under more than 1 law or provision

- (1) This section applies if conduct engaged in by a person may be the subject of a criminal proceeding under—
 - (a) this Act and any other law; or
 - (b) 2 or more other laws; or
 - (c) 2 or more provisions of this Act; or
 - (d) 2 or more provisions of any other law.
- (2) The person may be prosecuted, and if found guilty dealt with by a court, for an offence under any law or provision of a law that applies to the conduct.

9 Common law offences

- (1) A person must not be proceeded against for a common law offence.
- (2) However, subsection (1) does not apply to proceedings for contempt of Parliament or contempt of court.

10 Act applies to corporations

This Act applies to corporations in the same way as it applies to individuals, subject to—

- (a) a provision of this subpart; and
- (b) any other modification impliedly necessary to achieve the application of this Act to proceedings for criminal responsibility of a corporation instead of an individual.

11 Corporation—conduct for an offence

Conduct for an offence is taken to be committed by a corporation if it is engaged in by an employee, agent, or officer of the corporation acting within the actual or apparent scope of his or her employment or within his or her actual or apparent authority.

12 Corporation—mental elements of intention, knowledge, or recklessness

- (1) In deciding whether the mental element of intention, knowledge, or recklessness exists in conduct engaged in by a corporation, the element is taken to exist if the corporation expressly, tacitly, or impliedly authorises or permits conduct for the offence.
- (2) The ways in which corporate authorisation or permission may be established include—
 - (a) proving that the body exercising the corporation’s executive authority intentionally, knowingly or recklessly engaged in the conduct, or expressly, tacitly, or impliedly authorised or permitted the conduct; or
 - (b) proving that a high managerial agent of the corporation intentionally, knowingly, or recklessly engaged in the conduct, or expressly, tacitly, or impliedly authorised or permitted the conduct; or
 - (c) proving that a culture existed within the corporation that directed, encouraged, tolerated, or caused non-compliance with a law that proscribed the conduct; or
 - (d) proving that the corporation failed to create and maintain a corporate culture requiring compliance with a law that proscribed the conduct.
- (3) However, subsection (2)(b) does not apply if the corporation proves that it exercised appropriate diligence to prevent the conduct, authorisation, or permission.
- (4) Factors relevant to subsection (2)(c) and (d) include—
 - (a) whether authority to engage in the conduct, or conduct for an offence of the same or a similar character, had been given by a high managerial agent of the corporation; and
 - (b) whether the employee, agent, or officer of the corporation who engaged in the conduct reasonably believed, or had a reasonable expectation, that a high managerial agent of the corporation would have authorised or permitted the conduct.
- (5) In this section,—

corporate culture, for a corporation, means an attitude, policy, rule, course of conduct, or practice existing within the corporation generally or in the part of the corporation where the relevant conduct happens

high managerial agent, of a corporation, means an employee, agent, or officer of the corporation whose conduct may fairly be assumed to represent the corporation’s policy because of the nature of his or her duties.

13 Corporation—mental element for grossly negligent conduct

- In deciding whether the mental element exists for conduct engaged in by a corporation that is grossly negligent, the element is taken to exist if,—
- (a) no individual employee, agent, or officer of a corporation has the required mental element, but gross negligence is apparent on viewing the conduct of its employees, agents, or officers; or
 - (b) the corporation’s conduct is substantially attributable to—

- (i) inadequate corporate management, control, or supervision of the conduct of 1 or more of the corporation's employees, agents, or officers; or
- (ii) failure to provide adequate systems for giving relevant information to relevant people in the corporation.

14 Corporation—mistake of fact—conduct to which no mental element applies

A corporation may only rely on section 38 (Mistake of fact—conduct to which no mental element applies) in relation to conduct (to which no mental element applies) for an offence by the corporation if—

- (a) the employee, agent, or officer of the corporation who carried out the conduct was under a mistaken but reasonable belief about facts that, had they existed, would have meant that the conduct would not have been an offence; and
- (b) the corporation proves that it exercised appropriate diligence to prevent the conduct.

15 Corporation—intervening conduct or event

A corporation may not rely on section 40 (Intervening conduct or event) in relation to conduct for an offence brought about by someone else if the other person is an employee, agent, or officer of the corporation.

16 Corporation—penalties for offences against this Act

If a corporation is convicted of an offence and, apart from this section, the penalty for the offence is a period of imprisonment only, the court may impose a fine not exceeding—

- (a) if the period of imprisonment is not longer than 6 months, \$5,000;
- (b) if the period of imprisonment is longer than 6 months but not longer than 1 year, \$10,000;
- (c) if the period of imprisonment is longer than 1 year but not longer than 2 years, \$20,000;
- (d) if the period of imprisonment is longer than 2 years but not longer than 5 years, \$50,000;
- (e) if the period of imprisonment is longer than 5 years but not longer than 10 years, \$100,000;
- (f) if the period of imprisonment is longer than 10 years but not imprisonment for life, \$150,000;
- (g) if the period of imprisonment is imprisonment for life, \$2,000,000.

Part 2 Jurisdiction

17 Geographical application and effect of Act

- (1) This Act applies to all offences for which an offender may be proceeded against and tried in the Cook Islands.
- (2) This Act applies to all conduct in the Cook Islands.

- (3) Subject to subsection (4), conduct engaged in outside the Cook Islands is not an offence except as provided by this Act or another enactment.
- (4) If conduct forming part of an offence, or an event necessary to the completion of an offence, occurs in the Cook Islands, the offence is taken to be committed in the Cook Islands, whether or not the person charged with the offence was in the Cook Islands at the time the conduct was engaged in or the event took place.

18 Extraterritorial jurisdiction—ships or aircraft outside Cook Islands

- (1) Subject to this Act or any other enactment, a person commits an offence by engaging in conduct outside the Cook Islands if the conduct—
 - (a) would be an offence against this Act, or any other enactment, if it happened in the Cook Islands; and
 - (b) meets the requirements of subsection (2).
- (2) Conduct meets the requirements of this section if the conduct is engaged in on board—
 - (a) a Cook Islands ship; or
 - (b) a Cook Islands aircraft; or
 - (c) any foreign ship or foreign aircraft, that arrives in the Cook Islands at any point in its voyage, or passing through the Cook Islands, if the person engaged in the conduct is not a citizen, permanent resident of or ordinary resident in, the Cook Islands; or
 - (d) any foreign ship on the high seas or in the territorial jurisdiction of another country, or any foreign aircraft in international airspace or territorial jurisdiction of another country, if the person engaged in the conduct is a citizen or permanent resident of or ordinary resident in the Cook Islands.
- (3) However, this section does not apply to conduct that—
 - (a) is an offence mentioned in section 19(1)(a); or
 - (b) is an offence against the Maritime Transport Act 2008.
- (4) It is a defence to a prosecution for an offence that relies on the application of this section, if the person proves that—
 - (a) the person is not a citizen or resident of, or ordinarily resident in, the Cook Islands;
and
 - (b) the conduct engaged in for the offence would not have been an offence against the law of a country—
 - (i) of which the person is a citizen or permanent resident; or
 - (ii) in which the person is ordinarily resident.
- (5) A person who, because of the operation of this section, commits an offence is liable to the same penalty to which the person would have been liable if the person committed the offence without the operation of this section.

- (6) A requirement under a law that affects a proceeding, or criminal responsibility, for an offence referred to in subsection (1) also applies to a proceeding or criminal responsibility for the offence that arises because of the operation of this section.

- (7) In this section,—

foreign aircraft means an aircraft that is not a Cook Islands aircraft

foreign ship means a ship that is not a Cook Islands ship.

19 Extraterritorial jurisdiction—transnational crime

- (1) A person commits an offence by engaging in conduct outside the Cook Islands if the conduct—

- (a) would be an offence against any of the following provisions if it happened in the Cook Islands—

- (i) Part 9 (Identity offences):
- (ii) Part 10 (Money laundering):
- (iii) Part 13 (Corruption and public administration offences):
- (iv) Part 14 (Administration of justice offences):
- (v) section 284 (Participating in organised criminal group):
- (vi) Part 17 (People smuggling and human trafficking):
- (vii) Part 18 (Torture); and

- (b) meets the requirements of subsection (2).

- (2) Conduct meets the requirements of this subsection if—

- (a) the conduct is engaged in by a person who—

- (i) is a citizen or permanent resident of the Cook Islands; or
- (ii) is ordinarily resident in the Cook Islands; or
- (iii) has been found in the Cook Islands and has not been extradited; or
- (iv) is a body corporate incorporated in the Cook Islands; or

- (b) any of the conduct is alleged to have occurred—

- (i) on board a Cook Islands ship; or
- (ii) on board a Cook Islands aircraft; or
- (iii) on board an aircraft or a ship that is leased to a person—
 - (A) whose principal place of business is in the Cook Islands; or
 - (B) who is a citizen or a permanent resident of the Cook Islands; or
 - (C) who is ordinarily resident in the Cook Islands; or

- (c) a victim of the conduct is—

- (i) a citizen or permanent resident of the Cook Islands; or
- (ii) ordinarily resident in the Cook Islands; or

- (d) for conduct that would be an offence against section 284 (Participating in organised criminal group)—any part of the conduct, criminal activity contributed to by the conduct, or objectives of the organised criminal group associated with the conduct occurs in the Cook Islands; or

- (e) the conduct relates to—

- (i) for an offence against section 298 (People smuggling), smuggling a person into the Cook Islands; or
 - (ii) for an offence against section 299 (Supporting presence of unlawful entrant), assisting a person to remain in the Cook Islands.
- (3) Nothing in this section limits or affects the application of section 18 to the occurrence in the Cook Islands of—
 - (a) conduct forming part of an offence; or
 - (b) an event necessary to the completion of an offence.
- (4) A person who commits an offence against this section is liable on conviction to the penalty that applies to the relevant offence referred to in subsection (1)(a).
- (5) A requirement under a law that affects a proceeding, or criminal responsibility, for an offence under subsection (1), also applies to a proceeding or criminal responsibility for the offence that arises because of the operation of this section.

20 Consent of Attorney-General required for certain prosecutions

- (1) This section applies to an offence if jurisdiction to prosecute the offence in the Cook Islands is provided under section 18 or 19.
- (2) A prosecution for an offence mentioned in subsection (1) must not proceed without the consent of the Attorney-General in writing.
- (3) However, subsection (2) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence;
 - (b) the arrest of the accused;
 - (c) remanding the accused in custody;
 - (d) granting bail to the accused.

21 Jurisdiction in relation to people with diplomatic or consular immunity

- (1) This section applies to anyone who has diplomatic or consular immunity under the Diplomatic Privileges and Immunities Act 1968.
- (2) Conduct engaged in by a person to whom this section applies is taken to occur in the Cook Islands if—
 - (a) the conduct occurs outside the Cook Islands; and
 - (b) the conduct would, if it occurred in the Cook Islands, be an offence punishable by imprisonment for 1 year or more; and
 - (c) the person has immunity from prosecution in the place where the conduct occurred; and
 - (d) the immunity has not been waived, otherwise than to any extent necessary to enable extradition of the person.
- (3) The person must not be charged with an offence over which jurisdiction is claimed under subsection (2) without the Attorney-General's consent.

- (4) However, subsection (3) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
- (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence:
 - (b) the arrest of the accused:
 - (c) remanding the accused in custody:
 - (d) granting bail to the accused.

Part 3

Proof of criminal responsibility

22 Legal burden of proof—prosecution

- (1) The prosecution has the legal burden of proving every element of an offence relevant to the guilt of the person charged.
- (2) The prosecution also has the legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof on the defendant.

23 Standard of proof—prosecution

- (1) A legal burden of proof on the prosecution must be discharged beyond reasonable doubt.
- (2) Subsection (1) does not apply if a law provides for a different standard of proof.

24 Evidential burden of proof—defence

- (1) Subject to section 25 (Legal burden of proof—defence), a burden of proof that law imposes on a defendant is an evidential burden only.
- (2) Subject to section 25, a defendant who wishes to deny criminal responsibility by relying on a provision of Part 4 (Lack of criminal responsibility) has an evidential burden in relation to the matter.
- (3) Subject to section 25, a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence (whether or not it accompanies the description of the offence) has an evidential burden in relation to the matter.
- (4) The defendant no longer has the evidential burden in relation to a matter if evidence sufficient to discharge the burden is presented by the prosecution.
- (5) The question whether an evidential burden has been discharged is a question of law.

25 Legal burden of proof—defence

A burden of proof imposed on the defendant is, subject to section 26, a legal burden only if it is provided for in an Act.

26 Standard of proof—defence

A legal burden of proof on the defendant must be discharged on the balance of probabilities.

27 Ignorance of the law not a defence

A person's ignorance of the law is not a defence to an offence committed by the person.

28 Proof of recklessness

If recklessness is a mental element of an offence, proof of intention, knowledge, or recklessness satisfies the mental element.

29 Offences that do not mention mental element required for offence

- (1) If the law creating an offence does not provide a mental element for conduct, intention is the mental element that applies to the conduct.
- (2) If the law creating an offence does not provide a mental element and where a component of the offence is the resulting consequence of the conduct, recklessness is the mental element that applies to the result of the conduct.
- (3) However, this section does not apply to conduct for an offence if the law creating the offence states that no mental element applies to the conduct.

Part 4

Lack of criminal responsibility

Subpart 1—Defences

30 Common law defences

If an offence against this Act has a defence at common law, the defence applies to the offence except to the extent that the defence is altered by, or inconsistent with, any Act or any other enactment.

31 Lawful authority

- (1) A person does not commit an offence against this Act if the conduct required for the offence is justified or excused under a law.
- (2) Without limiting subsection (1), conduct involving a reasonable use of force in the following circumstances is justified—
 - (a) carrying out an arrest, process, warrant or sentence:
 - (b) preventing the escape, or rescue, of a person in lawful custody:
 - (c) preventing conduct amounting to suicide:
 - (d) preventing conduct that would amount to an offence likely to cause immediate serious injury to a person, or damage to property:
 - (e) maintaining order or discipline on a Cook Islands ship or Cook Islands aircraft by, or under the direction of, the person in charge of the ship or aircraft:
 - (f) preventing or resisting someone who enters land or a building without the permission of the person with lawful possession of the land or building.
- (3) In this section, **reasonable use of force**, for a particular circumstance, means a degree of force no greater than reasonably needed to overcome resistance to conduct that is justified or excused under a law.

32 Lawful correction of child

- (1) A person does not commit an offence involving the use of physical force on a child if—
- (a) the physical force is applied by a parent or carer of the child; and
 - (b) the use, and degree, of physical force is reasonable in the circumstances having regard to the age, health, maturity or any other characteristic of the child.
- (2) Without limiting subsection (1)—
- (a) the use of force may be reasonable if for the purposes of—
 - (i) preventing or reducing harm to a child or another person; or
 - (ii) preventing a child from engaging in conduct that amounts to a criminal offence; or
 - (iii) preventing a child from engaging, or continuing to engage, in conduct that is offensive or disruptive; and
 - (b) the use of force is unreasonable if the force is applied to any—
 - (i) part of the child’s head or neck; or
 - (ii) other part of the child’s body that is likely to result in harm that lasts for more than a short period.
- (3) In this section,—
- carer**, of a child, means a person who—
- (a) is a step-parent of the child, a de facto partner of a parent of the child, a relative by blood or marriage of a parent of the child, or a person to whom the parent has entrusted care and management of the child; or
 - (b) is authorised by a parent of the child to use physical force to punish the child; or
 - (c) is recognised by a Cook Islands community to which the child belongs as being an appropriate person to exercise special responsibilities in relation to the child

parent means a person having all the duties, powers, responsibilities and authority in regard to the child which by law parents have in relation to their children.

33 Obedience to de facto law

- A person does not commit an offence by engaging in conduct that complied with a law that—
- (a) was in force at the time of the conduct; and
 - (b) applied to a place where the conduct was engaged in; and
 - (c) was made and enforced by a person or entity with sovereignty over the place at the time the law was in force.

Subpart 2—Lack of capacity

34 Lack of capacity—children under 10 years old

A child under 10 years old may not be convicted of any offence.

35 Lack of capacity—children aged between 10 and 14

- (1) A child who is 10 years old or older, but not yet 14 years old, may be convicted of an offence only if the child knows that his or her conduct is wrong.
- (2) The question whether a child knows that his or her conduct is wrong is a question of fact.
- (3) The burden of proving that a child knows that his or her conduct is wrong is on the prosecution.

36 Mental impairment

- (1) A person does not commit an offence if, when engaging in the conduct required for the offence, the person was suffering from a mental impairment that had the effect that the person—
 - (a) did not know the nature and quality of the conduct; or
 - (b) did not know that the conduct was wrong; or
 - (c) could not control the conduct.
- (2) For subsection (1)(b), a person does not know that conduct is wrong if the person cannot reason with a moderate degree of sense and composure about whether the conduct, as seen by a reasonable person, is wrong.
- (3) The question whether a person was suffering from a mental impairment is a question of fact.
- (4) A person is presumed not to have been suffering from a mental impairment.
- (5) The presumption is displaced only if it is proved on the balance of probabilities (by the prosecution or defence) that the person was suffering from a mental impairment.
- (6) The prosecution may rely on this section only with the court's leave.
- (7) The trier of fact must return a special verdict that the person is not guilty of an offence because of mental impairment if satisfied that the person is not guilty of the offence only because of a mental impairment.
- (8) A person cannot rely on a mental impairment to deny the existence of a mental state.
- (9) If the trier of fact is satisfied that a person engaged in conduct as a result of a delusion caused by mental impairment, the person cannot also rely on the delusion as a defence.

Subpart 3—Mistake

37 Mistake of fact—offences not involving criminal negligence

- (1) A person does not commit an offence that requires conduct and a particular state of mind other than negligence, if—
 - (a) when engaging in the conduct, the person is under a mistaken belief about, or ignorant of, particular facts; and
 - (b) the existence of the mistaken belief, or ignorance about the particular facts, negates the particular state of mind required for the conduct to be an offence.

- (2) In deciding whether a person was under a mistaken belief about facts or ignorant of facts the trier of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.

38 Mistake of fact—conduct to which no mental element applies

- (1) A person does not commit an offence that involves conduct to which no mental element applies, if—
- (a) when engaging in the conduct, the person considered whether or not particular facts existed, and was under a mistaken but reasonable belief about the facts; and
 - (b) had the particular facts existed, the conduct would not have been an offence.
- (2) A person may be taken to have considered whether or not facts existed when engaging in conduct if—
- (a) the person had considered, on a previous occasion, whether the facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as the circumstances surrounding the previous occasion.

39 Claim of right

- (1) A person does not commit an offence relating to property if—
- (a) when engaging in the conduct required for the offence, the person is under a mistaken belief about a proprietary or possessory right; and
 - (b) the existence of the right would negate a particular state of mind for conduct required for the offence.
- (2) A person is not guilty of any other offence arising necessarily out of the exercise of a proprietary or possessory right that the person mistakenly believes to exist.
- (3) In deciding whether a person was under a mistaken belief about facts or ignorant of facts the trier of fact may consider whether the mistaken belief or ignorance was reasonable in the circumstances.
- (4) This section does not negate criminal responsibility for an offence relating to the use of force against a person.

Subpart 4—External factors

40 Intervening conduct or event

- A person does not commit an offence that requires conduct to which no mental element applies if—
- (a) the conduct is brought about by someone else over whom the person has no control or by a non-human act or event over which the person has no control; and
 - (b) the person could not reasonably have been expected to guard against the conduct being brought about.

41 Sudden or extraordinary emergency

- (1) A person does not commit an offence if the person engages in the conduct required for the offence in response to circumstances of sudden or extraordinary emergency.
- (2) This section applies only if the person believes on reasonable grounds that—
 - (a) circumstances of sudden or extraordinary emergency exist; and
 - (b) engaging in the conduct is the only reasonable way to deal with the emergency; and
 - (c) the conduct is a reasonable response to the emergency.

42 Self-defence

- (1) A person does not commit an offence if the person engages in the conduct required for the offence in self-defence.
- (2) A person carries out conduct in self-defence only if—
 - (a) the person believes the conduct is necessary to defend himself or herself, someone else or property from an imminent and unlawful attack; and
 - (b) the conduct is a reasonable response in the circumstances as the person perceives them.
- (3) However, the person does not engage in conduct in self-defence if—
 - (a) the person uses force that involves the intentional infliction of death or serious injury to protect property; or
 - (b) the person is responding to lawful conduct that the person knows or should reasonably have known is lawful.
- (4) For subsection (3)(b), conduct is not lawful only because the person engaging in it is not criminally responsible for it.

43 Compulsion

- (1) A person does not commit an offence if the person—
 - (a) engages in the conduct required for the offence under compulsion by threats of immediate death or serious injury from a person who is present when the conduct is engaged in; and
 - (b) believes on reasonable grounds that the threats will be carried out unless the conduct is engaged in.
- (2) However, the person does not engage in conduct under compulsion if the threat is made by or on behalf of a person with whom the person is voluntarily associating to engage in conduct of the kind required for the offence.
- (3) This section does not apply to any of the following offences—
 - (a) section 56 (Murder), whether—
 - (i) as a substantive offence; or
 - (ii) as part of an inchoate offence that relies on section 50 (Attempts);
 - (b) section 88 (Assault causing serious injury);
 - (c) section 102 (Abduction for marriage or sexual connection);
 - (d) section 103 (Abduction of young person);
 - (e) section 104 (Kidnapping);

- (f) section 174 (Robbery):
- (g) section 175 (Aggravated robbery):
- (h) section 227 (Arson):
- (i) section 265 (Treason):
- (j) section 266 (Espionage):
- (k) section 273 (Sabotage):
- (l) section 286 (Piracy):
- (m) section 287 (Operating pirate-controlled ship or aircraft).

44 Surgical operations

A person does not commit an offence if—

- (a) the person engages in conduct required for the offence during a surgical operation on another person (the **patient**); and
- (b) the surgical operation is for the patient's benefit; and
- (c) the person performed the surgical operation with reasonable care and skill; and
- (d) either—
 - (i) the surgical operation was reasonable, having regard to the patient's state at the time and the circumstances of the case; or
 - (ii) the patient, or a person lawfully entitled to consent on the patient's behalf, consented to the surgical operation.

Subpart 5—Miscellaneous

45 Lack of criminal responsibility does not affect offence

The fact that a person is not criminally responsible for an offence, because of a provision in this part, does not prevent another person being criminally responsible for the offence.

Part 5
Extension of criminal responsibility

46 Meaning of special liability provision for part 5

In this Part, unless the context otherwise requires, **special liability provision** means—

- (a) a provision providing that no mental element applies to 1 or more (but not all) of the acts required for an offence; or
- (b) a provision providing that, in a prosecution for an offence, it is not necessary to prove that the defendant knew something; or
- (c) a provision providing that, in a prosecution for an offence, it is not necessary to prove that the defendant believed something.

47 Complicity and common purpose

(1) A person commits an offence if—

- (a) the person engages in conduct; and
- (b) the conduct—

- (i) aids, abets, counsels, procures, or results in the commission of the offence by another person; or
 - (ii) results in the person being knowingly concerned in, or a party to, the commission of the offence by another person.
- (2) Criminal responsibility arises under this section only if—
 - (a) either—
 - (i) the person's conduct in fact aids, abets, counsels, or procures the commission of the offence (the **common purpose offence**) by the other person; or
 - (ii) as a result of the person's conduct, the person in fact is knowingly concerned in or a party to the commission of the common purpose offence by the other person; and
 - (b) when engaging in the conduct, the person—
 - (i) intends the conduct to aid, abet, counsel, procure, or result in the person being knowingly concerned in or a party to, the commission of any offence (and has the particular state of mind required for conduct that makes up the offence) of the type committed by the other person; or
 - (ii) knows that the other person intends to engage in the conduct required for any offence (and has the particular state of mind required for conduct that makes up the offence) of the type committed by the other person.
- (3) Criminal responsibility arises under this section whether or not the common purpose offence is committed in the way the person counselled or procured, or was knowingly concerned in or a party to.
- (4) A special liability provision or any requirement under a law that affects a proceeding, or criminal responsibility, for the common purpose offence also applies to a proceeding or criminal responsibility for aiding, abetting, counselling, procuring, or being knowingly concerned in or a party to, the commission of the offence.
- (5) A person may be criminally responsible for aiding, abetting, counselling, procuring, or being knowingly concerned in or a party to, the commission of an offence even if the person who committed the offence is not prosecuted or found guilty.
- (6) A person who is criminally responsible because of the operation of this section is liable on conviction to a penalty not exceeding the maximum penalty for the common purpose offence committed.

48 Joint commission

- (1) A person commits an offence if—
 - (a) the person and at least 1 other person enter into an agreement to commit an offence; and
 - (b) either—
 - (i) an offence is committed in accordance with the agreement; or
 - (ii) an offence is committed in the course of carrying out the agreement.

- (2) For subsection (1)(b)(i), an offence is committed **in accordance with an agreement** if—
 - (a) the conduct of 1 or more parties in accordance with the agreement makes up the conduct of an offence (the **joint offence**) of the same type as the offence agreed to; and
 - (b) where the conduct for the joint offence consists of a result of conduct, the result arises from the conduct engaged in; and
- (3) For subsection (1)(b)(ii), an offence is committed **in the course of carrying out an agreement** if a person is reckless about the commission of an offence that another person in fact commits in the course of carrying out the agreement.
- (4) A person commits an offence because of this section only if the person and at least 1 other party to the agreement intend that an offence will be committed under the agreement.
- (5) An agreement—
 - (a) may consist of a non-verbal understanding; and
 - (b) may be entered into before, or at the same time as, any conduct for the joint offence was engaged in.
- (6) A person must not be found criminally responsible for an offence because of this section if, before any conduct for the joint offence concerned was engaged in, the person—
 - (a) ended the person's involvement; and
 - (b) took all reasonable steps to prevent the conduct from being engaged in.
- (7) A person may be found criminally responsible for an offence because of this section even if—
 - (a) another party to the agreement is not prosecuted or found guilty; or
 - (b) the person was not present when any conduct for the joint offence was engaged in.
- (8) A special liability provision or any requirement under a law that affects a proceeding, or criminal responsibility, for an offence also applies to a proceeding or criminal responsibility for joint commission of the offence because of the operation of this section.
- (9) A person who is criminally responsible for joint commission of an offence because of the operation of this section commits an offence and is liable on conviction to the maximum penalty for which the person would have been liable if the person had committed the joint offence as the principal offender.

49 Commission by proxy

- (1) A person commits an offence by proxy if—
 - (a) the person procures someone else to engage in conduct that (whether or not together with conduct engaged in by the person) makes up the conduct required for the offence; and
 - (b) any circumstances required for the offence exist; and
 - (c) any result of the conduct required for the offence occurs; and

- (d) when the person procured the other person to engage in the conduct, the person had the particular state of mind required for conduct that makes up the offence.
- (2) A special liability provision or any requirement under a law that affects a proceeding, or criminal responsibility, for an offence also applies to a proceeding or criminal responsibility for commission of the offence by proxy because of the operation of this section.
- (3) A person who is criminally responsible for commission of an offence by proxy because of the operation of this section is liable on conviction to a penalty not exceeding the maximum penalty for the offence for which the person would have been liable if the person had committed the offence as the principal offender.

50 Attempts

- (1) A person commits an offence if—
 - (a) the person intends to commit an offence; and
 - (b) the person engages in conduct for the purpose of committing the offence; and
 - (c) the conduct is—
 - (i) more than merely preparatory to the commission of the offence; and
 - (ii) immediately and proximately connected with the offence; and
 - (iii) a step in the actual commission of the offence.
- (2) The question of whether conduct satisfies the requirements of subsection (1)(c) is a question of law.
- (3) A person may be found criminally responsible for the attempt of an offence even though—
 - (a) it was impossible to commit the offence attempted; or
 - (b) the person committed the offence attempted.
- (4) A special liability provision or any requirement under a law that affects a proceeding, or criminal responsibility, for an offence also applies to a proceeding or criminal responsibility for deciding whether a person attempts to commit the offence because of the operation of this section.
- (5) If a person is found criminally responsible for the attempt of an offence, the person cannot later be charged with committing the offence.
- (6) A person who is criminally responsible for the attempt to commit an offence because of the operation of this section is liable on conviction to a penalty not exceeding,—
 - (a) if the attempted offence is punishable by life imprisonment, 14 years imprisonment; or
 - (b) for any other attempted offence, not more than half the maximum penalty for the attempted offence.

51 Conspiracy

- (1) A person commits an offence if the person conspires with someone else to commit an offence.

- (2) A person **conspires** to commit an offence if—
 - (a) the person intentionally enters into a formal or informal arrangement (whether or not in writing) with at least 1 other person; and
 - (b) the person and at least 1 other party to the arrangement intend that an offence be committed under the arrangement.
- (3) A special liability provision or any requirement under a law that affects a proceeding, or criminal responsibility, for an offence also applies to a proceeding or criminal responsibility for deciding whether a person conspires to commit the offence because of the operation of this section.
- (4) A person is not criminally responsible for conspiracy if—
 - (a) the conduct engaged in under the arrangement occurred outside the Cook Islands; and
 - (b) the conduct was not an offence in the place where it occurred.
- (5) A person may be found criminally responsible for conspiracy even though it was impossible to commit the offence conspired.
- (6) A person who is criminally responsible for conspiracy to commit an offence because of the operation of this section is liable on conviction to a penalty not exceeding,—
 - (a) if the offence the person conspired to commit is punishable by a maximum penalty of more than 7 years imprisonment, 7 years imprisonment; or
 - (b) for any other offence the person conspired to commit, not more than half the maximum penalty for which the person would be liable if the person had committed the offence.

52 Incitement

- (1) A person commits an offence if the person—
 - (a) incites another person to engage in conduct required for an offence; and
 - (b) knows that the conduct would be an offence if the other person engaged in it; and
 - (c) intends that the offence incited be committed.
- (2) A special liability provision or any requirement under a law that affects a proceeding, or criminal responsibility, for an offence also applies to a proceeding or criminal responsibility for deciding whether a person incites another person to commit the offence because of the operation of this section.
- (3) A person may be found criminally responsible for incitement even though it was impossible to commit the offence incited.
- (4) A person who is criminally responsible for incitement because of the operation of this section is liable on conviction to a penalty not exceeding,—
 - (a) for an offence incited that is punishable by life imprisonment, 14 years imprisonment; or
 - (b) for any other offence incited, not more than half the maximum penalty for the incited offence.

53 Accessories after fact

- (1) A person commits an offence if—
 - (a) the person engages in conduct in relation to another person; and
 - (b) the other person is a party to the offence; and
 - (c) the person knows the other person is a party to the offence; and
 - (d) the person intends the conduct to assist the other person to escape punishment for the offence.
- (2) A special liability provision or any requirement under a law that affects a proceeding, or criminal responsibility, for an offence also applies to a proceeding or criminal responsibility for being an accessory after the fact in relation to the offence because of the operation of this section.
- (3) A person who is criminally responsible for being an accessory after the fact to an offence because of the operation of this section is liable on conviction to a penalty not exceeding,—
 - (a) if the offence committed by the other person is punishable by a maximum penalty of imprisonment for life, 7 years imprisonment; or
 - (b) if the offence committed by the other person is punishable by a maximum penalty of imprisonment for 10 years or more, but not for life, 5 years imprisonment; or
 - (c) in any other case, not more than half the maximum penalty for the offence.

54 Extraterritorial application of extended criminal responsibility for offences

- (1) This section applies if—
 - (a) a person (the **first person**) in the Cook Islands either—
 - (i) incites, aids, abets, counsels, or procures another person to engage in conduct at a place outside the Cook Islands (the **extraterritorial conduct**); or
 - (ii) is knowingly concerned in, or a party to, the commission of extraterritorial conduct engaged in by another person; and
 - (b) the extraterritorial conduct would, if committed in the Cook Islands, amount to an offence against this Act; and
 - (c) for extraterritorial conduct that would amount to a category 2 offence, the extraterritorial conduct—
 - (i) is also an offence at the place where it happens or is intended to happen; and
 - (ii) results in the commission of the offence.
- (2) The first person is criminally responsible, and punishable, under section 47 (Complicity and common purpose) as if the extraterritorial conduct had been committed in the Cook Islands.
- (3) In this section,—

category 1 offence means an offence against any of the following sections—

 - (a) section 56 (Murder);
 - (b) section 265 (Treason);

- (c) section 266 (Espionage):
- (d) section 267 (Wrongful communication of official information):
- (e) section 271 (Provoking mutiny):
- (f) section 272 (Provoking disregard of duty):
- (g) section 286 (Piracy)

category 2 offence means any other offence against this Act, other than a category 1 offence.

55 Consent of Attorney-General for prosecutions based on extended criminal responsibility

- (1) In this Act, a provision that states that a prosecution for an offence must not be begun without the consent of the Attorney-General in writing also applies to a prosecution for that offence based on extended criminal responsibility under this Part.
- (2) However, subsection (1) does not make any of the following unlawful if done before the Attorney-General consents to a prosecution for an offence in writing based on extended criminal responsibility under this Part—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence:
 - (b) the arrest of the accused:
 - (c) remanding the accused in custody:
 - (d) granting bail to the accused.

Part 6

Crimes against the person

Subpart 1—Homicide

56 Murder

- (1) A person commits the offence of murder if—
 - (a) the person engages in conduct; and
 - (b) the conduct causes the death of another person (the **victim**); and
 - (c) the person intends causing—
 - (i) the death of the victim; or
 - (ii) serious injury to the victim with reckless indifference to the probability that the injury would cause the victim's death; or
 - (iii) the death of, or serious injury to, a person other than the victim.
- (2) A person who commits murder is liable on conviction to a minimum sentence of life imprisonment, unless it is shown that the community interest in safety and deterrence can be met through the imposition of a lesser sentence.

57 General manslaughter

- (1) A person commits the offence of manslaughter if—
 - (a) the person engages in conduct; and
 - (b) the conduct results in the death of another person; and

- (c) the conduct is culpable conduct.
- (2) Conduct that occurs in the course of a criminal offence is culpable conduct if—
 - (a) the conduct is grossly negligent and that criminal offence involves a mental element of negligence or no purposive intent;
 - (b) the conduct is dangerous and the criminal offence involves a mental element more purposive than negligence.
- (3) Conduct that is not a criminal offence but is a breach of a person's statutory or other duty is culpable conduct if the conduct is grossly negligent.
- (4) A person who commits manslaughter is liable on conviction to life imprisonment.

58 Industrial manslaughter—employer offence

- (1) A person commits the offence of industrial manslaughter by an employer if—
 - (a) the person is an employer; and
 - (b) a worker of the employer—
 - (i) dies in the course of employment by, or providing services to, or in relation to, the employer; or
 - (ii) is injured in the course of employment by, or providing services to, or in relation to, the employer and later dies; and
 - (c) the conduct of the employer causes the death of the worker; and
 - (d) when the employer engaged in the conduct the employer was—
 - (i) reckless about causing serious injury to the worker, or any other worker of the employer; or
 - (ii) grossly negligent about causing the death of the worker, or any other worker of the employer.
- (2) A person who commits industrial manslaughter by an employer is liable on conviction to a maximum sentence of life imprisonment.

59 Industrial manslaughter—senior officer offence

- (1) A person commits the offence of industrial manslaughter by a senior officer if—
 - (a) the person is a senior officer of an employer; and
 - (b) a worker of the employer—
 - (i) dies in the course of employment by, or providing services to, or in relation to, the employer; or
 - (ii) is injured in the course of employment by, or providing services to, or in relation to, the employer and later dies; and
 - (c) the conduct of the senior officer causes the death of the worker; and
 - (d) when the senior officer engaged in the conduct the senior officer was—
 - (i) reckless about causing serious injury to the worker, or any other worker of the employer; or
 - (ii) grossly negligent about causing the death of the worker, or any other worker of the employer.

- (2) A person who commits industrial manslaughter by a senior officer is liable on conviction to a maximum sentence of life imprisonment.

60 Industrial manslaughter—conduct involving an omission

For sections 58 and 59, and without limiting the circumstances in which a person's conduct amounting to an omission causes the death of another person, it is relevant for determining whether an omission causes the death of another person if the omission—

- (a) creates a danger to the health and safety of any person; and
- (b) the creation of the danger is substantially connected with any of the following—
 - (i) the person's behaviour;
 - (ii) anything in the person's possession or control;
 - (iii) a failure by the person to perform an undertaking or responsibility.

61 Infanticide

- (1) A person commits the offence of infanticide if—
- (a) the person is a woman; and
 - (b) the person engages in conduct that causes the death of her child; and
 - (c) the child was not more than 2 years old; and
 - (d) at the time of the conduct the balance of the person's mind was disturbed, to the extent that the person was not fully responsible, as a result of—
 - (i) not having fully recovered from the birth of the child; or
 - (ii) any other disorder arising from giving birth to the child; and
 - (e) the conduct would, without this section, be an offence of murder or manslaughter.
- (2) A person who commits infanticide is liable on conviction to imprisonment for a term not exceeding 3 years.
- (3) In a trial for an offence of murder or manslaughter of a child who is under 2 years old by an accused who is the child's natural mother—
- (a) the trier of fact may, if satisfied beyond reasonable doubt that the accused is criminally responsible for the offence of infanticide, find the accused guilty of infanticide whether or not the accused raises infanticide in the trial; and
 - (b) if the accused wishes to raise infanticide in the trial, the accused has a legal burden in relation to the matters mentioned in subsection (1)(d).
- (4) Nothing in this section prevents a trier of fact that returns a verdict of guilty to infanticide for an accused from returning a verdict of guilty to murder or manslaughter to another accused charged with a homicide offence arising from the same facts.

62 Aiding suicide

- (1) A person commits the offence of aiding suicide if—
- (a) the person aids, abets, or procures any thing for, the suicide or attempted suicide of another person; and

- (b) the person intends that the other person commit, or attempt to commit, suicide; and
 - (c) as a result of the aiding, abetting, or procurement, the other person commits suicide or attempts to commit suicide.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) A person does not commit an offence against this section for engaging in conduct that is an offence against section 64(1).

63 Inciting suicide

- (1) A person commits the offence of inciting suicide if—
 - (a) the person incites or counsels the suicide or attempted suicide of another person; and
 - (b) as a result of the incitement or counselling the other person commits suicide or attempts to commit suicide.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) A person does not commit an offence against this section for engaging in conduct that would be an offence against the section if the conduct would also be an offence against section 64(1).

64 Party to a suicide pact death

- (1) A person commits the offence of being party to a suicide pact death if—
 - (a) the person is party to a suicide pact; and
 - (b) the person intends dying in accordance with the pact; and
 - (c) at least 1 other party to the pact dies in accordance with the pact.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) In a trial for the offence of murder, an accused may be found not guilty of the offence of murder but guilty of the offence of manslaughter if the accused—
 - (a) is party to a suicide pact; and
 - (b) the person intends dying in accordance with the pact; and
 - (c) engages in conduct that results in the death of another party to the pact in accordance with the pact.
- (4) A person who is found guilty of the offence of manslaughter because of the operation of subsection (3) is liable on conviction to life imprisonment.
- (5) The accused has a legal burden in relation to the matters mentioned in subsection (3).
- (6) In a joint trial of 2 or more accused charged with murder arising from the same facts, this section does not prevent the trier of fact returning a verdict of guilty to manslaughter under subsection (3) in relation to an accused and returning a verdict of guilty to murder in relation to 1 or more co-accused in the same trial.
- (7) In this section, **suicide pact**—

- (a) means an agreement between 2 or more people that has as its object the death of each person to the agreement, whether or not a party to the agreement is to commit suicide; but
- (b) does not include an agreement that also has as its object, or that has an object that involves a reasonable risk of, the death of a person who is not party to the agreement.

65 Concealing dead body of child

- (1) A person commits the offence of concealing the dead body of a child if the person—
 - (a) disposes of the dead body of a child (whether or not the child was born alive); and
 - (b) intends to conceal the child's birth.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.

66 Homicide—no criminal responsibility for death caused by mental state of deceased

- (1) A person is not criminally responsible for an offence of murder or manslaughter of another person if the death of the other person is caused only by conduct that affects the state of mind of that person.
- (2) In this section, **conduct that affects the state of mind**, of a person—
 - (a) includes conduct that frightens the person; but
 - (b) does not include conduct involving the use, or non-use, of a substance that results in the person's temporary or permanent mental impairment.

67 Homicide—criminal responsibility despite death due to other factors

A person may be criminally responsible for an offence under this subpart for conduct by the person that causes the death of another person even if, when the conduct happened, the other person was in a condition (including because of a disease or disorder) or under circumstances that would have resulted in the person's death.

68 Homicide—criminal responsibility despite preventable death

A person may be criminally responsible for an offence under this subpart for conduct by the person that causes the death of another person even if, when the conduct happened, the other person's death as a result of the conduct was preventable by taking reasonable steps.

69 Homicide—criminal responsibility despite treatment for injury

- A person may be criminally responsible for an offence under this subpart if—
- (a) the person engages in conduct causing serious injury to another person; and
 - (b) the death of the other person is caused by treatment for the injury (even if the treatment is proper and administered in good faith).

70 Homicide—criminal responsibility despite consent to death

A person may be criminally responsible for an offence under this subpart despite engaging in conduct that caused the death of a person who—

- (a) consented to the conduct; or
- (b) consented to the person’s own death being caused by the conduct.

71 Homicide—criminal responsibility for injuries to child

A person may be criminally responsible for the offence of murder or manslaughter if—

- (a) the person engages in conduct causing injury to a child before or during the birth of the child; and
- (b) the conduct results in the death of the child after the child is born.

Subpart 2—Abortion

72 Meaning of lawful medical procedure in subpart 2

(1) In this subpart, unless the context otherwise requires,—

lawful medical procedure means a procedure that—

- (a) is carried out by a medical practitioner; and
- (b) is carried out on a person who the practitioner believes on reasonable grounds is not more than 20 weeks pregnant; and
- (c) the practitioner considers appropriate because in the practitioner’s opinion—
 - (i) the continuation of the person’s pregnancy would result in serious danger (not being danger normally attendant upon childbirth) to the life, or to the physical or mental health, of the person; or
 - (ii) there is a substantial risk that the child, if born, would be seriously handicapped as a result of physical or mental abnormality; or
 - (iii) the pregnancy is the result of—
 - (A) rape; or
 - (B) sexual connection with a family member, or someone other than a family member to whom the person is a dependent family member; or
 - (iv) the person suffers a severe developmental impairment; and
- (d) is carried out with the consent of,—
 - (i) if the person is capable of consenting to the procedure, the person; or
 - (ii) if the person is not capable of consenting to the procedure, another person lawfully entitled to consent on behalf of the person

lawful medical procedure also means a procedure—

- (a) carried out by a medical practitioner; and
- (b) performed on a person who the practitioner believes on reasonable grounds is more than 20 weeks pregnant; and
- (c) the practitioner considers necessary to—

- (i) save the life of the person; or
 - (ii) prevent serious permanent injury to the person's physical or mental health; and
- (d) that is carried out with the consent of,—
 - (i) if the person is capable of consenting to the procedure, the person; or
 - (ii) if the person is not capable of consenting to the procedure, another person lawfully entitled to consent on behalf of the person.
- (2) For this section, the following may be taken into account when determining serious danger to the life, or physical or mental health, of a person—
 - (a) the age of the person;
 - (b) whether the pregnancy is a result of a sexual offence.
- (3) In this section,—

dependent family member has the same meaning as in section 119(4)

family member has the same meaning as in section 120(3)

severe developmental impairment, suffered by a person, means an intellectual, mental, or physical condition, or combination of conditions, that result in a substantial impairment of the person's capacity to—

- (a) understand the nature of sexual activity;
- (b) foresee the possible results of decisions about sexual activity;
- (c) make responsible decisions about sexual activity;
- (d) communicate decisions about sexual activity.

73 **Meaning of miscarriage in subpart 2**

In this subpart, unless the context otherwise requires, **miscarriage** means—

- (a) the destruction or death of an embryo or fetus after implantation; or
- (b) the premature expulsion or removal of an embryo or fetus after implantation, other than for the purpose of inducing the birth of a fetus believed to be viable or removing a fetus that has died.

74 **Ineffectiveness of drug, substance or instrument no defence**

It is not a defence to a prosecution for an offence against this subpart that any poison, drug, noxious substance or instrument used, or intended to be used, to bring about a miscarriage, would not result in a miscarriage.

75 **Carrying out an abortion**

- (1) A person commits the offence of carrying out an abortion if—
 - (a) the person engages in any of the following conduct—
 - (i) administering, or causing another person to take, a poison, a drug, or other noxious substance;
 - (ii) using an instrument on or in another person's body;
 - (iii) doing anything else to another person that might result in miscarriage in that person; and
 - (b) the person intends causing a miscarriage in the other person (whether the other person is pregnant or not); and

- (c) the conduct is not a lawful medical procedure.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) The person whose pregnancy miscarried is not criminally responsible for an offence against this section.

76 Procuring an abortion

- (1) A person commits the offence of procuring an abortion if the person—
 - (a) engages in any of the following conduct—
 - (i) self-administering, or permitting someone else to administer to the person, a poison, a drug, or other noxious substance;
 - (ii) using, or permitting someone else to use an instrument on or in the person's body;
 - (iii) doing, or permitting the doing, of anything else to the person that might result in miscarriage; and
 - (b) engages in the conduct with intent to cause a miscarriage in the person (whether the person is pregnant or not); and
 - (c) the conduct is not a lawful medical procedure.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$1,000.

77 Procuring or supplying items for miscarriage

- (1) A person commits the offence of procuring or supplying items capable of causing miscarriage if—
 - (a) the person—
 - (i) procures any poison, drug, noxious substance, instrument, or thing with the intention of supplying it to another person; or
 - (ii) supplies any poison, drug, noxious substance, instrument, or thing to another person; and
 - (b) the person believes the other person intends to use the poison, drug, noxious substance, instrument, or thing to commit an offence against this subpart.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.

Subpart 3—Statutory duties tending to preservation of life

78 Statutory duty—carer to provide necessities of life to vulnerable adult

- (1) A person (the **carer**) has a statutory duty to provide another person with the necessities of life, and take reasonable steps to protect the other person from injury, if—
 - (a) the other person is in the care or charge of the carer (whether or not the care or charge is under a legal requirement); and
 - (b) the other person is—
 - (i) a vulnerable adult; and

- (ii) unable to supply the necessities of life for, or prevent injury to, himself or herself.

- (2) In this section, **vulnerable adult** means a person who is—
 - (a) at least 18 years old; and
 - (b) unable to withdraw from the care or supervision of another person because of the person's detention, age, sickness, physical or mental impairment, or any other reason.

79 Statutory duty—parent, guardian, carer to provide necessities of life to child

- (1) A person has a statutory duty to provide a child with the necessities of life, and take reasonable steps to protect the child from injury, if—
 - (a) the person is the parent or guardian of the child; and
 - (b) the child is in the person's care or charge; and
 - (c) the child is under 18 years old.
- (2) In this section, **guardian**, of a child, includes a person temporarily acting in place of a parent.

80 Statutory duty—person carrying out dangerous acts

- (1) A person has a statutory duty to be qualified for, and exercise reasonable skill and care when, carrying out any act that may be dangerous to human life.
- (2) In this section, **act that may be dangerous to human life** includes a medical procedure.

81 Statutory duty—person in charge of dangerous thing

- (1) A person has a statutory duty to take reasonable steps to protect human life if the person—
 - (a) has a thing, in the person's care or control, that may endanger human life; or
 - (b) designs, makes, operates or maintains a thing that may endanger human life.
- (2) In this section, **take reasonable steps** includes take reasonable precautions and exercise reasonable care.

82 Statutory duty—person to avoid omissions endangering life

- A person has a statutory duty to do an act if—
- (a) the person has agreed to do the act; and
 - (b) not doing the act would endanger the life, safety or health of another person; and
 - (c) the danger arises from the person's possession or control of a thing, or a circumstance under the person's control.

Subpart 4—Offences against children and vulnerable people

83 Abandonment of child under 6 years old

- (1) A person commits the offence of abandonment of a child under 6 years old if—
- (a) the person intentionally engages in conduct; and
 - (b) the conduct results in a child being—
 - (i) unreasonably left without the care and supervision of a parent of the child or an adult with legal responsibility for care of the child; or
 - (ii) unreasonably exposed to climatic conditions or temperatures; and
 - (c) the child is under 6 years old.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section, **adult** means a person who is at least 18 years old.

84 Ill-treatment of child or vulnerable adult

- (1) A person commits the offence of ill treatment of a child or vulnerable adult if the person—
- (a) is a responsible carer for the child or vulnerable adult; and
 - (b) engages in conduct that creates a risk of suffering, or an adverse effect on the health or safety of the child or vulnerable adult; and
 - (c) the conduct is a grossly negligent failure to perform a statutory duty owed by the person to the child or vulnerable adult.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) In this section,—
- health** includes mental health
- responsible carer**, for a child or vulnerable adult, means a person who is—
- (a) responsible for the short-term or ongoing care or supervision of the child or vulnerable adult; or
 - (b) a temporary or permanent staff member at a hospital or institution providing care or supervision to the child or vulnerable adult
- vulnerable adult** means a person who is—
- (a) at least 18 years old; and
 - (b) unable to withdraw from the care or supervision of another person because of the person's detention, age, sickness, physical or mental impairment, or any other reason.

85 Failure to protect child or vulnerable adult

- (1) A person commits the offence of failure to protect a child or vulnerable adult if the person—
- (a) has a duty of care in relation to the child or vulnerable adult; and

- (b) knows that there is a likelihood that the child or vulnerable adult will suffer death, serious injury or sexual assault because of another person's—
 - (i) unlawful conduct; or
 - (ii) grossly negligent failure to perform a statutory duty owed by the other person to the child or vulnerable adult; and
 - (c) fails to take reasonable steps to protect the child or vulnerable adult from the risk.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) However, subsection (1) does not apply to a person who was under 18 years at the time of the offence.
- (4) For this section,—
 - (a) a person has a duty of care to a child or vulnerable adult if the person is—
 - (i) a member of the same household as the child or vulnerable adult; or
 - (ii) a temporary or permanent staff member at a hospital or institution providing care or supervision to the child or vulnerable adult; and
 - (b) a person has a duty of care to a child or vulnerable adult if the person is a member of a household visited by the child or vulnerable adult; and
 - (c) a person who does not live in the same household as a child or vulnerable adult may be regarded as a member of the household if the person has a close association with the household based on any of the following—
 - (i) the reasons for the person's visits to the household;
 - (ii) the frequency and length of the person's visits;
 - (iii) the nature of the person's relationship to people living in the household;
 - (iv) any other relevant matter.
- (5) For this section, a reference to a **household** means the household in which conduct that forms the basis of criminal proceedings under this section is alleged to have occurred.
- (6) In this section, **vulnerable adult** means a person who is—
 - (a) at least 18 years old; and
 - (b) unable to withdraw from the care or supervision of another person because of the person's detention, age, sickness, physical or mental impairment, or any other reason.

Subpart 5—Assault

86 Assault

- (1) A person commits the offence of assault if the person assaults another person.

- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months.
- (3) A person commits the offence of assault with intent to cause injury if the person—
 - (a) assaults another person; and
 - (b) intends causing injury to the other person.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (5) However, if a person is convicted of an offence against this section committed in circumstances of aggravation, the person is liable on conviction to a penalty not exceeding,—
 - (a) for an offence against subsection (1), 3 years imprisonment;
 - (b) for an offence against subsection (3), 5 years imprisonment.

87 Assault causing injury

- (1) A person commits the offence of assault recklessly causing injury if the person—
 - (a) assaults another person; and
 - (b) is reckless about causing injury to the other person; and
 - (c) causes injury to the other person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) A person commits the offence of assault intentionally causing injury if the person—
 - (a) assaults another person; and
 - (b) intends causing injury to the other person; and
 - (c) causes injury to the other person.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (5) However, if a person is convicted of an offence against this section committed in circumstances of aggravation, the person is liable on conviction to a penalty not exceeding,—
 - (a) for an offence against subsection (1), 7 years imprisonment;
 - (b) for an offence against subsection (3), 10 years imprisonment.

88 Assault causing serious injury

- (1) A person commits the offence of assault recklessly causing serious injury if the person—
 - (a) assaults another person; and
 - (b) is reckless about causing injury to the other person; and
 - (c) causes serious injury to the other person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) A person commits the offence of assault intentionally causing serious injury if the person—

- (a) assaults another person; and
 - (b) intends causing injury to the other person; and
 - (c) causes serious injury to the other person.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (5) However, if a person is convicted of an offence against this section committed in circumstances of aggravation, the person is liable on conviction to a penalty not exceeding,—
 - (a) for an offence against subsection (1), 14 years imprisonment;
 - (b) for an offence against subsection (3), 16 years imprisonment.

89 Impairment of another person

- (1) A person commits the offence of impairment of another person if—
 - (a) the person engages in conduct; and
 - (b) the person intends to, or is reckless as to whether the conduct may, impair the sensibilities or consciousness of another person; and
 - (c) the conduct results in the impaired sensibilities, or unconsciousness of, the other person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.

90 Circumstances of aggravation for subpart 5

An offence against this subpart is committed in circumstances of aggravation if the offence is committed—

- (a) to facilitate, or in the course of, engaging in conduct for an offence; or
- (b) to hinder the detection or apprehension of any person who has committed or attempted to commit an offence; or
- (c) to overcome the ability of a person to resist an unlawful act; or
- (d) using an offensive item.

Subpart 6—Acts causing danger to life or injury

91 Possessing offensive item

- (1) A person commits the offence of possessing an offensive item if the person—
 - (a) possesses an offensive item in a public place; or
 - (b) if the person is not in a public place, possesses an offensive item with intent to cause injury to, threaten violence against, anaesthetise or disable another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$4,000 or imprisonment for a term not exceeding 2 years, or both.
- (3) It is a defence to a prosecution for an offence against subsection (1)(a) if the accused proves that the accused did not intend doing any of the following to another person—
 - (a) cause an injury:

- (b) threaten violence:
- (c) anaesthetise or disable.
- (4) This section does not apply if the person has a reasonable excuse.

92 Setting or allowing trap

- (1) A person commits the offence of setting a trap if the person—
 - (a) engages in conduct that sets, places, or causes to be set or placed, any trap or device capable of causing injury to a person; and
 - (b) intends, or is reckless about, causing injury to a person with the trap or device.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) A person commits the offence of allowing a trap if—
 - (a) the person occupies or possesses a place; and
 - (b) the person knows that a trap or device capable of causing injury to a person is at the place; and
 - (c) the person allows the trap or device to remain at the place; and
 - (d) in the circumstances, allowing the trap or device to remain at the place represents a serious risk to the health or safety of another person.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (5) In this section, **trap or device** includes a trap or device that may be electronic, electric, mechanical, chemical or otherwise.

93 Laying poison

- (1) A person commits the offence of laying poison if the person—
 - (a) engages in conduct that places, or causes to be placed, at a place any poison capable of causing injury to a person; and
 - (b) intends, or is reckless about, causing injury to a person with the poison.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) A person commits the offence of allowing a poison to be laid if—
 - (a) the person occupies or possesses a place; and
 - (b) the person knows that any poison capable of causing injury to a person has been laid at the place; and
 - (c) the person allows the poison to remain at the place; and
 - (d) in the circumstances, allowing the poison to be laid at the place represents a serious risk to the health or safety of another person.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (5) In this section, **poison** includes any intoxicating substance, or other destructive or noxious thing.

94 Impeding rescue attempt

- (1) A person commits the offence of impeding a rescue attempt if the person—

- (a) engages in an act; and
- (b) is reckless about impeding another person's attempt to save—
 - (i) the other person's own life; or
 - (ii) the life of a third person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) It is a defence to a prosecution for an offence of impeding a rescue attempt if the accused proves that his or her conduct was reasonably necessary to save his or her own life or the life of another person.

95 Contaminating water or food

- (1) A person commits an offence of contaminating water, food or a source of food if—
 - (a) the person engages in conduct; and
 - (b) the conduct causes contamination of water, food or a source of food; and
 - (c) the person is reckless as to whether the contamination—
 - (i) affects water, food or a source of food; or
 - (ii) harms the health of a person; or
 - (iii) causes an economic loss for a person; or
 - (iv) causes substantial economic loss to the national economy of the Cook Islands.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) In this section,—

contaminant includes—

 - (a) any gas, liquid, or solid; and
 - (b) any odour; and
 - (c) any organism, whether alive or dead, including a virus; and
 - (d) energy, including heat, radioactivity and electromagnetic radiation; and
 - (e) a combination of anything mentioned in paragraphs (a) to (d)

contamination, of a thing, means the release of a contaminant that adversely affects the economic value of the thing or any quality or physical characteristic of the thing that is conducive to ecological health, public amenity or safety of the thing

food includes—

 - (a) any substance or thing for human consumption; and
 - (b) any ingredient or additive used in a substance or thing mentioned in paragraph (a); and
 - (c) a live animal or plant intended for human consumption

water includes all or part of a body of water, or a source of water, used to supply—

 - (a) drinking water for humans; or
 - (b) water for irrigation; or

- (c) water for livestock.

96 Infecting others

- (1) A person commits the offence of intentionally infecting another person if—
 - (a) the person engages in conduct; and
 - (b) the person intends causing a condition or disease in another person; and
 - (c) the other person contracts the condition or disease as a result of the conduct.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) A person commits the offence of recklessly infecting another person if—
 - (a) the person engages in conduct; and
 - (b) the person is reckless about causing a condition or disease in another person; and
 - (c) the other person contracts the condition or disease as a result of the conduct.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (5) A person commits the offence of recklessly placing the public at risk of infection if—
 - (a) the person engages in conduct; and
 - (b) the person is reckless about causing a condition or disease in any member of the public; and
 - (c) the conduct results in a likely risk of a member of the public contracting the condition or disease.
- (6) A person who commits an offence against subsection (5) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (7) It is a defence to a prosecution for an offence against subsection (1) or (3) if the accused proves that the person who contracted the condition or disease—
 - (a) knew that the accused had the condition or disease; and
 - (b) accepted the risk of contracting the condition or disease from the accused.
- (8) In this section, **causing** includes transmitting.

97 Cruelty to animal

- (1) A person commits the offence of intentional cruelty to an animal if—
 - (a) the person engages in conduct that amounts to cruelty toward an animal; and
 - (b) the person intends that the conduct directly or indirectly cause—
 - (i) death or injury to the animal; or
 - (ii) sickness or disease in the animal.

- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine of \$10,000 or imprisonment for a term not exceeding 5 years, or both.
- (3) A person commits the offence of reckless cruelty to an animal if—
 - (a) the person engages in conduct that amounts to cruelty toward an animal; and
 - (b) the person is reckless about whether the conduct directly or indirectly causes—
 - (i) death or injury to the animal; or
 - (ii) sickness or disease in the animal.
- (4) A person who commits an offence against subsection (3) is liable on conviction to a fine of \$4,000 or imprisonment for a term not exceeding 2 years, or both.
- (5) In this section, **cruelty**, in relation to an animal, includes any of the following—
 - (a) Overdriving:
 - (b) Overloading:
 - (c) abusing or ill-treating:
 - (d) failure to provide suitable or sufficient food or water:
 - (e) failure to provide suitable shelter.

Subpart 7—Public safety offences

98 Unlawful conduct causing risk to health or safety

- (1) A person commits the offence of engaging in unlawful conduct causing risk to public safety if—
 - (a) the conduct is—
 - (i) grossly negligent; or
 - (ii) a failure to perform a statutory duty; and
 - (b) the conduct results in a real risk to the health or safety of any person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months.

99 Unlawful conduct causing injury

- (1) A person commits the offence of engaging in unlawful conduct causing injury if—
 - (a) the conduct is—
 - (i) grossly negligent; or
 - (ii) a failure to perform a statutory duty; and
 - (b) the conduct—
 - (i) directly injures another person; or
 - (ii) involves dishonest, threatening, or menacing behaviour which results in another person engaging in conduct that results in an injury to that person.

- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.

Subpart 8—Stalking

100 Stalking

- (1) A person commits the offence of stalking if the person—
- (a) engages in stalking behaviour in relation to another person; and
 - (b) knows, or ought reasonably to have known, that the stalking behaviour would be likely to cause the other person harm.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) For this section, a person engages in **stalking behaviour** if the person does 1 or more of the following in relation to another person on at least 2 occasions in a 12-month period—
- (a) follows, approaches, accosts, or stops the other person:
 - (b) watches, loiters near, enters, or hinders or prevents entry to—
 - (i) the home, business, or place of employment of the other person; or
 - (ii) any property owned by the other person; or
 - (iii) any other place regularly used by the person:
 - (c) keeps the other person under surveillance:
 - (d) interferes with property in the possession of the other person:
 - (e) contacts the other person by telephone, correspondence, electronically, or in any other way:
 - (f) gives or sends offensive material to the other person, or leaves offensive material where it is likely to be found by, given to or brought to the attention of the other person:
 - (g) publishing a statement or any other material that—
 - (i) relates to the other person; or
 - (ii) purports to relate to, or originate from, the other person:
 - (h) monitors or traces the other person's use of the internet, email, or any other electronic communication:
 - (i) causes unauthorised—
 - (i) access to data held in a computer used by the other person; or
 - (ii) alteration or removal of, or addition to, data held in the computer; or
 - (iii) impairment of electronic communication to or from the computer:
 - (j) acts secretly or openly in a way that could reasonably be expected to arouse apprehension or fear in the other person:
 - (k) engages in conduct amounting to intimidation, harassment or molestation of the other person.
- (4) In a prosecution for an offence against this section, it is not necessary to prove that a person apprehended or feared harm, or was harassed.

(5) In this section,—

access, in relation to data held in a computer, means—

- (a) display or output of the data by the computer; or
- (b) copying or moving of the data to another place in the computer or a data storage device; or
- (c) for a program—executing of the program

data includes—

- (a) information in any form; and
- (b) any program or part of a program

data storage device means anything that contains, or is designed to contain, data for use by a computer

electronic communication means a communication of information in any form by means of guided or unguided electromagnetic energy

harm means—

- (a) physical harm, including unconsciousness, pain, disfigurement or physical contact that might reasonably be objected to in the circumstances whether or not there was awareness of the contact at the time; or
- (b) harm to mental health, including psychological harm; or
- (c) disease of a permanent or temporary kind

impairment, of electronic communication to or from a computer—

- (a) includes—
 - (i) prevention of the communication; or
 - (ii) disruption, damage, or interference with the communication on any electronic link or network used by the computer; but
- (b) does not include the mere interception of the communication.

Subpart 9—Abduction and kidnapping

101 Meaning of young person in subpart 9

In this subpart, unless the context otherwise requires, **young person** means a person who is under 16 years old.

102 Abduction for marriage or sexual connection

(1) A person commits the offence of abduction for marriage or sexual connection if the person takes or detains another person—

- (a) without the other person's consent, or in circumstances in which the other person consents as a result of fraud or duress; and
- (b) with the intention of compelling the other person to—
 - (i) enter into marriage with the person, or someone else; or
 - (ii) engage in sexual connection with the person, or someone else.

(2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

103 Abduction of young person

- (1) A person commits the offence of abduction of a young person if—
 - (a) the person—
 - (i) entices, takes, or detains a young person; and
 - (ii) either—
 - (A) intends unlawfully removing the young person from the lawful control of the young person’s carer; or
 - (B) where the young person has no apparent carer, entices, takes, or detains the young person for purposes other than providing assistance, care, and protection; or
 - (b) the person—
 - (i) receives a young person; and
 - (ii) knows that the young person has been unlawfully removed from the lawful control of the young person’s carer.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section, **carer**, of a young person, means a parent, guardian, or any other person with lawful responsibility for the young person.

104 Kidnapping

- (1) A person commits the offence of kidnapping if the person takes or detains another person—
 - (a) without the other person’s consent, or in circumstances in which the other person consents as a result of fraud or duress; and
 - (b) with the intention of—
 - (i) obtaining a ransom for the person; or
 - (ii) unlawfully keeping the person confined or imprisoned; or
 - (iii) unlawfully moving the person into, or within, or from, the Cook Islands.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

105 Consent of young person not a defence

It is not a defence to a prosecution for an offence against section 102, 103, or 104 that a young person taken or detained consented to being taken or detained.

106 Honest belief in lawful right to care a defence

It is a defence to a prosecution for an offence against section 103 or 104 if the accused proves that he or she held an honest and reasonable belief about a lawful right to having care and responsibility for an abducted or kidnapped person.

Subpart 10—Female genital mutilation

107 Interpretation

In this subpart, unless the context otherwise requires,—

female genital mutilation means the excision, infibulation, or mutilation of all or part of the labia majora, labia minora, or clitoris of a person

sexual reassignment procedure means a surgical procedure to give a female person, or a person whose sex is ambivalent, the genital appearance of a person of the opposite sex or of a particular sex (whether male or female).

108 Female genital mutilation

- (1) A person commits an offence of female genital mutilation if the person intentionally—
 - (a) performs female genital mutilation on another person; or
 - (b) takes any step to arrange for female genital mutilation to be performed on another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) It is not a defence to a prosecution for an offence against this section that—
 - (a) the person on whom the female genital mutilation was performed, or a parent or guardian of that person, consented to the mutilation; or
 - (b) the person who performed the female genital mutilation believed that consent to the mutilation had been given.
- (4) However, subsection (1) does not apply to a person who—
 - (a) performs a medical procedure that has a genuine therapeutic purpose (including a sexual reassignment procedure) when performed on the other person; or
 - (b) takes any step to arrange for another person to undergo female genital mutilation, with the intention of having a medical procedure that has a genuine therapeutic purpose (including a sexual reassignment procedure) performed on the other person.
- (5) For subsection (3), the belief of any person (including the person on whom the procedure is performed) that a medical procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice must not be taken into account to determine whether the procedure has a genuine therapeutic purpose.
- (6) Subsection (3) does not affect a requirement of a law dealing with consent needed for a medical procedure.
- (7) A person on whom female genital mutilation is, or is to be, carried out is not criminally responsible for an offence against this section for that mutilation.

109 Conveying person for female genital mutilation outside Cook Islands

- (1) A person commits the offence of conveying another person for female genital mutilation outside the Cook Islands if—
 - (a) the person engages in conduct that results in—
 - (i) an arrangement for the other person to be sent, or taken, to a place outside the Cook Islands; or
 - (ii) the other person being sent, or taken, to a place outside the Cook Islands; and
 - (b) the person intends the other person undergo female genital mutilation at the place; and

- (c) the other person is either a citizen of, or ordinarily resident in, the Cook Islands.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) In proceedings for an offence against subsection (1), it will be presumed, in the absence of proof to the contrary, that the accused intended having another person subjected to female genital mutilation if the prosecution proves—
 - (a) the accused sent, took, or arranged to send or take the other person outside the Cook Islands; and
 - (b) the other person was subjected to female genital mutilation while outside the Cook Islands.
- (4) It is not a defence to a prosecution for an offence against this section that—
 - (a) the other person to be sent, or taken, to a place outside the Cook Islands, or a parent or guardian of that person, consented to being sent or taken; or
 - (b) the accused believed that consent to send or take the other person had been given.
- (5) However, subsection (1) does not apply to a person who sends, takes, or arranges to send or take, the other person to a place outside the Cook Islands to undergo female genital mutilation, with the intention of having a medical procedure that has a genuine therapeutic purpose (including a sexual reassignment procedure) performed on the other person.
- (6) For subsection (4), the belief of any person (including the person on whom the procedure is performed) that a medical procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice must not be taken into account to determine whether the procedure has a genuine therapeutic purpose.

Subpart 11—Sexual offences

110 Interpretation

In this subpart, unless the context otherwise requires,—

indecent conduct means an indecent act that happens without the consent, or an honest and reasonable belief in the consent, of a person on whom or in whose presence the act happens

procure, for a purpose, means entice or recruit for the purpose.

rape means sexual connection limited to inserting a person's penis to any extent into the genitalia of a person who is female without the consent, or an honest and reasonable belief in the consent, of the female person involved in the sexual connection

sexual violation means an act of—

- (a) rape; or
- (b) unlawful sexual connection

unlawful sexual activity means—

- (a) sexual violation; or

(b) indecent conduct

unlawful sexual connection means sexual connection, other than rape, without the consent, or an honest and reasonable belief in the consent, of a person involved in the sexual connection.

111 No presumption against sexual connection based on age

A person must not be presumed to be incapable of sexual connection only because of the person's age.

112 Nature of consent in offences against this subpart

- (1) This section applies to offences under this subpart.
- (2) A person consents to sexual connection or an indecent act only if the person freely and voluntarily agrees to the connection or act.
- (3) There is no honest and reasonable belief in the consent of a person—
 - (a) merely because the person does not protest by words or action to the connection or act; or
 - (b) if the person—
 - (i) is subjected to force or the threat of force or an act of terror, whether the force is applied or the threat is made or the terrorisation is carried out toward that person or someone else; or
 - (ii) is fearful of any force that may be applied to the person or someone else; or
 - (iii) is subjected to a non-violent threat; or
 - (iv) is unlawfully detained; or
 - (v) is substantially affected by alcohol or any other drug; or
 - (vi) is under a mistaken belief about the identity of the person with whom the connection or act happens; or
 - (vii) is under a mistaken belief about the nature or quality of the connection or act; or
 - (c) if the person—
 - (i) is under 16 years old; or
 - (ii) has a cognitive incapacity to consent (including any mental or physical impairment that affects the person's ability to consent, or refuse to consent, to the connection or act).
- (4) Subsection (3) does not limit the circumstances in which a person may be taken not to consent to sexual connection or an indecent act.
- (5) In this section, **non-violent threat** includes an express or implied representation by a person that he or she, or someone else, may do any of the following—
 - (a) commit an offence that—
 - (i) is punishable by imprisonment; but
 - (ii) does not involve the application of force;
 - (b) make an accusation or disclosure that may or may not be true about any living or dead person which could seriously damage the reputation of that person;
 - (c) make improper use of a power or authority arising from—

- (i) an occupation or vocation held by the person; or
- (ii) a commercial relationship involving the person.

113 Circumstances of aggravation for subpart 11

- (1) This section applies to an offence against the following provisions—
 - (a) section 114 (Sexual violation):
 - (b) section 115 (Indecent assault):
 - (c) section 116 (Indecency):
 - (d) section 117 (Sexual connection or indecent conduct with person under 16 years old):
 - (e) section 118 (Sexual connection or indecent conduct with person under 12 years old).
- (2) An offence to which this section applies is committed in **circumstances of aggravation** if any of the following circumstances apply—
 - (a) at the time of, or immediately before or after, the offence is committed the alleged offender intentionally or recklessly inflicts injury on the alleged victim or any other person who is present or nearby:
 - (b) at the time of, or immediately before or after, the offence is committed, the alleged offender threatens to inflict injury on the alleged victim or any other person who is present or nearby using an offensive item:
 - (c) the offence is committed by 1 or more other people acting in company with the alleged offender:
 - (d) if the offence does not specifically include the age of the complainant as an element of the offence, the complainant is under 16 years old:
 - (e) the alleged victim, at the time of the offending, has been under authority of the alleged offender:
 - (f) the alleged victim has a serious physical disability:
 - (g) the alleged victim has a cognitive impairment:
 - (h) the alleged offender breaks and enters into any premises with the intention of committing the offence or any other serious offence:
 - (i) the alleged offender deprives the alleged victim of his or her liberty for a period before or after the offence is carried out.
- (3) In deciding how an offender should be sentenced (if at all) for an offence to which this section applies, a court must—
 - (a) determine whether conduct for the offence was committed in circumstances of aggravation; and
 - (b) increase the severity of the sentence that would have been imposed if the offence had not been committed in circumstances of aggravation.
- (4) A person who commits an offence to which this section applies in circumstances of aggravation is liable on conviction to imprisonment for a term not exceeding 20 years.

114 Sexual violation

- (1) A person commits the offence of sexual violation if—
 - (a) the person intentionally or recklessly—

- (i) engages in conduct with an alleged victim; or
 - (ii) substantially contributes to another person's engaging in conduct with an alleged victim; and
- (b) the conduct amounts to sexual violation.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) A person commits the offence of assault with intent to commit sexual violation if the person—
 - (a) assaults another person; and
 - (b) intends to commit sexual violation in relation to that person.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 10 years.

115 Indecent assault

- (1) A person commits the offence of indecent assault if the person—
 - (a) assaults another person; and
 - (b) immediately before or at the time of the assault—
 - (i) the person intends engaging in indecent conduct in relation to, or in the presence of, the other person without that person's consent; or
 - (ii) the person substantially contributes to the other person engaging in indecent conduct, with or without someone else, without the other person's consent.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

116 Indecency

- (1) A person commits the offence of indecency if—
 - (a) the person engages in an indecent act; and
 - (b) the act happens either—
 - (i) at a place accessible to the public, whether on payment of a charge or otherwise; or
 - (ii) at a place other than a place accessible to the public where the person intends to insult or offend another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.

117 Sexual connection or indecent conduct with person under 16 years old

- (1) A person commits the offence of sexual connection with a person under 16 years old if—
 - (a) the person intentionally engages in conduct that amounts to sexual connection with another person; and
 - (b) the other person is under 16 years old.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 15 years.

- (3) A person commits the offence of indecent conduct with a person under 16 years old if the person intentionally engages in conduct that—
 - (i) is an indecent act; and
 - (ii) is carried out on, or in the presence of, a person under 16 years old.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (5) Despite section 112(3)(c)(i), subsections (1) and (3) do not apply to a person if the person is married to the other person and the other person consented to the conduct.
- (6) It is not a defence to a prosecution for an offence against this section that—
 - (a) subject to subsection (8), the other person consented; or
 - (b) the accused believed that the other person was 16 years old or older.
- (7) It is a defence to a prosecution against subsection (1) or (3) if the accused proves that—
 - (a) the accused—
 - (i) took reasonable steps to determine the age of the other person; and
 - (ii) honestly believed on reasonable grounds that the other person was 16 years old or older; and
 - (b) the other person consented to the accused's engaging in conduct that amounted to,—
 - (i) for a prosecution under subsection (1), sexual connection; or
 - (ii) for a prosecution under subsection (3), an indecent act.
- (8) It is also a defence to a prosecution against subsection (1) or (3) if the accused proves that at the time of the alleged offence—
 - (a) the accused was not more than 2 years older than the other person; and
 - (b) the other person, despite section 112(3)(c)(i), consented to the sexual connection or indecent act.
- (9) In subsection (3) an **indecent act** includes conduct that amounts to an indecent assault.

118 Sexual connection or indecent conduct with person under 12 years old

- (1) A person commits the offence of sexual connection with a person under 12 years old if—
 - (a) the person intentionally engages in conduct; and
 - (b) the conduct amounts to sexual connection with another person; and
 - (c) the other person is under 12 years old.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 16 years.
- (3) A person commits the offence of indecent conduct with a person under 12 years old if—
 - (a) the person intentionally engages in conduct; and
 - (b) the conduct—
 - (i) is an indecent act; and

- (ii) is carried out on, or in the presence of, a person under 12 years old.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 12 years.
- (5) It is not a defence to a prosecution for an offence against this section that—
 - (a) the other person consented; or
 - (b) the accused believed that the other person was 12 years old or older.
- (6) In subsection (3) an **indecent act** includes conduct that amounts to an indecent assault.

119 Sexual connection or indecent conduct with dependent family member under 18 years old

- (1) A person commits the offence of sexual connection with a dependent family member under 18 years old if—
 - (a) the person intentionally engages in sexual violation of another person; and
 - (b) the other person is—
 - (i) a dependent family member; and
 - (ii) under 18 years old.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) A person commits the offence of indecent conduct with a dependent family member under 18 years old if the person intentionally engages in conduct that—
 - (a) is an indecent act; and
 - (b) is carried out on, or in the presence of, a dependent family member who is under 18 years old.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (5) It is not a defence to a prosecution for an offence against this section that the other person consented.
- (6) A person (the **dependent person**) is a **dependent family member** of another person if—
 - (a) the other person has care, custody or control of the dependent person, and, is—
 - (i) the dependent person's parent, step-parent, foster parent, guardian, uncle, or aunt; or
 - (ii) a parent, step-parent, or foster parent of a person mentioned in subparagraph (i); or
 - (iii) a child of the parent or step-parent of the dependent person; or
 - (iv) a spouse or de-facto partner of a person mentioned in subparagraph (i), (ii) or (iii); or
 - (b) the other person is not a person mentioned in paragraph (a), but—
 - (i) has responsibility for, or a significant role in, the dependent person's upbringing; and

- (ii) is part of the extended family of the dependent person; or
 - (c) the other person is not a person mentioned in paragraph (a), but—
 - (i) has care, custody or control of the dependent person; and
 - (ii) allows the dependent person to live with the other person's family as a member of the family.
- (7) In subsection (3) an **indecent act** includes conduct that amounts to an indecent assault.
- (8) In subsection (6),—
 - aunt**, of a person, includes a half-sister or step-sister of one of the person's parents, step-parents, foster parents or guardians
 - foster parent** includes a former foster parent
 - guardian** includes a former guardian
 - step-parent** includes a former step-parent
 - uncle**, of a person, includes a half-brother or step-brother of one of the person's parents, step-parents, foster parents or guardians.

120 Incest

- (1) A person commits the offence of incest if—
 - (a) the person is 18 years old or older; and
 - (b) the person intentionally engages in conduct; and
 - (c) the conduct amounts to sexual connection with another person; and
 - (d) the person knows that the other person is a family member of the person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) In subsection (1), **family member**, of a person, means any of the following people—
 - (a) a sister or half-sister:
 - (b) a brother or half-brother:
 - (c) a parent:
 - (d) a grandparent:
 - (e) a child:
 - (f) a grandchild.

121 Maintaining unlawful sexual activity with person under 16 years old

- (1) A person commits the offence of maintaining unlawful sexual activity with a person who is under 16 years old if—
 - (a) the person engages in conduct that is unlawful sexual activity; and
 - (b) the conduct is carried out on, or in the presence of, a person who is under 16 years old; and
 - (c) the conduct happens with the same person on more than 1 occasion over a period of more than 1 day.

- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 20 years.
- (3) However, in a prosecution for an offence against this section, it is not necessary—
 - (a) for the prosecution to prove particulars of unlawful sexual activity that would otherwise be required for the prosecution for an offence of unlawful sexual activity that occurred on a single occasion; or
 - (b) for the trier of fact to be—
 - (i) satisfied of the particulars of unlawful sexual activity in the way required for an offence made up of unlawful sexual activity that occurred only once; or
 - (ii) if the trier of fact is a jury, unanimously satisfied about the existence of the same instances of unlawful sexual activity.
- (4) It is a defence to a prosecution for an offence against this section if the accused proves that he or she—
 - (a) took reasonable steps to determine the age of the other person; and
 - (b) honestly believed on reasonable grounds that the other person was 16 years old or older.
- (5) It is also a defence to a prosecution against subsection (1) if the accused proves that at the time of the alleged offence—
 - (a) the accused was not more than 2 years older than the other person; and
 - (b) the other person, despite section 112(3)(c)(i), consented to the conduct making up the unlawful sexual activity.
- (6) In a proceeding for an offence against this section, the accused may also be prosecuted for 1 or more other offences against this subpart alleged to have been committed at the same time as the period in which the offence against this section is alleged to have occurred.
- (7) If an accused is convicted of an offence against this section, as well as other offences against this subpart committed over the same period as the offence against this section, any sentence of imprisonment imposed for the offence against this section must be ordered to be served concurrently with any sentence imposed for the other offences.
- (8) A prosecution for an offence against this section must not proceed without the consent of the Attorney-General in writing.
- (9) However, subsection (8) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence:
 - (b) the arrest of the accused:
 - (c) remanding the accused in custody:
 - (d) granting bail to the accused.
- (10) The Attorney-General may inform himself or herself of a matter in any way that he or she considers appropriate before, and for the purposes of, deciding whether to consent to a prosecution for the offence.

122 Grooming person under 16 years old for sexual connection or indecent act

- (1) A person commits the offence of grooming another person for sexual connection or an indecent act if—
 - (a) the person is 16 years old or older; and
 - (b) the person engages in conduct—
 - (i) that exposes another person to communication or contact with the person; and
 - (ii) with the intent of procuring the other person for the purposes of sexual connection or an indecent act with the person or someone else; and
 - (c) the other person is, or the person believes the other person to be, under 16 years old.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) for an offence in which the other person is, or is believed by the accused to be, under 16 years old but not under 12 years old, to imprisonment for a term not exceeding 7 years; or
 - (b) for an offence in which the other person is, or is believed by the accused to be, under 12 years old, to imprisonment for a term not exceeding 10 years.
- (3) In any proceedings for an offence against this section—
 - (a) it is necessary to prove that the other person was, or was to be, procured for the purposes of sexual connection or an indecent act; but
 - (b) it is not necessary to specify or to prove any particular sexual connection or indecent act.
- (4) It is a defence to a prosecution for an offence against this section if—
 - (a) the accused proves that he or she—
 - (i) took reasonable steps to determine the age of the other person; and
 - (ii) honestly believed on reasonable grounds that the other person was 16 years old or older; or
 - (b) where the offence does not involve an intention to procure the other person for someone else, the accused is not more than 2 years older than the other person.
- (5) In this section, a reference to an **indecent act** includes conduct that amounts to an indecent assault.

123 Associating with groomed person under 16 years old for sexual connection or indecent act

- (1) A person commits the offence of associating with a person groomed for sexual connection or an indecent act if the person—
 - (a) is 16 years old or older; and
 - (b) has previously communicated or had contact with another person (the **groomed person**) under 16 years old with the intent of procuring the groomed person for sexual connection or an indecent act; and

- (c) after communicating with the groomed person, engages in any of the following conduct—
 - (i) meeting the groomed person:
 - (ii) travelling to meet the groomed person:
 - (iii) arranging for, or persuading, the groomed person to travel to meet the person; and
 - (d) at the time of the conduct mentioned in paragraph (c), intends procuring the groomed person for sexual connection or an indecent act with the person or someone else.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
- (a) for an offence in which the groomed person is under 16 years old but not under 12 years old, to imprisonment for a term not exceeding 7 years; or
 - (b) for an offence in which the groomed person is under 12 years old, to imprisonment for a term not exceeding 10 years.
- (3) It is a defence to a prosecution for an offence against this section if—
- (a) the accused proves that he or she—
 - (i) took reasonable steps to determine the age of the other person; and
 - (ii) honestly believed on reasonable grounds that the other person was 16 years old or older; or
 - (b) where the offence does not involve associating with intent to procure the other person for someone else, the accused is not more than 2 years older than the other person.
- (4) In this section, a reference to an **indecent act** includes conduct that amounts to an indecent assault.

124 Procuring person under 16 years old for sexual connection or indecent act in presence of the person

- (1) A person commits the offence of presently procuring another person for sexual connection or an indecent act if the person—
- (a) is 16 years old or older; and
 - (b) engages in conduct in the presence of another person who is, or the person believes to be, under 16 years old with the intention of procuring the other person to engage in sexual connection or an indecent act with the person, or someone else.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
- (a) for an offence in which the other person is under 16 years old but not under 12 years old, to imprisonment for a term not exceeding 10 years; or
 - (b) for an offence in which the other person is under 12 years old, to imprisonment for a term not exceeding 14 years.
- (3) It is a defence to a prosecution for an offence against this section if—
- (a) the accused proves that he or she—

- (i) took reasonable steps to determine the age of the other person; and
 - (ii) honestly believed on reasonable grounds that the other person was 16 years old or older; or
 - (b) where the offence does not involve the intent to procure the other person for someone else, the accused is not more than 2 years older than the other person.
- (4) In this section, a reference to an **indecent act** includes conduct that amounts to an indecent assault.

125 Unlawful sexual activity outside Cook Islands with person under 16 years old

- (1) A person commits the offence of unlawful sexual activity outside the Cook Islands with a person under 16 years old if—
- (a) the person is—
 - (i) 16 years old or older; and
 - (ii) a citizen or resident of, or ordinarily resident in, the Cook Islands; and
 - (b) engages in conduct outside the Cook Islands; and
 - (c) the conduct—
 - (i) if done in the Cook Islands, would be unlawful sexual activity; and
 - (ii) is carried out on, or in the presence of, a person who is under 16 years old.
- (2) A person who commits an offence against subsection (1) is liable on conviction to the penalty for an offence against this Act that would apply if the conduct was engaged in within the Cook Islands.
- (3) It is a defence to a prosecution for an offence against this section if the accused—
- (a) proves that he or she—
 - (i) took reasonable steps to determine the age of the other person; and
 - (ii) honestly believed on reasonable grounds that the other person was 16 years old or older; or
 - (b) is not more than 2 years older than the other person.
- (4) A prosecution for an offence against this section must not proceed without the consent of the Attorney-General in writing.
- (5) However, subsection (4) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
- (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence;
 - (b) the arrest of the accused;
 - (c) remanding the accused in custody;
 - (d) granting bail to the accused.

- (6) The Attorney-General may inform himself or herself of a matter in any way that he or she considers appropriate before, and for the purposes of, deciding whether to consent to a prosecution for the offence.

126 Promoting or organising travel for unlawful sexual activity with person under 16 years old

- (1) A person commits the offence of organising or promoting travel for unlawful sexual activity with a person who is under 16 years old if the person—
- (a) is aged 16 years old or older; and
 - (b) does any of the following—
 - (i) organises or makes travel arrangements, or assists another person to organise or make travel arrangements, for the other person with the intention of assisting the other person to engage in unlawful sexual activity outside the Cook Islands with a person under 16 years old;
 - (ii) transports, or assists someone else to transport, another person outside the Cook Islands with the intention of assisting the other person to engage in unlawful sexual activity outside the Cook Islands with a person under 16 years old;
 - (iii) prints or publishes, or assists someone else to print or publish, information with the intention to promote or assist another person to engage in unlawful sexual activity outside the Cook Islands with a person under 16 years old.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
- (a) for an offence involving a person who is under 16 years old but not under 12 years old, to imprisonment for a term not exceeding 7 years; or
 - (b) for an offence involving a person who is under 12 years old, to imprisonment for a term not exceeding 10 years.
- (3) In this section, **travel arrangements** includes purchases or reservations of—
- (a) tickets for travel outside the Cook Islands; or
 - (b) accommodation outside the Cook Islands.

127 Bestiality

- (1) A person commits the offence of bestiality if the person knowingly—
- (a) inserts the person's penis to any extent into the genital or anal passage of an animal; or
 - (b) allows the penis of an animal to be inserted to any extent into the person's vagina or anus.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) A person commits the offence of compelling bestiality if—
- (a) the person engages in conduct; and
 - (b) the conduct includes the use of force, or making a threat, against another person (the **compelled person**); and

- (c) as a result of the conduct the compelled person engages in conduct mentioned in subsection (1).
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (5) The compelled person is not criminally responsible for an offence against subsection (1).

128 Indecency with animal

- (1) A person commits the offence of indecency with an animal if—
 - (a) the person engages in conduct with an animal; and
 - (b) the conduct is indecent.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (3) A person commits the offence of compelling indecency with an animal if—
 - (a) the person engages in conduct; and
 - (b) the conduct includes the use of force, or making a threat, against another person (the **compelled person**); and
 - (c) as a result of the conduct the compelled person engages in conduct mentioned in subsection (1).
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (5) The compelled person is not criminally responsible for an offence against subsection (1).

Subpart 12—Voyeurism

129 Interpretation

In this subpart, unless the context otherwise requires,—

building includes a tent or temporary structure

engaged in a private act means that a person—

- (a) is in a state of undress, using the toilet, showering, bathing, engaged in a sexual act of a kind not ordinarily done in a public place, or engaged in any other like activity; and
- (b) the circumstances are such that a reasonable person would expect to be afforded privacy

filming, when used in the context of one person filming another person, means that the person causes 1 or more images (whether still or moving) of the other person to be recorded or transmitted for the purpose of enabling the person or someone else to observe the images (whether during the filming or later).

130 Voyeurism

- (1) A person commits the offence of voyeurism if the person engages in conduct that results in knowingly observing another person engaged in a private act without the other person's consent to the conduct.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.

131 Filming person engaged in private act

- (1) A person commits the offence of filming a person engaged in a private act if the person engages in conduct that results in knowingly filming another person engaged in a private act without the other person's consent to the conduct.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.

132 Filming genitalia, anal area, or breasts of another person

- (1) A person commits the offence of filming the genitalia, anal area, or breasts of another person if the person knowingly films another person's genitalia or anal area or, if the other person is female, breasts whether clothed or not—
 - (a) without the other person's consent to the conduct; and
 - (b) in circumstances in which a reasonable person would expect the person's genitalia, anal area, or breasts would not be filmed.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.

133 Installing device to allow voyeurism

- (1) A person commits the offence of installing a device to allow voyeurism if the person engages in conduct—
 - (a) that results in the installation or continued operation of a device, or the construction or adaptation of the fabric of a building, vehicle, or vessel for the purpose of assisting the observation or filming of another person; and
 - (b) with intent to engage in, or allow another person to engage in, conduct that would make the person criminally responsible for an offence against this subpart.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.

Subpart 13—Child abuse and other indecent material

134 Interpretation

In this subpart, unless the context otherwise requires,—

child means a person who is under 16 years old

consideration means money or other valuable consideration for goods or services (regardless of whether the money or other valuable consideration is, or is to be, given to the person who provides goods or services or to another person)

data includes the following—

- (a) information in any form;
- (b) any program or part of a program

public benefit means necessary for, or of assistance in, any of the following—

- (a) enforcing a law of the Cook Islands, or a foreign country;

- (b) monitoring compliance with, or investigating a contravention of, a law of the Cook Islands or a foreign country:
- (c) the administration of justice (whether within or outside the Cook Islands):
- (d) conducting scientific, medical or educational research approved in writing by the Attorney-General, or a Minister with portfolio responsibility for the research.

135 Meaning of child abuse material for subpart 13

- (1) For this subpart, **child abuse material** is a document, or any other matter, that shows or describes any of the following in a way that a reasonable person would consider offensive under the circumstances—
 - (a) a person who is, appears to be or is implied to be, a child as a victim of torture, cruelty, or physical abuse:
 - (b) a person who is, appears to be or is implied to be, a child engaged in or apparently engaged in a sexual pose or sexual activity (whether or not in the presence of another person):
 - (c) the genitalia or anal area or, if the other person is female, the breasts of a person who is, appears to be or is implied to be, a child.
- (2) The following matters must be taken into account in deciding whether a reasonable person would consider material offensive under the circumstances—
 - (a) the standards of morality, decency and propriety generally accepted by reasonable adults:
 - (b) the literary, artistic or educational merit, if any, of the material:
 - (c) the journalistic merit, if any, of the material, being the merit of the material as a record or report of a matter of public interest:
 - (d) the general character of the material, including whether it is of a medical, legal or scientific character.
- (3) For this section,—
 - (a) the reference in subsection (1) to material that shows or describes a person or the genitalia or anal area or, if the other person is female, the breasts of a person must be treated as including material that depicts a representation of a person or the genitalia, anal area, or breasts of a person; and
 - (b) any material that has been altered or manipulated to make a person appear to be a child or to otherwise create a depiction referred to in subsection (1) must be treated as if the material were depicting a child or were a depiction referred to in subsection (1).

136 Using child for production of child abuse material

- (1) A person commits the offence of using a child for the production of child abuse material if the person engages in conduct that amounts to—
 - (a) using a child for the production of child abuse material; or
 - (b) procuring, or substantially contributing to the procurement of, a child for use in the production of child abuse material; or

- (c) consenting to, or allowing, a child in the person's care to be used in the production of child abuse material.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) For subsection (1)(c), a child may be in a person's care even if the person does not have legal care of the child.

137 Producing, disseminating, or possessing child abuse material

- (1) A person commits the offence of producing, disseminating or possessing child abuse material if—
 - (a) the person produces, disseminates, or possesses material; and
 - (b) the material is child abuse material.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) In this section,—
 - disseminates**, in relation to material, includes the following—
 - (a) sending, supplying, exhibiting, transmitting or communicating the material to another person;
 - (b) making the material available for access by another person, or entering into any agreement or arrangement to do so
 - possesses**, in relation to material in the form of data, includes having control of—
 - (a) a computer or data storage device holding or containing the data; or
 - (b) a document in which the data is recorded
 - produces**, in relation to material, includes—
 - (a) filming, photographing, printing or otherwise making the material; or
 - (b) altering or manipulating any image for the purpose of making the material; or
 - (c) entering into any agreement or arrangement to do an act mentioned in paragraph (a) or (b).

138 Defences to prosecution for offence against section 137

- (1) It is a defence to a prosecution for an offence against section 137 if the accused proves that he or she—
 - (a) did not know that he or she produced, disseminated or possessed child abuse material; and
 - (b) in the circumstances it was reasonable for the accused not to know.
- (2) It is a defence to a prosecution for an offence against section 137 if the accused proves that conduct engaged in by the accused involved—
 - (a) receiving unsolicited child abuse material; and
 - (b) taking reasonable steps to dispose of the material as soon as he or she became aware that it was child abuse material.
- (3) It is a defence to a prosecution for an offence against section 137 if the accused proves that conduct engaged in by the accused—
 - (a) was of public benefit; and

- (b) did not extend beyond what was of public benefit.
- (4) For subsection (3)—
 - (a) the question of whether a person's conduct is of public benefit is a question of fact; and
 - (b) the person's motives for engaging in the conduct are irrelevant.
- (5) It is a defence to a prosecution for an offence against section 137 if—
 - (a) the accused was a law enforcement officer acting in the course of his or her duties; and
 - (b) the conduct of the defendant was reasonable in the circumstances for the purpose of performing the duties.

139 Trading in indecent matter

- (1) A person commits the offence of trading in an indecent matter if the person—
 - (a) displays, offers, sells, or distributes to the public any indecent matter; or
 - (b) exhibits any indecent matter—
 - (i) in a public place whether or not for consideration; or
 - (ii) in the presence of a person for consideration.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) It is a defence to a prosecution for an offence against subsection (1) if—
 - (a) the accused proves that the accused's conduct—
 - (i) is of public benefit; and
 - (ii) does not go beyond what is of public benefit; or
 - (b) the accused proves that—
 - (i) the accused did not know the content of the matter was indecent; and
 - (ii) in the circumstances it was reasonable for the accused not to know.
- (4) For subsection (3)—
 - (a) the question of whether a person's conduct is of public benefit is a question of fact; and
 - (b) the person's motives for engaging in the conduct are irrelevant.
- (5) A prosecution for an offence against this section must not proceed without the consent of the Attorney-General in writing.
- (6) However, subsection (5) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence:
 - (b) the arrest of the accused:
 - (c) remanding the accused in custody:

- (d) granting bail to the accused.
- (7) The Attorney-General may inform himself or herself of a matter in any way that he or she considers appropriate before, and for the purposes of, deciding whether to consent to a prosecution for the offence.

140 Trading in indecent documents

- (1) A person commits the offence of trading in indecent documents if the person—
 - (a) produces, publishes, offers, hires, or sells any indecent document; or
 - (b) includes any material in a publication that makes the publication an indecent document; or
 - (c) sends an indecent document (whether by post, electronically or in any other way); or
 - (d) exhibits any indecent document—
 - (i) in a public place whether or not for consideration; or
 - (ii) in the presence of a person for consideration; or
 - (e) delivers, or offers to deliver, an indecent document to another person or a place occupied by another person—
 - (i) in circumstances in which it is reasonable for the person to know the document is indecent; or
 - (ii) intending that the other person deal with the document in a way that constitutes an offence against this section.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the offender is an individual, to a fine not exceeding \$750 or imprisonment for a term not exceeding 3 months, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine of not exceeding \$3,750; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.
- (3) It is a defence to a prosecution for an offence against subsection (1) if—
 - (a) the accused proves that the accused's conduct—
 - (i) is of public benefit; and
 - (ii) does not go beyond what is of public benefit; or
 - (b) the accused proves that—
 - (i) the accused did not know the content of the document or that the content was indecent; and
 - (ii) in the circumstances it was reasonable for the accused not to know.
- (4) For subsection (3),—
 - (a) the question of whether a person's conduct is of public benefit is a question of fact; and
 - (b) the person's motives for engaging in the conduct are irrelevant.

- (5) A prosecution for an offence against this section must not proceed without the consent of the Attorney-General.
- (6) However, subsection (5) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence:
 - (b) the arrest of the accused:
 - (c) remanding the accused in custody:
 - (d) granting bail to the accused.
- (7) The Attorney-General may inform himself or herself of a matter in any way that he or she considers appropriate before, and for the purposes of, deciding whether to consent to a prosecution for the offence.

141 Exposing person under 16 years old to child abuse material, indecent matter or indecent document

- (1) A person commits the offence of exposing a person under 16 years old to child abuse material, indecent matter, or an indecent document if the person engages in conduct that results in exposing another person under 16 years old to child abuse material, indecent matter, or an indecent document.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) for an offence involving a person who is under 16 years old but not under 12 years old, to a term of imprisonment not exceeding 7 years; or
 - (b) for an offence involving a person who is under 12 years old, to a term of imprisonment not exceeding 10 years.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the accused proves that he or she—
 - (a) took reasonable steps to determine the age of the other person; and
 - (b) honestly believed on reasonable grounds that the other person was 16 years old or older.

142 Determining whether document or matter is indecent

For this subpart, the following must be taken into account when determining whether a document or matter is an indecent document or indecent matter—

- (a) the standards of morality, decency, and propriety generally accepted by reasonable adults:
- (b) the literary, artistic, or educational merit, if any, of the document or matter:
- (c) the journalistic merit, if any, of the document or matter, being the merit of the document or matter as a record or report of public interest:
- (d) the medical, legal, or scientific merit of the document or matter:
- (e) the general character of the document or matter:

- (f) the circumstances in which the document or matter is made available, and its likely effect on a person or class of people likely to see the document or matter, including the tendency of the document or matter to deprave or corrupt;
- (g) the general character of the accused's conduct in relation to the document or matter, and in particular whether the accused acted immorally or with intent to create mischief.

143 Consent of Attorney-General required for prosecution of person under 18 years

- (1) A prosecution of a person for an offence against this subpart must not proceed without the consent of the Attorney-General in writing if the person was under 18 years old at the time of the offence.
- (2) However, subsection (1) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
 - (a) the issue or execution of a warrant for the arrest of a person under 16 years old accused (the **accused**) of committing the offence;
 - (b) the arrest of the accused;
 - (c) remanding the accused in custody;
 - (d) granting bail to the accused.
- (3) The Attorney-General may inform himself or herself of a matter in any way that he or she considers appropriate before, and for the purposes of, deciding whether to consent to a prosecution for the offence.

Subpart 14—Prostitution and compelling prostitution

144 Soliciting

- (1) A person commits the offence of soliciting if the person—
 - (a) accosts any person, or solicits or loiters; and
 - (b) is in a public place; and
 - (c) intends offering commercial sexual services.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$250 or imprisonment for a term not exceeding 1 month, or both.
- (3) This section does not apply if the person is under 16 years old at the time of the conduct.

145 Procuring prostitution

- (1) A person commits the offence of procuring prostitution if the person—
 - (a) accosts any person or loiters; and
 - (b) is in a public place; and
 - (c) intends procuring commercial sexual services for the person's own use.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) for commercial sexual services sought from a person who is 16 years old or older, to a term of imprisonment not exceeding 3 years; or

- (b) for commercial sexual services sought from a person who is under 16 years old but not under 12 years old, to a term of imprisonment not exceeding 10 years; or
 - (c) for commercial sexual services sought from a person who is under 12 years old, to a term of imprisonment not exceeding 14 years.
- (3) A person commits the offence of procuring commercial sexual services if the person—
 - (a) procures, or agrees or offers to procure, another person to provide commercial sexual services for someone else; and
 - (b) receives payment or other reward for the procurement of, or agreement or offer to procure, the commercial sexual services.
- (4) A person who commits an offence against subsection (3) is liable on conviction,—
 - (a) for commercial sexual services sought from a person who is 16 years old or older, to a term of imprisonment not exceeding 5 years; or
 - (b) for commercial sexual services sought from a person who is under 16 years old but not under 12 years old, to a term of imprisonment not exceeding 10 years; or
 - (c) for commercial sexual services sought from a person who is under 12 years old, to a term of imprisonment not exceeding 14 years.

146 Maintaining a brothel

- (1) A person commits the offence of maintaining a brothel if—
 - (a) the person owns, operates, or assists the operation of, a brothel; or
 - (b) the person—
 - (i) is a lessor, lessee, or agent, for premises; and
 - (ii) knowingly allows the premises to be leased, sub-leased, or used, as a brothel.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) In this section, **brothel**—
 - (a) means premises used, or to be used, for commercial sexual services; but
 - (b) does not include premises where accommodation is normally provided on a commercial basis if the commercial sexual services happen at the premises as a result of an arrangement made elsewhere.

147 Receiving proceeds of prostitution

- (1) A person commits the offence of receiving proceeds of prostitution if the person engages in conduct that—
 - (a) solicits payment for commercial sexual services provided by another person; or
 - (b) receives payment that the person knows, or could reasonably be expected to know, is derived directly or indirectly from commercial sexual services provided by another person; or

- (c) uses payment that the person knows, or could reasonably be expected to know, is derived directly or indirectly from commercial sexual services provided by another person, for the person's living expenses or other personal use.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) In this section, **payment**—
 - (a) means all or part of a payment; and
 - (b) includes a reward or any valuable consideration.

148 Compelling prostitution and giving of earnings from prostitution

- (1) A person commits the offence of compelling prostitution if—
 - (a) the person (**person A**) engages in conduct that is intimidating; and
 - (b) the conduct substantially contributes to another person (**person B**) entering into, or remaining in, prostitution; and person A intended person B to enter into, or remain in, prostitution.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) for an offence involving a person who is 16 years old or older, to a term of imprisonment not exceeding 14 years; or
 - (b) for an offence involving a person who is under 16 years old but not under 12 years old, to term of imprisonment not exceeding 16 years; or
 - (c) for an offence involving a person who is under 12 years old, to a term of imprisonment not exceeding 20 years.
- (3) A person commits the offence of compelling the giving of earnings from prostitution if—
 - (a) the person (**person A**) engages in conduct that is intimidating; and
 - (b) the conduct substantially contributes to another person (**person B**) giving person A or someone else any payment or reward earned by person B from prostitution; and
 - (c) person A intended person B to give any payment or reward earned by person B from prostitution.
- (4) A person who commits an offence against subsection (3) is liable,—
 - (a) for an offence involving a person who is 16 years old or older, to a term of imprisonment not exceeding 14 years; or
 - (b) for an offence involving a person who is under 16 years old but not under 12 years old, to term of imprisonment not exceeding 16 years; or
 - (c) for an offence involving a person who is under 12 years old, a term of imprisonment not exceeding 20 years.
- (5) Person B is not criminally responsible for an offence against section 144 (Soliciting).
- (6) In this section, **conduct that is intimidating** means an explicit or implicit threat or promise that person A will—

- (a) improperly use, to the detriment of any other person, any power or authority arising out of—
 - (i) any occupational or vocational position held by person A; or
 - (ii) any relationship existing between person A and person B; or
- (b) commit an offence that is punishable by imprisonment; or
- (c) make an accusation or disclosure (whether true or false)—
 - (i) about any offence committed by any person; or
 - (ii) about any other misconduct that is likely to damage seriously the reputation of any person; or
 - (iii) that any person is unlawfully in the Cook Islands; or
- (d) supply, or withhold supply, of any drug.

Subpart 15—Bigamy

149 Meaning of married for subpart 15

In this subpart, unless the context otherwise requires, **married** means party to a valid marriage.

150 Bigamy

- (1) A person commits the offence of bigamy if—
 - (a) the person is married; and
 - (b) the person enters into a marriage with another person; and
 - (c) the other person does not know the person is already married.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) A person commits the offence of joint bigamy if—
 - (a) the person—
 - (i) is not married; and
 - (ii) enters into a marriage with another person who is married; and
 - (iii) knows the other person is married; or
 - (b) the person—
 - (i) is married; and
 - (ii) enters into a marriage with another person; and
 - (iii) the other person knows the person is already married.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (5) It is a defence to a prosecution for an offence against subsection (1) or subsection (3)(b) if the accused proves that he or she—
 - (a) has not seen his or her spouse at any time for a continuous period of at least 7 years before entering another marriage; and
 - (b) had no reasonable grounds to suspect his or her spouse was alive.
- (6) It is not a defence to a prosecution for an offence against this section that the accused, or a person married to the accused, was not competent to enter into the marriage.

151 Feigned marriage

- (1) A person commits the offence of feigned marriage if—
- (a) the person enters into a marriage; and
 - (b) the person knows, at the time the person enters into the marriage, that the marriage is not a valid marriage for any reason other than that the person is committing an offence against section 150; and
 - (c) the marriage is not a valid marriage.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) However, if the person with whom the accused enters into the marriage knows the marriage is not valid at the time of the marriage, the maximum penalty is 2 years imprisonment.

Part 7
Property offences

Subpart 1—General

152 Interpretation

In this Part, unless the context otherwise requires,—

deception includes—

- (a) a representation by words or other conduct made by a person who—
 - (i) intends to deceive another person, entity, or system; and
 - (ii) knows or is reckless about whether the representation is false in a material particular; or
- (b) an omission to disclose a material particular, with intent to deceive another person, entity, or system, in circumstances where there is a duty to disclose the particular; or
- (c) a fraudulent device, trick, or stratagem used with intent to deceive any person, entity, or system; or
- (d) directly or indirectly intentionally falsifying particulars in a document, by any of the following means—
 - (i) false entries:
 - (ii) omissions:
 - (iii) transferring property interests in stocks, debentures, or other choses in action in a name other than the owner of the interest:
 - (iv) transferring interest in a debt to someone else

obtain, for or by any person, includes directly or indirectly—

- (a) acquire or retain for the person, or another person; or
- (b) induce someone else to do something to acquire or retain for the person or the other person.

153 Permanently deprive another person of property

A person intends to deprive permanently another person of property if the person intends dealing with the property in a way that—

- (a) the property cannot be returned to the other person in the same condition; or
- (b) the other person is likely to be deprived permanently of the property.

154 When is property owned by a person

- (1) Property is **owned** by a person if the person has—
 - (a) possession or control of the property; or
 - (b) an interest in the property; or
 - (c) the right to possess or control the property.
- (2) In this Part, if property belongs to 2 or more people, a reference to the property owned by 1 person is taken to be a reference to each of the owners.

155 Taking property

- (1) If property is tangible, taking of property happens only if the property is moved.
- (2) Taking property does not include obtaining ownership or possession of, or control over, any property with the consent of the person from whom it is obtained, whether or not consent is obtained by deception.

156 Theft by spouse

A person may be criminally responsible for the offence of theft of another person's property even though the person was married to, or in a de facto relationship with, the other person at the time of the theft.

157 Theft by co-owner

An owner of property may be criminally responsible for the offence of theft of property in relation to property in which the owner is a joint or part owner with 1 or more other owners of that property.

Subpart 2—Theft offences

158 Meaning of vehicle or transport in subpart 2

In this subpart, unless the context otherwise requires, **vehicle or transport** includes—

- (a) a vehicle, ship, or aircraft; or
- (b) any part of any vehicle, ship, or aircraft; or
- (c) a horse.

159 Theft

- (1) A person commits the offence of theft if the person—
 - (a) dishonestly takes property owned by another person, with the intention of permanently depriving the other person of the property; or
 - (b) dishonestly uses or deals with property owned by another person, with the intention of permanently depriving the person of the property after obtaining possession of, or control over, the property.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—

- (a) if the value of the property is more than \$1,000, to imprisonment for a term not exceeding 7 years; or
- (b) if the value of the property is more than \$500 but not more than \$1,000, to imprisonment for a term not exceeding 12 months; or
- (c) if the value of the property is not more than \$500, to imprisonment for a term not exceeding 3 months.

160 Theft in fiduciary relationship

- (1) A person commits the offence of theft in a fiduciary relationship if the person—
 - (a) is a fiduciary in relation to another person's property; and
 - (b) engages in conduct in relation to the property; and
 - (c) intentionally—
 - (i) fails to account to the other person for the property or any proceeds from the property in accordance with the terms or circumstances of the fiduciary relationship; or
 - (ii) deals with the property or any proceeds from the property other than in accordance with the terms or circumstances of the fiduciary relationship.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) A person is a **fiduciary** in relation to another person's property if the person has received or is in possession of, or has control over, any property of another person under terms or in circumstances that the person knows require the person—
 - (a) to account to any other person for the property, or for any proceeds arising from the property; or
 - (b) to deal with the property, or any proceeds arising from the property, in accordance with the requirements of any other person.
- (4) For this section, it does not matter whether or not the person was required to deliver over the identical property received or in the person's control.
- (5) The question whether circumstances require a person to account or act in accordance with particular requirements is a question of law.

161 Theft of animal

- A person commits the offence of theft of an animal if the person engages in conduct with intent to—
 - (a) kill an animal owned by another person; or
 - (b) obtain all or any part of the animal by theft.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the value of the animal is more than \$1,000, to imprisonment for a term not exceeding 7 years; or
 - (b) if the value of the animal is more than \$500 but not more than \$1,000, to imprisonment for a term not exceeding 12 months; or

- (c) if the value of the animal is not more than \$500, to imprisonment for a term not exceeding 3 months.

162 Looting

- (1) A person commits the offence of looting if—
 - (a) the person is criminally responsible for theft of any thing; and
 - (b) the theft is carried out in circumstances of natural disaster, civil unrest or an industrial dispute; and
 - (c) at the time of the theft, the thing was left unattended because of the death, incapacity, or absence of a person with lawful possession or control of the item.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the value of the property is more than \$1,000, to imprisonment for a term not exceeding 10 years; or
 - (b) if the value of the property is more than \$500 but not more than \$1,000, to imprisonment for a term not exceeding 4 years; or
 - (c) if the value of the property is not more than \$500, to imprisonment for a term not exceeding 12 months.

Subpart 3—Other theft related offences

163 Conversion of vehicle, ship, or aircraft

- (1) A person commits the offence of conversion of property in the form of a vehicle, ship, or aircraft if the person—
 - (a) engages in conduct that dishonestly takes or uses it for his or her or another's purposes; and
 - (b) intends using the vehicle or transport taken for the person's, or another person's, use.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

164 Possessing instrument for conversion of vehicle or transport

- (1) A person commits the offence of possessing an instrument for conversion of a vehicle or transport if the person—
 - (a) possesses any instrument capable of use to take or convert a vehicle or transport; and
 - (b) possesses the instrument with the intention that the person, or someone else, will use the instrument to commit an offence against section 163.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months.

165 Dishonestly taking or using document for material benefit

- (1) A person commits the offence of dishonestly taking or using a document to obtain a material benefit if the person—
 - (a) dishonestly—

- (i) takes or obtains a document; or
 - (ii) uses or attempts to use a document; and
- (b) does so with the intention of obtaining a material benefit.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

166 Breach of duty by trustee

- (1) A person commits the offence of breach of duty by trustee if—
 - (a) the person is a trustee; and
 - (b) the person engages in conduct—
 - (i) that is a breach of trust; and
 - (ii) that results in conversion of property held under trust; and
 - (iii) with intent to defraud the trust.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) A prosecution for an offence against this section must not proceed without the consent of the Attorney-General in writing.
- (4) However, subsection (3) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence;
 - (b) the arrest of the accused;
 - (c) remanding the accused in custody;
 - (d) granting bail to the accused.
- (5) The Attorney-General may inform himself or herself of a matter in any way that he or she considers appropriate before, and for the purposes of, deciding whether to consent to a prosecution for the offence.

167 Dishonest concealment

- (1) A person commits the offence of dishonest concealment if the person engages in conduct that conceals, moves or takes a thing capable of being the object of theft; with the dishonest intention of preventing a person, other than the owner, from gaining a financial benefit.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.

Subpart 4—Burglary

168 Interpretation

In this subpart, unless the context otherwise requires, **enclosed space** includes the following—

- (a) a structure, whether or not the structure is fixed or moveable or permanent or temporary, including a tent or a caravan;
- (b) an aircraft, ship (including a houseboat), or vehicle;
- (c) an enclosed yard, closed tunnel or closed cave;

- (d) any part of a place or thing mentioned in paragraphs (a) to (c).

169 Meaning of enter and without authority for subpart 4

- (1) For this subpart, a person **enters** an enclosed space when any part of the person's body, or a thing used by the person, is inside the space or the person gains access to the top of the enclosed space.
- (2) A person who enters an enclosed space using any threat, artifice, or collusion with another person inside the space, is taken to enter the space **without authority**.

170 Burglary

- (1) A person commits the offence of burglary if the person—
 - (a) enters an enclosed space—
 - (i) without authority; and
 - (ii) with intent to commit an offence in the enclosed space punishable by imprisonment; or
 - (b) having entered an enclosed space, stays in the space—
 - (i) without authority; and
 - (ii) with intent to commit an offence, punishable by imprisonment, in the space.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.

171 Aggravated burglary

- (1) A person commits the offence of aggravated burglary if—
 - (a) the person—
 - (i) is criminally responsible for burglary; and
 - (ii) at the time of the burglary, the person possesses an offensive item or uses an offensive item; or
 - (b) the person—
 - (i) is criminally responsible for burglary; and
 - (ii) the person possesses an offensive item or uses an offensive item while in an enclosed space entered as a result of the burglary; or
 - (c) the person is criminally responsible for burglary and the subject enclosed space is a residence.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

172 Being equipped or armed for offence

- (1) A person commits the offence of being equipped for burglary, or another offence punishable by imprisonment if the person—
 - (a) possesses an instrument with intent to carry, or use, the instrument in the course of conduct amounting to burglary; or
 - (b) is disguised or has the person's face covered, and intends to engage in conduct for an offence punishable by imprisonment.

- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (3) A person commits the offence of being armed for burglary if the person—
 - (a) possesses an offensive item; and
 - (b) intends carrying the offensive item in the course of conduct for burglary.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 5 years.

173 Being found in enclosed space without lawful authority or excuse

- (1) A person commits the offence of being found in enclosed space or yard without lawful authority or excuse if the person—
 - (a) enters an enclosed space or yard; and
 - (b) the owner of the enclosed space or yard does not consent to the person entering the space.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$750 or imprisonment for a term not exceeding 3 months, or both.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the accused proves that the accused had lawful authority or a lawful excuse to enter the enclosed space.
- (4) In this section, **owner**, of an enclosed space or yard, includes a person apparently in charge of the space.

Subpart 5—Robbery and blackmail

174 Robbery

- (1) A person commits the offence of robbery if—
 - (a) the person is criminally responsible for the offence of theft; and
 - (b) immediately before, at the time of, or immediately after the theft the person uses, or threatens to use, force on another person or property to carry out the theft.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) In this section, **carry out the theft** includes the following—
 - (a) take property from another person;
 - (b) prevent or overcome resistance;
 - (c) escape from the place where the theft happens.

175 Aggravated robbery

- (1) A person commits the offence of aggravated robbery if—
 - (a) the person is criminally responsible for robbery; and
 - (b) immediately before, at the time of, or immediately after the robbery the person—
 - (i) causes serious injury to another person; or
 - (ii) is in company with 1 or more people; or

- (iii) possesses an offensive item, or a thing that appears to be an offensive item.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

176 Assault with intent to rob

- (1) A person commits the offence of assault with intent to rob if—
 - (a) the person—
 - (i) causes serious injury to another person; or
 - (ii) assaults another person while—
 - (A) armed with an offensive item; or
 - (B) in company with at least 1 other person; and
 - (b) the person intends to commit robbery.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the offence involves causing serious injury to a person, to a term of imprisonment not exceeding 14 years; or
 - (b) if the offence involves assaulting while armed or in company, to a term of imprisonment not exceeding 7 years.

177 Compelling execution of document by force to obtain material benefit or cause material loss

- (1) A person commits the offence of compelling the execution of a document by force to obtain a material benefit or cause a material loss if the person—
 - (a) uses, or threatens to use, force on another person to compel the other person to execute, make, accept, endorse, alter or destroy a document that is able to give a financial advantage; and
 - (b) intends obtaining a material benefit from the altered document, or causing a material loss.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

178 Demanding property with intent to commit theft

- (1) A person commits the offence of demanding property with intent to commit theft if the person—
 - (a) makes a demand for property with a menace, of another person; and
 - (b) intends to commit theft of the property.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

179 Blackmail

- (1) A person commits the offence of blackmail if the person—
 - (a) makes an unwarranted demand with a menace of another person; and
 - (b) intends—
 - (i) the other person to give effect to the person's will; and

- (ii) to obtain a material benefit, cause a material loss to someone else, or influence the exercise of a public duty.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) In this section, a demand is **unwarranted** unless the person making the demand believes that—
 - (a) the person is entitled to the benefit, or to cause the loss, or to influence the public duty; and
 - (b) in the circumstances, the demand is a reasonable and proper way of reinforcing the demand.

Subpart 6—Obtaining by deceit

180 Obtaining benefit or causing loss by dishonesty or deception

- (1) A person commits the offence of obtaining a benefit, or causing a loss, by dishonesty or deception, if—
 - (a) the person engages in conduct that is dishonest, or amounts to deception; and
 - (b) as a result of the conduct, the person—
 - (i) obtains a material benefit, including credit; or
 - (ii) causes a material loss to another person; or
 - (iii) causes another person to deliver, execute, make, accept, endorse, destroy, or alter a document or thing capable of being used to get a financial advantage; or
 - (iv) obtains or makes a copy of an original or facsimile document, depiction or model of a thing or process the person knows contains or embodies a trade secret; or
 - (v) induces another person to subscribe to any security, or entrust or advance any property to someone else.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the benefit obtained, or loss sustained as a result of the offence is more than \$1,000, or for an offence that involves a result of conduct mentioned in subsection (1)(b)(iv) or (v), to a term of imprisonment not exceeding 7 years; or
 - (b) if the benefit obtained, or loss sustained as a result of the offence is more than \$500 but not more than \$1,000, to a term of imprisonment not exceeding 12 months; or
 - (c) if the benefit obtained, or loss sustained as a result of the offence is \$500 or less, to a term of imprisonment not exceeding 3 months.
- (3) In this section,—
 - security**—
 - (a) means any interest or right to participate in any capital, assets, earnings, royalties or other property of any person; and
 - (b) includes—
 - (i) an equity security; and

- (ii) a debt security; and
- (iii) a unit in a unit trust; and
- (iv) an interest in a superannuation scheme; and
- (v) a life insurance policy; and
- (vi) any interest or right that is a security under a law in force in the Cook Islands; and
- (vii) a renewal or variation of the terms or conditions of an interest or right mentioned in subparagraph (vi); but
- (c) does not include any interest or right (other than an interest or right mentioned in subparagraph (vi)) prescribed by regulation not to be a security

trade secret means any information that—

- (a) is, or has the potential to be, used industrially or commercially; and
- (b) is not generally available in industrial or commercial use; and
- (c) has economic value or potential economic value to the possessor of the information; and
- (d) is the subject of all reasonable efforts to preserve its secrecy.

Subpart 7—Receiving

181 Receiving unlawfully obtained property

- (1) A person commits the offence of receiving unlawfully obtained property if—
 - (a) the person receives property; and
 - (b) the property was obtained as a result of an offence (**unlawfully obtained**); and
 - (c) the person—
 - (i) knows the property is unlawfully obtained; or
 - (ii) is reckless as to whether the property is unlawfully obtained.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the benefit obtained, or loss sustained as a result of the offence is more than \$1,000, to a term of imprisonment not exceeding 7 years; or
 - (b) if the benefit obtained, or loss sustained as a result of the offence is more than \$500 but not more than \$1,000, to a term of imprisonment not exceeding 12 months; or
 - (c) if the benefit obtained, or loss sustained as a result of the offence is \$500 or less, to a term of imprisonment not exceeding 3 months.
- (3) For subsection (1)(b), property obtained by conduct engaged in outside the Cook Islands is taken to be property unlawfully obtained if the conduct would be an offence against this Act or any other enactment, if it happened in the Cook Islands.

- (4) The act of receiving any property obtained as a result of an offence is complete when the person has, either exclusively or jointly with the perpetrator of the offence, or any other person, taken possession or control over, or helps in concealing or disposing of, the property.
- (5) This section does not apply to receiving of property that has previously been unlawfully obtained, even though the receiver knows the property has been previously unlawfully obtained, if—
 - (a) the property has been returned to the owner; or
 - (b) legal title to the property has been acquired by another person.
- (6) The accused has an evidential burden in relation to the matters mentioned in subsection (5).

Subpart 8—Forgery

182 Interpretation

In this subpart, unless the context otherwise requires,—

certifying mark means a mark, word or description on any chattel, or thing associated with the chattel, that is by recognised practice understood to denote that the thing on which it appears or to which it is affixed has been examined and certified to be of a particular quality by a particular officer or person

false document means a document—

- (a) of which the whole or any material part purports to be made by a person who did not make it, or by a fictitious person; or
- (b) of which the whole or any material part purports to be made by or on behalf of any person who did not authorise its making, or on behalf of a fictitious person; or
- (c) of which the whole or any material part has been altered, whether by addition, insertion, deletion, obliteration, erasure, removal, or otherwise, and that purports to have been altered by or on behalf of a person who did not alter it or authorise its alteration, or by or on behalf of a fictitious person; or
- (d) that is, in whole or in part, a reproduction of any other document, and that purports to have been made by or on behalf of a person who did not make it or authorise its making, or by or on behalf of a fictitious person; or
- (e) that is made in the name of a person, either by that person or by that person's authority, with the intention that it should pass as being made by some other person who did not make it, or by a fictitious person

seal or stamp means—

- (a) any public seal or stamp (including a seal or stamp of a court, local authority, public body, or public officer) used at any time in the Cook Islands or another country, or the impression of that seal or stamp; or
- (b) any company or other corporate seal or stamp used in the Cook Islands or another country, or the impression of that seal or stamp.

183 Forgery

- (1) A person commits the offence of forgery if—
 - (a) the person engages in—
 - (i) making a false document; or
 - (ii) unlawfully making or counterfeiting any seal or stamp; or
 - (iii) dishonestly counterfeiting or imitating a certifying mark; and
 - (b) the person,—
 - (i) in the case of making a false document, intends—
 - (A) using the document to obtain a material benefit or cause material loss; or
 - (B) that the document in any way be used as genuine in the Cook Islands or elsewhere knowing that the document is false; or
 - (ii) in the case of an unlawfully made or counterfeited seal or stamp, uses the seal or stamp knowing it is unlawfully made or counterfeit.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) An offence against this section that involves a false document is complete—
 - (a) when the document is made, with the intent, or intent and knowledge, described in subsection (1)(b)(i); and
 - (b) even though the false document may be incomplete, or may not purport to be a document that would be binding or sufficient in law.

184 Using forged document, seal or stamp, or certifying mark

- (1) A person commits the offence of using a forged document, seal or stamp, or certifying mark if the person—
 - (a) knows a document, seal or stamp, or certifying mark is forged; and
 - (b) engages in conduct that either—
 - (i) uses, deals in, or acts upon the document, seal or stamp or certifying mark; or
 - (ii) substantially contributes to another person's use, dealings or action upon the document, seal or stamp, or certifying mark with intent to obtain by deception any property or privilege; and
 - (c) intends obtaining a material advantage or causing a material loss by engaging in that conduct.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) For this section, it does not matter whether the document, seal or stamp, or certifying mark was altered or made in or outside the Cook Islands.

185 Concealing or destroying document, seal or stamp, or certifying mark with intent to deceive

- (1) A person commits the offence of concealing or destroying a document, seal or stamp, or certifying mark with intent to deceive if the person—

- (a) either—
 - (i) conceals or destroys, or substantially contributes to the concealment or destruction of,—
 - (A) a document; or
 - (B) a seal or stamp; or
 - (C) a certifying mark; or
 - (ii) dishonestly or with deception makes, or causes the making of, a document, seal or stamp, or certifying mark that is partly or entirely a reproduction of another document, seal or stamp, or certifying mark; and
 - (b) intends obtaining a material advantage or causing a material loss.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) An offence against this section—
- (a) is committed as soon as conduct mentioned in subsection (1)(a) is engaged in with the relevant mental element mentioned in subsection (1)(b); and
 - (b) does not require the offender to have identified a particular person to—
 - (i) use or act upon the document, seal or stamp, or certifying mark in question; or
 - (ii) act on the basis of the absence of the document, seal or stamp, or certifying mark in question; or
 - (iii) be induced to do or refrain from doing anything.

186 Possessing thing with intent to forge

- (1) A person commits the offence of possessing a thing with intent to forge if—
- (a) the person has in his or her possession, or under his or her control, any thing capable of being used to—
 - (i) make a false document; or
 - (ii) make or counterfeit any seal or stamp; or
 - (iii) counterfeit or imitate a certifying mark; and
 - (b) the person intends—
 - (i) making a false document; or
 - (ii) unlawfully making or counterfeiting any seal or stamp; or
 - (iii) dishonestly counterfeiting or imitating a certifying mark.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.

187 Counterfeit money

- (1) A person commits the offence of making counterfeit money if the person—
- (a) makes, or substantially contributes to the making of, counterfeit money with the intention that the counterfeit money be accepted as genuine by another person; or

- (b) possesses a thing capable for use in, or connected with, the making of counterfeit money with the intention of using the thing to make counterfeit money.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) A person commits the offence of dealing in counterfeit money if the person—
 - (a) deals in counterfeit money at a lower value than the face value of the counterfeit money; or
 - (b) knowingly imports, or takes steps to import, counterfeit money into the Cook Islands; or
 - (c) knowingly exports, or takes steps to export, counterfeit money from the Cook Islands.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (5) A person commits the offence of circulating counterfeit money if the person—
 - (a) knowingly possesses counterfeit money and passes, or attempts to pass, the counterfeit money into circulation; or
 - (b) knowingly possesses money that is no longer current money (**lapsed currency**), or any other substance or thing, and passes, or attempts to pass, the lapsed currency, other substance or thing into circulation as current money; or
 - (c) knowingly possesses counterfeit money with the intention that the counterfeit money be accepted as genuine by another person.
- (6) A person who commits an offence against subsection (5) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (7) In this section,—
 - counterfeit money**—
 - (a) means—
 - (i) any article, not being current money, that resembles, or is apparently intended to resemble, or pass for current money; or
 - (ii) any article, being current money, that has been altered in a material respect and in such a manner as to conceal, or to be apparently intended to conceal, the alteration; and
 - (b) includes any article whether it is or is not in a fit state to be used and whether the process of manufacture or alteration is or is not complete

current money means genuine coin or genuine paper money that is, under a law in force in the Cook Islands, lawfully current in the Cook Islands

deal, in counterfeit money, means—

- (a) buy, sell, procure, receive or dispose of counterfeit money; or
- (b) offer to buy, sell, procure, receive or dispose of counterfeit money

paper money means money comprising a note written, printed or otherwise made on paper or any other material

possess, a thing, includes any of the following (whether done solely or jointly)—

- (a) receive, or obtain, custody or control of the thing;
- (b) have control over the disposition of the thing (whether or not having custody of the thing).

Subpart 9—Offences involving computers

188 Interpretation

In this subpart, unless the context otherwise requires,—

access, in relation to a computer system, includes (direct or indirect) instruction of, communication with, storage of data in, reception of data from, or utilisation of any other resource provided by, the computer system

authorised, in relation to conduct, includes conduct in accordance with any permission or entitlement, however described, given to a person—

- (a) under a law or order of a court; or

by a person or entity able to give the permission or entitlement lawfully

computer system—

- (a) means any of the following—
 - (i) a computer;
 - (ii) 2 or more interconnected computers;
 - (iii) any communication links between computers, or links to remote terminals or any other devices;
 - (iv) 2 or more interconnected computers combined with any communication links between computers, or to remote terminals or any other devices; and
- (b) includes any part of a thing described in paragraph (a), and any related input, output, processing, storage, software, or communication facilities, and stored data

electronic includes electrical, digital, magnetic, optical, electromagnetic, biometric, and phototonic

Government means the Cook Islands Government

information includes text, message, data, voice, sound, database, video, signals, software, computer programs, and codes including object code and source code

interception—

- (a) means tapping into an electronic communication not directed to the one who is tapping in; and
- (b) includes, but is not limited to, the acquiring, viewing, and capturing of any electronic communication whether by wire, wireless, electronic, optical, magnetic, or other means during transmission through the use of any technical device

Interpol means International Criminal Police Organization

remote forensic tool means an investigative tool such as software or hardware installed on or applied with regard to an electronic system and used to perform tasks that include, but are not limited to, keystroke logging or transmission of an IP-address

seize includes—

- (a) activating any onsite electronic system and electronic storage media; and
- (b) making and retaining a copy of electronic data, including by using onsite equipment; and
- (c) maintaining the integrity of the relevant stored electronic data; and
- (d) rendering inaccessible, or removing, electronic data in the accessed electronic system; and
- (e) taking a printout of output of electronic data; and
- (f) securing an electronic system or part of it or an electronic storage medium

sensitive electronic system means an electronic system used directly in connection with or necessary for—

- (a) the security, defence, or international relations of the Cook Islands; or
- (b) the existence or identity of a confidential source of information relating to the enforcement of criminal law; or
- (c) the provision of services directly related to communications infrastructure, banking and financial services, public utilities, courts, public transportation, public key infrastructure, payment systems infrastructure, or e-commerce infrastructure; or
- (d) the protection of public safety, including systems related to essential emergency services such as police, civil defence, and medical services; or
- (e) a purpose declared as such by the Queen's Representative by Order in Executive Council; or
- (f) containing any data or database protected as such, by any other law

service provider—

- (a) means a person providing any kind of electronic communications; and
- (b) includes, but is not limited to,—
 - (i) a person acting as a service provider in relation to sending, receiving, storing, or processing of electronic communication or the provision of other services in relation to electronic communication through any electronic system; and
 - (ii) a person who owns, possesses, operates, manages, or controls a public switched network or provides electronic communication services; and
 - (iii) any other person who processes or stores electronic data on behalf of such electronic communication service or users of such service

traffic data means electronic data that—

- (a) relates to a communication by means of an electronic system; and

- (b) is generated by an electronic system that is part of the chain of communication; and
- (c) shows the communication's origin, destination, route, time date, size, or duration or the type of underlying services

unauthorised access means access of any kind by any person to any electronic system or electronic data held in an electronic system or electronic device, without authority or in excess of authority, if the person is not entitled to control access of the kind in question to the electronic system or electronic device, or electronic data and the person does not have consent to such access from any person so entitled.

189 Accessing computer system for dishonest purpose

- (1) A person commits the offence of accessing a computer system for a dishonest purpose if—
 - (a) the person gains access to a computer system; and
 - (b) the person uses the access dishonestly—
 - (i) to obtain a benefit; or
 - (ii) to cause a loss.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) A person commits the offence of intentionally causing access to a computer system for a dishonest purpose if—
 - (a) the person engages in conduct; and
 - (b) the conduct causes access to a computer system; and
 - (c) the person intends to cause access to the computer system to dishonestly or by deception—
 - (i) obtain a material benefit; or
 - (ii) cause a material loss.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 5 years.

190 Damaging or interfering with computer system

- (1) A person commits the offence of intentionally damaging or interfering with a computer system if—
 - (a) the person intentionally or recklessly engages in conduct; and
 - (b) the conduct results in destruction, damage, or alteration to a computer system; and
 - (c) the destruction, damage or alteration to the computer system is reasonably likely to endanger the life of another person; and
 - (d) the person knows, or ought reasonably to know, that the destruction, damage, or alteration to the computer system is reasonably likely to endanger the life of another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) A person commits the offence of conduct resulting in damage or interference with a computer system if—

- (a) the person intentionally or recklessly engages in conduct; and
 - (b) the conduct is not authorised; and
 - (c) the conduct results in destruction, damage, or alteration to a computer system; and
 - (d) the person knows that he or she is not authorised, or is reckless as to whether he or she is authorised, to do any of the following—
 - (i) damage, delete, modify, impair or otherwise interfere with data or software in any computer system:
 - (ii) cause data or software in any computer system to be damaged, deleted, modified, or interfered with or impaired in some other way:
 - (iii) cause a computer system to fail, or deny service to any authorised user of the system.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 7 years.

191 Trading in software to commit offence

- (1) A person commits the offence of trading in software to commit an offence if—
- (a) the person creates, displays, offers, sells, supplies, or distributes (or possesses for any of these purposes) any software or information; and
 - (b) the software or information is capable of allowing access to a computer system without authorisation for the access; and
 - (c) the person provides, or intends providing, another person with the software or information in circumstances in which the person knows, or is reckless as to whether, the software or information will be used to commit an offence.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) A person commits the offence of possessing software to commit an offence if—
- (a) the person possesses software or information capable of allowing access to a computer system without authorisation for the access; and
 - (b) the person intends to use the software or information to commit an offence.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 2 years.

192 Accessing computer system without authorisation

- (1) A person commits the offence of access to a computer system without authorisation if—
- (a) the person gains access to a computer system; and
 - (b) the person knows that he or she is not authorised, or is reckless as to whether he or she is authorised, to access the computer system.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.

- (3) This section does not apply if a person authorised to access a computer system gains access to the system for a purpose other than the one for which the person was authorised.
- (4) The accused has an evidential burden in relation to the authorisation mentioned in subsection (3).

193 Illegal data access

- (1) A person commits the offence of illegally accessing data if the person intentionally—
 - (a) causes any electronic system or electronic device to perform any function for the purpose of gaining unauthorised access to any data held in any electronic system or electronic device; or
 - (b) obtains such unauthorised access.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a term of imprisonment not exceeding 5 years.

194 Illegal interception

- (1) A person commits the offence of illegal interception if the person intentionally, without lawful excuse or justification or in excess of a lawful excuse or justification, intercepts by technical means—
 - (a) any non-public transmission to, from, or within an electronic system; or
 - (b) electromagnetic emissions from an electronic system.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a term of imprisonment not exceeding 5 years.

195 Illegal data interference

- (1) A person commits the offence of illegally interfering with data if the person intentionally, without lawful excuse or justification or in excess of a lawful excuse or justification, interferes with any electronic data owned or managed by someone else by doing any of the following acts—
 - (a) damaging electronic data; or
 - (b) deleting electronic data; or
 - (c) altering electronic data; or
 - (d) rendering electronic data meaningless, useless, or ineffective; or
 - (e) obstructing, interrupting, or interfering with the lawful use of electronic data; or
 - (f) obstructing, interrupting, or interfering with any person in the lawful use of electronic data; or
 - (g) denying access to electronic data to any person authorised to access it.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a term of imprisonment not exceeding 5 years.

196 Disclosure of details of investigation

- (1) This section applies if a service provider, or any of its employees, receives a court order related to a criminal investigation that explicitly states that confidentiality is to be maintained in relation to the investigation or if such an obligation otherwise applies by operation of law.
- (2) The service provider or employee commits the offence of disclosing details of an investigation if the provider or employee intentionally, without lawful excuse or justification or in excess of a lawful excuse or justification, discloses—
 - (a) the fact that an order has been made; or
 - (b) anything done under the order; or
 - (c) any data collected or recorded under the order.
- (3) A person who commits an offence against subsection (2) is liable on conviction to a term of imprisonment not exceeding 5 years.

197 Obtaining access to sensitive electronic system in course of committing offence

- (1) A person who obtains unauthorised access to any sensitive electronic system in the course of the commission of any of the offences against this subpart is liable on conviction, in addition to the penalty set out in the relevant section, to a fine not exceeding \$10,000.
- (2) For the purposes of any prosecution for any additional penalty under this section, it is presumed, until contrary is proved, that the accused had the requisite knowledge that it was a sensitive electronic system.

198 Committing offence against other Act with help of electronic system

A person who commits any offence against any other Act with the help of an electronic system is liable on conviction, in addition to the penalty set out in that Act, to a fine not exceeding \$10,000.

Procedural matters

199 Production order

If a Judge or Registrar of the court, on application by a member of the Police, is satisfied on the basis of a sworn statement that specified electronic data or a printout or other information is reasonably required for the purpose of a criminal investigation or criminal proceedings, the Judge or Registrar may order—

- (a) a person in control of an electronic device or electronic system of electronic devices to produce specified electronic data or printout of such information; and
- (b) a service provider to produce information about persons who subscribe to or use their services.

200 Expedited preservation

- (1) Subsection (2) applies if a member of the Police is satisfied that—
 - (a) electronic data stored in an electronic device is reasonably required for the purpose of a criminal investigation; and
 - (b) there is a risk that the data may be destroyed or rendered inaccessible.

- (2) If this subsection applies, the member of the Police may, by written notice given to a person in control of the electronic device, require the person to ensure that the data specified in the notice be preserved for a period of up to 7 days as specified in the notice.
- (3) A Judge or Registrar of the court may, upon application, authorise an extension of the notice period not exceeding 14 days.

201 Partial disclosure of traffic data

If a Judge or Registrar of the court is satisfied on the basis of an application by a member of the Police that specified data stored in an electronic device or system of electronic devices is required for the purpose of a criminal investigation or criminal proceedings, the Judge or Registrar may order a person to disclose sufficient traffic data about a specified communication.

202 Collection of traffic data

- (1) If a Judge or Registrar of the court, on application by a member of the Police, is satisfied on the basis of a sworn statement that traffic data associated with a specified communication is reasonably required for the purposes of a criminal investigation, the Judge or Registrar may, by written notice given to a person in control of such data, request that person to—
 - (a) collect or record traffic data associated with a specified communication during a specified period; and
 - (b) permit and assist the member of the Police to collect or record that data.
- (2) If a Judge or Registrar of the court, on application by a member of the Police is satisfied on the basis of a sworn statement that traffic data associated with a specified communication is reasonably required for the purposes of a criminal investigation, the Judge or Registrar may authorise any member of the Police to collect or record traffic data associated with a specified communication during a specified period through application of technical means.

203 Lawful interception

If a Judge or Registrar of the court, on application by a member of the Police, is satisfied on the basis of a sworn statement that content of electronic communications is reasonably required for the purposes of a criminal investigation, the Judge or Registrar may—

- (a) order a service provider whose service is available in the Cook Islands through application of technical means to collect or record, to permit or assist competent authorities with the collection or recording of electronic data associated with specified communications transmitted by means of an electronic system; or
- (b) authorise a member of the Police to collect or record that electronic data through application of technical means.

204 Forensic tool

- (1) If a Judge or Registrar of the court, on application by a member of the Police, is satisfied on the basis of a sworn statement that in an investigation concerning an offence there are reasonable grounds to believe that essential evidence cannot be collected by applying other means under this Part, but is reasonably required for the purposes of a criminal investigation, the Judge or Registrar may authorise a member of the Police to utilize a remote forensic tool with the specific task required for the investigation and install it on the suspect's or the suspect's service provider's electronic system in order to collect the relevant evidence.
- (2) The application must contain the following information—
 - (a) the suspect of the offence and his service provider, if possible with name and address:
 - (b) a description of the targeted electronic system:
 - (c) a description of the intended measure, extent and duration of the utilization:
 - (d) reasons for the necessity of the utilization.
- (3) The person carrying out the investigation must ensure that modifications to the electronic system of the suspect or the suspect's service provider are limited to those essential for the investigation and that any changes if possible can be undone after the end of the investigation. During the investigation it is necessary to log—
 - (a) the technical mean used and time and date of the application; and
 - (b) the identification of the electronic system and details of the modifications undertaken within the investigation; and
 - (c) any information obtained.
- (4) The information obtained by the use of such software must be protected against any modification, unauthorized deletion, and unauthorized access.
- (5) The duration of the authorisation is limited to 3 months. If the conditions of the authorisation are no longer met, the actions taken are to stop immediately.
- (6) Access to any place in order to carry out an installation process is not authorised without a warrant issued by a Judge or Registrar, which may be issued under the authority of this subsection.
- (7) If necessary, a member of the Police may, under the order granted under subsection (1), request that the Judge or Registrar to order a service provider to support the installation process.

205 Limitation on liability of service providers

- (1) In the absence of intent to facilitate, aid, or abet, a service provider is not subject to any criminal liability under this Act solely because the service provider's service or system is used in connection with a contravention of this Act by a person not subject to the direction or control of the service provider.
- (2) Subsection (1) does not absolve the service provider from its liability—

- (a) to act in accordance with the order from any public authority or court to block or remove specific information or bar access of the accused; or
 - (b) to expeditiously take appropriate action upon obtaining knowledge or awareness about specific illegal information or activity, to remedy and inform the relevant public authority to enable the authority to evaluate the nature of the information or activity.
- (3) Subsection (1) does not apply when the user of the service is acting under the authority or the control of the service provider.
- (4) If the service provider is taking action in accordance with the order from any public authority or court as contemplated by subsection (2), the service provider is exempted from contractual obligations with the service provider's subscriber to ensure the availability of the service.
- (5) Service providers do not have a general obligation to monitor the information which they transmit or store on behalf of another, nor do they have a general obligation to seek to ascertain facts or circumstances indicating illegal activity to avoid criminal liability. However, this subsection does not affect the possibility for a public authority or court to require a service provider to terminate or prevent an infringement based on any law of the Cook Islands.

206 International co-operation

- (1) The Government may cooperate with any foreign government, Interpol, or any other international agency with whom it has or establishes reciprocal arrangements for the purposes of investigations or proceedings concerning offences related to electronic system and electronic data, or for the collection of evidence in electronic form of an offence or obtaining expeditious preservation and disclosure of traffic data or data by means of an electronic system or real-time collection of traffic data associated with specified communications or interception of data.
- (2) The Government may, without prior request, forward to such foreign government, Interpol, or other international agency, any information obtained from its own investigations if it considers that the disclosure of such information might assist the other government or agency in initiating or carrying out investigations or proceedings concerning any offence.
- (3) The Government may require the foreign Government, Interpol, or other international agency to keep the information provided confidential or use it subject to some conditions.
- (4) The investigating agency is, subject to approval of the Government, responsible for sending and answering requests for mutual assistance, the execution of such requests or their transmission to the authorities competent for their execution.
- (5) The Government may refuse to accede to any request made by such foreign government, Interpol, or international agency if the request concerns an offence which is likely to prejudice its sovereignty, security, public order, or other essential interests.
- (6) The Government may postpone action on a request if such action would prejudice investigations or proceedings conducted by its investigation agency.

Part 8

Market trading offences

Subpart 1—Interpretation

207 Interpretation

(1) In this Part, unless the context otherwise requires,—

disseminate, in relation to information, includes make available, publish, or circulate the information using a letter, telephone, newspaper, radio or television broadcast, film, internet service or any other form of communication

financial market is an exchange, market, or other facility (whether inside or outside the Cook Islands) through which offers to acquire, trade, or dispose of securities are regularly made or accepted

generally available, when used in the context of information about securities being generally available, means—

- (a) the information consists of readily observable matter; or
- (b) the information—
 - (i) has been made known in a manner that would, or would be likely to, bring it to the attention of people (**interested people**) who commonly invest in securities of a kind whose price might be affected by the information; and
 - (ii) has, since being made known, been available for a reasonable time for it to be disseminated among interested people; or
- (c) the information that consists of deductions, conclusions or inferences made or drawn from information—
 - (i) mentioned in paragraph (a); or
 - (ii) made known in a manner mentioned in paragraph (b)(i)

information includes—

- (a) matters of supposition and other matters that are insufficiently definite to warrant being made known to the public; and
- (b) matters relating to the intentions, or likely intentions, of a person

inside information means information in relation to particular securities which—

- (a) is not generally available; and
- (b) if the information were generally available, a reasonable person would expect it to have a material effect on the price or value of such securities

insider means a person who has inside information

person includes the Cook Islands government and a Cook Islands public agency

security or **securities** means any class of interest or right to participate in any capital, assets, earnings, royalties, or other property of any person traded on a financial market, and includes any interest in or right to be paid money that is, or is to be, deposited with, lent to, or otherwise owing by, any person (whether or not the interest or right is secured by a charge over any property).

- (2) For this Part, a reasonable person would be taken to expect information to have a material effect on the price or value of particular securities only if the information would, or would be likely to, influence people who commonly acquire securities in deciding whether or not to acquire or dispose of the particular securities.

Subpart 2—Market trading offences

208 Prohibited conduct by insider

- (1) A person commits the offence of prohibited trading conduct by an insider if—
- (a) the person knows, or can be reasonably expected to know, inside information; and
 - (b) the person engages in conduct, as principal or agent, that directly or indirectly results in the person—
 - (i) applying for, acquiring, or disposing of securities to which the inside information relates; or
 - (ii) agreeing to apply for, acquire, or dispose of securities to which the inside information relates; or
 - (iii) procuring another person to apply for, acquire, or dispose of securities to which the inside information relates; or
 - (iv) agreeing to procure another person to apply for, acquire, or dispose of securities to which the inside information relates.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
- (a) if the offender is an individual, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$250,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.
- (3) Subsection (1) does not apply if—
- (a) the application, acquisition or disposal of the securities—
 - (i) is done in the name of the person or in the name, or on behalf, of the person's spouse or child; and
 - (ii) complies with any requirements of an entity authorised to regulate acquiring, or disposing of securities for personal gain; or
 - (b) the securities are applied for, or acquired, as a result of a take-over offer made by the insider in accordance with the law.
- (4) A person commits the offence of prohibited communication conduct by an insider if—
- (a) the person knows, or can be reasonably expected to know, inside information; and

- (b) the person engages in conduct that directly or indirectly communicates the information, or causes the information to be communicated, to another person; and
- (c) the person knows, or can be reasonably expected to know, that the other the person would, or would be likely to,—
 - (i) apply for, acquire, or dispose of securities to which the inside information relates; or
 - (ii) agree to apply for, acquire, or dispose of securities to which the inside information relates; or
 - (iii) procure another person to apply for, acquire, or dispose of securities to which the inside information relates; or
 - (iv) agree to procure another person to apply for, acquire, or dispose of securities to which the inside information relates.
- (5) A person who commits an offence against subsection (4) is liable on conviction,—
 - (a) if the offender is an individual, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$250,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.

209 Market manipulation

- (1) A person commits the offence of engaging in market manipulation if—
 - (a) the person engages in conduct; and
 - (b) the conduct directly or indirectly causes a transaction; and
 - (c) the transaction results, or is likely to result, in—
 - (i) the creation of an artificial price for trading in particular securities; or
 - (ii) the maintaining of an artificial price for trading in particular securities (whether or not the price was previously artificial); and
 - (d) the person is reckless as to whether the transaction results, or is likely to result, in creating or maintaining an artificial price for trading in securities.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the offender is an individual, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$250,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.

210 False trading

- (1) A person commits the offence of false trading if—
 - (a) the person engages in conduct; and
 - (b) the conduct results in a false or misleading impression about—
 - (i) active trading in particular securities; or
 - (ii) the market for particular securities; or
 - (iii) the price for trading in particular securities; and
 - (c) the person is reckless as to whether the conduct results in a false or misleading impression about the trade in, market for, or price of particular securities.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the offender is an individual, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$250,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.
- (3) Without limiting subsection (1)(b), a false or misleading impression about active trading in particular securities occurs if a person directly or indirectly enters into, or carries out, a transaction that purports to acquire or dispose of the particular securities, but does not actually involve any change to the beneficial ownership of the securities.
- (4) For subsection (3), a transaction that purports to acquire or dispose of the particular securities, but does not actually involve any change to the beneficial ownership of the securities happens if—
 - (a) a person (**person A**) who had an interest in the securities before the transaction has an interest in the securities after the transaction; or
 - (b) an associate of person A has an interest in the securities after the transaction.

211 Market rigging

- (1) A person commits the offence of market rigging if—
 - (a) the person engages in conduct; and
 - (b) the conduct results in the person entering into a fictitious or artificial transaction or arrangement; and
 - (c) the transaction or arrangement results, or is likely to result, in—
 - (i) maintenance, inflation, or depreciation of the price for trading in particular securities; or
 - (ii) fluctuations in the price for trading in particular securities; and
 - (d) the person is reckless as to whether the transaction or arrangement results, or is likely to result, in maintenance, inflation, or depreciation of the price for trading in particular securities or fluctuations in the price for trading in particular securities.

- (2) A person who commits an offence against subsection (1) is liable on conviction,—
- (a) if the offender is an individual, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$250,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.

212 False or misleading statements

- (1) A person commits the offence of making a false or misleading statement if—
- (a) the person makes a statement (whether orally, in a document or in any other way); and
 - (b) the statement is false or misleading; and
 - (c) the person is reckless about whether the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is false or misleading; and
 - (d) the statement is likely—
 - (i) to induce a person to apply for, acquire, or dispose of securities; or
 - (ii) to result in an increase, reduction, maintenance or stabilisation of the price for trading in particular securities.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
- (a) if the offender is an individual, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$250,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.

Part 9
Identity Offences

Subpart 1—General

213 Interpretation

In this Part, unless the context otherwise requires,—

deal, in relation to identification information, includes make, supply or use identification information

identification information means information, or a document, relating to a person (whether living, dead, real or fictitious) that is capable of being used (whether alone or in conjunction with other information or documents) to identify or purportedly identify the person, including any of the following—

- (a) a name or address:
- (b) a date or place of birth, whether the person is married or has a de facto partner, relatives' identity or similar information:
- (c) a driver's licence or driver's licence number:
- (d) a passport or passport number:
- (e) a biometric data:
- (f) a voice print:
- (g) a credit or debit card, its number, or data stored or encrypted on it:
- (h) a financial account number, user name or password:
- (i) a digital signature:
- (j) a series of numbers or letters (or both) intended for use as a means of personal identification:
- (k) an identifying detail of a business operated by the person.

214 Attempts

Section 50 (Attempts) does not apply to an offence against this Part.

Subpart 2—Identity offences

215 Dealing in identification information

- (1) A person commits the offence of dealing in identification information if—
 - (a) the person engages in conduct that deals in identification information; and
 - (b) the person intends, or intends another person, to use the information to pretend to be someone else (whether living, dead, real, or fictitious) to—
 - (i) engage in conduct; or
 - (ii) assist another person to engage in conduct; and
 - (c) the conduct amounts to a serious offence.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) There is no mental element for the circumstance mentioned in subsection (1)(c) and the defence of mistake of fact is not available in relation to the circumstance.
- (4) This section applies even if—
 - (a) the person to whom the information relates consents to the information being used; or
 - (b) committing the serious offence is impossible.
- (5) This section does not apply if a person deals in the person's own identification information.

216 Possessing identification information

- (1) A person commits the offence of possessing identification information if—
 - (a) the person possesses identification information; and
 - (b) the person intends, or intends another person, to use the information to engage in conduct; and
 - (c) the conduct amounts to an offence against section 215.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (3) There is no mental element for the circumstance mentioned in subsection (1)(c) and the defence of mistake of fact is not available in relation to the circumstance.
- (4) This section—
 - (a) applies even if the person to whom the identification information relates consents to the information being used; but
 - (b) does not apply if a person deals in the person's own identification information.

217 Possessing equipment used for making identification documentation

- (1) A person commits the offence of possessing equipment used for making identification documentation if—
 - (a) the person possesses equipment; and
 - (b) the person intends, or intends another person, to—
 - (i) use the equipment to make identification documentation; and
 - (ii) use the documentation to engage in conduct; and
 - (c) the conduct amounts to an offence against section 215.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (3) There is no mental element for the circumstance mentioned in subsection (1)(c) and the defence of mistake of fact is not available in relation to the circumstance.
- (4) In this section, **identification documentation** means a document or any other thing that—
 - (a) contains or incorporates identification information; and
 - (b) is capable of being used by a person to pretend to be another person (whether living, dead, real, or fictitious).

Subpart 3—Victim certificates

218 Certificate may be issued by Judge for victim of identity crime

- (1) A Judge, on application by a person (the **victim**), may issue a certificate under this section if the Judge is satisfied, on the balance of probabilities, that—
 - (a) another person (the **dealer**) has dealt in identification information; and

- (b) the dealer intended that any person (the **user**) (whether or not the dealer) would use the identification information to pretend to be, or to pass the user off as, another person (whether the victim or another person living, dead, real or fictitious) for the purpose of—
 - (i) committing a serious offence; or
 - (ii) assisting in the commission of a serious offence; and
 - (c) the certificate may assist with any problems the dealing has caused in relation to the victim's personal or business affairs.
- (2) This section applies—
 - (a) even if—
 - (i) committing the offence referred to in subsection (1)(b) is impossible; or
 - (ii) the offence referred to in subsection (1)(b) is to be committed at a later time; and
 - (b) whether or not the person to whom the identification information concerned relates consented to the dealing in the identification information.

219 Content of certificate

- (1) A certificate issued under section 218 must—
 - (a) identify the victim; and
 - (b) describe the dealing in identification information.
- (2) The certificate may contain such other information as a Judge considers appropriate.
- (3) The certificate must not identify the dealer.

220 Relation to civil and criminal proceeding

- (1) A Judge may issue a certificate under section 218 whether or not—
 - (a) the dealer is identifiable; or
 - (b) subject to subsection (2), any proceeding (whether civil or criminal) has been or can be taken against a person for or in relation to the dealing, or is pending.
- (2) A Judge must not issue a certificate under section 218 if doing so would prejudice any proceeding.
- (3) A certificate issued under section 218 is not admissible in a proceeding for the offence mentioned in section 218(1)(b).

Part 10

Money laundering

221 Interpretation

In this Part, unless the context otherwise requires,—

deals, with property, means any of the following—

- (a) acquires, receives, possesses, conceals, uses or disposes of property;
- (b) imports property into the Cook Islands;
- (c) exports property from the Cook Islands;

- (d) carries out a transaction relating to property

property includes, but is not limited to, the following—

- (a) physical currency in any denominated form:
- (b) electronic money:
- (c) cheques, bills of exchange, promissory notes or shares on a company:
- (d) bullion:
- (e) money order or postal order issued by a post office:
- (f) any other prescribed matter

tainted property means any property directly or indirectly derived or realised from the commission of a serious offence

transaction, in relation to property, includes—

- (a) deposit, withdrawal, exchange, or transfer of the property; or
- (b) use of a safety deposit box or any other form of safe deposit; or
- (c) payment in full or part satisfaction of a contractual or other legal obligation; or
- (d) any other prescribed transaction.

222 Money laundering

- (1) A person commits the offence of knowingly engaging in money laundering if the person—

- (a) engages in conduct—
 - (i) that deals with tainted property; and
 - (ii) knowing, or in circumstances in which it is reasonable to suspect, that the property is tainted property; or
- (b) engages in conduct—
 - (i) that transfers or converts tainted property; and
 - (ii) knowing, or in circumstances in which it is reasonable to suspect, that the property is tainted property; and
 - (iii) with intent to—
 - (A) conceal or disguise that the property is tainted property; or
 - (B) aid another person to evade the legal consequences of the serious offence from which the tainted property is derived; or
- (c) engages in conduct—
 - (i) that conceals or disguises the origin, ownership, movement, disposition, or location of tainted property; and
 - (ii) knowing, or in circumstances in which it is reasonable to suspect, that the property is tainted property; or
- (d) engages in conduct that assists another person to engage in conduct mentioned in paragraph (a), (b), or (c).

- (2) A person who commits an offence against subsection (1) is liable on conviction,—

- (a) if the offender is an individual, to a fine not exceeding \$100,000 or a term of imprisonment not exceeding 10 years, or both; or

- (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$500,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.
- (3) A person commits the offence of recklessly engaging in money laundering if the person—
 - (a) engages in conduct—
 - (i) that deals with tainted property; and
 - (ii) is reckless as to whether the property is tainted property; or
 - (b) engages in conduct—
 - (i) that transfers or converts tainted property; and
 - (ii) is reckless as to whether the property is tainted property; and
 - (iii) with intent to—
 - (A) conceal or disguise that the property is tainted property; or
 - (B) aid another person to evade the legal consequences of the serious offence from which the tainted property is derived; or
 - (c) engages in conduct—
 - (i) that conceals or disguises the origin, ownership, movement, disposition, or location of tainted property; and
 - (ii) is reckless as to whether the property is tainted property; or
 - (d) engages in conduct that assists another person to engage in conduct mentioned in paragraph (a), (b), or (c).
- (4) A person who commits an offence against subsection (3) is liable on conviction,—
 - (a) if the offender is an individual, to a fine not exceeding \$50,000 or a term of imprisonment not exceeding 5 years, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$250,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.
- (5) In a prosecution for an offence against this section—
 - (a) proof of a person's knowledge or intention for an element of the offence may rely on reasonable inferences based on objective factual circumstances; and
 - (b) a person may be convicted of the offence despite the absence of any person's conviction for a serious offence from which the tainted property alleged to have been laundered has been directly or indirectly derived or realised; and
 - (c) a person may be found guilty of the offence even if the tainted property alleged to have been laundered is directly or indirectly derived or realised from a serious offence committed by the person.

223 Dealing with property reasonably suspected of being tainted property

- (1) A person commits the offence of dealing with property reasonably suspected of being tainted property if—
 - (a) the person engages in conduct that deals with property; and
 - (b) it is reasonable to suspect the property is tainted property.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the offender is an individual, to a fine not exceeding \$20,000 or a term of imprisonment not exceeding 2 years, or both; or
 - (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$100,000; and
 - (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.
- (3) In a prosecution for an offence against this section, and without limiting the matters that may be taken into account for subsection (1)(b), it is reasonable to suspect that property is tainted property if the conduct in subsection (1)(a)—
 - (a) involves a transaction structured or arranged to avoid any reporting requirements that would otherwise apply to the transaction under the Financial Transactions Reporting Act 2004; or
 - (b) uses an account held in a false name with—
 - (i) a banking business; or
 - (ii) the Bank of the Cook Islands Limited; or
 - (c) amounts to an offence against section 7 or section 37 of the Financial Transactions Reporting Act 2004; or
 - (d) involves a transaction in cash, or a request or receipt of an electronic fund transfer, of more than \$10,000 in relation to which—
 - (i) section 10 of the Financial Transactions Reporting Act 2004 is breached; or
 - (ii) the accused has given false or misleading information in purported compliance with section 10 of that Act; or
 - (e) the conduct involves property with a value that is grossly out of proportion to the accused's income and expenditure over a reasonable period in which the conduct happens; or
 - (f) the accused—
 - (i) asserts that the conduct was engaged in on behalf of, or at the request of another person; and
 - (ii) has not provided information to identify and locate the other person.
- (4) There is no mental element for the circumstance mentioned in subsection (1)(b) and the defence of mistake of fact is not available in relation to the circumstance.
- (5) This section does not apply if the accused proves that he or she had no reasonable grounds for suspecting that the property was tainted property.

- (6) The accused has a legal burden in relation to the matters mentioned in subsection (5).

- (7) In this section,—

banking business has the same meaning as in section 4 of the Banking Act 2011

Bank of the Cook Islands Limited has the same meaning as in section 20 of the Bank of Cook Islands Act 2003.

224 Prejudicing investigation into money laundering

- (1) A person commits the offence of prejudicing an investigation into money laundering if—

- (a) the person engages in conduct that communicates information, or makes information available, to another person; and
- (b) the information is likely to prejudice an investigation into an offence against this Part.

- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years, or both.

- (3) It is a defence to a prosecution for an offence against this section if the accused proves—

- (a) that the accused did not know his or her conduct was likely to prejudice an investigation into an offence against this Part; and
- (b) in the circumstances it was reasonable for the accused not to know.

225 Person not liable for breaching secrecy or non-disclosure requirement when assisting police

A requirement under a law, or legally enforceable obligation, that requires a person to maintain the secrecy of, or not publicly disclose, information (a

protected information requirement) does not apply to the person if—

- (a) the person gives information to a member of the Police; and
- (b) the information is given, in good faith, to assist in the enforcement of any of the following—
 - (i) a provision under this Part;
 - (ii) the Proceeds of Crime Act 2003;
 - (iii) the Mutual Assistance in Criminal Matters Act 2003;
 - (iv) the Financial Transactions Reporting Act 2004; and
- (c) a protected information requirement applies to the information; and
- (d) the person would, but for this subsection, breach the protected information requirement by giving the information to the Police.

Part 11

Intentional damage

226 Interpretation

In this Part, unless the context otherwise requires,—

immovable property means any building, erection, structure, well of combustible matter, a mine, bush, forest or plantation

movable property means property other than immoveable property or a vehicle, ship or aircraft and includes an animal

property means—

- (a) immovable property; or
- (b) movable property; or
- (c) a vehicle, ship, or aircraft.

227 Arson

- (1) A person commits the offence of arson endangering life if—
 - (a) the person engages in conduct using fire or explosives; and
 - (b) the conduct results in damage to, or destruction of, property; and
 - (c) the person is reckless about endangering the life of another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) A person commits the offence of arson with intent to dishonestly obtain a benefit or cause a loss if—
 - (a) the person engages in conduct using fire or explosives; and
 - (b) the conduct results in damage to, or destruction of, property; and
 - (c) the person intends dishonestly—
 - (i) to obtain a material benefit; or
 - (ii) to cause a material loss to another person.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (5) A person commits the offence of arson destroying or damaging property if—
 - (a) the person engages in conduct using fire or explosives; and
 - (b) the conduct results in the destruction of, or damage to, property that belongs to another person; and
 - (c) the person is reckless about causing the destruction of, or damage to, the property.
- (6) A person who commits an offence against subsection (5) is liable on conviction to imprisonment for a term not exceeding 6 years.

228 Intentional destruction of property

- (1) A person commits the offence of destruction of property endangering life if—
 - (a) the person engages in conduct; and

- (b) the conduct results in the destruction of, or damage to, property (other than by fire or explosives); and
 - (c) the person is reckless about endangering the life of another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) A person commits the offence of destruction of property with intent to dishonestly obtain a benefit or cause a loss if—
 - (a) the person engages in conduct; and
 - (b) the conduct results in the destruction of, or damage to, property (other than by fire or explosives); and
 - (c) the person intends dishonestly—
 - (i) to obtain a material benefit; or
 - (ii) to cause a material loss to another person.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (5) A person commits the offence of destruction of property if—
 - (a) the person engages in conduct; and
 - (b) the conduct results in the destruction of, or damage to, property that belongs to another person (other than by fire or explosives); and
 - (c) the person is reckless about causing the destruction of, or damage to, the property.
- (6) A person who commits an offence against subsection (5) is liable on conviction to imprisonment for a term not exceeding 4 years.

229 Waste or diversion of resources

- (1) A person commits the offence of wasting or diverting electricity, gas or water if—
 - (a) the person engages in conduct; and
 - (b) the conduct results in, or substantially contributes to, wasting or diverting the supply of electricity, gas or water to another person; and
 - (c) the person intends causing a material loss, or harm, to the other person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.

230 Endangering transport

- (1) A person commits the offence of endangering transport if—
 - (a) the person engages in conduct that—
 - (i) interferes with the operation of a transport facility; or
 - (ii) substantially contributes to the creation of a danger to the safety of any person or property at the transport facility; and
 - (b) the person intends, or is reckless as to the risk of, creating a danger to the safety of a person or property at the facility.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

- (3) In this section, **transport facility** includes the following—
- (a) a vehicle, ship, or aircraft;
 - (b) an installation or piece of equipment used for navigation by, or guidance of, a vehicle, ship, or aircraft;
 - (c) property used in connection with the transportation of persons or goods.
- 231 Manufacture or possession of dangerous item for use in offence**
- (1) A person commits the offence of manufacture or possession of dangerous item to commit an offence if the person—
- (a) makes a dangerous item; and
 - (b) intends—
 - (i) using the item to commit an offence; or
 - (ii) allowing another person to use the item to commit an offence.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) In this section, **dangerous item** includes the following—
- (a) an offensive item;
 - (b) a dangerous engine.

Part 12 Threats

- 232 Threatening to kill**
- (1) A person commits the offence of threatening to kill if—
- (a) the person threatens, by words or conduct, to kill another person (or someone else); and
 - (b) the person—
 - (i) intends the other person to fear the threat will be carried out; or
 - (ii) is reckless about whether the other person fears the threat will be carried out; and
 - (c) the threat is made in circumstances in which the other person would fear the threat will be carried out.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section,—
- conduct** includes using symbols or images
- words** includes written words.
- 233 Threatening to cause serious injury**
- (1) A person commits the offence of threatening to cause serious injury if—
- (a) the person threatens, by words or conduct, to seriously injure another person (or someone else); and
 - (b) the person—
 - (i) intends the other person to fear the threat will be carried out; or

- (ii) is reckless about whether the other person fears the threat will be carried out; and
 - (c) the threat is made in circumstances in which the other person would fear the threat will be carried out.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) In this section,—
 - conduct** includes using symbols or images
 - words** includes written words.

234 Threatening to destroy property

- (1) A person commits the offence of threatening to destroy property if—
 - (a) the person threatens to destroy another person's property (or someone else's property); and
 - (b) the person—
 - (i) intends the other person to fear the threat will be carried out; or
 - (ii) is reckless about whether the other person fears the threat will be carried out; and
 - (c) the threat is made in circumstances in which a reasonable person would fear that the threat will be carried out.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the accused proves that the accused had a legal claim of right to the property.
- (4) In this section,—
 - destroy**, in relation to property that is an animal, includes injure the animal
 - property** includes an animal.

235 Threatening safety of person on any premises

- (1) A person commits the offence of threatening another person's safety on any premises if—
 - (a) the person is reckless about intimidating or annoying another person; and
 - (b) the person—
 - (i) damages or attempts to damage any part of premises where the other person is present; or
 - (ii) does anything else that would cause a reasonable person at the premises to fear for their safety.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.

236 Threatening population and infrastructure

- (1) A person commits the offence of threatening population and infrastructure if the person—
 - (a) intends causing civic disruption; and
 - (b) either—

- (i) threatens to engage in conduct that, if carried out, could be reasonably expected to result in an event causing civic damage; or
 - (ii) gives another person or entity information about a possible threat of an event causing civic damage but believing the information to be false.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section,—

civic damage means detriment to any of the following—

- (a) public health and safety;
- (b) public or private property;
- (c) private commercial activity;
- (d) the national economy

civic disruption means interference with any of the following—

- (a) lawful activities of the population:
- (a) public facilities;
- (b) public services;
- (c) trade and commerce

public facilities means any of the following, whether publicly or privately owned—

- (a) a Cook Islands government facility, including premises used by Cook Islands government employees for official duties;
- (b) a public infrastructure facility, including a facility providing water, sewerage, energy, fuel, communication or other services to the public;
- (c) a public information system, including a system used to generate, send, receive, store or otherwise process electronic communications;
- (d) a public transport facility, including a vehicle used to transport people or goods;
- (e) a public place, including any premises, land or water open to the public.

Part 13

Corruption and public administration offences

Subpart 1—Interpretation

237 Interpretation

In this Part, unless the context otherwise requires, **function**, of a Cook Islands public official—

- (a) means any authority, duty, function or power given to a person as a Cook Islands public official; and
- (b) includes a function the person represents himself or herself to have as a Cook Islands public official.

Subpart 2—Corruption offences

238 Interpretation

In this subpart, unless the context otherwise requires,—

dishonestly, in relation to conduct by a public official, means contrary to the principles of honesty, integrity or proper administration applicable to the circumstances in which the conduct happens

inducement, in relation to a person, means—

- (a) a material benefit for the person; or
- (b) a material loss for another person.

239 Public corruption

(1) A person commits the offence of corrupting a Cook Islands public official if—

- (a) the person directly or indirectly—
 - (i) provides an inducement to a Cook Islands public official or another person; or
 - (ii) causes an inducement to be provided to a Cook Islands public official or another person; or
 - (iii) offers to provide, or agrees to provide, an inducement to a Cook Islands public official or another person; or
 - (iv) causes an offer for the provision of an inducement, or an agreement for the provision of an inducement, to be made to a Cook Islands public official or another person; and
- (b) the person intends that the Cook Islands public official to act improperly as a result of the inducement.

(2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

(3) A person commits the offence of corrupt conduct as a Cook Islands public official if—

- (a) the person is a Cook Islands public official; and
- (b) the person directly or indirectly—
 - (i) asks for an inducement for the person or another person; or
 - (ii) obtains, or causes to be obtained, an inducement for the person or another person; or
 - (iii) agrees to receive an inducement for the person or another person; and
- (c) the person intends—
 - (i) to act improperly as a result of the inducement; or
 - (ii) inducing a belief in another person that the person will act improperly as a result of the inducement.

(4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 7 years.

(5) A prosecution for an offence against this section may only proceed if,—

- (a) for a prosecution against a Minister of the Crown or a member of the Parliament of the Cook Islands,—

- (i) a Judge of the High Court grants leave to begin the prosecution; and
 - (ii) the person against whom the prosecution is proposed is given—
 - (A) reasonable notice of the prosecution’s intention to apply for leave to begin the prosecution; and
 - (B) a reasonable opportunity to oppose the application; or
 - (b) in any other case, the Attorney-General consents to the prosecution.
- (6) However, subsection (5) does not make any of the following unlawful if done before the High Court grants leave for, or the Attorney-General considers whether to consent to, a prosecution for an offence against this section—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence:
 - (b) the arrest of the accused:
 - (c) remanding the accused in custody:
 - (d) granting bail to the accused.
- (7) The High Court may inform itself, and the Attorney-General may inform himself or herself, of any matter considered appropriate for the purposes of deciding whether to grant leave for, or give consent to, a prosecution for an offence against this section.
- (8) In this section, **act improperly**, for a Cook Islands public official, means—
 - (a) be influenced or affected to dishonestly exercise the public official’s functions; or
 - (b) dishonestly do or not do something as a public official, or because of his or her position as a public official; or
 - (c) dishonestly cause or influence another public official to act in a way mentioned in paragraph (a) or (b).

240 Foreign corruption

- (1) A person **commits** the offence of corrupting a foreign public official if—
 - (a) the person directly or indirectly—
 - (i) provides an inducement to a foreign public official or another person; or
 - (ii) causes an inducement to be provided to a foreign public official or another person; or
 - (iii) offers to provide, or agrees to provide, an inducement to a foreign public official or another person; or
 - (iv) causes an offer for the provision of an inducement, or an agreement for the provision of an inducement, to be made to a foreign public official or another person; and
 - (b) the person, as a result of the inducement, intends—
 - (i) to obtain or retain domestic or international business; or
 - (ii) to obtain an improper advantage in domestic or international business.

- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) For this section, it does not matter that an inducement directed at a foreign public official was intended as an inducement for conduct that is not within the authority of the foreign public official.
- (4) This section does not apply if—
 - (a) the conduct required for the offence was mainly engaged in to ensure or expedite the performance of a routine government action by a foreign public official; and
 - (b) the value of the inducement is small.
- (5) In this section, **routine government action**, in relation to the performance of any action by a foreign public official, does not include—
 - (a) a decision about—
 - (i) whether to award new business; or
 - (ii) whether to continue existing business with any particular person or body; or
 - (iii) the terms of new business or existing business; or
 - (b) an action that is outside the scope of the ordinary duties of the foreign public official.

241 Gifts according to custom or tradition defence

- (1) A person is not criminally responsible for an offence against section 239 or 240 if, when the conduct required for the offence was carried out, the person was engaging in conduct that—
 - (a) is a recognised customary or traditional practice; and
 - (b) is an honest and reasonable expression of that practice.
- (2) The accused has a legal burden in relation to the matters mentioned in subsection (1).
- (3) The question whether conduct satisfies the requirements of subsection (1) is a question of law.
- (4) A court may take the following matters into account to determine the requirements—
 - (a) the history of the practice;
 - (b) the circumstances in which the practice would and would not have been appropriate;
 - (c) any other matter the court considers relevant.

242 Corrupt dealing in official information

- (1) A person commits the offence of corrupt dealing in official information by a Cook Islands public official if—
 - (a) the person is a Cook Islands public official; and
 - (b) the person engages in conduct that results in the use, or disclosure, of information—
 - (i) to which the person has direct or indirect access only because the person is a Cook Islands public official; and
 - (ii) with the dishonest intention of—

- (A) obtaining a material benefit for the person or another person; or
 - (B) causing a material loss to another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section, **information** includes any information about an identifiable person whether the individual is living or dead.

243 Corrupt use of official information

- (1) A person commits the offence of corrupt use of official information if the person—
 - (a) receives official information; and
 - (b) knows the information has been provided to him or her as a result of an offence against section 242; and
 - (c) uses the information to directly or indirectly obtain a material benefit or cause another person a material loss.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the accused proves that the person was lawfully authorised to use or disclose the information.
- (4) In this section, **information** includes any information about an identifiable person whether the individual is living or dead.

244 Abuse of public office

- (1) A person commits the offence of abuse of public office if the person—
 - (a) is a Cook Islands public official; and
 - (b) engages in any of the following conduct—
 - (i) the exercise of a function or any influence the person has as a Cook Islands public official;
 - (ii) the failure to exercise a function or any influence the person has as a Cook Islands public official;
 - (iii) the performance of any other activity as a Cook Islands public official; and
 - (c) dishonestly intends—
 - (i) obtaining a material benefit for the person or another person; or
 - (ii) causing a material loss to another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

245 Embezzlement by Cook Islands public official

- (1) A person commits the offence of embezzlement by a Cook Islands public official if the person—
 - (a) is a Cook Islands public official; and

- (b) is lawfully permitted or required to deal with property in the name of, on behalf of, or on account of the Cook Islands in the course of the person's employment or appointment; and
- (c) engages in conduct that deals with property—
 - (i) in the name of, on behalf of, or on account of the Cook Islands; and
 - (ii) before the property comes into the possession of the Cook Islands; and
 - (iii) dishonestly for—
 - (A) the person's own benefit; or
 - (B) the benefit of another person or entity.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section,—

deals, with property, includes the following—

 - (a) acquires, receives, possesses, uses, or disposes of property;
 - (b) carries out a transaction relating to the property

property includes all or part of the property.

Subpart 3—Offences against public administration

246 Interpretation

In this subpart, unless the context otherwise requires, **injury** includes psychological or emotional harm.

247 Unwarranted demands on Cook Islands public official

- (1) A person commits the offence of making unwarranted demands on a Cook Islands public official if—
 - (a) the person engages in conduct that results in a demand with a menace of another person; and
 - (b) the other person is a Cook Islands public official; and
 - (c) the demand or the menace is directly or indirectly related to—
 - (i) the other person's capacity as a Cook Islands public official; or
 - (ii) the influence the other person has in the other person's capacity as a Cook Islands public official; and
 - (d) the person intends—
 - (i) obtaining a material benefit; or
 - (ii) causing a material loss; or
 - (iii) influencing the official in the exercise of the official's duties as a Cook Islands public official.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 years.

248 Injuring Cook Islands public official

- (1) A person commits the offence of injuring a Cook Islands public official if—
 - (a) the person engages in conduct that results in injury to another person; and
 - (b) the other person does not consent to the injury; and
 - (c) the person intends causing injury to the other person because the person believes—
 - (i) the other person is a Cook Islands public official; or
 - (ii) the other person has engaged in conduct in his or her capacity as a Cook Islands public official; and
 - (d) the other person is a current, or former, Cook Islands public official.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.

249 Threatening Cook Islands public official

- (1) A person commits the offence of threatening a Cook Islands public official with serious injury if—
 - (a) the person engages in conduct that amounts to a threat to inflict a serious injury on—
 - (i) another person; or
 - (ii) someone else (a **third-person**) known to the other person; and
 - (b) the person engages in the conduct because the person believes the other person—
 - (i) is a Cook Islands public official; or
 - (ii) has engaged in conduct in the other person's capacity as a Cook Islands public official; and
 - (c) the person is reckless about causing the other person to fear a serious injury to himself or herself, or the third-person; and
 - (d) the other person is a Cook Islands public official.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) A person commits the offence of threatening a Cook Islands public official with injury if—
 - (a) the person engages in conduct that amounts to a threat to inflict an injury on—
 - (i) another person; or
 - (ii) someone else (a **third-person**) known to the other person; and
 - (b) the person engages in the conduct because the person believes the other person—
 - (i) is a Cook Islands public official; or
 - (ii) has engaged in conduct in the other person's capacity as a Cook Islands public official; and
 - (c) the person is reckless about causing the other person to fear an injury to himself or herself, or the third-person; and

- (d) the other person is a Cook Islands public official.
- (4) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (5) For this section, a **threat** may be—
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (6) In a prosecution for an offence against this section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.
- (7) In this section,—

fear includes apprehend

serious injury includes serious psychological or emotional harm.

250 Obstructing Cook Islands public official

- (1) A person commits the offence of obstructing a Cook Islands public official if—
 - (a) the person obstructs, hinders, intimidates, or resists another person in the exercise of the other person's functions as a Cook Islands public official; and
 - (b) the person believes that the other person is a Cook Islands public official.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.

251 Aggravating factor for this subpart

- (1) This section applies to a sentencing proceeding for an offence against this subpart.
- (2) In deciding how an offender should be sentenced (if at all) for the offence, a court must—
 - (a) determine whether conduct for the offence was accompanied by the circumstance mentioned in subsection (3) (**circumstance of aggravation**); and
 - (b) increase the severity of the sentence that would have been imposed if the offence had not been committed in the circumstance of aggravation.
- (3) It is a circumstance of aggravation for an offence against this subpart if conduct for the offence involves threatening, obstructing, making demands of, or injuring a senior Cook Islands public official.
- (4) In this section, **senior Cook Islands public official** means the holder of any of the following offices—
 - (a) Queen's Representative;
 - (b) Speaker of the Parliament of the Cook Islands;
 - (c) Minister of the Crown;
 - (d) member of an Island Council;
 - (e) Judge, Justice, Coroner or Commissioner of a court established under Part IV of the Constitution, or a law of the Cook Islands.

Part 14

Administration of justice offences

252 Interpretation

In this Part, unless the context otherwise requires,—

affidavit has the meaning given by section 4 of the Acts Interpretation Act 1924

declaration includes a statutory declaration under section 653 of the Cook Islands Act 1915

evidence includes anything that may be used as evidence

juror includes a person who—

- (a) is reasonably likely to serve as a juror in a legal proceeding; but
- (b) has not yet taken an oath to serve as a juror in the proceeding

legal proceeding means a proceeding before, or an investigation by, any of the following (despite any defect in the institution of the proceeding, or the appointment of a person or constitution of an entity hearing the proceeding)—

- (a) a court;
- (b) a non-judicial tribunal with jurisdiction to determine a right or liability;
- (c) the Parliament of the Cook Islands, including a committee of the Parliament;
- (d) any person or entity—
 - (i) authorised by law to take evidence on oath; or
 - (ii) vested with power to conduct a proceeding as a court or non-judicial tribunal to determine a right or liability

perjury means an offence against section 253

statement means an assertion in oral form, documentary form or any other form authorised by law

sworn statement means a statement made or verified under oath

under oath includes—

- (a) by affirmation; or
- (b) by declaration; or
- (c) any other solemn avowal of truthfulness allowed by law or a court

witness includes a person who—

- (a) is reasonably likely to be a witness in a legal proceeding; but
- (b) has not yet been called to give evidence as a witness in the proceeding.

253 Perjury

(1) A person commits the offence of perjury if—

- (a) the person makes a sworn statement in a legal proceeding; and
- (b) the statement is false; and
- (c) the person knows, or believes, the statement is false.

(2) A person who commits an offence against subsection (1) is liable on conviction,—

- (a) if the offence is committed to procure the conviction or acquittal of a person for a crime punishable by imprisonment for 3 years or more, to imprisonment for a term not exceeding 14 years; or
- (b) in any other case, to imprisonment for a term not exceeding 7 years.

254 False sworn statement

- (1) A person commits the offence of making a false sworn statement if—
 - (a) the law requires or allows the person to make a sworn statement; and
 - (b) the person makes a sworn statement in documentary form; and
 - (c) the statement would amount to perjury if it were used as evidence in a legal proceeding.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) A person must not be prosecuted for an offence against this section if—
 - (a) the prosecution relies on the evidence of 1 witness only in a proceeding for the offence; and
 - (b) the evidence of the witness is not corroborated.

255 False statement

- (1) A person commits the offence of making a false statement if—
 - (a) the law requires or allows the person to make a statement (other than a sworn statement) before another person authorised by law to witness the statement; and
 - (b) the person makes the statement; and
 - (c) the statement would amount to perjury if it were used as evidence in a legal proceeding.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.

256 Falsifying evidence

- (1) A person commits the offence of falsifying evidence if—
 - (a) the person fabricates any thing that may be used as evidence; and
 - (b) the person intends that the fabricated evidence influence—
 - (i) a decision about starting a legal proceeding; or
 - (ii) the outcome of a legal proceeding.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) This section does not apply to conduct that amounts to perjury.
- (4) In this section, **fabricate**, in relation to evidence, includes change evidence.

257 Falsely witnessing affidavit or declaration

- (1) A person commits the offence of falsely witnessing an affidavit or declaration if—
 - (a) the person—
 - (i) certifies that an affidavit was made before the person; and
 - (ii) the person—

- (A) was not present when the affidavit was made; or
 - (B) was not a person before whom an affidavit may be made; or
 - (b) the person—
 - (i) certifies that a declaration was taken by the person; and
 - (ii) the person—
 - (A) was not present when the declaration was taken; or
 - (B) was not a person before whom a declaration may be taken.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.

258 Use of invalid affidavit or declaration

- (1) A person commits the offence of using an invalid affidavit if—
 - (a) the person uses, or offers for use, an affidavit; and
 - (b) the person knows the affidavit was not made—
 - (i) before a person before whom an affidavit may be made; or
 - (ii) by the purported deponent.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (3) A person commits the offence of using an invalid declaration if—
 - (a) the person uses, or offers for use, a declaration; and
 - (b) the person knows the declaration was not—
 - (i) taken before a person before whom a declaration may be taken; or
 - (ii) declared by the purported declarant.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 3 years.

259 Falsely accusing person of offence

- (1) A person commits the offence of falsely accusing a person of an offence if the person—
 - (a) engages in conduct that results in an accusation to a law enforcement officer that another person has committed an offence; and
 - (b) knows or believes that the other person did not commit the offence; and
 - (c) intends that—
 - (i) the other person will be charged with committing the offence; or
 - (ii) law enforcement officers will be deflected from prosecuting the offender.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the offence the subject of the false accusation is punishable by imprisonment for 3 years or more, to imprisonment for a term not exceeding 14 years; or
 - (b) in any other case, to imprisonment for a term not exceeding 7 years.

260 Perverting the course of justice

- (1) A person commits the offence of perverting the course of justice if the person—
 - (a) engages in conduct; and
 - (b) the conduct perverts the course of justice or the administration of the law in the Cook Islands or in a foreign jurisdiction; and
 - (c) intends to pervert the course of justice or the administration of the law.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section, **perverts** includes obstructs, prevents and defeats.

261 Corrupting witness or juror

- (1) A person commits the offence of corrupting a witness or juror if the person—
 - (a) engages in conduct that results, or is undertaken to result, in—
 - (i) detriment to another person, or someone else; or
 - (ii) an inducement for another person, or someone else; and
 - (b) intends a person will—
 - (i) fail to attend as a witness or juror in a legal proceeding; or
 - (ii) give false or misleading evidence in a legal proceeding; or
 - (iii) withhold true evidence in a legal proceeding; or
 - (iv) be influenced to make a decision as a juror in a legal proceeding; or
 - (v) improperly influence a juror in a legal proceeding.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section,—

detriment includes—

 - (a) the threat, or application, of physical force; and
 - (b) intimidation of any kind; and
 - (c) material loss

inducement includes a material advantage

legal proceeding includes a legal proceeding in a foreign jurisdiction.

262 Acting corruptly as witness or juror

- (1) A person commits the offence of acting corruptly as a witness or juror if—
 - (a) the person accepts, or agrees to accept, an inducement for the person or for another person; and
 - (b) in return for the inducement or promise of the inducement the person agrees—
 - (i) to fail to attend as a witness or juror in a legal proceeding; or
 - (ii) to give false or misleading evidence in a legal proceeding; or
 - (iii) to withhold true evidence in a legal proceeding; or

- (iv) improperly to make a decision as a juror in a legal proceeding; or
- (v) improperly to influence a juror in a legal proceeding.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section, **legal proceeding** includes a legal proceeding in a foreign jurisdiction.

Part 15

Public order offences

Subpart 1—Interpretation

263 Interpretation

In this Part, unless the context otherwise requires,—

allied force means a foreign military force that is present in the Cook Islands at the request of the Cook Islands Government or acting in cooperation with a foreign force that is present in the Cook Islands at the request of the Cook Islands Government

department means an entity mentioned in Part I of the Schedule to the Ombudsman Act 1984

foreign agent means a person or organisation acting on behalf, or in the interests, of a foreign country

information means information of any kind, whether true or false and whether in a material form or not, and includes—

- (a) an opinion; and
- (b) a report of a conversation

official information includes information—

- (a) held by any of the following—
 - (i) a Minister of the Crown in his or her official capacity:
 - (ii) a department:
 - (iii) an organisation:
 - (iv) an officer or employee of a department or organisation acting in the officer or employee's capacity as a statutory officer:
 - (v) an independent contractor acting in his or her capacity as a contractor retained by a Minister of the Crown, a department, or an organisation; or
- (b) held outside the Cook Islands by a branch or post forming part of—
 - (i) a department; or
 - (ii) an organisation; or
- (c) held by an unincorporated body established—
 - (i) under a law, by a Minister of the Crown, by a department, or by an organisation; and
 - (i) to assist, advise, or perform functions associated with a Minister of the Crown, a department, or an organisation

organisation means an entity named—

- (a) in Part II of the Schedule to the Ombudsman Act 1984; or
- (b) in the list of organisations set out in the Schedule to the Official Information Act 2008

record, of information, means a copy of information in any form, including a document, paper, database, software system or other article or system containing information or from which information can be derived

security or defence includes the operations, capabilities and technologies of, and methods and sources used by an intelligence or security agency

statutory officer means a person who—

- (a) is appointed to an office created by a law; or
- (b) performs functions or duties conferred on the person by a law

thing includes an object which any of the following may possess as owner, hirer, lessee, bailee or custodian—

- (a) a Minister of the Crown in his or her official capacity;
- (b) a department, including a branch or post of the department located outside the Cook islands;
- (c) an organisation;
- (d) an officer or employee of a department or organisation acting in the officer or employee's capacity as a statutory officer;
- (e) an independent contractor acting in his or her capacity as a contractor retained by a Minister of the Crown, a department, or an organisation;
- (f) an unincorporated body established—
 - (i) under a law, by a Minister of the Crown, by a department, or by an organisation; and
 - (ii) to assist, advise, or perform functions associated with a Minister of the Crown, a department, or an organisation.

Subpart 2—Offences against the State

264 Consent of Attorney-General required for particular offences in subpart 2

- (1) A prosecution for an offence against section 265, 266, 267, 268, or 269 must not proceed without the consent of the Attorney-General in writing.
- (2) However, subsection (1) does not make any of the following unlawful if done before the Attorney-General considers whether to consent to a prosecution for the offence—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence;
 - (b) the arrest of the accused;
 - (c) remanding the accused in custody;
 - (d) granting bail to the accused.

- (3) The Attorney-General may inform himself or herself of a matter in any way that he or she considers appropriate before, and for the purposes of, deciding whether to consent to a prosecution for an offence mentioned in subsection (1).

265 Treason

- (1) A person commits the offence of treason if the person owes allegiance to the Head of State of the Cook Islands and engages in conduct that directly or indirectly—
 - (a) results in the death, serious injury, imprisonment, or restraint of the Head of State of the Cook Islands; or
 - (b) levies war against the Cook Islands or any foreign force that is present in the Cook Islands at the request of the Cook Islands Government; or
 - (c) assists—
 - (i) a foreign government at war with the Cook Islands or with any foreign force that is present in the Cook Islands at the request of the Cook Islands Government; or
 - (ii) an entity, or members of an entity, engaged in hostilities against the Cook Islands or against any foreign force that is present in the Cook Islands at the request of the Cook Islands Government, whether during a state of war or not; or
 - (d) incites or assists a hostile force to invade the Cook Islands; or
 - (e) uses force with intent to overthrow the government of the Cook Islands.
- (2) A person who commits an offence against subsection (1) is liable on conviction to life imprisonment.
- (3) A person must not be convicted of an offence against this section (other than an offence against subsection (1)(a)) if—
 - (a) the prosecution relies on the evidence of 1 witness only in a proceeding for the offence; and
 - (b) a material particular of the evidence of the witness cannot be corroborated by other evidence.

266 Espionage

- (1) A person commits the offence of espionage if—
 - (a) the person owes allegiance to the Head of State of the Cook Islands; and
 - (b) the person engages in conduct that—
 - (i) communicates official information, or delivers any thing, to a foreign country or a foreign agent; or
 - (ii) does any of the following for the purposes of communicating official information, or delivering any thing, to a foreign country or a foreign agent—
 - (A) collects or records information:
 - (B) copies any document:
 - (C) obtains any thing:

- (D) makes a sketch, plan, model or note:
 - (E) takes a photograph:
 - (F) records any sound or image:
 - (G) delivers a thing to another person; and
 - (c) the person intends to prejudice the security or defence of the Cook Islands or any foreign force that is present in the Cook Islands at the request of the Cook Islands Government; and
 - (d) the conduct is likely to prejudice the security or defence of the Cook Islands or any foreign force that is present in the Cook Islands at the request of the Cook Islands Government.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.

267 Wrongful communication of official information

- (1) A person commits the offence of wrongful communication, of official information if—
- (a) the person owes allegiance to the Head of State of the Cook Islands; and
 - (b) the person engages in conduct that—
 - (i) communicates official information, or delivers any thing, to another person, a foreign country, or a foreign agent; and
 - (ii) is reckless as to whether the communication or delivery is likely to prejudice the security or defence of the Cook Islands or any foreign force that is present in the Cook Islands at the request of the Cook Islands Government; and
 - (c) the person knows he or she is acting without proper authority.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.

268 Wrongful retention or copying of official information

- (1) A person commits the offence of wrongful retention or copying of official information if—
- (a) the person owes allegiance to the Head of State of the Cook Islands; and
 - (b) the person engages in conduct to retain, or copy, official information; and
 - (c) the person knows—
 - (i) that he or she is not properly authorised to retain or copy the information; and
 - (ii) the information relates to the security or defence of the Cook Islands or any foreign force that is present in the Cook Islands at the request of the Cook Islands Government; and
 - (d) the information would, if disclosed, be likely to prejudice the security or defence of the Cook Islands or any foreign force that is present in the Cook Islands at the request of the Cook Islands Government; and

- (e) the person intends prejudicing the security or defence of the Cook Islands or a foreign force that is present in the Cook Islands at the request of the Cook Islands Government.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.

269 Failure to manage properly official information

- (1) A person commits the offence of failing to manage properly official information if—
 - (a) the person owes allegiance to the Head of State of the Cook Islands; and
 - (b) the person possesses or can control official information; and
 - (c) the information has been inappropriately managed by the person; and
 - (d) the information relates to the security or defence of the Cook Islands or of any foreign force that is present in the Cook Islands at the request of the Cook Islands Government; and
 - (e) the person is reckless as to whether the information has been inappropriately managed; and
 - (f) the information would, if disclosed, be likely to prejudice the security or defence of the Cook Islands or of any foreign force that is present in the Cook Islands at the request of the Cook Islands Government.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) For subsection (1), and without limiting the circumstances in which official information may be inappropriately managed, official information is inappropriately managed if the confidentiality of the information is not reasonably protected.

270 Questions of law for particular offences in this subpart

- (1) The following are questions of law—
 - (a) in a proceeding for an offence against section 266 or section 267, whether the communication of official information, or the delivery of any thing, was or would have been likely to prejudice the security or defence of the Cook Islands, or any foreign force that was present in the Cook Islands at the request of the Cook Islands Government, at the time of the offence;
 - (b) in a proceeding for an offence against section 268 or section 269, whether the communication of official information would have been likely to prejudice the security or defence of the Cook Islands or any foreign force that was present in the Cook Islands at the request of the Cook Islands Government.
- (2) If, in a proceeding for an offence mentioned in subsection (1) the determination of a question of law mentioned in the subsection depends on a question of fact,—
 - (a) the prosecution or the accused may adduce evidence relevant to the questions of fact; and
 - (b) the Judge must hear the evidence.

271 Provoking mutiny

- (1) A person commits the offence of provoking mutiny if the person engages in conduct that seeks to persuade—
 - (a) another person in a foreign force that is present in the Cook Islands at the request of the Cook Islands Government to engage in conduct that amounts to a defiance of that person's duty; or
 - (b) if a foreign force that is present in the Cook Islands at the request of the Cook Islands Government is involved in a state of war or hostilities, another person in the service of an allied force to engage in conduct that amounts to a defiance of that person's duty.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) In this section, **defiance of duty**, by a person in a military force, means—
 - (a) an overthrow of lawful authority in the force; or
 - (b) resistance to lawful authority in the force that substantially affects the operation of the force.

272 Provoking disregard of duty

- (1) A person commits the offence of provoking disregard of duty if the person engages in conduct that seeks to persuade—
 - (a) another person in a foreign force that is present in the Cook Islands at the request of the Cook Islands Government to engage in conduct that amounts to a disregard of that person's duty; or
 - (b) if a foreign force that is present in the Cook Islands at the request of the Cook Islands Government is involved in a state of war or hostilities, another person in the service of an allied force to engage in conduct that amounts to a disregard of that person's duty.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.

273 Sabotage

- (1) A person commits the offence of sabotage if the person—
 - (a) engages in conduct that impairs—
 - (i) the operation of a vehicle, ship, aircraft, armament, or plant; or
 - (ii) any other thing necessary for public health or safety; and
 - (b) intends to prejudice—
 - (i) the security or defence, or safety, of the Cook Islands or any foreign force that is present in the Cook Islands at the request of the Cook Islands Government; or
 - (ii) the safety of any part of an allied force.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) Subsection (1) does not apply if the person is only—
 - (a) picketing a place of employment; or

- (b) demonstrating or protesting about a particular issue, including a demonstration or protest that involves the person's absence as part of any industrial action; or
 - (c) speaking, bearing or otherwise identifying with a banner, placard or sign or otherwise behaving in a way that is apparently intended to publicise the person's view about a particular issue.
- (4) In this section,—
- armament** includes munitions
- operation**, of a thing, includes the efficient output of the thing
- plant** includes any apparatus, machinery, factory, or utility for the generation of power or water.

274 Taking part in criminal oath

- (1) A person commits the offence of taking part in a criminal oath if the person engages in any of the following conduct—
- (a) encourages or compels another person to take a criminal oath; or
 - (b) administers a criminal oath to another person; or
 - (c) takes a criminal oath.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.
- (3) If a person is convicted or acquitted of an offence against this section, the person must not be tried for an offence against section 265 (Treason) whether as an accessory or a principal, if the trial for treason would be based on substantially the same facts as for the offence against this section.
- (4) In this section,—
- criminal oath** means an oath, or other solemn agreement, that purports to pledge the person who takes the oath or enters the agreement, to participate in the commission of a criminal offence whether as an accessory or a principal to the offence
- encourage**, another person, includes command, request, propose, advise, incite, induce, persuade, authorise, urge, threaten or place pressure on the person.

Subpart 3—Offences against the peace

275 Unlawful assembly

- (1) A person commits the offence of taking part in an unlawful assembly if—
- (a) the person and 2 or more other people are present together (an **assembly**) for a common purpose; and
 - (b) the conduct of the assembly, taken as a whole, would cause a reasonable person in the vicinity to fear that the assembly would—
 - (i) use unlawful violence against people or property; or
 - (ii) provoke others to use unlawful violence against people or property.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 12 months.

- (3) For subsection (1),—
 - (a) it is immaterial whether there is, or is likely to be, a person in the vicinity who holds the fear mentioned in the subsection; and
 - (b) the common purpose of an assembly, or a member of an assembly, may be inferred from conduct; and
 - (c) the offence may be committed in a public or a private place.
- (4) Subsection (1) does not apply to—
 - (a) a lawful exercise of fundamental human rights and freedoms; or
 - (b) an assembly with a common purpose to protect the premises of a member of the assembly from entry by someone else who intends to commit an offence on the premises.
- (5) In this section, **fundamental human rights and freedoms** means the rights and freedoms declared under subclause (1), and subject to subclause (2), of Article 64 of the Constitution.

276 Riot

- (1) A person commits the offence of taking part in a riot if—
 - (a) the person and 2 or more other people are present together (an **assembly**) for a common purpose; and
 - (b) the conduct of the assembly taken as a whole—
 - (i) involves the use of unlawful violence against people or property; and
 - (ii) would cause a reasonable person in the vicinity to fear for that person's safety; and
 - (c) the person as a member of the assembly—
 - (i) approves the use of violence; or
 - (ii) intends using violence; or
 - (iii) knows that his or her conduct is being violent.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.
- (3) For subsection (1)—
 - (a) it is immaterial whether there is, or is likely to be, a person in the vicinity who holds the fear mentioned in the subsection; and
 - (b) the common purpose of an assembly, or a member of an assembly, may be inferred from conduct; and
 - (c) the offence may be committed in a public or a private place.

277 Causing riotous damage

- (1) A person commits the offence of causing riotous damage if the person—
 - (a) commits an offence against section 276; and
 - (b) causes damage to property when committing the offence.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.

278 Suppression of riot—civic power and police action

- (1) A person may suppress a riot, using force, only if the person—

- (a) believes on reasonable grounds that—
 - (i) suppression of the riot is necessary to prevent the use of unlawful violence against people or property; and
 - (ii) a member of the Police is unlikely to be available to intervene to suppress the riot before an offence is committed; and
 - (b) the force is a reasonable response to the circumstances of the riot as the person honestly believes them.
- (2) However, a person must not engage in conduct under this section if the person is responding to lawful conduct that the person knows is lawful.
- (3) A member of the Police—
- (a) may refuse to obey orders for the suppression of a riot given by a superior member of the Police, if the orders are manifestly unlawful; and
 - (b) may take a person, conveyed to the member by a person suppressing a riot in accordance with this section, into custody if the member is reasonably satisfied in all the circumstances that the person has committed an offence.

279 Forcible entry and detainer

- (1) A person commits the offence of forcible entry if—
- (a) the person enters land—
 - (i) using force or the threat of force; or
 - (ii) by causing or threatening to cause some other breach of the peace; and
 - (b) the person intends taking possession of the land; and
 - (c) the land is in the actual and lawful possession of another person.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 3 years.
- (3) A person commits the offence of forcible detainer if—
- (a) the person—
 - (i) has actual possession of land; but
 - (ii) has no right to lawful possession of the land; and
 - (b) the person maintains actual possession of the land in opposition to another person with lawful possession of the land—
 - (i) using force or the threat of force; or
 - (ii) by causing or threatening to cause some other breach of the peace.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 3 years.

280 Public nuisance

- (1) A person commits the offence of public nuisance if—
- (a) the person engages in conduct in a public place or within view of a public place; and
 - (b) the conduct amounts to a public nuisance.

- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$1,500 or imprisonment for a term not exceeding 6 months, or both.
- (3) Without limiting subsection (1)(b), conduct amounts to a **public nuisance** if the conduct—
 - (a) involves behaviour that—
 - (i) is disorderly; or
 - (ii) is offensive; or
 - (iii) is threatening; or
 - (iv) is violent; or
 - (v) is drunk; or
 - (vi) disturbs public worship; and
 - (b) unreasonably interferes, or is likely to interfere unreasonably, with the peaceful use of a public place.
- (4) In a prosecution for an offence against subsection (1) the prosecution may rely on evidence of more than 1 kind of behaviour mentioned in subsection (3)(a) to prove a single offence.
- (5) A police officer may charge a person for an offence against subsection (1) despite the absence of a complaint by another person.
- (6) In this section,—

offensive, in relation to behaviour, includes language that is obscene, indecent or abusive

threatening, in relation to behaviour, includes language that is threatening.

281 Public nuisance—civic power and police action

- (1) A person may arrest and detain another person who commits an offence against section 280 (an **offender**), for the purpose of conveying the offender into the custody of a member of the Police, only if—
 - (a) the person witnesses the offender engage in conduct that—
 - (i) amounts to the offence; and
 - (ii) involves violence against a person or damage to property or both; and
 - (b) the person believes on reasonable grounds that—
 - (i) detention of the offender is necessary to prevent continuation of the conduct; and
 - (ii) a member of the Police—
 - (A) is unlikely to be available to prevent continuation of the conduct; or
 - (B) requires the person's assistance to arrest the offender; and
 - (c) the force used to arrest and detain the other person is a reasonable response to prevent continuation, or further commission, of the offence.

- (2) A member of the Police may take an offender, conveyed to the member in accordance with this section, into custody if the member is reasonably satisfied in all the circumstances that the offender has committed an offence.

Subpart 4—Criminal trespass

282 Criminal trespass

- (1) A person commits the offence of criminal trespass if the person enters or remains in a place, and—
- (a) the person—
 - (i) has been ordered not to enter, or ordered to leave, the place by a court and the order of the court is still in force; and
 - (ii) fails to comply with the order; or
 - (b) the person—
 - (i) has been directed not to enter, or directed to leave, the place by an owner or occupier of the land; and
 - (ii) fails to comply with the direction, or
 - (c) the person knows from earlier conduct on that person's part or from other circumstances, that the person would be immediately directed to leave by the owner or occupier were they not inhibited by fear, if 1 or more of them were aware of the person's entry.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$750 or imprisonment for a term not exceeding 3 months, or both.
- (3) It is a defence to a prosecution under subsection (1) if the accused proves that it was necessary to enter or remain in a place for the protection of the accused or someone else, or because of an emergency affecting the property of the accused or someone else.
- (4) If a court finds a person (the **offender**) guilty of any offence against this Act involving a particular place, the court may order the offender not to enter the place for up to 2 years.
- (5) A direction or order mentioned in this section may be given, or made, in any of the following ways—
- (a) orally;
 - (b) by notice in writing sent by registered mail to the person's home address;
 - (c) by clear signage erected at the place.
- (6) In this section,—
- occupier**, of a place, includes a person entitled to control access to the place
- place** includes land or premises.

Subpart 5—Organised criminal groups

283 Meaning of an organised criminal group

- (1) In this subpart, unless the context otherwise requires, **organised criminal group** means a group of 3 or more people who have any of the following as an objective of the group—
 - (a) obtaining a material benefit from conduct that amounts to an offence punishable by at least 4 years imprisonment;
 - (b) obtaining a material benefit from conduct engaged in outside the Cook Islands that, if engaged in in the Cook Islands, would amount to an offence punishable by at least 4 years imprisonment;
 - (c) engaging in conduct that amounts to a serious violence offence in, or outside, the Cook Islands;
 - (d) engaging in conduct that amounts to an offence punishable by at least 10 years imprisonment;
 - (e) engaging in conduct outside the Cook Islands that, if engaged in in the Cook Islands, would amount to an offence punishable by at least 10 years imprisonment.
- (2) For this section, when working out the number of people in an organised criminal group, the number includes all people in the group, whether or not—
 - (a) the people are subordinates or employees of others in the group; or
 - (b) only some of the people involved in the group are involved in planning, organising or carrying out particular activity; or
 - (c) the membership of the group changes from time to time.

284 Participating in organised criminal group

- (1) A person commits the offence of participating in an organised criminal group if the person—
 - (a) engages in conduct for an organised criminal group; and
 - (b) knows, or ought reasonably to know, that the group is an organised criminal group; and
 - (c) is reckless about whether the conduct contributes to any criminal activity by the group.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 10 years.
- (3) Without limiting subsection (1)(a), a person may engage in conduct for an organised criminal group by—
 - (a) directing any activity of the group; or
 - (b) advising the group about ways to achieve its objectives; or
 - (c) assisting the group to carry out its objectives; or
 - (d) threatening or assaulting another person, including a member of the Police, in connection with the activities of the group; or
 - (e) representing the group (other than as a legal representative for any member of the group).
- (4) In this section, **serious violence offence** means an offence—
 - (a) punishable by at least 7 years imprisonment; and

- (b) constituted by conduct that involves—
 - (i) loss of a person's life or serious risk of loss of a person's life; or
 - (ii) serious injury to a person or serious risk of serious injury to a person; or
 - (iii) serious damage to property in circumstances endangering the safety of any person; or
 - (iv) for an offence against section 260 (Perverting the course of justice), preventing, seriously hindering, or seriously obstructing the detection, investigation, or prosecution of any offence—
 - (A) that is punishable by at least 7 years imprisonment; and
 - (B) that includes conduct mentioned in subparagraphs (i) to (iii).

Subpart 6—Piracy

285 Interpretation

In this subpart, unless the context otherwise requires,—

coastal sea, of the Cook Islands, includes the territorial sea and internal waters of the Cook Islands and includes airspace over those seas and waters

high seas means the seas beyond the territorial sea of the Cook Islands and any other foreign country, and includes airspace over those seas

internal waters, of the Cook Islands, has the same meaning as in section 4 of the Territorial Sea and Exclusive Economic Zone Act 1977

pirate-controlled ship or aircraft means a private ship or aircraft which is under the control of a person that—

- (a) has used, is using, or intends using the ship or aircraft to commit acts of piracy; or
- (b) has seized control of the ship or aircraft as a result of an act of piracy

place outside the jurisdiction of any country means a place, other than the high seas, that is not within the territorial jurisdiction of the Cook Islands or any foreign country

piracy means an act of violence, detention, or depredation, committed for private ends by the crew or passengers of a private ship or aircraft—

- (a) done—
 - (i) in the coastal sea of the Cook Islands; or
 - (ii) on the high seas; or
 - (iii) a place outside the jurisdiction of any country; and
- (b) directed against—
 - (i) a ship; or
 - (ii) an aircraft; or
 - (iii) people or property on board a ship or aircraft

private ship or aircraft means a ship or aircraft that is not being operated for naval, military, customs or law enforcement purposes by the Cook Islands or a foreign country, and includes a ship or aircraft that has been taken over by its crew or passengers.

286 Piracy

- (1) A person commits the offence of piracy if the person engages in an act of piracy.
- (2) A person who commits an offence against subsection (1) is liable on conviction to life imprisonment.

287 Operating pirate-controlled ship or aircraft

- (1) A person commits the offence of operating pirate-controlled ship or aircraft if—
 - (a) the person is involved in the operation of a ship or aircraft; and
 - (b) the ship or aircraft is a pirate-controlled ship or aircraft; and
 - (c) the person knows the ship or aircraft is a pirate-controlled ship or aircraft.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 15 years.
- (3) This section also applies to conduct performed on the high seas, and in places outside the jurisdiction of the Cook Islands or any other country.

288 Seizure of pirate-controlled ships and aircraft

- (1) A member of the Police or other authorised person may seize—
 - (a) a ship or aircraft that the member believes on reasonable grounds to be a pirate-controlled ship or aircraft; or
 - (b) a thing that appears to be connected with the commission of an offence against this subpart found on board such a ship or aircraft.
- (2) Seizure powers under subsection (1) may be exercised—
 - (a) in the Cook Islands; or
 - (b) on the high seas; or
 - (c) in a place beyond the jurisdiction of any country.
- (3) The High Court may make the following orders in relation to a pirate-controlled ship, aircraft or any other thing seized in accordance with this section,—
 - (a) if a custodian of, or a person with an interest in, a ship, aircraft or thing seized under this section makes an application for its return, order that the ship, aircraft or thing be returned to its lawful owner; or
 - (b) on the court's own motion, or on application—
 - (i) order the ship, aircraft or thing forfeited to the Cook Islands if satisfied that the ship, aircraft or thing is tainted property; or
 - (ii) make any order relating to the seizure, detention or disposal of the ship, aircraft or thing that the court considers appropriate.
- (4) An order to return a ship, aircraft or thing may be made subject to conditions, including conditions as to the payment to the Cook Islands of reasonable costs of seizure and detention and conditions about security for payment of its value should it be forfeited.
- (5) In this section,—

authorised person means a person, other than a member of the Police, who is authorised under a law to exercise a power of arrest or seizure

tainted property means a ship, aircraft or thing—

- (a) in relation to which a person has been found guilty of an offence against this subpart; and
- (b) used in, or in some way involved in, the commission of the offence.

289 Evidentiary certificate

- (1) This section applies to a criminal proceeding for an offence against this subpart.
- (2) A certificate that appears to be signed by the Foreign Affairs Minister, or a person authorised by the Minister, stating any of the following matters is evidence of the matter in any criminal proceeding for an offence against this subpart—
 - (a) specified waters were, at a specified time—
 - (i) part of the high seas; or
 - (ii) within the coastal sea of the Cook Islands; or
 - (b) a specified place was, at a specified time, a place beyond the jurisdiction of any country.

290 Consent of Attorney-General for prosecutions under this subpart

- (1) A prosecution for an offence against this subpart must not proceed without the consent of the Attorney-General in writing.
- (2) However, subsection (1) does not make any of the following unlawful if done before the Attorney-General consents to a prosecution for an offence against this Part—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence:
 - (b) the arrest of the accused:
 - (c) remanding the accused in custody:
 - (d) granting bail to the accused.
- (3) The Attorney-General may inform himself or herself of a matter in any way that he or she considers appropriate before, and for the purposes of, deciding whether to consent to a prosecution for the offence.

Part 16

Custody offences

291 Interpretation

- (1) In this Part, unless the context otherwise requires,—

held in lawful custody means—

- (a) under arrest; or
- (b) remanded for appearance before a court or tribunal; or
- (c) imprisoned—
 - (i) following conviction for an offence; or
 - (ii) in medical custody; or

- (iii) for contempt of Parliament, a court, or any other body authorised by a law to punish for contempt; or
- (d) detained at the pleasure of the Queen's Representative; or
- (e) detained as a prisoner of war, or interned generally, in accordance with international law

medical custody means detention ordered by the High Court in accordance with Part 21 of the Cook Islands Act 1915

place of custody, in relation to a person, means the place where a person is being held in lawful custody.

- (2) For this Part, a person is taken to be held in lawful custody despite any defect, irregularity, or illegality affecting the custody.

292 Escaping from custody

- (1) A person commits the offence of escaping from custody if the person—
 - (a) is held in lawful custody; and
 - (b) escapes from that custody.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 5 years.

293 Damaging place of custody for purpose of escape

- (1) A person commits the offence of damaging a place of custody for the purpose of escape if—
 - (a) the person engages in conduct that directly or indirectly alters, damages, breaches, or excavates beneath or through premises used as a place of custody; and
 - (b) the person intends escaping, or assisting another person to escape, from the place of custody.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) In this section, **premises** includes any land, building, part of a building, vehicle, vessel, or aircraft.

294 Assisting escape from custody

- (1) A person commits the offence of assisting an escape from custody if—
 - (a) the person—
 - (i) frees or causes the release of another person (a **prisoner**) held in lawful custody; or
 - (ii) assists a prisoner to escape or attempt to escape from being held in lawful custody; or
 - (iii) conveys or causes to be conveyed to a place of custody a thing reasonably able to be used by a prisoner to escape from being held in lawful custody; and
 - (b) the person intends to assist the prisoner to escape.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—

- (a) if the prisoner is a person in medical custody, to a term of imprisonment not exceeding 5 years; or
- (b) in any other case, to a term of imprisonment not exceeding 7 years.

295 Permitting escape from custody

- (1) A person commits the offence of negligently permitting escape from lawful custody if—
 - (a) the person has a legal duty to ensure a person (a **prisoner**) is held in lawful custody; and
 - (b) the person engages in conduct that results in the prisoner's escape from being held in lawful custody; and
 - (c) the person's conduct is grossly negligent.
- (2) A person who commits an offence against subsection (1) is liable on conviction,—
 - (a) if the prisoner is a person in medical custody, to a term of imprisonment not exceeding 6 months; or
 - (b) in any other case, to a term of imprisonment not exceeding 12 months.
- (3) A person commits the offence of wilfully permitting escape from lawful custody if—
 - (a) the person has a legal duty to ensure a person (a **prisoner**) is held in lawful custody; and
 - (b) the person engages in conduct that results in the prisoner's escape from being held in lawful custody; and
 - (c) the person intends to permit the escape of the prisoner.
- (4) A person who commits an offence against subsection (3) is liable on conviction,—
 - (a) if the prisoner is a person in medical custody, to a term of imprisonment not exceeding 5 years; or
 - (b) in any other case, to a term of imprisonment not exceeding 7 years.

296 Assisting prisoner of war, internee, or parolee to escape

- (1) A person commits the offence of assisting a prisoner of war or internee to escape from custody if—
 - (a) the person's conduct—
 - (i) frees, or causes the release of, a prisoner of war or internee held in lawful custody; or
 - (ii) assists a prisoner of war or internee to escape or attempt to escape from lawful custody; or
 - (iii) conveys or causes to be conveyed to a place of custody a thing reasonably able to be used by a prisoner of war or internee to escape from custody; and
 - (b) the person intends to assist the prisoner of war or internee to escape.
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (3) A person commits the offence of assisting a parolee to depart from a place of parole if—

- (a) the person engages in conduct that assists or is likely to assist a parolee to leave a place of parole; and
- (b) it is a condition of parole for the parolee that he or she must not leave the place of parole; and
- (c) the person—
 - (i) knows about the condition of parole; and
 - (ii) intends to assist the parolee to leave the place of parole.
- (4) A person who commits an offence against subsection (3) is liable on conviction to imprisonment for a term not exceeding 7 years.
- (5) In this section, **place of parole** means the place where a parolee is permitted to remain at large, in accordance with the conditions of his or her parole.

Part 17

People smuggling and human trafficking

Subpart 1—Interpretation

297 Interpretation

In this Part, unless the context otherwise requires,—

document means any record of information, and includes the following—

- (a) a stamp, seal or anything else signified on that record:
- (b) anything on which there is writing:
- (c) anything on which there are figures, marks, numbers, perforations, symbols or anything else having a meaning for people qualified to interpret them:
- (d) anything from which images, sounds, messages or writings can be produced or reproduced, whether with or without the aid of anything else:
- (e) a drawing, map, photograph or plan:
- (f) anything attached to a thing mentioned in paragraphs (a) to (e)

exploitation, of a person, includes the person's entry, or proposed entry, into any of the following circumstances—

- (a) prostitution or any other form of paid or unpaid sexual servitude:
- (b) forced labour or services:
- (c) slavery or practices similar to slavery:
- (d) servitude:
- (e) undergoing a procedure for the removal of human organs or other human body parts belonging to the person that does not have a genuine therapeutic purpose for the person

fraudulent travel document or fraudulent identity document means a travel document or identity document that—

- (a) has been made or altered in any way by a person other than a person or agency lawfully authorised to make or issue the travel or identity document on behalf of a country; or

- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being used by a person other than the lawful owner

identity document includes any kind of document that may be used to establish the identity of a person in a country under the law or procedures of that country

intimidates, a person, includes any of the following—

- (a) threatens the person:
- (b) uses force or any other form of coercion against the person:
- (c) abducts the person:
- (d) improperly exercises authority over the person

manipulates, a person, includes—

- (a) makes fraudulent or dishonest representations to the person; and
- (b) deceives the person; and
- (c) offers inducements to someone else with control over the person

material benefit includes any type of service whether of a sexual or non-sexual nature

people smuggling means conduct that amounts to an offence against section 298

unlawful entrant, in relation to a country, means a person who is—

- (a) not a citizen of the country; and
- (b) not ordinarily resident in the country; and
- (c) not in possession of documents required for lawful entry into the country under the law of the country

trafficked person means a person who is transported, or proposed to be transported, in circumstances that amount to an offence against this Part

travel document includes any kind of document required, under the law of a country, to enter or leave that country.

Subpart 2—People smuggling

298 People smuggling

- (1) A person commits the offence of people smuggling if—
 - (a) the person assists another person (the **smuggled person**) to enter, or take steps to enter, a country; and
 - (b) the person is reckless about whether the smuggled person's entry is, or would be, contrary to the country's laws; and
 - (c) the smuggled person's arrival in the country makes, or would make, that person an unlawful entrant in the country; and
 - (d) the offending person engages in the conduct for material benefit.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 20 years, or both.

- (3) For this section, it does not matter whether the smuggled person actually enters the country.
- (4) There is no mental element for the result of engaging in conduct mentioned in subsection (1)(c) and the defence of mistake of fact is not available in relation to the result.
- (5) A person who under this section is a smuggled person must not be prosecuted for—
 - (a) an offence against this section or being a party to the offence; or
 - (b) the smuggled person's unlawful entry into the Cook Islands in connection with the offence; or
 - (c) the smuggled person's period of unlawful residence in the Cook Islands after being transported in connection with the offence; or
 - (d) the smuggled person having obtained, possessed, or relied on, any fraudulent travel document or fraudulent identity document that the smuggled person obtained, or with which the smuggled person was supplied, for the purpose of entering a country in connection with the offence.
- (6) However, nothing in this section prevents the—
 - (a) removal of the other person from the Cook Islands in accordance with the Entry, Residence and Departure Act 1971-72; or
 - (b) classification of the other person as an illegal immigrant or illegal resident under that Act.

299 Supporting presence of unlawful entrant

- (1) A person commits the offence of supporting the presence of an unlawful entrant in a country if—
 - (a) the person assists another person to remain in a country; and
 - (b) the other person is an unlawful entrant to the country; and
 - (c) the person is reckless about whether the other person is an unlawful entrant to the country; and
 - (d) the person engages in the conduct for a material benefit.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$300,000 or imprisonment for a term not exceeding 14 years, or both.
- (3) There is no mental element for the circumstance mentioned in subsection (1)(b) and the defence of mistake of fact is not available in relation to the circumstance.

300 Making use of fraudulent travel or identity documents

- (1) A person commits the offence of making use of fraudulent travel documents or fraudulent identity documents if—
 - (a) the person intentionally—
 - (i) obtains, provides, or possesses a fraudulent travel document or a fraudulent identity document; or
 - (ii) relies on a fraudulent travel document or fraudulent identity document—

- (A) knowing the document is fraudulent; and
 - (B) intending the document to be accepted as genuine; and
 - (b) the person intends obtaining a material benefit from conduct involving the document.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 10 years, or both.

Subpart 3—Human trafficking

301 Human trafficking—adults

- (1) A person commits the offence of international human trafficking of an adult if—
 - (a) the person engages in conduct that—
 - (i) organises, or assists in, recruiting, transporting, transferring, harbouring or receiving another person—
 - (A) located outside the Cook Islands for entry or proposed entry into the Cook Islands; or
 - (B) located in the Cook Islands for entry or proposed entry to a foreign country; and
 - (ii) coerces, threatens or deceives the other person causing the other person to submit to entry or proposed entry to the Cook Islands or the foreign country; and
 - (b) the person is reckless about whether the other person's entry or proposed entry into the Cook Islands or the foreign country is connected with the exploitation of the person; and
 - (c) the other person's entry or proposed entry into the Cook Islands or the foreign country is connected with the—
 - (i) exploitation of the other person; or
 - (ii) transit to another country for exploitation of the other person; and
 - (d) the other person is 18 years old or older.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 20 years, or both.
- (3) A person commits the offence of domestic human trafficking of an adult if—
 - (a) the person engages in conduct that—
 - (i) organises, or assists in, recruiting, transporting, transferring, harbouring, or receiving another person located in the Cook Islands for movement or proposed movement from one place in the Cook Islands to another place in the Cook Islands; and
 - (ii) coerces, threatens, or deceives the other person causing the other person to submit to the movement; and

- (b) the person is reckless about whether the movement, or proposed movement, of the other person is connected with the exploitation of the person in the Cook Islands or a foreign country; and
 - (c) the other person's movement or proposed movement is connected with the exploitation of the other person in the Cook Islands or a foreign country; and
 - (d) the other person is 18 years old or older.
- (4) A person who commits an offence against subsection (3) is liable on conviction to a fine not exceeding \$500,000 or imprisonment for a term not exceeding 20 years, or both.
- (5) In this section,—
- coerce**, another person, includes—
- (a) force the person; or
 - (b) subject the person to duress; or
 - (c) detain the person; or
 - (d) psychologically oppress the person; or
 - (e) an abuse of power that affects the person; or
 - (f) taking advantage of the person's vulnerability
- deceive**, another person, means mislead the person by words or conduct about a matter of—
- (a) fact; or
 - (b) intention; or
 - (c) law
- threaten**, another person, means to intimidate a person with the possibility or inevitability of—
- (a) conduct that coerces the person; or
 - (b) deportation or removal of the person from a place; or
 - (c) any other detrimental action, but not if there are reasonable grounds for the threat of that action arising from the person's responsibility to provide labour or services.

302 Human trafficking—children

- (1) A person commits the offence of international human trafficking of a child if—
- (a) the person organises, or assists in, recruiting, transporting, transferring, harbouring, or receiving another person—
 - (i) located outside the Cook Islands for entry or proposed entry into the Cook Islands; or
 - (ii) located in the Cook Islands for entry or proposed entry to a foreign country; and
 - (b) the person is reckless about whether the other person's entry or proposed entry into the Cook Islands or the foreign country is connected with the exploitation of the person; and
 - (c) the other person's entry or proposed entry into the Cook Islands or the foreign country is connected with the—

- (i) exploitation of the other person; or
 - (ii) transit to another country for exploitation of the other person; and
- (d) the other person is under 18 years old.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$800,000 or imprisonment for a term not exceeding 30 years, or both.
- (3) A person commits the offence of domestic human trafficking of a child if—
 - (a) the person engages in conduct that organises, or assists in, recruiting, transporting, transferring, harbouring, or receiving another person located in the Cook Islands for movement or proposed movement from one place in the Cook Islands to another place in the Cook Islands; and
 - (b) in engaging in that conduct the person is reckless about whether the movement, or proposed movement, of the other person is connected with the exploitation of the person in the Cook Islands or a foreign country; and
 - (c) the other person's movement or proposed movement is connected with the exploitation of the other person in the Cook Islands or a foreign country; and
 - (d) the other person is under 18 years old.
- (4) A person who commits an offence against subsection (3) is liable on conviction to a fine not exceeding \$800,000 or imprisonment for a term not exceeding 30 years, or both.

303 Consent of trafficked person not a defence

It is not a defence to a prosecution for an offence against this subpart that—

- (a) a trafficked person consented to being transported; or
- (b) exploitation of the trafficked person did not happen.

304 Offences in subpart not to apply to trafficked person

- (1) A person who, under section 301 or 302 (a **human trafficking offence**), is a trafficked person must not be prosecuted for—
 - (a) a human trafficking offence or being a party to a human trafficking offence; or
 - (b) the trafficked person's entry into the Cook Islands, without complying with the requirements for lawful entry under a law of the Cook Islands, in connection with a human trafficking offence; or
 - (c) the trafficked person's period of unlawful residence in the Cook Islands after being transported in connection with the human trafficking offence; or
 - (d) the trafficked person having obtained, possessed, or relied on, any fraudulent travel document or fraudulent identity document that the trafficked person obtained, or with which the trafficked person was supplied, for the purpose of entering a country in connection with a human trafficking offence.

- (2) However, nothing in this section prevents the—
 - (a) removal of a trafficked person from the Cook Islands in accordance with the Entry, Residence and Departure Act 1971-72; or
 - (b) classification of a trafficked person as an illegal immigrant or illegal resident under that Act.

Subpart 4—Slavery and restricting prohibited employees

305 Dealing with person as commodity

- (1) A person commits the offence of dealing with a person as a commodity if the person—
 - (a) engages in, or offers or agrees to engage in, conduct; and
 - (b) the conduct involves—
 - (i) selling, buying, transferring, bartering, letting, hiring, or dealing with a person as a slave; or
 - (ii) employing, using, or permitting another person to employ or use, a person as a slave; or
 - (iii) detaining, confining, imprisoning, carrying away, removing, receiving, transporting, or importing a person as a slave or to be used as a slave; or
 - (iv) inducing another person to sell, let, or give—
 - (A) himself or herself away as a slave; or
 - (B) any other person away as a slave; or
 - (v) transferring a person in exchange for a material benefit, being party to the inheritance of a person, or giving a person in marriage without the person's free consent; or
 - (vi) permitting a child aged under 18 years old, for whom the person is a parent or guardian, to be placed under the care or control of someone else so that the child may be subject to exploitation; or
 - (vii) building, fitting out, selling, buying, transferring, letting, hiring, using, operating, navigating, or serving on any ship, aircraft or any other form of transport that is likely to be used to engage in an activity mentioned in subparagraphs (i) to (vi).
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 14 years.
- (3) In this section,—

debt-bondage means the status or condition arising from a pledge by a person of his or her personal services, or of the personal services of any person under his or her control, as security for a debt, if the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt or if the length and nature of those services are not limited and defined

forced labour means the status or condition of a person who provides labour or services in circumstances in which a reasonable person in the same circumstances would not consider the person to be free to stop providing the labour or services, or free to leave the place where the labour or services are provided, even if escape for the person is practically possible or the person has previously attempted escaping

serfdom means the status or condition of a person who is by any law, custom, or agreement bound to live and labour on land belonging to another person and to render some determinate service to the other person, whether for reward or not, and who is not free to change that status or condition

slave means a person—

- (a) over whom another person claims, and purports to exercise, a right of ownership; or
- (b) in debt-bondage; or
- (c) in forced labour; or
- (d) in serfdom.

306 Restricting prohibited employee

- (1) A person commits the offence of restricting a prohibited employee if the person—
 - (a) employs a prohibited employee; and
 - (b) prevents or hinders the employee from—
 - (i) leaving the Cook Islands; or
 - (ii) seeking an entitlement under a law; or
 - (iii) telling another person about the circumstances of the employee's employment.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$50,000 or imprisonment for a term not exceeding 5 years, or both.
- (3) Without limiting subsection (1), a person may prevent or hinder an employee by engaging in any of the following conduct—
 - (a) taking possession of, or maintaining control over the employee's travel documents or identity documents;
 - (b) impeding, restricting or stopping—
 - (i) the employee's access to a telephone or the internet, or use of a telephone or the internet in private; or
 - (ii) the employee's movements, and in particular the employee's unaccompanied departure from premises;
 - (c) impeding, restricting or stopping an inspector appointed under, and acting in accordance with, the Employment Relations Act 2012 from entering, or having access to any place within, premises to which the inspector is entitled to have access under any law.
- (4) In this section, **prohibited employee** means a person who, under the Entry, Residence and Departure Act 1971-72 or an entry or residence permit issued under that Act, is not entitled to work in the Cook Islands.

Subpart 5—Offence by commercial carrier

307 Carriage of unlawful entrant by commercial carrier

- (1) A person commits the offence of carriage of an unlawful entrant by a commercial carrier if the person—
 - (a) is a commercial carrier; and
 - (b) conveys another person to a country (the **receiving country**) in which the other person is an unlawful entrant.
- (2) A person who commits an offence against subsection (1) is liable on conviction to a fine not exceeding \$500,000.
- (3) It is a defence to a prosecution under subsection (1) if the accused proves that—
 - (a) there were reasonable grounds to believe that the unlawful entrant possessed travel documents and identity documents to allow the entrant to lawfully enter the receiving country; or
 - (b) when the unlawful entrant boarded the transport operated by the accused, the entrant possessed travel documents and identity documents for lawful entry into the receiving country; or
 - (c) the unlawful entrant was conveyed to the receiving country by necessity caused by—
 - (i) illness or injury on board the transport on which the entrant was travelling; or
 - (ii) dangerous weather affecting the transport; or
 - (iii) any other circumstances beyond the accused's control which made it reasonably necessary to enter the receiving country; or
 - (d) the accused did not know the unlawful entrant was on board the transport operated by the accused.
- (4) Nothing in this section affects the operation of section 31 of the Entry, Residence and Departure Act 1971-72.
- (5) In this section, **commercial carrier** includes any person or entity that provides transport for people or goods for profit.

Subpart 6—Powers of border control officers for this Part

308 Boarding, search, and detention of craft

- (1) This section applies if a border control officer believes on reasonable grounds that a craft is—
 - (a) being used to commit an offence against this Part; and
 - (b) the craft is located within the Cook Islands.
- (2) A border control officer may do any of the following in the reasonable execution of the officer's functions or powers—
 - (a) direct the craft—
 - (i) to remain at the place where it is intercepted; or
 - (ii) to another place elsewhere in the Cook Islands, for the purposes of conducting a search of the craft:

- (b) if relevant for the purposes of an investigation into, or prosecution under section 298, 301, 302, or 305, detain, search or seize any of the following—
 - (i) the craft;
 - (ii) a person on the craft;
 - (iii) any thing on the craft;
 - (c) question any person on the craft;
 - (d) require a person to produce—
 - (i) a document relating to the craft; and
 - (ii) a travel document or identity document of a person on the craft;
 - (e) copy any documents produced or seized;
 - (f) remain on the craft for as long as reasonably necessary for—
 - (i) boarding, searching or directing the craft in accordance with this section; or
 - (ii) investigating whether an offence against section 298, 301, 302, or 305 has been committed;
 - (g) direct any person on board the craft to take action to give effect to a direction mentioned in paragraph (a);
 - (h) if the craft fails to stop at the reasonable direction of a border control officer, take reasonable steps to—
 - (i) pursue the craft into international waters without entering the territorial sea of another country; and
 - (ii) intercept and board the craft.
- (3) A person who is in charge of a craft and subject to the directions of a border control officer must—
- (a) give an officer required to remain on the craft reasonable food and accommodation if requested to do so by the officer; and
 - (b) not request payment for the food or accommodation.
- (4) A border control officer may detain a person for as long as reasonably necessary to exercise the officer's powers or carry out the officer's functions under subsection (2).
- (5) A person commits the offence of obstructing a border control officer if the—
- (a) person does an act or omits to do an act; and
 - (b) act or omission obstructs another person purporting to exercise powers or carry out functions under this section; and
 - (c) person knows the other person is a public official; and
 - (d) other person is a border control officer; and
 - (e) other person is attempting to exercise powers or carry out functions under this section.
- (6) A person who commits an offence against subsection (5) is liable on conviction to a fine not exceeding \$300,000 or imprisonment for a term not exceeding 14 years, or both.

- (7) It is a defence to a prosecution against subsection (6) if the accused proves that the accused had a reasonable excuse for obstructing the border control officer.
- (8) A person commits the offence of unreasonable detention by a border control officer if the person—
 - (a) is a border control officer; and
 - (b) detains another person under subsection (2); and
 - (c) fails to comply with the requirement of subsection (4).
- (9) A person who commits an offence against subsection (3) is liable on conviction to a fine not exceeding \$500 or imprisonment for a term not exceeding 2 years, or both.
- (10) However, subsection (9) does not apply if the person has a reasonable excuse.
- (11) In this section,—

border control officer means—

- (a) a member of the Police; or
- (b) a Customs officer; or
- (c) an Immigration Officer

Cook Islands includes the area within the boundaries of the territorial sea of the Cook Islands set out in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977

craft—

- (a) includes a ship, boat, vessel, aircraft, machine or other form of transport able to carry people on or over water; but
- (b) does not include a thing mentioned in paragraph (a) used or intended for use by the armed forces of another country

Customs officer has the same meaning as in section 4 of the Customs Revenue and Border Protection Act 2012

Immigration officer has the same meaning as in section 2 of the Entry, Residence and Departure Act 1971-72

obstruct, a border control official, includes the following—

- (a) hinder, intimidate or resist the official;
- (b) fail to comply with a direction given, or a request made, by the official.

Subpart 7—Aggravating factors and associated procedures for Part 17 offences

309 Aggravating factors for this Part

- (1) This section applies to a sentencing proceeding for an offence against this Part.
- (2) In deciding how an offender should be sentenced (if at all) for the offence, a court must—
 - (a) determine whether conduct for the offence was accompanied by circumstances mentioned in subsection (3) (**circumstances of aggravation**); and
 - (b) increase the severity of the sentence that would have been imposed if the offence had not been committed in circumstances of aggravation.

- (3) The following are circumstances of aggravation for an offence against this Part—
- (a) for an offence that does not include intended, threatened or actual violence as an element of the offence, intended, threatened or actual violence:
 - (b) cruel, inhuman or degrading treatment:
 - (c) for an offence that does not include exploitation of a person as an element of the offence, actual or intended exploitation:
 - (d) exposure to life threatening illness, or any other real risk to the safety or life of a person:
 - (e) serious injury or death:
 - (f) the activity of an organised criminal group:
 - (g) attempted or actual confiscation or destruction of travel documents or identity documents:
 - (h) use of drugs or an offensive item—
 - (i) the offender—
 - (ii) has prior convictions for the same, or a similar, offence; or
 - (iii) was a Cook Islands public official at the time of the offence; or
 - (iv) held a position of trust in relation to a victim for the offence; or
 - (v) was the spouse or de-facto spouse of the victim for the offence:
 - (i) the victim for the offence was a vulnerable person:
 - (k) there were more than 2 victims for the offence:
 - (j) any other fact a court considers to be an aggravating circumstance for the offence.

- (4) In this section,—

death includes the ending of human life by suicide

violence includes torture

vulnerable person includes a person who is more exposed to harm, or easily harmed, because of the nature of the person's age, condition, circumstances or occupation.

310 Consent of Attorney-General for prosecutions under this Part

- (1) A prosecution for an offence against this Part must not proceed without the consent of the Attorney-General in writing.
- (2) However, subsection (1) does not make any of the following unlawful if done before the Attorney-General consents to a prosecution for an offence against this Part—
- (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence:
 - (b) the arrest of the accused:
 - (c) remanding the accused in custody:
 - (d) granting bail to the accused.

311 Extradition or prosecution of offence against this Part

- (1) This section applies if—

- (a) an extradition country makes an extradition request to the Cook Islands; and
 - (b) the extradition offence that is the subject of the request is an offence constituted by conduct that if committed in the Cook Islands would constitute an offence against this Part; and
 - (c) the Attorney-General refuses to surrender a person who is the subject of the extradition request.
- (2) The Attorney-General must refer the matter to the Solicitor-General for the Solicitor-General's consideration as to whether to prosecute the person for an offence against this Part.
- (3) In this section, —
- extradition country** has the same meaning as in section 4 of the Extradition Act 2003
- extradition offence** has the same meaning as in section 4 of the Extradition Act 2003
- extradition request** has the same meaning as in section 4 of the Extradition Act 2003.

Part 18 Torture

312 Torture

- (1) A person commits the offence of torture if—
- (a) the person engages in conduct that inflicts severe physical or mental pain or suffering on another person; and
 - (b) the conduct is engaged in for any of the following reasons—
 - (i) obtaining information or a confession from the other person, or someone else;
 - (ii) punishing the other person for conduct which the other person, or someone else, has engaged in or is suspected of having engaged in;
 - (iii) intimidating or coercing the other person or someone else;
 - (iv) discrimination of any kind;
 - (v) any reason related to a reason mentioned in subparagraphs (i) to (iv); and
 - (c) the person is acting—
 - (i) in the capacity of—
 - (A) a Cook Islands public official; or
 - (B) a foreign public official; or
 - (ii) in an official capacity; or
 - (iii) at the instigation, or with the consent or acquiescence, of a person mentioned in subparagraph (i) or (ii).
- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 20 years.

- (3) There is no mental element for the circumstance mentioned in subsection (1)(c) and the defence of mistake of fact is not available in relation to the circumstance.
- (4) Subsections (1) and (3) do not apply to conduct engaged in by a person if—
 - (a) the conduct is, or is an inherent or incidental part of, a lawful sanction; and
 - (b) the lawful sanction is consistent with the Constitution.

313 Exceptional circumstances or superior orders no defence

- (1) It is not a defence to a prosecution for an offence against section 312 that conduct for the offence was engaged in because of—
 - (a) a necessity generated by any of the following—
 - (i) a state of war;
 - (ii) the threat of war;
 - (iii) political instability;
 - (iv) public emergency;
 - (v) any other exceptional circumstance; or
 - (b) the orders of a superior officer, or a public authority.
- (2) However, in deciding how an offender should be sentenced for the offence of torture, a court may take into account the matters mentioned in subsection (1).

314 Consent of Attorney-General for prosecutions under this Part

- (1) A prosecution for an offence against this Part must not proceed without the consent of the Attorney-General in writing.
- (2) However, subsection (1) does not make any of the following unlawful if done before the Attorney-General consents to a prosecution for an offence against section 312—
 - (a) the issue or execution of a warrant for the arrest of a person accused (the **accused**) of committing the offence;
 - (b) the arrest of the accused;
 - (c) remanding the accused in custody;
 - (d) granting bail to the accused.

Part 19
Other offences

315 Misconduct in relation to dead human body or human remains

- (1) A person commits the offence of misconduct in relation to a dead human body or human remains if—
 - (a) the person engages in conduct; and
 - (b) the conduct—
 - (i) is a failure by the person to perform his or her duty under a law in relation to a dead human body or human remains; or
 - (ii) is an indecent or improper interference with, or an indignity toward, a dead human body or human remains.

- (2) A person who commits an offence against subsection (1) is liable on conviction to imprisonment for a term not exceeding 2 years.

Part 20

Domestic violence

316 Interpretation

In this subpart, unless the context otherwise requires,—

domestic relationship has the meaning given by **section 90 of the Family Law Act 2017**

domestic violence has the meaning given by **section 91 of the Family Law Act 2017**.

317 Application of Act to domestic violence matters

- (1) Despite any provision of the **Family Law Act 2017**, or any other law of the Cook Islands, nothing affects the application of this Act to conduct for which a person may be criminally responsible and that—
- (a) arises in the context of a domestic relationship; or
 - (b) constitutes domestic violence.
- (2) If conduct mentioned in subsection (1) amounts to an offence against this Act as well as an offence against any other law,—
- (a) the conduct is a criminal offence despite any other Act applying to the conduct; and
 - (b) criminal proceedings for the offence may proceed under this Act despite any other proceeding in relation to the conduct under any other Act.
- (3) An acquittal of a person prosecuted under this Act for conduct mentioned in subsection (1) does not affect—
- (a) a proceeding under the **Family Law Act 2017** in relation to the same conduct; or
 - (b) the power of the High Court of the Cook Islands to make a protection order under part 6 of the Family Law Act 2017 affecting a person.

Part 21

Miscellaneous provisions

Subpart 1—General

318 Maximum penalty if not specified

If a provision of a law creates an offence but does not specify the maximum penalty for the offence, the person is liable on conviction,—

- (a) if the offender is an individual, to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 12 months, or both; or
- (b) if the offender is a corporation,—
 - (i) to a fine not exceeding \$80,000; and

- (ii) if the court considers it appropriate, to the suspension or cancellation of any licence used by the corporation to conduct its business.

319 Offence under Act does not affect civil remedy

Subject to subpart 3, nothing in this Act affects—

- (a) the right or entitlement of a person to obtain a civil remedy in relation to conduct that amounts to an offence under this Act; or
- (b) the operation of any civil remedy.

Subpart 2—Arrest, custody and seizure of property

320 Operation of other Acts in relation to arrest and custody

This Act does not affect the operation of a provision of any other Act in relation to—

- (a) the arrest of a person; or
- (b) the restraint or detention of a person.

321 Court may seize tainted property

- (1) This section applies subject to the Proceeds of Crime Act 2003.
- (2) A court may, on application by a member of the Police or a representative of the Crown or of its own volition, order that suspected tainted property in the possession or control of a person arrested for an offence (the **alleged offender**), or in the possession of another person who has acquired the property from the alleged offender or possesses the property on behalf of the alleged offender, be seized and held by a person or entity nominated by the court until the finalisation of criminal proceedings against the alleged offender for the offence.
- (3) Before making an order under subsection (2), the court must allow the alleged offender to be heard about whether the order should be made unless—
 - (a) there is a reasonable likelihood that the suspected tainted property may be disposed of before the alleged offender is heard; or
 - (b) for any other reason the court considers that it is not necessary to hear the alleged offender in relation to the order.
- (4) At the end of criminal proceedings against the alleged offender the court must,—
 - (a) if the court is satisfied that any property seized in accordance with this section is tainted property, order the property forfeited to the Cook Islands, subject to a restitution order or a sentence of reparation; or
 - (b) if the court is satisfied that any property seized in accordance with this section is not tainted property, order that the property be immediately returned to the person from whom it was seized.
- (5) The court must be satisfied of the matters in subsection (4) on the balance of probabilities.
- (6) In this section,—
restitution order means an order under section 327

sentence of reparation means a sentence of reparation under section 328

suspected tainted property means property reasonably believed to have been directly or indirectly derived or realised from the commission of an offence

tainted property means property directly or indirectly derived or realised from the commission of an offence.

322 Custody and discharge

If a trier of fact acquits an accused on the basis that the accused was suffering from a mental impairment at the time of the offence for which the accused was tried, sections 591, 592 and 593 of the Cook Islands Act 1915 apply in relation to the custody and discharge of the accused.

Subpart 3—Protection from liability

323 No civil liability for acting in accordance with this Act

A person is not liable for a civil penalty for engaging in conduct in accordance with any of the following provisions honestly and without recklessness—

- (a) section 40 (Intervening conduct or event):
- (b) section 41 (Sudden or extraordinary emergency):
- (c) section 42 (Self-defence):
- (d) section 278 (Suppression of riot—civic power and police action):
- (e) section 281 (Public nuisance—civic power and police action).

324 No civil or criminal liability for giving effect to sentence, process, or warrant

- (1) A person is not liable for a civil or criminal penalty for carrying out a sentence, process, or warrant if the sentence is passed, or the process, or warrant is issued, by someone with purported authority to do so, and—
 - (a) the person—
 - (i) is lawfully required to carry out the sentence, process, or warrant; and
 - (ii) is acting in the person’s lawful capacity when carrying out the sentence, process, or warrant; and
 - (iii) believes on reasonable grounds that the sentence, process, or warrant is not defective; or
 - (b) the person is assisting a person mentioned in paragraph (a)(i) to carry out the sentence, process, or warrant.
- (2) This section applies despite any defect in—
 - (a) the substance or form of a sentence, process, or warrant; or
 - (b) the jurisdiction of a court or person passing a sentence, or issuing any process or warrant; or
 - (c) the appointment of a person passing a sentence, or issuing any process or warrant.
- (3) In this section, **process** means any document accepted by a court for the purposes of summoning a person before the court.

325 No civil or criminal liability for lawful arrest

- (1) A person is not liable for a civil or criminal penalty for exercising a power of arrest without warrant if the person exercises the power of arrest—
 - (a) in accordance with any law; or
 - (b) to assist—
 - (i) either a member of the Police, or an authorised person, who requests the person’s assistance to arrest another person without a warrant; and
 - (ii) in circumstances in which the person believes on reasonable grounds that the other person has committed an offence; or
 - (c) to apprehend another person that the person believes on reasonable grounds—
 - (i) is committing, or has committed, an offence against any law; or
 - (ii) is escaping from lawful pursuit or custody.
- (2) This section applies despite a decision of a member of the Police or an authorised person, or a finding of a court, that—
 - (a) a suspected offence in relation to which the arrested person was arrested was not committed; or
 - (b) a suspected offence in relation to which the arrested person was arrested was committed but that the arrested person did not commit the offence.
- (3) In this section, **authorised person** means a person, other than a member of the Police, who is authorised under a law to exercise a power of arrest and request another person to assist the authorised person to exercise the power.

Subpart 4—Costs, restitution, and reparations

Costs

326 Court may order costs

- (1) A court may make the following orders about costs in a criminal proceeding if the court is satisfied that it is in the interests of justice—
 - (a) if a person is found guilty of an offence, order the guilty person to pay a reasonable amount, determined by the court, toward the costs of the prosecution in the proceeding;
 - (b) if a person is acquitted of an offence, order the prosecution to pay a reasonable amount, determined by the court, toward the legal costs of the acquitted person’s defence in the proceeding.
- (2) If the court makes an order under subsection (1)(a) against a guilty person, the court may order that any money found on the person at the time of his or her arrest is forfeited to satisfy the amount payable under the order.
- (3) An order of a court under this section has effect as a judgment of the court.

*Restitution***327 Court may order restitution**

- (1) At the end of criminal proceedings against an accused who has been found guilty of an offence (the **guilty person**) and whose property is subject to an order under section 321, a court may, if satisfied that the property is tainted property, make an order (a **restitution order**) that the property be returned to the person (the **previous lawful owner**) who last owned the property before it became tainted property.
- (2) If the property dealt with by a restitution order deals with tainted property in the possession of a person (the **current lawful owner**) who lawfully acquired the tainted property from the guilty person in good faith—
 - (a) the order may—
 - (i) require the guilty person to pay the current lawful owner up to, but not more than, an amount paid by the current lawful owner for the tainted property (a **restitution payment**); and
 - (ii) for the purposes of satisfying the requirement in subparagraph (i), direct that any money forfeited in accordance with section 321(4)(a) be used to meet the restitution payment amount; and
 - (b) whether or not the current lawful owner has received a restitution payment for the property, the order may direct the current lawful owner to forfeit the property—
 - (i) to the court; or
 - (ii) to someone else who, in the opinion of the court, is the previous lawful owner of the property.
- (3) Before making a restitution order that directs a current lawful owner to forfeit property under subsection (2)(b), the court must allow the current lawful owner to be heard about whether the direction should form part of the order.
- (4) A restitution order—
 - (a) is authority for a registrar of the court, or a member of the Police, to carry out the order; and
 - (b) may be enforced in the same manner as a fine.
- (5) A restitution order—
 - (a) changes lawful possession of tainted property to which the order relates; but
 - (b) does not affect any property rights, or any right of action, existing or acquired in the property before or after the commission of the offence to which the tainted property relates.
- (6) In this section,—

restitution order means an order under subsection (2)

tainted property means property directly or indirectly derived or realised from the commission of an offence.

Reparations

328 Sentence of reparation

- (1) The court may, on application or on its own initiative, impose a sentence of reparation for an offence if an offender has, through or by means of an offence of which the offender is convicted, caused a person to suffer—
 - (a) loss of, or damage to, property; or
 - (b) emotional harm; or
 - (c) loss or damage consequential on any emotional or physical harm or loss of, or damage to, property.
- (2) In determining whether a sentence of reparation is appropriate or the amount of reparation to be made for any consequential loss or damage described in subsection (1)(c), the court must take into account whether the person has brought any proceedings in relation to that loss or damage.
- (3) The court must not impose as part of a sentence of reparation an obligation on the offender to perform any form of work or service for the person who suffered the harm, loss, or damage.
- (4) If the court considers that a sentence of reparation may be appropriate, the court may order a probation officer, or any other person designated by the court for the purpose, to prepare a reparation report for the court.

329 Financial capacity of offender

- (1) If the offender has insufficient means to pay the total value of the loss, damage, or harm, the court may sentence the offender to make—
 - (a) reparation for any amount that is less than the value of the loss, damage, or harm; or
 - (b) payment by instalments in respect of the loss, damage, or harm; or
 - (c) both (a) and (b).
- (2) The court may impose conditions relating to the payment of reparations under the sentence.
- (3) A copy of the conditions must be given to the person who suffered the harm, loss, or damage.
- (4) Failure to give a copy of the conditions in accordance with this section does not affect the validity of the proceedings in the court or of the sentence imposed by the court.

330 Payment of reparation

- (1) Every sum payable under a sentence of reparation must be paid to the person who suffered the harm, loss, or damage, or, with that person's consent, to that person's insurer.
- (2) A sentence of reparation does not affect any right that the person who suffered the harm, loss, or damage has to recover by civil proceedings any damages in excess of the amount recovered under the sentence.

331 Cancellation of sentence of reparation

- (1) The court may, on application or on its own initiative, cancel a sentence of reparation and substitute any other sentence (including another sentence of reparation) that could have been imposed on the offender at the time when the offender was convicted of the offence for which the sentence was imposed.
- (2) An offender who is subject to a sentence of reparation or a Registrar may apply for an order under subsection (1) on the ground that the reparation is unaffordable because the offender's financial position has changed significantly since the sentence was imposed.
- (3) A Registrar may apply for an order under subsection (1) on the ground that the Registrar reasonably believes that the sentence is unenforceable because the offender provided false or misleading information about the offender's financial position that the court relied on in imposing the sentence or because of any other reason.
- (4) The court may make an order under subsection (1) (whether on application or on its own initiative) only if the court is satisfied that—
 - (a) the ground in subsection (2) or (3) has been established; and
 - (b) enforcement of the original sentence of reparation is unlikely to be effective.
- (5) If the court is considering a substitute sentence,—
 - (a) the court must take the following matters into account—
 - (i) the amount of the original sentence of reparation that has been paid and the amount outstanding;
 - (ii) any other sentences or orders imposed on the offender for the offending for which the original reparation was imposed and the extent to which the reparation was taken into account in imposing those sentences or orders; and
 - (b) if the offender provided false or misleading information about the offender's financial position, the court may take the following matters into account—
 - (i) the extent to which the information was false or misleading;
 - (ii) the offender's culpability in providing the information, including whether, in the court's opinion, the offender intended to mislead the court.
- (6) If the court cancels a sentence of reparation, the amount of reparation outstanding is deemed to be remitted from the date the order is made or any other date that the court may specify.

332 Arrest of liable person

- (1) A Judge or a Registrar of the court may, on an application in writing by a constable, issue a warrant for the arrest of a person (the liable person) if the Judge or Registrar (as the case may be) is satisfied that the person has not paid or is not paying the reparation due under a sentence of reparation and is about to leave or attempt to leave the Cook Islands.

- (2) The liable person must be brought as soon as possible before the court, and if it is satisfied that the person is about to leave or attempt to leave the Cook Islands without making reasonable efforts to comply with the sentence of reparation, the court may order that the person—
 - (a) pay the outstanding reparations:
 - (b) make arrangements with the court to pay or continue to pay the reparations:
 - (c) give such security (including the provision of sureties) for the payment of that liability as the court specifies:
 - (d) not leave the Cook Islands without the written permission of the court:
 - (e) surrender to the court, for such period as the court specifies, any travel documents or tickets in the person's possession:
 - (f) provide the court, within such period as the court specifies, with any information the court thinks appropriate.
- (3) To avoid doubt, the court may make an order having the effect stated in all or any of paragraphs (a) to (f) of subsection (2) and make an order even if the reparations are recoverable by other means.
- (4) On making an order under subsection (2)(d) or (e), the court may direct the Registrar to give notice of the order to such departments of State, offices, or persons as the court or the Registrar thinks appropriate.
- (5) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000 who—
 - (a) is a person against whom an order is in force under subsection (2)(d) or (e); and
 - (b) is in default of his or her reparation obligation; and
 - (c) either—
 - (i) leaves the Cook Islands; or
 - (ii) attempts, or does any act with the intent, to leave the Cook Islands.
- (6) A person against whom an order under subsection (2) is in force may apply to the court for the discharge of the order, and the court may, if it considers it just or appropriate, discharge the order accordingly.
- (7) If the court discharges an order made under subsection (2)(e), it must direct the return of any travel documents or tickets surrendered pursuant to the order (unless the court grants a new order under subsection (2)(e) in relation to the same documents).

Subpart 5—Regulations

333 Regulations

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

- (a) prescribing forms to be used for the purposes of this Act:
- (b) prescribing fees, travelling allowances, and expenses for witnesses and interpreters in a proceeding under this Act:
- (c) prescribing matters for which other fees are payable under this Act and the amounts of those fees:

- (d) prescribing grounds for an exemption from fees, in whole or in part:
- (e) providing for any other matters contemplated by this Act, necessary for its full administration, or necessary for giving it full effect.

Part 22

Repeal and consequential amendments

334 Repeals

The Crimes Act 1969 is repealed.

335 Amendments to other Acts

The Acts listed in the Schedule are amended as set out in that schedule.

Part 23

Transitional provisions

336 Interpretation

In this Part, unless the context otherwise requires,—

commencement day means the day section 2 commences

repealed Act means the Crimes Act 1969 as in force immediately before the commencement day.

337 Application of this Act and repealed Act

- (1) This Act applies to conduct that happens on or after the commencement day.
- (2) Despite its repeal, the repealed Act continues to apply to conduct, and any proceeding, requirement, procedure, or action taken in relation to conduct, that happened before the commencement day.

338 General saving

Any act, matter, thing, decision done or having effect, or proceeding brought under a provision of the repealed Act continues to have effect subject to this Act.

Schedule Amendments to other Acts

Aviation Security Act 2008

Section 2 is amended by repealing the definition of “Act of violence”, and substituting the following new definition:

“**Act of violence** means an act which, if committed in the Cook Islands, would constitute—

- “(a) any of the following offences against the Crimes Act 2017—
 - “(i) section 86 (Assault):
 - “(ii) section 87 (Assault causing injury):
 - “(iii) section 88 (Assault causing serious injury):
 - “(iv) section 89 (Impairment of another person):
 - “(v) section 92 (Setting or allowing trap):
 - “(vi) section 104 (Kidnapping):
 - “(vii) section 230 (Endangering transport); or
- “(b) any of the offences specified in section 9 or 18 of the Arms Ordinance of 1954”

Section 40 (3)(a) is amended by omitting “intentional homicide under the Crimes Act 1969” and substituting “murder under section 56 or general manslaughter under section 57 of the Crimes Act 2017”.

Section 40 (3)(b) is amended by omitting “intentional assault resulting in permanent damage or death under the Crimes Act 1969” and substituting “assault causing serious injury under section 88 of the Crimes Act 2017”.

Section 41 (3)(a) is amended by omitting “intentional homicide under the Crimes Act 1969” and substituting “murder under section 56 or general manslaughter under section 57 of the Crimes Act 2017”.

Section 41 (3)(b) is amended by omitting “intentional assault resulting in permanent damage or death under the Crimes Act 1969” and substituting “assault causing serious injury under section 88 of the Crimes Act 2017”.

Section 49 is repealed and the following section is substituted—

“49 Application of certain provisions of the Crimes Act 2017

Nothing in section 18 of the Crimes Act 2017 (which relates to jurisdiction in respect of offences on ships and aircraft outside the Cook Islands) applies the offence of hijacking or to any of the offences described in section 46 of this Act or to any offence referred to in section 45 of this Act committed in connection with the offence of hijacking.”

Section 52 is repealed and the following section is substituted—

“52 Liability for offences under the Crimes Act 2017 despite extraterritoriality

- “(1) Any person who commits an act or omission on an aircraft in flight outside the Cook Islands that would, if it occurred in the Cook Islands, be an offence against section 86 (Assault), section 116 (Indecency), section 228 (Intentional destruction of property) or section 280 (Public nuisance) of the Crimes Act 2017 is liable under that Act as if the omission had occurred in the Cook Islands.
- “(2) To avoid doubt, in a prosecution for an offence against section 116 or section 280 of the Crimes Act 2017, an aircraft is taken to be a ‘place accessible to the public’ or a ‘public place’, respectively.”

Section 74(5) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Section 81 is amended by omitting “Crimes Act 1969” wherever the term appears and substituting in each case “Crimes Act 2017”.

Births and Deaths Registration Act 1973

Section 11(4) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Crimes (Internationally Protected Persons and Hostages) Act 1982

Section 3 is amended by omitting “Crimes Act 1969” wherever it appears and substituting in each place “Crimes Act 2017”.

Section 4 is amended by omitting “Crimes Act 1969” wherever it appears and substituting in each place “Crimes Act 2017”.

Section 5(2)(b) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Section 16 is repealed and the following section is substituted—

“16 Application of certain provisions of Crimes Act 2017

“Nothing in section 18 of the Crimes Act 2017 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond the Cook Islands) applies with respect to a proceeding for an offence against sections 3 to 8 of this Act.”

Section 17 is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

The First Schedule is repealed and the following schedule is substituted—

“FIRST SCHEDULE

Section 3 (1)

CRIMES AGAINST INTERNATIONALLY PROTECTED PERSON

Crimes Act 2017	Description of offence
section 56	Murder
section 57	General manslaughter

section 87	Assault causing injury
section 88	Assault causing serious injury
section 89	Impairment of another person
section 96	Infecting others
section 104	Kidnapping
section 114	Sexual violation”

The Second Schedule is repealed and the following schedule is substituted—

“SECOND SCHEDULE

Section 4 (1)

CRIMES AGAINST INTERNATIONALLY PROTECTED PERSON’S

PREMISES OR VEHICLE

Crimes Act 2017	Description of offence
section 227	Arson
section 228	Intentional destruction of property
section 230	Endangering transport ”

Criminal Justice Amendment Act 1976

Section 9 is amended by repealing subsection (1) and substituting the following subsection—

- “(1) If, under any law, a court may order the imprisonment of a person because of the person’s failure to pay a lawfully imposed fine, the court may instead order the person to serve in a Community Service Group for a period of not more than 12 months if the court thinks it appropriate having taken into account any other fines owing by the person and the requirement under section 13 of this Act.”

Section 22 (2)(b) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Criminal Procedure Act 1980-81

Section 2(1) is amended by repealing the definition of “Organised criminal group”, and substituting the following definition—

“**organised criminal group** has the same meaning as in section 283 of the Crimes Act 2017.”

Section 4 (6) is amended by omitting “Part III of the Crimes Act 1969 (which relates to matters of justification or excuse)” and substituting “Part 4 of the Crimes Act 2017 (Lack of criminal responsibility)”.

Section 50 (2) is amended by omitting “section 198 of the Crimes Act 1969 (relating to infanticide)” and substituting “section 61 of the Crimes Act 2017 (Infanticide)”.

Section 83 is amended by repealing subsection (3) and substituting the following subsection—

- “(3) Everyone is bailable as of right if charged with any of the following offences against the Crimes Act 2017—
 - “(a) section 57 (General manslaughter) if the offence involves a breach of the duty to provide the necessities of life mentioned in section 81 or 82 of that Act:
 - “(b) section 76 (Procuring an abortion):
 - “(c) section 83 (Abandonment of child under 6 years):
 - “(d) section 84 (Ill-treatment of child or vulnerable adult):
 - “(e) section 85 (Failure to protect child or vulnerable adult):
 - “(f) section 92 (Setting or allowing trap):
 - “(g) section 99 (Unlawful conduct causing injury):
 - “(h) section 255 (False statement).”

Section 83 is amended by repealing subsection (5) and substituting the following subsection—

- “(5) A person charged with an offence of a kind that is not bailable as of right under this section is bailable—
 - “(a) at the discretion of a court; but
 - “(b) for an offence against section 265 (Treason) or section 266 (Espionage) of the Crimes Act 2017, only by order of a Judge or the Queen’s Representative.”

Section 96A is amended by omitting “section 109A(2) of the Crimes Act 1969” wherever it appears and substituting in each place “the definition of organised criminal group in section 283 of the Crimes Act 2017”.

Section 96B(1)(a)(ii) is amended by omitting “section 109A (2) of the Crimes Act 1969” and substituting “the definition of organised criminal group in section 283 of the Crimes Act 2017”.

Section 117(1) is amended by inserting “reparations,” after “restitution,”.

Section 121 is amended by repealing paragraph (c) and substituting the following new paragraph—

- “(c) that the defendant has threatened to do, or to procure some other person to do, any act which if done would constitute an offence under either of the following sections of the Crimes Act 2017—
 - “(i) section 227 (Arson):
 - “(ii) section 228 (Intentional destruction of property).”

Section 138 is repealed.

Defamation Act 1993

Section 2(1) is amended by repealing the definition of “Criminal proceeding”.

Section 15(1) is amended by omitting “or criminal”.

Section 16 is amended by repealing subsection (1) and substituting the following subsection—

- “(1) Any person who is a defendant in any civil proceeding (commenced in respect of the publication of any report, paper, votes, or proceedings by that person, or by the person’s servant, by or under the authority of Parliament) may bring before the Court in which the proceeding is commenced (first giving 24 hours’ notice of the person’s intention to do so to the plaintiff in the proceeding or to the plaintiff’s solicitor) a certificate under the hand of the Speaker of Parliament stating that the report, paper, votes, or proceedings, as the case may be, in respect of which the proceeding is commenced were published by the person, or the person’s servant, by order or under the authority of Parliament.”

Section 17 is repealed and the following section is substituted—

“17 Stay of proceedings in respect of copy of parliamentary report, paper, votes or proceedings

- “(1) The defendant in a civil proceeding commenced in respect of the publication of any copy of any report, paper, votes, or proceedings referred to in section 16 may at any stage of the proceeding lay before the Court the report, paper votes, or proceedings, and the copy, with an affidavit verifying the report, paper, votes, or proceedings, and the correctness of the copy, and apply for a stay of the proceeding.
- “(2) The Court must, if the requirements of subsection (1) have been satisfied, immediately stay the proceeding.
- “(3) A proceeding stayed under this section is deemed to have been finally determined.”

Section 18 is repealed and the following section is substituted—

“18 Stay of proceedings in respect of extract from parliamentary report, paper, votes or proceedings

- “(1) The defendant in any civil proceeding commenced in respect of the publication of any extract from or abstract of any report, paper, votes or proceedings referred to in section 16 may give in evidence the report, paper, votes, or proceedings, and show that the extract or abstract was published in good faith and without malice.
- “(2) If the Court is satisfied of the matters given in evidence under subsection (1), judgment must be entered in favour of the defendant.”

Section 19 is amended by omitting—

- (a) “or criminal”; and
- (b) “or prosecuted”.

Section 20 is amended by omitting—

- (a) “or criminal”; and
- (b) “or prosecuted”.

Disaster Risk Management Act 2007

Section 25 is repealed.

Electoral Act 2004

Section 8(2) is amended by inserting the following paragraph after paragraph (d)—

“(da) has been convicted (whether before or after the commencement of this Act) of any of the offences specified in Part 3 of the Third Schedule to this Act, unless a period of 5 years has elapsed from the date of the conviction;”.

Parts 1 and 2 of the Third Schedule are repealed and the following Parts are substituted—

“PART 1—CRIMES AGAINST THE STATE, MURDER, HUMAN TRAFFICKING, PIRACY, AND KIDNAPPING

Crimes against the following provisions of the Crimes Act 2017:

Section 56	(Murder)
Section 104	(Kidnapping)
Section 265	(Treason)
Section 266	(Espionage)
Section 267	(Wrongful communication of official information)
Section 268	(Wrongful retention or copying of official information)
Section 269	(Failure to manage properly official information)
Section 271	(Provoking mutiny)
Section 272	(Provoking disregard of duty)
Section 273	(Sabotage)
Section 286	(Piracy)
Section 287	(Operating pirate-controlled ship or aircraft)
Part 17	(People smuggling and human trafficking)

“PART 2—CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE

Crimes against the following provisions of the Crimes Act 2017:

Section 239	(Public corruption)
Section 240	(Foreign corruption)
Section 253	(Perjury)
Section 254	(False sworn statement)
Section 256	(Falsifying evidence)
Section 261	(Corrupting witness or juror)
Section 262	(Act corruptly as witness or juror)

“PART 3—CRIMES INVOLVING DISHONESTY

Crimes against the following provisions of the Crimes Act 2017:

Section 159	(Theft—if the value of the property stolen is worth more than \$1,000)
Section 163	(Conversion of vehicle, ship, or aircraft)
Section 166	(Breach of duty by trustee)
Section 170	(Burglary)
Section 171	(Aggravated burglary)
Section 172	(Being equipped or armed for offence)
Section 174	(Robbery)
Section 175	(Aggravated robbery)
Section 176	(Assault with intent to rob)
Section 177	(Compelling execution of document by force to obtain material benefit or cause material loss)
Section 178	(Demanding property with intent to commit theft)
Section 179	(Blackmail)
Section 180	(Obtaining benefit or causing loss by dishonesty or deception—if the value of the benefit obtained or loss caused is more than \$1,000)
Section 181	(Receiving unlawfully obtained property—if the value of the property is more than \$1,000)
Section 183	(Forgery)
Section 185	(Concealing or destroying document, seal or stamp, or certifying mark with intent to deceive)
Section 186	(Possessing thing with intent to forge)
Section 187	(Counterfeit money)
Part 10	(Money Laundering)”

The table which follows the prescribed forms in the Third Schedule to the principal Act, and entitled “Crimes involving dishonesty”, is repealed.

Entry, Residence and Departure Act 1971-72

Section 28(1) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Section 29(8) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Evidence Act 1968

Section 6 is amended by repealing subsection (3)(b) and (c) and substituting the following paragraph:

- “(b) an offence against any of the following sections of the Crimes Act 2017—
 - “(i) section 84 (Ill-treatment of child or vulnerable adult):

- “(ii) section 85 (Failure to protect child or vulnerable adult):
- “(iii) section 150 (Bigamy).”

Section 6 is amended by repealing subsection (4) and substituting the following subsection—

- “(4) The wife of a person charged is a competent but not a compellable witness for the prosecution at every stage of the proceedings, whether or not the person charged consents, if—
 - “(b) the person (the **complainant**) against whom or in respect of whom the offence is alleged to have been committed is a woman or child under 21 years at the time of the alleged offence; and
 - “(c) the complainant either—
 - “(i) is a daughter, grand-daughter, son, or grand-son of the person charged and the witness; or
 - “(ii) was, at the time of the alleged offence, under the care or protection of the person charged and the witness; and
 - “(d) the charges allege the commission or attempted commission of any of the following offences against the Crimes Act 2017—
 - “(i) section 114 (Sexual violation):
 - “(ii) section 115 (Indecent assault):
 - “(iii) section 117 (Sexual connection or indecent conduct with person under 16 years old):
 - “(iv) section 118 (Sexual connection or indecent conduct with person under 12 years old):
 - “(v) section 119 (Sexual connection or indecent conduct with dependent family member under 18 years old):
 - “(vi) section 120 (Incest):
 - “(vii) section 121 (Maintaining unlawful sexual activity with person under 16 years old):
 - “(viii) section 122 (Grooming person under 16 years old for sexual connection or indecent act):
 - “(ix) section 123 (Associating with groomed person under 16 years old for sexual connection or indecent act):
 - “(x) section 124 (Procuring person under 16 years old for sexual connection or indecent act in presence of the person).”

Section 20A(1) is amended by repealing the definition of “Rape” and substituting the following definition—

“**rape** has the same meaning as in section 110 of the Crimes Act 2017”.

Section 20B is amended by repealing subsection (1) and substituting the following subsection—

- “(1) In a criminal proceeding for an offence against any of the following sections of the Crimes Act 2017, or any other offence of a sexual nature, corroboration of a complainant’s evidence is not required for the accused to be found guilty and a Judge is not required to warn the jury about the absence of corroboration—

- “(a) section 114 (Sexual violation):
- “(b) section 115 (Indecent assault):
- “(c) section 117 (Sexual connection or indecent conduct with person under 16 years old):
- “(d) section 118 (Sexual connection or indecent conduct with person under 12 years old):
- “(e) section 119 (Sexual connection or indecent conduct with dependent family member under 18 years old):
- “(f) section 120 (Incest):
- “(g) section 121 (Maintaining unlawful sexual activity with person under 16 years old):
- “(h) section 122 (Grooming person under 16 years old for sexual connection or indecent act):
- “(i) section 123 (Associating with groomed person under 16 years old for sexual connection or indecent act):
- “(j) section 124 (Procuring person under 16 years old for sexual connection or indecent act in presence of the person):
- “(k) section 125 (Unlawful sexual activity outside Cook Islands with person under 16 years old):
- “(l) section 126 (Promoting or organising travel for unlawful sexual activity with person under 16 years old):
- “(m) section 127 (Bestiality):
- “(n) section 128 (Indecency with animal).”

Fair Trading Act 2008

Section 57 is amended by repealing subsection (3) and substituting the following subsection—

- “(3) Subsections (1) and (2) do not apply to a criminal proceeding against the Commissioner for an offence, or an attempt or conspiracy to commit an offence, against any of the following sections of the Crimes Act 2017—
 - “(a) Section 239 (Public corruption):
 - “(b) Section 240 (Foreign corruption):
 - “(c) Section 266 (Espionage):
 - “(d) Section 267 (Wrongful communication of official information):
 - “(e) Section 268 (Wrongful retention or copying of official information):
 - “(f) Section 269 (Failure to manage properly official information).”

Financial Transactions Reporting Act 2004

Section 2(1) is amended by repealing the definition of “money laundering offence” and substituting the following definition—

“**money laundering offence** means an offence against Part 10 of the Crimes Act 2017”.

Income Tax Act 1997

Section 222(4) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

International Companies Act 1981-82

Section 249(2) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

International Partnership Act 1984

Section 72 (1) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

International Trusts Act 1984

The Schedule is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Judicature Act 1980-1981

Section 14 is repealed and the following section is substituted—

“14 Trial with Judge and jury or Judge without jury in certain cases

- “(1) Despite any other provision in any law, the trial of a person for an offence specified in the First Schedule to this Act must be held in Rarotonga and be heard before,—
- “(a) for an offence mentioned in Part I of the First Schedule, a Judge sitting with a jury; or
 - “(b) for an offence mentioned in Part II of the First Schedule, a Judge sitting with or without a jury.
- “(2) On the trial of a person for an offence mentioned in Part II of the First Schedule the following apply—
- “(a) the substance of the charge must be read to the person:
 - “(b) the person charged must before the charge is gone into but not afterwards, elect whether the Judge sits with or without a jury to hear the charge:
 - “(c) if the person elects to be tried by a Judge alone under this section, or does not elect when requested by the Court to do so, the person must be remanded, with or without bail, to appear before the Court to be presided over by a Judge without a jury, and the provisions of Part I of the Criminal Procedure Act 1980-81 relating to preliminary proceedings apply accordingly:
 - “(d) a person who has elected under this section to be tried by a Judge alone may, by leave of the Court, at any time before the charge is gone into but not afterwards, withdraw the election, and have the case dealt with by a Judge and jury:
 - “(e) an election under this section, if the defendant is personally present, may be made on the person’s behalf by any barrister or solicitor appearing for the person.”

Section 15A is amended by—

- (a) omitting “Part X of the Crimes Act 1969” and substituting “Part 7 of the Crimes Act 2017” in subsection (1)(a); and
- (b) omitting “section 250 of the Crimes Act 1969” and substituting “section 163 of the Crimes Act 2017” in subsection (1)(b); and

- (c) omitting “section 263 of the Crimes Act 1969” and substituting “section 170 of the Crimes Act 2017” in subsection (1)(ba); and
- (d) inserting the following new subsection—
- “(6) This section does not apply to the trial of person under any of the following provisions of the Crimes Act 2017—
 - “(a) Section 162 ((Looting—if the value of any money or property involved is not more than \$5,000):
 - “(b) Section 180 (Obtaining benefit or causing loss by dishonesty or deception—if the value of the benefit or loss is at least \$1,000):
 - “(c) Section 184 (Using forged document, seal or stamp, or certifying mark):
 - “(d) Section 185 (Concealing or destroying document, seal or stamp, or certifying mark with intent to deceive):
 - “(e) Section 186 (Possess thing with intent to forge):
 - “(f) Section 187 (Counterfeit money):
 - “(g) Section 189 (Accessing computer system for dishonest purpose):
 - “(h) Section 190 (Damaging or interfering with computer system):
 - “(i) Section 191 (Trading in software to commit offence).”

Section 37 is amended by omitting “\$100” and substituting “not exceeding \$15,000 for individuals and \$150,000 for corporations,”

Section 92 of the principal Act is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

The First Schedule and the Second Schedule are repealed and the following schedules are substituted—

“FIRST SCHEDULE

Section 14(1)(a)

PART I— OFFENCES TO BE TRIED BY A JUDGE AND JURY

- Section 56 (Murder)
- Section 57 (General manslaughter)
- Section 61 (Infanticide)
- Section 75 (Carrying out an abortion)
- Section 88 (Assault causing serious injury)
- Section 89 (Impairment of another person)
- Section 114 (Sexual violation)
- Section 239 (Public corruption)
- Section 253 (Perjury)
- Section 259 (Falsely accusing person of offence)

Section 260	(Perverting the course of justice)
Section 261	(Corrupting witness or juror)
Section 265	(Treason)
Section 266	(Espionage)
Section 271	(Provoking mutiny)
Section 273	(Sabotage)
Section 274	(Taking part in criminal oath)
Section 286	(Piracy)
Section 287	(Operating pirate-controlled ship or aircraft)
Section 305	(Dealing with person as commodity)

**PART II—OFFENCES TO BE TRIED BY A JUDGE ALONE, OR JUDGE
AND JURY, IN ACCORDANCE WITH ELECTION BY
DEFENDANT**

Section 14(1)(b)

Crimes against the following provisions of the Crimes Act 2017—

Section 162	(Looting—if the value of any money or property involved is not more than \$5,000)
Section 180	(Obtaining benefit or causing loss by dishonesty or deception—if the value of the benefit or loss is at least \$1,000)
Section 184	(Using forged document, seal or stamp, or certifying mark)
Section 185	(Concealing or destroying document, seal or stamp, or certifying mark with intent to deceive)
Section 186	(Possessing thing with intent to forge)
Section 187	(Counterfeit money)
Section 189	(Accessing computer system for dishonest purpose)
Section 190	(Damaging or interfering with computer system)
Section 191	(Trading in software to commit offence)

“SECOND SCHEDULE

Section 19(a)(ii)

PART I—OFFENCES TO BE TRIED BY A SINGLE JUSTICE

Section 86	(Assault)
Section 91	(Possessing offensive item)
Section 93	(Laying poison)
Section 97(3)	(Reckless cruelty to animal)
Section 144	(Soliciting)

Section 159	(Theft—if the value of the item stolen is not more than \$1,000)
Section 164	(Possessing instrument for conversion of vehicle or transport)
Section 181	(Receiving unlawfully obtained property—if the value of the item received is not more than \$1,000)
Section 234	(Threatening to destroy property)
Section 235	(Threatening safety of person on any premises)
Section 279	(Forcible entry and detainer)
Section 280	(Public nuisance)
Section 282	(Criminal trespass)
Section 315	(Misconduct in relation to dead human body or human remains)

An offence against any law punishable on conviction by a maximum penalty of not more than 3 years imprisonment.

Section 20(a)(i)

PART II—OFFENCES TO BE TRIED BY 3 JUSTICES

Section 94	(Impeding rescue attempt)
Section 97(1)	(Intentional cruelty to an animal)
Section 98	(Unlawful conduct causing risk to health or safety)
Section 100	(Stalking)
Section 116	(Indecency)
Section 145	(Procuring prostitution—if the prostitution is by a person who is at least 16 years old)
Section 146	(Maintaining a brothel)
Section 147	(Receiving proceeds of prostitution)
Section 150	(Bigamy)
Section 151	(Feigned marriage)
Section 159	(Theft—if the value of the item stolen is \$1,000 or more)
Section 161	(Theft of animal—if the value of the animal stolen is \$1,000 or more)
Section 163	(Conversion of vehicle, ship, or aircraft)
Section 172	(Being equipped or armed for offence)
Section 180	(Obtaining benefit or causing loss by dishonesty or deception—if the value of the benefit or loss is less than \$1,000)
Section 181	(Receiving unlawfully obtained property—if the value of the item received is \$1,000 or more)
Section 187	(Counterfeit money—if the conduct relates to dealing in, or circulating, counterfeit money)
Section 292	(Escaping from custody)
Section 293	(Damaging place of custody for purpose of escape)
Section 294	(Assisting escape from custody)

Section 295	(Permitting escape from custody)
Section 296	(Assisting prisoner of war, internee, or parolee to escape) ”

Limited Liability Companies Act 2008

The First Schedule is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Ombudsman Act 1984

Section 16(2) is amended by omitting “judicial proceeding within the meaning of section 120 of the Crimes Act 1969 (which relates to perjury)” and substituting “legal proceeding within the meaning of section 253 (Perjury) of the Crimes Act 2017”.

Section 16(6) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Police Act 2012

Section 45(4) is amended by omitting “Part III of the Crimes Act 1969 (which relates to matters of justification or excuse)” and substituting “Part 4 (Lack of criminal responsibility) (which deals with matters of justification and excuse)”.

Section 52(1)(b)(i) is amended by omitting “section 80 of the Crimes Act 1969” and substituting “section 266 (Espionage), section 267 (Wrongful communication of official information), section 268 (Wrongful retention or copying of official information) or section 269 (Failure to manage properly official information) of the Crimes Act 2017”.

Section 83(3) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Prevention of Juvenile Crime Act 1968

Section 26(7) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Proceeds of Crime Act 2003

Section 17A is amended by repealing subsection (2) and substituting the following subsection—

- “(2) **Organised criminal group**, for this section, has the same meaning as in section 283 of the Crimes Act 2017.”

Race Relations Act 1972

Section 13(2) is amended by omitting “section 119 of the Crimes Act 1969 which relates to perjury” and substituting “section 253 (Perjury) of the Crimes Act 2017”.

Section 13(4) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Section 19(1)(b) is amended by omitting “section 2 of the Crimes Act 1969” and substituting “section 3 of the Crimes Act 2017”.

Telecommunications Act 1989

Section 30(1)(a) is amended by omitting “Crimes Act 1969” and substituting “Crimes Act 2017”.

Section 41S(2) is amended by omitting “Crimes Act 1969 relating to receiving property dishonestly obtained” and substituting “section 181 (Receiving unlawfully obtained property) of the Crimes Act 2017”.

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