



PARLIAMENT OF THE COOK ISLANDS

CRIMES BILL

EXPLANATORY NOTE

This note does not form part of the Bill but is intended to indicate its effect, and to identify the more important aspects of the Bill.

Introduction

This Bill repeals and replaces the Crimes Act 1969 (1969 Act). The new Act will be a comprehensive, modern criminal code for the Cook Islands. It draws heavily from the Australian Model Criminal Code, with adaptations to suit present Cook Islands' law and conditions. Outdated current offences are not carried over and relevant current offences are carried over in a modern form. New offences are added to ensure the Cook Islands complies with its relevant international obligations.

Provisions

Clause 1 relates to the Title.

Clause 2 relates to commencement.

Part 1 **Preliminary matters**

Subpart 1 defines terms used in the Bill. **Clause 3** carries over and updates terms defined in section 2 of the 1969 Act, as well as adding new definitions. In clauses 4 to 6 there are separate definitions of “dishonest”, “menace” and “ordinarily resident” (a term defined in section 3 of the 1969 Act).

Subpart 2, clauses 10 to 17 are new and provide for the application of the Act to corporate bodies. Under the 1969 Act, “person” includes a corporation and under section 108 of the Criminal Procedure Act 1980-81 a corporation can be sentenced to pay a fine if it is convicted of an offence punishable only by imprisonment. Clause 17 sets out the maximum fines that can be imposed on a corporation in lieu of imprisonment.

Part 2 Jurisdiction

Part 2 relates to the place where offences are committed. The provisions in section 7 of the 1969 Act about offences committed by Cook Island residents outside the Cook Islands on a ship or aircraft are updated by clause 19. Jurisdiction over transnational crimes is provided for by clause 20, so that a Cook Island resident will commit an offence by engaging in conduct outside the Cook Islands if the conduct would be an offence against any of the following provisions if it happened in the Cook Islands: Part 9 (Identity offences), Part 10 (Money laundering), Part 13 (Corruption and public administration offences), Part 14 (Administration of justice offences), clause 285 (Participating in organised criminal group), Part 17 (People smuggling and human trafficking), Part 18 (Torture).

Part 3 Proof of criminal responsibility

Part 3 relates to the burden of proof in criminal cases. For the first time, Cook Islands law will state the prosecution's obligation of proving every element of an offence relevant to the guilt of the person charged and of disproving any matter in relation to which the defendant has discharged an evidential burden of proof on the defendant. The legal standard of proof to be met by the prosecution is proof "beyond reasonable doubt", unless in a particular case the law provides for a different standard of proof.

Part 4 Lack of criminal responsibility

Part 4 relates to persons who lack criminal responsibility and replaces Part III of the 1969 Act.

Subpart 1 relates to defences. The new features in this subpart are:

- clause 32 sets out the circumstances where reasonable force can be used in the exercise of lawful authority (such as maintaining discipline on an aircraft):
- clause 33 sets out the circumstances where a parent or carer of a child can use physical force on a child.

Subpart 2 relates to lack of capacity of children and mentally impaired people, and updates provisions in sections 23 to 26 of the 1969 Act.

Subpart 3 restates the law about the defence of mistaken belief about a factual situation or a person's right to particular property.

Subpart 4 provides for the use of self-defence in the case of an imminent and unlawful attack to a person or property, and compulsion caused by the threat of immediate death or serious injury.

Subpart 5 provides that the fact that a person is not criminally responsible for an offence does not prevent another person being criminally responsible for the offence.

Part 5

Extension of criminal responsibility

Part 5 relates to parties to the commission of offences and replaces Part IV of the 1969 Act. This Part introduces new terminology in relation to parties to offences, such as “complicity and common purpose”, “joint commission” and “commission by proxy”.

Part 6

Crimes against the person

Part 6 relates to crimes against the person and replaces Part VIII of the 1969 Act.

Subpart 1 relates to homicide, which is dealt with by sections 187 to 201 of the 1969 Act. The following new offences are included:

- industrial manslaughter (employer):
- industrial manslaughter (senior officer):
- industrial manslaughter (omission).

Subpart 2 relates to abortion and replaces sections 202 to 207 of the 1969 Act. This subpart introduces the concept of “lawful medical procedure”, which is defined in clause 73. Conduct that is a lawful medical procedure will not be captured by the offences in this subpart. It will be lawful for a medical practitioner to terminate a pregnancy of a person who is not more than 20 weeks pregnant where the person consents and the practitioner considers it appropriate because of a specified factor, such as serious danger to the physical or mental health of the person, or a substantial risk that the child, if born, would be seriously handicapped as a result of physical or mental abnormality. A more limited provision is made for a case where the pregnancy is more advanced.

Subpart 3 relates to duties tending to the preservation of life and replaces sections 171 to 177 of the 1969 Act.

Subpart 4 relates to offences against children and vulnerable people. This subpart creates new offences of ill-treatment of a child or vulnerable adult and failure to protect a child or vulnerable adult.

Subpart 5 relates to assault and replaces assault-related provisions in sections 208 to 219 of the 1969 Act.

Subpart 6 relates to acts causing danger to life or injury.

Subpart 7 relates to public safety offences.

Subpart 8 creates a new offence of stalking.

Subpart 9 relates to abduction and kidnapping, and replaces sections 230 to 232 of the 1969 Act.

Subpart 10 creates a new offence of female genital mutilation.

Subpart 11 relates to sexual offences and replaces sections 140 to 157 of the 1969 Act. In general, the offences are couched in gender neutral terms, including “sexual violation”, “unlawful sexual activity”, “unlawful sexual connection”. The offence of sodomy is not carried over.

The following new offences are created:

- grooming a person under 16 for sexual connection or an indecent act:
- associating with a person groomed for sexual connection or an indecent act:
- promoting or organising travel for unlawful sexual activity with a person under 16.

Subpart 12 creates new offences relating to voyeurism.

Subpart 13 relates to child abuse and other indecent material, and replaces some provisions in sections 135 to 139 of the 1969 Act. The following new offences are created:

- using a child for the production of child abuse material:
- producing, disseminating or possessing child abuse material:
- exposing a person under 16 years old to child abuse material, indecent matter, or an indecent document.

Subpart 14 relates to prostitution and replaces sections 160 to 163 of the 1969 Act. The new offences are:

- soliciting:
- procuring prostitution:
- maintaining a brothel:
- receiving proceeds of prostitution:
- compelling prostitution.

The offence of keeping a place of resort for homosexual acts (in section 159 of the 1969 Act) is not carried over.

Subpart 15 relates to bigamy and replaces sections 227 to 229 of the 1969 Act.

Part 7

Property offences

Part 7 relates to property offences and replaces Part X of the 1969 Act. The following new offences are created:

- theft in a fiduciary relationship:
- looting (currently in section 25 of the Disaster Risk Management Act 2007):
- breach of duty by a trustee:
- blackmail:
- accessing a computer system for a dishonest purpose:
- trading in software.

Part 8

Market trading offences

Part 8 relates to market trading offences and replaces Part XII of the 1969 Act (sections 336 to 342), which was enacted in 2003.

Part 9

Identity offences

Part 9 relates to identity offences and creates the following new offences:

- dealing in identification information:
- possessing identification information:
- possessing equipment used for making identification documentation.

Part 10

Money laundering

Part 10 relates to money laundering and replaces sections 280A to 280C of the 1969 Act, which were enacted in 2003. The new offence of dealing with property reasonably suspected of being tainted property is added to the existing offences.

Part 11

Intentional damage

Part 11 relates to intentional damage and replaces provisions in sections 316 to 328 of the 1969 Act. The new offences are:

- arson:
- intentional destruction of property:
- waste or diversion of resources:
- endangering transport:
- manufacturing or possessing dangerous items for use in an offence.

Part 12

Threats

Part 12 relates to threats and replaces Part XI of the 1969 Act.

Part 13

Corruption and public administration offences

Part 13 relates to corruption and public administration offences, and replaces provisions in Part VI of the 1969 Act. A new offence of embezzlement by a public official is added.

Part 14

Administration of justice offences

Part 14 relates to administration of justice offences and replaces sections 119 to 128 of the 1969 Act.

Part 15

Public order offences

Part 15 relates to public order offences and replaces Part V of the 1969 Act, though it does not carry over the sedition offence provisions in sections 82 to 87.

Part 16

Custody offences

Part 16 relates to the escape by, and assistance given to, persons who are in custody and replaces sections 129 to 133 of the 1969 Act.

Part 17

People smuggling and human trafficking

Part 17 relates to people smuggling and human trafficking and replaces Part VA of the 1969 Act, which was enacted in 2004.

Part 18

Torture

Part 18 creates the offence of torture.

Part 19

Other offences

Part 19 replaces the offence in section 164 of the 1969 Act with the offence of misconduct in relation to a dead human body or human remains.

Part 20

Domestic violence

Part 20 provides that despite any other law of the Cook Islands (such as the proposed Family Law Act), the Crimes Act will apply to conduct for which a person may be criminally responsible and that:

- (1) arises in the context of a domestic relationship; or
- (2) constitutes domestic violence.

Part 21

Miscellaneous provisions

Part 21 contains miscellaneous provisions, including provisions about costs, restitution, compensation and regulation-making powers.

Part 22

Transitional provisions

Part 22 provides that the Crimes Act will apply to conduct that happens on or after the commencement of the new Act. However, the 1969 Act will continue to apply to conduct, and any proceeding, requirement, procedure, or action taken in relation to conduct, that happened before the commencement of the new Act. Any act, matter, thing, decision done or having effect, or proceeding brought under the 1969 Act will continue to have effect subject to the new Act.

Schedule

The Schedule sets out consequential amendments to other Acts that refer to the 1969 Act.

Table of offences in 1969 Act that are not carried over

Section	Description of offence
82	Oath to commit offence (sedition)
83	Seditious offences defined
84	Seditious conspiracy
85	Seditious statements
86	Publication of seditious documents
87	Use of apparatus for making seditious documents or statements
118?	Contravention of statute
134	Blasphemous libel
155	Sodomy
165	Witchcraft
233 to 238	Criminal libel and slander offences
305 to 315	Coinage offences (other than counterfeiting)
