

COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME

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Counter Terrorism and Transnational Organised Crime Act 2004

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SCHEDULE — COUNTER TERRORISM CONVENTIONS

Counter Terrorism and Transnational Organised Crime Act 2004

TABLE OF AMENDMENTS

The Counter Terrorism and Transnational Organised Crime Act 2004 No 14 was certified and commenced on 3 November 2004 (GN No 319/2004; Gaz 92/2004).

Amending Legislation	Certified	Date of Commencement
Counter Terrorism and Transnational Organised Crime (Amendment) Act 2008 No 12	26 November 2008	26 November 2008
Counter Terrorism and Transnational Organised Crime (Amendment) Act 2010 No 4	18 November 2010	18 November 2010
Interpretation (Consequential Amendments) Act 2011 No 18	3 November 2011	3 November 2011
Maritime Security Act 2019 No 31	20 December 2019	1 February 2020
Counter Terrorism and Transnational Organised Crime (Amendment) Act 2020 No 37	3 December 2020	3 December 2020
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to prevent terrorists from operating in the Republic and to prevent persons in the Republic from taking part in or supporting terrorist and related activities.

Enacted by the Parliament of Nauru as follows:

PART 1 — PRELIMINARY

1 Short title and commencement

This Act may be cited as the *Counter Terrorism and Transnational Organised Crime Act 2004* and came into effect on 3 November 2004.

[s 1 insrt Act 4 of 2010 s 3 and Sch[2], opn 18 Nov 2010]

1A Objectives

The objectives of this Act are:

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

[s 1A renum Act 4 of 2010 s 3 and Sch[1], opn 18 Nov 2010]

2 Definitions

(1) In this Act:

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

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

‘aid to navigation’ means a device, system, service or facility, external to ships, used to enhance the safe and efficient navigation of individual ships or traffic among ships;

[def insrt Act 31 of 2019 s 37 and Sch[1.1], opn 1 Feb 2020]

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

‘authorised officer’ means:

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

‘child’ means a person under 20 years;

‘commander’, for an aircraft, means the person who is for the time being in command of the aircraft;

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

'consular officer' means a consular officer of the Republic, including a consul-general, consul, pro-consul and consular agent of the Republic;

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

'counter terrorism convention' means an instrument mentioned in Schedule;

[def am Act 37 of 2020 s 12, opn 3 Dec 2020]

'court' means the District Court;

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

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

'Director of Immigration' has the meaning given to it in the *Immigration Act 2014*;

'entity' means a person, group, trust, partnership, fund or an unincorporated association or organisation;

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

'explosive or other lethal device' means:

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

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

- (a) accepting deposits and other repayable funds from the public;
- (b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions;
- (c) financial leasing;
- (d) providing money transmission services;
- (e) issuing and administering means of payment (for example, credit cards, travellers' cheques and bankers' drafts);
- (f) entering into guarantees and commitments;
- (g) trading for the institution's own account, or for account of customers, in money market instruments (for example, cheques, bills and certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities;
- (h) underwriting share issues and participation in such issues;
- (i) giving advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings;

- (j) money-broking;
- (k) providing portfolio management and advice;
- (l) safekeeping and administration of securities;
- (m) providing credit reference services;
- (n) providing safe custody services;
- (o) insurance, insurance intermediation, securities dealing or futures broking;
- (p) trustee administration or investment management of a superannuation scheme, other than a closed-end scheme;
- (q) dealing in bullion;
- (r) operating a gambling house, casino or lottery, including over the Internet;
- (s) a trustee or manager of a unit trust;
- (t) a trust or company service provider;
- (u) a legal practitioner when helping to plan or execute, for his or her client, any of the following transactions:
 - (i) depositing or investing funds;
 - (ii) buying or selling real property or a business entity;
 - (iii) managing assets;
 - (iv) opening or managing an account with a financial institution;
 - (v) managing contributions necessary for the creation, operation or management of a company; or
 - (vi) creating, operating or managing a trust or company;
- (v) a legal practitioner when acting for a client in a financial or real estate transaction, to the extent that he or she receives funds in the course of his or her business for deposit or investment, or to settle a real estate transaction;
- (w) an accountant, to the extent that he or she receives funds in the course of his or her business for deposit or investment;
- (x) dealing in real estate or high value items including antiques; or
- (y) any other prescribed business;

'Financial Intelligence Unit' has the meaning given by the *Anti Money Laundering Act 2008*;

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

[def am Act 31 of 2019 s 37 and Sch[1.1], opn 1 Feb 2020]

'forfeiture order' means an order made by the court under Section 24;

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

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

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

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

‘illegal entry’ means entering the Republic or any other country without complying with the requirements for lawful entry of that country;

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

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

‘international organisation’ means any organisation of States or Governments of States or any organ or any agency of any organisation of that kind;

‘internationally protected person’ means:

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

‘landing’ includes alighting on water;

‘material benefit’ includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

‘means of delivery’ means missiles, rockets and other unmanned systems capable of delivering nuclear, chemical and biological weapons that are specifically designed for delivering those weapons;

[def insrt Act 12 of 2008 s 2, opn 26 Nov 2008]

‘military aircraft’ means an aircraft of the naval, military or air forces of any country;

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

‘military service’ includes naval and air force service;

‘Minister’ means the Minister for Justice;

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

‘Mutual Assistance in Criminal Matters Act’ means the *Mutual Assistance in Criminal Matters Act 2004*;

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

‘Nauruan aircraft’ has the same meaning as provided under Section 6 of the *Crimes Act 2016*;

[def insrt Act 31 of 2019 s 37 and Sch[1.1], opn 1 Feb 2020]

‘Nauruan ship’ has the same meaning as provided under Section 6 of the *Crimes Act 2016*;

[def insrt Act 31 of 2019 s 37 and Sch[1.1], opn 1 Feb 2020]

‘Nauru controlled aircraft’ means any of the following:

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

‘nuclear facility’ means:

- (a) any nuclear reactor, including reactors installed on vessels, vehicles, aircraft, whether or not used for military, customs or police services or space objects for use as an energy source in order to propel the vessels, vehicles, aircraft or space objects or for any other purpose;
- (b) any plant or convenience being used for the production, storage or processing or transport of radioactive material;

[def insrt Act 12 of 2008 s 2, opn 26 Nov 2008]

‘nuclear material’ means any of the following:

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

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

‘Nuclear Terrorism Convention’ means the *International Convention for the Suppression of Acts of Nuclear Terrorism*, adopted by the General Assembly of the United Nations on 13 April 2005;

[def insrt Act 12 of 2008 s 2, opn 26 Nov 2008]

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

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

‘people smuggling’ means the arranging or assisting of an unauthorised person’s illegal entry into any country;

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

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

‘plastic explosive’ means an explosive that:

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

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

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

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

‘property’ includes:

- (a) assets of every kind, including financial assets and economic resources, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible;
- (b) legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;
- (c) any interest, dividends or other income on or value accruing from or generated by such assets; and
- (d) any other asset which potentially may be used to obtain funds, goods or services;

[def subst Act 37 of 2020 s 4, opn 3 Dec 2020]

‘public official’ includes a person who is a member of the public service or provides a public service;

‘radioactive device’ means:

- (a) any nuclear explosive device; or
- (b) any radioactive material dispersal or radiation-emitting device which may,

owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment;

[def insrt Act 12 of 2008 s 2, opn 26 Nov 2008]

‘radioactive material’ means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionising radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

[def insrt Act 12 of 2008 s 2, opn 26 Nov 2008]

‘receiving country’ means:

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

‘registrable property’ means property the title to which is passed by registration on a register kept under a law in force in the Republic;

‘SUA Convention and Protocol’ means the *Convention for the Suppression of Unlawful Acts of Violence Against the Safety of Maritime Navigation* done at Rome on 10 March 1988 and its 2005 Protocol;

[def insrt Act 31 of 2019 s 37 and Sch[1.1], opn 1 Feb 2020]

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

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

‘specified entity’

[def rep Act 37 of 2020 s 4, opn 3 Dec 2020]

‘specified means’ includes any of the following:

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

‘terrorism financing offence’ refers to the conduct in Section 10;

‘terrorist’ means a natural person who:

- (a) commits or attempts to commit a terrorist act;
- (b) participates as an accomplice in a terrorist act;
- (c) organises or directs others to commit a terrorist act; or
- (d) contributes to the commission of a terrorist act by a group of persons acting with a common purpose, where the contribution is made intentionally and with the aim of furthering the terrorist act, or with the knowledge of the intention of the group to commit a terrorist act; and

(e) includes a terrorist fighter.

[def insrt Act 37 of 2020 s 4, opn 3 Dec 2020]

‘terrorist act’ has the meaning given by Section 3;

‘terrorist group’ means a group of persons that:

- (a) commits or attempts to commit a terrorist act;
- (b) participates as an accomplice in a terrorist act;
- (c) organises or directs others to commit a terrorist act; or
- (d) contributes to the commission of a terrorist act by acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

[def subst Act 37 of 2020 s 4, opn 3 Dec 2020]

‘terrorist property’ means any property that is:

- (a) the proceeds of terrorism financing or a terrorist act;
- (b) used in, intended or allocated for use in terrorism financing or a terrorist act; or
- (c) used by, intended or allocated for use by a terrorist group;

[def subst Act 37 of 2020 s 4, opn 3 Dec 2020]

‘threat’ means a threat directly or indirectly communicated by words (written or spoken) or by conduct, or partly by words and partly by conduct, and includes a contingent or conditional threat;

[def insrt Act 31 of 2019 s 37 and Sch[1.1], opn 1 Feb 2020]

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

‘trafficked person’ means a person who is the victim of trafficking in persons;

‘trafficking in persons’ means the recruitment; transportation, transfer, harbouring or receipt of a person for the purpose of exploitation;

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

‘unlawful employee’, for an employer, means a person whom the employer knows, or ought reasonably to know, is not entitled under the *Immigration Act 2014* to undertake, employment in the employer’s service;

‘unmarked plastic explosive’ means a plastic explosive that:

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

‘weapon’ includes a firearm, chemical, biological or nuclear weapon.

(2) For this Act:

- (a) the period during which an aircraft is in flight is taken to include:
 - (i) any period from the moment when all its external doors are closed following embarkation until the moment when any door is opened for disembarkation; and

- (ii) for a forced landing including any period until the competent authorities take over responsibility for the aircraft and for persons and property on board; and
- (b) an aircraft is taken to be in service:
 - (i) during the whole of the period that begins with the pre-flight preparation of the aircraft for a flight and ends 24 hours after the aircraft lands having completed that flight; and
 - (ii) at any time while, in accordance with paragraph (a), the aircraft is in flight.
- (3) In this Act, a reference to an aircraft in flight includes a reference to an aircraft during any period when it is on the surface of the sea or land but not within the territorial limits of any country.
- (4) In this Act, unless the context otherwise requires, a reference to a country or the territorial limits of a country is taken to include a reference to the territorial waters, if any, of the country.

3 Definition of terrorist act

- (1) For the purposes of this Act, '*terrorist act*' means:
 - (a) an act which constitutes an offence within the scope of and as defined by a counter terrorism convention; or
 - (b) any other act intended to cause any one or more of the outcomes specified in subsection (2), when the purpose of such act, by its nature or context is to:
 - (i) intimidate a civilian population or a section of a civilian population; or
 - (ii) compel or coerce a domestic or foreign government or an international organisation to do or abstain from doing any act.
- (2) For the purposes of subsection (1), an outcome is:
 - (a) the death of or serious bodily injury to one or more persons, other than a person carrying out the act;
 - (b) a serious risk to the health or safety of a population;
 - (c) destruction of or serious damage to property of great value or importance;
 - (d) major economic loss or environmental damage, if likely to result as a consequence of one or more outcomes specified in paragraphs (a), (b) or (c);
 - (e) serious interference with, or serious disruption to, an infrastructure facility, if likely to endanger human life;
 - (f) introduction or release of a disease-bearing organism, if likely to devastate the national economy of a country; or
 - (g) acquire finance or property to perpetuate or perpetrate, to further achieve the objectives in subsection (1).
- (3) An act does not fall within subsection (1), if it occurs in a situation of armed conflict and is, at the time and in the place that it occurs, in accordance with rules of international law applicable to the conflict.
- (4) For the avoidance of any doubt, the fact that a person engages in any protest, advocacy, dissent, strike, lockout or other industrial action, is not, by itself, a sufficient basis for inferring that the person is carrying out an act with an outcome specified in subsection (2) or terrorist act.

[s 3 subst Act 37 of 2020 s 5, opn 3 Dec 2020]

PART 2 — SPECIFIED ENTITIES

[Repealed]

[Pt 2 rep Act 37 of 2020 s 6, opn 3 Dec 2020]

PART 3 — OFFENCES

10 Terrorism financing

- (1) No person shall provide, offer or collect a property by any means, directly or indirectly, with the knowledge that such property be used or is to be used, in full or in part:
 - (a) to carry out a terrorist act;
 - (b) by a terrorist group; or
 - (c) by a terrorist.
- (2) A person contravenes subsection (1):
 - (a) even in the absence of a link to a specific terrorist act;
 - (b) regardless of whether the property is from a legitimate or illegitimate source;
 - (c) even if the property provided or collected was not actually used, in full or in part, to carry out or attempt a terrorist act;
 - (d) regardless of whether the person is in the same country or a different country from the one in which a terrorist or terrorist group is located; and
 - (e) regardless of whether the person is in the same country or a different country from the one in which the terrorist act occurred or will occur.

[subs (2) am Act 37 of 2020 s 12, opn 3 Dec 2020]

- (3) A person who contravenes subsection (1), commits an offence and upon conviction is liable to:
 - (a) if the offender is a natural person, life imprisonment; or
 - (b) if the offender is a legal person, a fine not exceeding \$10,000,000.

[s 10 subst Act 37 of 2020 s 7, opn 3 Dec 2020]

10A Terrorist act

A person commits an offence who engages in a terrorist act.

Penalty: life imprisonment.

[s 10A insrt Act 12 of 2008 s 4, opn 26 Nov 2008]

11 Provision of property or services to terrorist group

- (1) A person shall not, directly or indirectly, knowingly make available property or financial or other related services to, or for the benefit of, a terrorist group.

Maximum penalty: 20 years imprisonment.

[subs (1) am Act 12 of 2008 s 5, opn 26 Nov 2008; am Act 37 of 2020 s 12, opn 3 Dec 2020]

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

12 Dealing with terrorist property

- (1) A person shall not knowingly:
 - (a) deal, directly or indirectly, in any terrorist property;
 - (b) collect or acquire or possess terrorist property;

- (c) enter into, or facilitate, directly or indirectly, any transaction in respect of terrorist property; or
- (d) convert, conceal or disguise terrorist property.

Maximum penalty: 20 years imprisonment.

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

13 Harboursing of persons committing terrorist acts

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

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

Maximum penalty: life imprisonment.

[s 12 am Act 37 of 2020 s 12, opn 3 Dec 2020]

14 Provision of weapons to terrorist groups

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

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

Maximum penalty: life imprisonment.

[s 13 am Act 37 of 2020 s 12, opn 3 Dec 2020]

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

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

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

Maximum penalty: life imprisonment.

15A Foreign terrorist

(1) No foreign terrorist shall:

- (a) leave or attempt to leave the Republic;
- (b) board or attempt to board a vessel or an aircraft intending to leave the Republic; or
- (c) provide, receive or participate in any training on how to plan or carry out a terrorist act,

for the purposes of perpetrating, planning, preparing or participating in the commission of one or more terrorist acts in the Republic or in a foreign jurisdiction.

(2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to life imprisonment.

[s 15A insrt Act 37 of 2020 s 8, opn 3 Dec 2020]

15B Assisting foreign terrorist

- (1) No person shall recruit, organise, facilitate or assist a foreign terrorist to leave or attempt to leave the Republic for the purposes of:
 - (a) planning, preparing, carrying out, participating in or assisting the commission of any act outside of the Republic that, if committed in the Republic, would be a terrorist act; or
 - (b) providing, receiving or participating in any training on how to plan or carry out a terrorist act,
knowing that or is being reckless as to whether the terrorist or terrorist group is leaving or attempting to leave the Republic for such purpose.
- (2) A person who contravenes subsection (1), commits an offence and upon conviction is liable to:
 - (a) if the offender is a natural person, life imprisonment; or
 - (b) if the offender is a legal person, a fine not exceeding \$10,000,000.

[s 15B insrt Act 37 of 2020 s 9, opn 3 Dec 2020]

15C Financing foreign terrorist

- (1) No person shall provide or collect any property by any means, directly or indirectly, with the knowledge that it is to be used, in full or in part, to facilitate the travel of a terrorist to a foreign country other than his or her country or country of residence or nationality for the purposes of:
 - (a) perpetrating a terrorist act;
 - (b) planning a terrorist act;
 - (c) preparing a terrorist act;
 - (d) participating in a terrorist act; or
 - (e) providing or receiving terrorist training.
- (2) A person contravenes subsection (1):
 - (a) even in the absence of a link to a specific terrorist act;
 - (b) regardless of whether the property is from a legitimate or illegitimate source;
 - (c) even if the property collected or provided was not actually used, in full or in part, to carry out or attempt an activity mentioned in subsection (1);
 - (d) regardless of whether the person is in the same country or a different country from the one in which the foreign terrorist is located; or
 - (e) regardless of whether the person is in the same country or a different country from the one in which an activity mentioned in subsection (1)(a), (b), (c), (d) and (e) occurred or will occur.
- (3) A person who contravenes subsection (1), commits an offence and upon conviction is liable to:
 - (a) if the offender is a natural person, life imprisonment; or
 - (b) if the offender is a legal person, a fine not exceeding \$10,000,000.

[s 15C insrt Act 37 of 2020 s 10, opn 3 Dec 2020]

PART 4 — MANAGEMENT AND FORFEITURE OF TERRORIST PROPERTIES

[Pt 4 am Act 37 of 2020 s 11, opn 3 Dec 2020]

DIVISION 1 — MANAGEMENT

16 Direction to take control of property

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

17 Notice of direction

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

18 Variation, revocation, or expiry of direction

- (1) Where the court has made a direction under Section 16, the court may, on application by the Minister or the person who owns or controls the property:
 - (a) make another direction under Section 16 varying the conditions of the direction or the property that is subject to the direction; or
 - (b) revoke the direction.
- (2) Where the application is made by the person who owns or controls the property:
 - (a) the person shall give reasonable written notice of the application to the Minister; and
 - (b) before deciding on the application, the court shall hear from the Minister.

- (3) The court shall:
 - (a) if the court decides that there are reasonable grounds to do so, revoke the direction; or
 - (b) if the court decides that there are no reasonable grounds to revoke the direction, refuse the application,
- (4) Where the court revokes the direction, the Minister shall:
 - (a) tell the person who owns or controls the property in writing; and
 - (b) publish a notice of revocation in the Gazette.
- (5) Where not earlier revoked, a direction under Section 16 about terrorist property expires if a forfeiture order is made under Section 24 in relation to the property.

[subs (5) subst Act 37 of 2020 s 11, opn 3 Dec 2020]

19 Appeal

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

20 Further provisions on management of terrorist properties

Part 3 of the *Proceeds of Crime Act 2004* apply, with the necessary modifications, to property that is the subject of a direction under Section 16.

[s 20 am Act 37 of 2020 s 11, opn 3 Dec 2020]

21 Third parties may apply for relief

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

22 Court may grant relief to third party

- (1) Subsection (2) applies if:
 - (a) a person makes an application under Section 21; and
 - (b) the court is satisfied that the person's claim to the interest is valid.
- (2) The court shall make an order:
 - (a) declaring the nature, extent, and value of the person's interest in the property;
 - (b) declaring that the interest is no longer subject to the order under Section 16; and
 - (c) if the interest is held by the Administrator:
 - (i) directing the Administrator to transfer the interest to the person; or
 - (ii) declaring that there is payable by the Administrator to the person an amount equal to the value of the interest declared by the court.
- (3) However, the court may, if it thinks fit, refuse to make an order if it is satisfied that:
 - (a) the person was knowingly involved in any way in the carrying out of the terrorist act; or
 - (b) if the person acquired an interest in the property before it became a terrorist property, the applicant did not acquire the interest in the

property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to a direction under Section 16.

[subs (3) am Act 37 of 2020 s 11, opn 3 Dec 2020]

DIVISION 2 — FORFEITURE

23 Application for forfeiture order

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

24 Making forfeiture order

- (1) Where the court is satisfied, on the balance of probabilities, that the property the subject of the application is terrorist property, the court shall order that the property be forfeited to the Republic.
- (2) Where the court is satisfied that a person mentioned in Section 23(2)(a) or (3)(a):
 - (a) has an interest in the property the subject of the application;
 - (b) has exercised reasonable care to ensure that the property is not terrorist property; and
 - (c) is not a member of a terrorist group,the court shall order that the interest is not affected by the order and declare the nature and extent of the interest.

[subs (2) am Act 37 of 2020 s 12, opn 3 Dec 2020]

- (3) Where the court makes a forfeiture order, the court may give any directions that are necessary or convenient to give effect to the order.
- (4) Where the court refuses to make a forfeiture order, the court shall make an order that describes the property and declare that it is not terrorist property.

25 Effect of forfeiture order

- (1) Where the court makes a forfeiture order against property, the order vests the property absolutely in the Republic.
- (2) Where the court makes a forfeiture order against registrable property:
 - (a) the order vests the property in the Republic in equity, but does not vest it in the Republic at law until the applicable registration requirements have been complied with;

- (b) the Republic is entitled to be registered as owner of the property;
 - (c) the Minister may do, or authorise the doing of, anything necessary or convenient to obtain the registration of the Republic as owner, including the execution of any necessary instrument;
 - (d) the Minister may do anything necessary or convenient to give notice of, or otherwise protect, the Republic's equitable interest in the property; and
 - (e) anything done by the Minister under paragraph (d) is not a dealing for subsection (3)(a).
- (3) Where the court makes a forfeiture order against property:
- (a) the property shall not, except with the leave of the court and in accordance with any directions of the court, be disposed of, or otherwise dealt with, by or for the Republic, before 6 months after the forfeiture order was made; and
 - (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Minister directs, 6 months after the forfeiture order was made.

26 Protection of third parties

- (1) A person who claims an interest in property that has been forfeited and who has not been given notice under Section 23(2)(a) or (3)(a) may apply to the court, within 6 months after the forfeiture order was made, for an order under subsection (4).
- (2) The person shall give reasonable written notice of the application to the Minister.
- (3) The Minister:
 - (a) is a party to the proceedings in an application under subsection (1); and
 - (b) may make an application under subsection (1) for a person.
- (4) Where a person applies to the court for an order about the person's interest in property, the court shall make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the court is satisfied in accordance with Section 24(2).
- (5) An appeal lies to the Supreme Court from an order under subsection (4).

27 Return of property

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

28 Appeal

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

DIVISION 3 — INFORMATION

29 Disclosure of information

- (1) [subs (1) rep Act 37 of 2020 s 11, opn 3 Dec 2020]
- (2) [subs (2) rep Act 37 of 2020 s 11, opn 3 Dec 2020]
- (3) [subs (3) rep Act 37 of 2020 s 11, opn 3 Dec 2020]
- (4) A financial institution shall inform the Financial Intelligence Unit about every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to the commission of a terrorist act.
- (5) No civil or criminal proceedings lie against a person for making a disclosure or report, in good faith, under subsection (1), (2) or (4).
[subs (5) am Act 37 of 2020 s 11, opn 3 Dec 2020]
- (6) Nothing in subsection (4) requires a legal practitioner to disclose a privileged communication, other than information about a financial transaction recorded for a trust account of the legal practitioner within the meaning of the *Legal Practitioners Act 2019*.
[subs (6) am Act 37 of 2020 s 11, opn 3 Dec 2020]
- (7) A person who receives information under subsection (4) shall not disclose the information or its source except:
- (a) for the purposes of:
 - (i) the enforcement of this Act;
 - (ii) the detection, investigation or prosecution of an offence under this Act; or
 - (iii) providing assistance under the *Mutual Assistance in Criminal Matters Act*; or
 - (b) in accordance with an order of a court.
[subs (7) am Act 37 of 2020 s 11, opn 3 Dec 2020]
- (8) A person shall not contravene subsection (4).
[subs (8) am Act 37 of 2020 s 11, opn 3 Dec 2020]
- Maximum penalty: 15 years imprisonment.

PART 5 — GENERAL POWERS

30 Controlled delivery of property

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

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

- (1) The operator of a craft:
 - (a) arriving in or departing from the Republic; or
 - (b) registered in the Republic, departing from any place outside the Republic,shall give the Secretary for Justice any information in his or her possession, relating to persons or goods on board, or expected to be on board, the craft.
- (2) A person shall not contravene subsection (1).
Maximum penalty: 10 years imprisonment.
- (3) The Secretary for Justice may give the competent authority in a foreign country any information:
 - (a) in his or her possession relating to persons entering or leaving the Republic; and
 - (b) that is required by the laws of the foreign country.
- (4) The provision of information under subsection (1) or (3) is taken not to be a contravention of any provision of law prohibiting the disclosure of information.
- (5) No information provided to the Secretary for Justice under subsection (1), may be used or disclosed by the Secretary for Justice, except for the purpose of protecting border security, national security or public safety.
- (6) The Minister may make regulations generally to give effect to the purposes of this Section, including regulations prescribing the types or classes of information that may be:
 - (a) provided under this Section; or

- (b) disclosed to the competent authority of a foreign country.
- (7) Regulations may include the following information:
 - (a) details of craft movements, including name of the craft, registration number or identifier, estimated time of arrival or departure and place or origin and destination; and
 - (b) personal information including the person's name, date of birth, gender, passport number, nationality and travel documents.

32 Power to prevent entry and order the removal of persons

- (1) An authorised officer shall not grant an endorsement or other authority permitting a person to enter the Republic if he or she has reasonable grounds to suspect that that person has been, is, or will be, involved in the commission of a terrorist act.
- (2) Where the Secretary for Justice has reasonable grounds to suspect that a person, other than a citizen, in the Republic has been, is or will be, involved in the commission of a terrorist act, he or she, in consultation with the Director of Immigration, may make an order requiring the person to leave the Republic and to remain out of the Republic.
- (3) A person against whom an order under subsection (2) is made shall leave the Republic and shall, so long as the order is in force, remain out of the Republic.
- (4) A person against whom an order under subsection (2) is made, may appeal such order to the Supreme Court.
- (5) A person against whom an order under subsection (2) is made may be:
 - (a) detained in such manner as may be directed by the Secretary for Justice for no more than 7 days, or any longer period that is reasonably needed to arrange for the person's removal from the Republic; and
 - (b) placed on a craft leaving the Republic.

33 Exchange of information relating to terrorist groups and terrorist acts

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

- (a) the actions or movements of terrorist groups or persons suspected of involvement in the commission of terrorist acts;
- (b) the use of forged or falsified travel papers by persons suspected of involvement in the commission of terrorist acts;
- (c) traffic in explosives or other lethal devices by terrorist groups or persons suspected of involvement in the commission of terrorist acts; and
- (d) the use of communication technologies by terrorist groups,

if the disclosure is not prohibited by any written law and will not, in the Secretary for Justice's opinion, prejudice national security or public safety.

34 Regulations

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

[s 34 am Act 37 of 2020 s 12, opn 3 Dec 2020]

PART 6 — COUNTER-TERRORISM CONVENTIONS

DIVISION 1 — TOKYO CONVENTION — AIRCRAFT

35 Application of criminal law to aircraft

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

36 Specified aircraft

Where the Minister is satisfied that the requirements of Article 18 of the *Tokyo Convention* have been satisfied, the Minister may, by notification published in the Government Gazette, declare that a specified aircraft is taken to be registered in a specified Convention country.

37 General powers of commander of aircraft

- (1) The commander of an aircraft in flight may take any reasonable measures necessary for the purposes mentioned in subsection (2) in relation to a person on board the aircraft, including restraint of the person and the use of force, if the commander has reasonable grounds to believe:
 - (a) that the person has done or is about to do any act on the aircraft while it is in flight that jeopardises or may jeopardise:
 - (i) the safety of the aircraft or of persons or property on board the aircraft; or
 - (ii) good order and discipline on board the aircraft; or
 - (b) that the person has done on the aircraft while in flight any act that in the opinion of the commander is a serious offence under a law in force in the country in which the aircraft is registered, not being a law of a political nature or based on racial or religious discrimination.
- (2) The purposes mentioned in subsection (1) are:
 - (a) to protect the safety of the aircraft or of persons or property on board the aircraft;
 - (b) to maintain good order and discipline on board the aircraft; or
 - (c) to enable the commander to disembark or deliver that person in accordance with subsection (5).
- (3) For the purposes of subsection (1)(b), a Nauru-controlled aircraft is taken to be registered in Nauru whether or not it is so registered and whether or not it is registered in another country.
- (4) A member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the

aircraft, and a member shall if required by the commander, render assistance in restraining a person whom the commander is entitled under subsection (1) to restrain.

- (5) At any time when the aircraft is in flight, a member of the crew of the aircraft or any other person may, without obtaining the authority of the commander, take any measures mentioned in subsection (1) in relation to a person on board the aircraft that the member or other person has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

38 Restraint of persons on aircraft

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

39 Disembarkation and delivery of person

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

officer having functions corresponding to the functions of a police officer or of an immigration officer in the Republic.

40 Reporting and notification obligations

- (1) The commander of an aircraft:
 - (a) if he or she disembarks a person under Section 39(1), for a Nauru-controlled aircraft, in any country or, for any other aircraft, in Nauru, shall report the fact of, and the reason for, the disembarkation to:
 - (i) an appropriate authority in the country of disembarkation; or
 - (ii) the appropriate diplomatic or consular office of the country of nationality of that person;
 - (b) if he or she intends to deliver a person under Section 39 in Nauru or, for a Nauru-controlled aircraft, in any other country that is a Convention country, shall, before or as soon as reasonably practicable after landing, give notification of his or her intention and of the reasons:
 - (i) if the country is Nauru, to a police officer or immigration officer or, for any other country, to an officer having functions corresponding to the functions of a police officer or of an immigration officer in Nauru; and
 - (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of the person; and
 - (c) shall give to the appropriate authority evidence in his or her possession about the person's behaviour.
- (2) A commander of an aircraft who, without reasonable cause, fails to comply with the requirements of this Section commits an offence.

Maximum penalty: 10 years imprisonment.

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

41 Indemnity for actions under this Division

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

DIVISION 2 — HAGUE CONVENTION – HIJACKING

42 Offence of hijacking

- (1) Subject to subsections (2) and (3), a person on board an aircraft in flight shall not unlawfully, by the use of force or by threats of any kind, seize the aircraft or exercise control of it, whether the aircraft is in the Republic or not.

Maximum penalty: life imprisonment.

- (2) Proceedings may be brought for an offence under subsection (1) only if:

- (a) the offence is committed on board an aircraft registered in Nauru;
 - (b) the offence is committed on board an aircraft owned by Nauru;
 - (c) the offence is committed on board an aircraft owned by a company or corporation registered in Nauru;
 - (d) the aircraft on board which the offence is committed lands in Nauru's territory and the alleged offender is on board; or
 - (e) the offence is committed on board an aircraft leased without crew to a lessee who has his or her principal place of business in Nauru or, if the lessee has no principal place of business in Nauru, if the lessee is a permanent resident of Nauru.
- (3) Subsection (1) applies to an act committed in relation to an aircraft used in military, customs or police service only if:
- (a) the act is committed in or over Nauru; or
 - (b) if the act is committed outside Nauru, the person committing the act is a citizen of Nauru.

DIVISION 3 — MONTREAL CONVENTION AND PROTOCOL — CIVIL AVIATION

43 Offence to destroy, damage or endanger safety of aircraft

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

Maximum penalty: life imprisonment.

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

Maximum penalty: life imprisonment.

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

44 Offences involving other acts endangering or likely to endanger the safety of aircraft

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

Maximum penalty: life imprisonment.

- (2) Subsection (1) applies to any property used for the provision of air navigation facilities including any land, building, ship, apparatus or equipment, whether it is on board an aircraft or elsewhere.
- (3) A person shall not intentionally communicate any information which he or she knows to be false, misleading or deceptive in a material particular, if

the communication of the information endangers the safety of an aircraft in flight or is likely to endanger the safety of an aircraft in flight.

Maximum penalty: life imprisonment.

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

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

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

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

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

Maximum penalty: life imprisonment.

DIVISION 4 — INTERNATIONALLY PROTECTED PERSONS

46 Offences against internationally protected person

A person shall not intentionally:

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

Maximum penalty: life imprisonment.

DIVISION 5 — HOSTAGES

47 Offence of taking hostage

A person shall not:

- (a) seize or detain another person; and
- (b) threaten to kill, injure or continue to detain the other person,

with intent to compel the government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person.

Maximum penalty: life imprisonment.

DIVISION 6 — NUCLEAR MATERIAL

48 Movement of nuclear material

- (1) A person shall not knowingly import or export nuclear material to or from the Republic except in accordance with a licence or written permit given by Cabinet.

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

- (2) A person shall not knowingly, without written permission from Cabinet, transport nuclear material:

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

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

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

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

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

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

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

49 Offences relating to nuclear material

A person shall not intentionally:

- (a) without lawful authority receive, possess, use, transfer, alter, dispose of or disperse nuclear material in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property or to the environment;
- (b) steal nuclear material;
- (c) embezzle or fraudulently obtain nuclear material;
- (d) demand nuclear material by threat or use of force or any other form of intimidation;
- (e) threaten:
 - (i) to use nuclear material to cause death or serious injury to a person or substantial damage to any property or to the environment; or

- (ii) to steal nuclear material to compel a person, state or an international organisation to do or refrain from doing any act; or
- (f) without lawful authority commit an act, or threaten to commit an act against a nuclear facility, or interfere with a nuclear facility in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property or to the environment.

Maximum penalty: imprisonment for 20 years and fine of no less than \$150,000.
[s 49 am Act 12 of 2008 s 6, opn 26 Nov 2008]

DIVISION 7 — SUA CONVENTION AND PROTOCOL

[Div 7 heading subst Act 31 of 2019 s 37 and Sch[1.2], opn 1 Feb 2020]

50 Offences

- (1) A person shall not unlawfully and intentionally:
 - (a) seize or exercise control over:
 - (i) a ship;
 - (ii) a person on board a ship;
 - (iii) any cargo on board a ship;
 - (iv) a fixed platform;
 - (v) a person on a fixed platform;
 - (vi) an aid to navigation; or
 - (vii) a person operating an aid to navigation,
by force or threat of force, any form of intimidation or by deception;
 - (b) commit an act of violence, against a person on board a ship or fixed platform, that is likely to endanger the safe navigation or operation of the ship or safety of the fixed platform;
 - (c) destroy a ship or its cargo or fixed platform or aid to navigation;
 - (d) remove or cause damage, to a ship or its cargo, a fixed platform or an aid to navigation, that is likely to endanger the safe navigation of a ship or safety of a fixed platform;
 - (e) deliver, place, discharge or detonate, on or nearby a ship, fixed platform or aid to navigation any:
 - (i) explosive or other lethal device;
 - (ii) weapon; or
 - (iii) noxious liquid, gas or other substance,
likely to bring about any of the outcomes described in paragraphs (c) and (d);
 - (f) engage in any conduct that is likely to or does:
 - (i) interfere with any navigational, life support, emergency response or other safety equipment onboard a ship or fixed platform;
 - (ii) endanger the safe operation or navigation of a ship;
 - (iii) result in the unlawful detention of a person or a ship; or
 - (iv) endanger or cause substantial damage to property or the environment;
 - (g) communicate information, that he or she knows to be false, endangering the safe operation or navigation of a ship; or
 - (h) injure or kill a person in connection with the commission, or attempted commission, of an offence mentioned in paragraph (a), (b), (c), (d), (e), (f) or (g).

Maximum penalty: life imprisonment and \$50,000.

[subs (1) am Act 31 of 2019 s 37 and Sch[1.3]–[1.14], opn 1 Feb 2020]

- (2) A person shall not, with the intention of compelling another person to do or to refrain from doing any act, threaten to commit an offence mentioned in subsection (1)(b), (c), (d) or (f) in relation to a ship or fixed platform, if the threat is likely to endanger the safety of the ship or fixed platform.

Maximum penalty: life imprisonment and \$50,000.

[subs (2) am Act 31 of 2019 s 37 and Sch[1.15], opn 1 Feb 2020]

- (3) A person shall not, with the intention of intimidating a population, or to compel a government or an international organisation to do or refrain from doing any act:
- (a) use against, or on or from, a ship, fixed platform or aid to navigation, any explosive or other lethal device or weapon;
 - (b) discharge any noxious liquid, gas or other substance;
 - (c) use a ship in a manner that causes death, serious injury or damage; or
 - (d) threaten to commit an offence mentioned in paragraph (a), (b) or (c).

Maximum penalty: life imprisonment and \$50,000.

[subs (3) insrt Act 31 of 2019 s 37 and Sch[1.16], opn 1 Feb 2020]

- (4) A person shall not, with the intention of assisting another person to evade arrest or prosecution for an offence under this Section, transport that person on board a ship.

Maximum penalty: life imprisonment and \$50,000.

[subs (4) insrt Act 31 of 2019 s 37 and Sch[1.16], opn 1 Feb 2020]

- (5) A reasonable act to rescue a person or to recover a ship or property or to regain lawful control of a ship or fixed platform or aid to navigation shall not be held to constitute offences under subsection (1), (2), (3) or (4).

[subs (5) insrt Act 31 of 2019 s 37 and Sch[1.16], opn 1 Feb 2020]

51 Arrest and delivery

- (1) The master of a Nauruan ship who has reasonable grounds to believe that a person has committed an offence under Section 50 may:
- (a) arrest and detain the person; and
 - (b) deliver the person to the appropriate authorities in any other Convention country; or
 - (c) deliver the person to a police officer.

[subs (1) am Act 31 of 2019 s 37 and Sch[1.17]–[1.19], opn 1 Feb 2020]

- (2) The master of a Nauruan ship who intends to deliver a person under subsection (1) shall, as soon as reasonably practicable and if possible before entering the territorial sea of the other Convention country:
- (a) notify the authorities in the other Convention country of his or her intention to deliver the person; and
 - (b) give to the authorities evidence in his or her possession that the person has committed the offence.

Maximum penalty: 5 years imprisonment and \$25,000.

[subs (2) am Act 31 of 2019 s 37 and Sch[1.20]–[1.22], opn 1 Feb 2020]

- (3) [subs (3) rep Act 31 of 2019 s 37 and Sch[1.23], opn 1 Feb 2020]

DIVISION 8 — PLASTIC EXPLOSIVES

52 Plastic explosives offences

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

Maximum penalty: 15 years imprisonment.

- (2) A person shall not possess or transport unmarked plastic explosives, knowing that they are unmarked.

Maximum penalty: 15 years imprisonment.

- (3) Subject to subsection (5), it is not an offence under subsections (1) or (2) if:
- (a) the person manufactures or holds unmarked plastic explosives in a quantity approved in writing by Cabinet solely for use:
 - (i) in research, development or testing of new or modified explosives;
 - (ii) in training in explosives detection or in the development or testing of explosives detection equipment; or
 - (iii) for forensic science purposes; or
 - (b) the unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military devices in the Republic within 3 years after the coming into force of the *Plastic Explosives Convention* in the Republic.
- (4) It is not an offence under subsection (2) if the person possesses or transports unmarked plastic explosives in a quantity approved in writing by Cabinet solely for a use in subsection (3).
- (5) Where unmarked plastic explosives have been manufactured in, or imported into, the Republic before the commencement of this Act:
- (a) if they are held by authorities performing military or police functions and are not incorporated as an integral part of a military device, they shall be destroyed, marked or rendered permanently ineffective within 15 years after the commencement of this Act; and
 - (b) if they are held by any other person, they shall be destroyed, marked or rendered permanently ineffective within 3 years after the commencement of this Act.
- (6) A person shall not import to, or export from, the Republic unmarked plastic explosives.

Maximum penalty: 15 years imprisonment.

[subs (6) am Act 18 of 2011 s 3 and Sch[5], opn 3 Nov 2011]

53 Power of entry

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

Maximum penalty: 5 years imprisonment.

DIVISION 9 — TERRORIST BOMBING

54 Terrorist bombing offences

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

Maximum penalty: life imprisonment.

DIVISION 10 — NUCLEAR TERRORISM

[Div 10 insrt Act 12 of 2008 s 7, opn 26 Nov 2008]

54A Nuclear terrorism offences

- (1) A person shall not:
 - (a) unlawfully possess radioactive material or make or possess a radioactive device:
 - (i) with the intent to cause death or serious bodily injury; or
 - (ii) with the intent to cause substantial damage to property or to the environment; or
 - (b) unlawfully use in any way radioactive material or a radioactive device, or use or damage a nuclear facility in a manner which causes a release or increases the risk of release of radioactive material:
 - (i) with the intent to cause death or serious bodily injury;
 - (ii) with the intent to cause substantial damage to property or to the environment; or

- (iii) with the intent to compel a person, state or an international organisation to do or refrain from doing any act.
- (2) A person shall not:
 - (a) threaten to commit an offence in the circumstances in subsection (1)(b);
or
 - (b) unlawfully and intentionally demand or make a demand supported by a threat or use of force:
 - (i) for the supply of radioactive material or a radioactive device; or
 - (ii) for a nuclear facility to be made available or for access to a nuclear facility.
- (3) The circumstances in subsection (2)(a) are that the threat shall be made in circumstances that indicate the credibility of the threat.

Penalty: life imprisonment.

54B Jurisdiction

Section 54A does not apply if the offence is committed:

- (a) in the Republic;
- (b) by a citizen of Nauru who is present in the Republic; and
- (c) in relation to a citizen of Nauru.

PART 7 — TRANSNATIONAL ORGANISED CRIME

55 Participation in organised criminal group

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

Maximum penalty: 20 years imprisonment.

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

56 Corruption

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

Maximum penalty: 5 years imprisonment.

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

Maximum penalty: 5 years imprisonment.

PART 8 — PEOPLE TRAFFICKING

57 Offence of trafficking in persons

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

Maximum penalty: 15 years imprisonment.

58 Offence of trafficking in children

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

Maximum penalty: 15 years imprisonment.

59 Exploitation of people not legally entitled to work

(1) An employer who allows an unlawful employee to undertake employment in the employer's service shall not take an action with the intention of preventing or hindering the employee from:

- (a) leaving the Republic;
- (b) ascertaining or seeking that person's entitlement under the law of the Republic; or
- (c) disclosing to a person the circumstances of that person's employment by the employer.

(2) Without limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection:

- (a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets; and
- (b) preventing or hindering a person from:
 - (i) having access to a telephone;
 - (ii) using a telephone;
 - (iii) using a telephone privately;
 - (iv) leaving premises; or
 - (v) leaving premises unaccompanied.

Maximum penalty: 5 years imprisonment.

60 Consent of trafficked person

For Sections 57 and 58 it is not a defence:

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

61 Offence relating to fraudulent travel documents

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

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

Maximum penalty: 10 years imprisonment.

62 Protection for trafficked persons

- (1) A trafficked person is not liable to criminal prosecution for:
 - (a) the act of trafficking in persons or being a party to an offence of trafficking in persons;
 - (b) the person's illegal entry into the Republic, in connection with the act of trafficking in person if the Republic is the receiving country;
 - (c) the person's period of unlawful residence in the Republic after being trafficked, if the Republic is the receiving country; or
 - (d) the person's procurement or possession of any fraudulent travel or identity documents that the person obtained, or with which the person was supplied, for the purpose of entering the receiving country in connection with the act of trafficking in persons.
- (2) Subsection (1) does not prevent the removal of a trafficked person in accordance with the *Immigration Act 2014*.

63 Obligation on commercial carriers

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

Maximum penalty: fine of \$5,000.

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

PART 9 — PEOPLE SMUGGLING

64 Offence of people smuggling

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

Maximum penalty: 15 years imprisonment.

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

65 Offence to facilitate stay of an unauthorised person

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

Maximum penalty: 15 years imprisonment.

66 Offence related to fraudulent travel or identity documents

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

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

Maximum penalty: 15 years imprisonment.

67 Aggravated offences

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

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

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

Maximum penalty: 15 years imprisonment.

68 Protection for smuggled persons

- (1) An unauthorised person is not liable to prosecution for an offence under this Part, by reason only of the fact that the person is the object of the following conduct:

- (a) people smuggling;
- (b) when committed for the purpose of enabling people smuggling, an offence under Section 66; or
- (c) an offence under Section 65.

- (2) For the avoidance of any doubt, nothing in subsection (1) prevents proceedings being taken against an unauthorised person for an act or omission that constitutes an offence under any other law.

69 **Obligation on commercial carriers**

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

Maximum fine: \$15,000.

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

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

- (1) This Section applies to a craft that is a ship, boat, or other machine or vessel used or capable of being used for the carriage of persons by water or over water, except for a foreign warship.
- (2) An immigration, customs or police officer may stop and board the craft within the Republic if the authorised officer has reasonable grounds to believe the craft:
 - (a) is being used to commit an offence against Section 64; and
 - (b) the craft is in:
 - (i) Nauru; or
 - (ii) the contiguous zone of Nauru.
- (3) The immigration, customs or police officer may, when reasonably necessary for the exercise of his or her functions in connection with an offence against Section 64:
 - (a) direct the craft to stay where it is, or direct it to be taken to a suitable place in Nauru, for the purpose of search;
 - (b) search and detain the craft, anyone on it and anything on it;
 - (c) question a person on board the craft;
 - (d) require the production of any documents relating to the craft or any travel or identity documents of a person on the craft;
 - (e) take a copy of any documents produced;
 - (f) seize and detain anything found on the craft that appears to him or her to be evidence of an offence against this Act; and
 - (g) remain on the craft for such period as is reasonably necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence against Section 64.
- (4) Where the craft fails to stop at the request of an authorised officer, the officer may pursue it into international waters and take any action that is reasonably necessary to stop the craft to enable it to be boarded, other than in the territorial sea of another country.

- (5) The authorised officer may require the person in charge of the craft, a member of the crew or a person on board to take any action that may be directed by the officer for subsection (3)(a).
- (6) The person in charge of the craft shall give any authorised officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.
- (7) A person shall comply with a direction of the authorised officer under subsection (3)(a).

Maximum penalty: 15 years imprisonment.

PART 9A — NUCLEAR, CHEMICAL AND BIOLOGICAL WEAPONS

[Pt 9A insrt Act 12 of 2008 s 8, opn 26 Nov 2008]

70A Offences in relation to nuclear, chemical and biological weapons

(1) A person shall not manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons or any means of delivery of those weapons.

Penalty: life imprisonment.

(2) It is not an offence under subsection (1) if the person has written permission from Cabinet to do any of the things in subsection (1).

PART 10 — GENERAL PROVISIONS

71 Jurisdiction

Unless otherwise provided for under this Act, proceedings may be brought for an offence under this Act:

- (a) if the act or omission:
 - (i) is committed in the Republic;
 - (ii) is committed on board a Nauruan ship or Nauruan aircraft, wherever located;
 - (iii) is committed by a person who is in the Republic; or
 - (iv) is committed on or against a fixed platform licensed by or operating within the Republic; and
- (b) whether or not the act or omission constituting the offence is committed in or outside the Republic, if the act or omission:
 - (i) is committed by a citizen of Nauru or a citizen of any country who is ordinarily resident in Nauru or a stateless person;
 - (ii) is committed in order to compel the Government of Nauru to do or abstain from doing any act;
 - (iii) is committed against a citizen of Nauru;
 - (iv) is committed by a person who is, after the commission of the offence, present in the Republic;
 - (v) is intended to be committed in the Republic; or
 - (vi) is committed by a person during a journey that originates in or transits the Republic.

[s 71 am Act 12 of 2008 s 9, opn 26 Nov 2008; Act 31 of 2019 s 37 and Sch[1.24]–[1.28], opn 1 Feb 2020]

72 Aiding, abetting, etc commission of an offence

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

73 Incitement to commit an offence

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

Maximum penalty: 20 years imprisonment.

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

74 Conspiring to commit an offence

- (1) A person who conspires with another person, whether inside or outside the

Republic, to commit an offence under this Act commits the offence of conspiracy and is punishable as if the offence to which the conspiracy relates had been committed.

- (2) A person is not guilty of conspiracy to commit an offence if, before the taking of action under the agreement, the person:
 - (a) withdrew from the agreement; and
 - (b) took all reasonable steps to prevent the commission of the offence.
- (3) A person is not guilty of conspiracy to commit an offence if:
 - (a) all other parties to the agreement have been acquitted of the conspiracy and a finding of guilt would be inconsistent with their acquittal; or
 - (b) the person is a person for whose benefit or protection the offence exists.

75 Attempting to commit an offence

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

76 Liability of a corporation

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

[subs (4) insrt Act 31 of 2019 s 37 and Sch[1.29], opn 1 Feb 2020]

77 Obligation to extradite or prosecute

Where the Minister refuses a request from another country to extradite a person, and the extradition request relates to an act or omission which is an offence in this Act or the *Anti-Money Laundering Act 2008* or the *Proceeds of Crime Act 2004*, the Minister shall submit the matter to the Director of Public Prosecutions for prosecution.

78 Consent of the Minister

- (1) Proceedings for any offence under this Act, for which jurisdiction is

claimed under Section 71(a)(ii) for an offence committed on board an aircraft while in flight, or a vessel, elsewhere than in or over the Republic or for any other offence committed outside the Republic may only be instituted with the consent of the Minister.

- (2) Subsection (1) does not prevent the arrest, or the issue of a warrant for the arrest, of a person for any offence, or the remanding in custody or on bail of a person charged with any offence.

79 Restricted grounds for refusal to extradite or provide mutual assistance

- (1) Notwithstanding anything in the *Mutual Assistance in Criminal Matters Act 2004* or the *Extradition Act 1973*, an offence under this or any other Act, where the act or omission constituting the offence also constitutes a terrorist act, is taken, for the purposes of extradition or mutual assistance, not to be:
- (a) an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or
 - (b) a fiscal offence.

[subs (1) am Act 12 of 2008 s 10, opn 26 Nov 2008]

- (2) Notwithstanding anything in the *Mutual Assistance in Criminal Matters Act 2004*, no request for mutual assistance in relation to an offence under this Act may be declined solely on the basis of bank secrecy.

80 Offence under this Act an offence for extradition purposes

The Schedule to the *Extradition Act 1973* is amended by inserting the following immediately below the number and words “30 Money laundering”:

“31 Offence under the *Counter Terrorism and Transnational Organised Crimes Act 2004*”.

[s 80 insrt Act 12 of 2008 s 11, opn 26 Nov 2008]

SCHEDULE

COUNTER TERRORISM CONVENTIONS

[Sch 1 am Act 12 of 2008 s 12, opn 26 Nov 2008; Act 4 of 2010 s 3 and Sch[3], opn 18 Nov 2010; Act 37 of 2020 s 13, opn 3 Dec 2020]

- 1 Convention on Offences and certain Other Acts committed on Board Aircraft done at Tokyo on 14 September 1963
- 2 Convention for the Suppression of Unlawful Seizure of Aircraft done at The Hague on 16 December 1970
- 3 Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, done at Montreal on 23 September 1971
- 4 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973
- 5 International Convention against the taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979
- 6 Convention on the Physical Protection of Nuclear Material, done at Vienna and New York on 3 March 1980
- 7 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988
- 8 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at the Rome on 10 March 1988
- 9 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988
- 10 Convention on the Marking of Plastic Explosives for the Purposes of Detection done at Montreal on 1 March 1991
- 11 International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997
- 12 International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999
- 13 International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations on 13 April 2005.
- 14 Amendment to the 1980 Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 8 July 2005
- 15 Protocol to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted in London on 14 October 2005
- 16 Protocol to the 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at London on 14 October 2005
- 17 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation 2010, adopted at Beijing on 10 September 2010
- 18 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft 2010, adopted at Beijing on 10 September 2010
- 19 Protocol to the Convention on Offences and Certain other Acts Committed on Board Aircraft 2014, done at Montreal on 4 April 2014

