

# CRIMES

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# Crimes Act 2016

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# Crimes Act 2016

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The Crimes Act 2016 No 18 was certified and commenced on 12 May 2016 (GN No 370/2016; Gaz 78/2016).

Amending Legislation	Certified	Date of Commencement
Criminal Procedure (Amendment) No 2 Act 2018 No 40	18 December 2018	s 9: 18 December 2018
Maritime Security Act 2019 No 31	20 December 2019	Sch 1 clause 2: 1 February 2020
Crimes (Amendment) Act 2020 No 10	4 June 2020	4 June 2020
Crimes (Amendment) No 2 Act 2020 No 29	23 October 2020	23 October 2020
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

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An Act relating to the criminal law and for related purposes.

Enacted by the Parliament of Nauru as follows:

## **PART 1 — PRELIMINARY**

### **1 Short title**

This Act may be cited as the *Crimes Act 2016*.

### **2 Commencement**

This Act commences on the date that it is certified by the Speaker and came into effect on 12 May 2016.

### **3 Application**

This Act binds the Republic.

### **4 Codification**

The only offences against laws of the Republic are those offences, created by or under the authority of, this Act or any other written law.

### **5 Standard geographical jurisdiction**

- (1) This Part applies to all offences for which a person may be proceeded against and tried in Nauru unless the written law creating the offence expressly provides otherwise.
- (2) This Act applies to all conduct in Nauru.
- (3) Subject to subsection (4), conduct engaged in outside Nauru is not an offence except as provided by this Act or any other written law.
- (4) Where conduct engaged in within Nauru constitutes part of an offence, or an event necessary to the completion of an offence took place in Nauru, the offence is taken to be committed in Nauru, whether or not the person charged with the offence was in Nauru at the time the conduct was engaged in or the event took place.

### **6 Extraterritorial jurisdiction — ship or aircraft outside Nauru**

- (1) A person is criminally responsible for conduct engaged in outside Nauru if the conduct:
  - (a) would be an offence under this Act or any other written law, if it happened in Nauru; and
  - (b) meets the requirements of subsection (2).
- (2) Conduct meets the requirements of this subsection if it happens on any of the following:
  - (a) a Nauruan ship;
  - (b) a Nauruan aircraft;
  - (c) if the person engaging in the conduct is not a citizen of, or ordinarily resident in, Nauru, a foreign ship or foreign aircraft that:

- (i) arrives in Nauru, whether or not at the end of its voyage; or
- (ii) passes over Nauru; or
- (d) if the person engaging in the conduct is a citizen of, or ordinarily resident in, Nauru:
  - (i) a foreign ship on the high seas or in the territorial jurisdiction of another country; or
  - (ii) a foreign aircraft in international airspace or the territorial jurisdiction of another country.
- (3) This Section does not apply to conduct that is an offence in Section 7(1)(a).
- (4) A person is not criminally responsible for an offence that relies on the application of this Section if:
  - (a) the person is not a citizen of, or ordinarily resident in, Nauru; and
  - (b) the conduct engaged in for the offence would not have been an offence against the law of a country:
    - (i) of which the person is a citizen or permanent resident; or
    - (ii) in which the person is ordinarily resident.
- (5) A person who, because of this Section, is criminally responsible for an offence is liable to the same penalty to which the person would have been liable if the person was criminally responsible for the offence without the operation of this Section.
- (6) A requirement under a law of Nauru that affects a proceeding, or criminal responsibility, for an offence under subsection (1), also applies to a proceeding or criminal responsibility for the offence that arises because of this Section.
- (7) In this Section:
 

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

***‘foreign aircraft’*** means an aircraft that is not a Nauruan aircraft;

***‘foreign ship’*** means a ship that is not a Nauruan ship;

***‘Nauruan aircraft’*** means the following:

  - (a) an aircraft registered, or required to be registered, under a law of Nauru relating to civil aviation; and
  - (b) an aircraft owned or possessed by:
    - (i) the Republic; or
    - (ii) a body established by or under a Nauruan law;

***‘Nauruan ship’*** means the following:

  - (a) a ship registered, or required to be registered, under a law of Nauru relating to shipping; or
  - (b) an unregistered ship that has Nauruan nationality; and

***‘ship’*** includes a boat and any other vessel (including aircraft) used in navigation on the sea or on inland waters.

## 7 Extraterritorial jurisdiction — transnational crime

- (1) A person is criminally responsible for conduct engaged in outside Nauru if the conduct:



- (a) would be an offence under any of the following provisions if it happened in Nauru:
    - (i) Section 76 (Causing harm to public official);
    - (ii) Section 77 (Causing harm to police officer);
    - (iii) Section 93 (Threatening to cause serious harm to public official);
    - (iv) Section 109 (Compelling prostitution and giving of earnings from prostitution);
    - (v) Section 118 (Causing etc child under 16 years old to engage in sexual activity);
    - (vi) Section 119 (Engaging child to provide commercial sexual services);
    - (vii) Section 120 (Obtaining benefits from commercial sexual services with child);
    - (viii) Section 125 (Promoting or organising travel for unlawful sexual activity with child under 16 years old);
    - (ix) Division 9.4 (Bribery and corruption);
    - (x) Section 183 (Unwarranted demand on public official);
    - (xi) Division 9.8 (Identity crime);
    - (xii) Section 242 (Obstructing public official);
    - (xiii) Section 257 (Dealing with person as a commodity); and
    - (xiv) any other offence, if the written law creating the offence states that this Section applies to the offence; and
  - (b) meets the requirements of subsection (2).
- (2) Conduct meets the requirements of this subsection if:
- (a) it is engaged in by a person who:
    - (i) is a citizen of Nauru;
    - (ii) is ordinarily resident in Nauru;
    - (iii) has been found in Nauru and has not been extradited; or
    - (iv) is a body corporate incorporated in Nauru; or
  - (b) any part of the conduct is alleged to have happened on any of the following:
    - (i) a Nauruan ship;
    - (ii) a Nauruan aircraft; or
    - (iii) on board an aircraft or ship that is leased to a person:
      - (A) whose principal place of business is in Nauru; or
      - (B) who is a citizen of Nauru; or
  - (c) a victim of the conduct is:
    - (i) a citizen of Nauru; or
    - (ii) ordinarily resident in Nauru.
- (3) Nothing in this Section limits or affects the application of Section 5 to the occurrence in Nauru of:
- (a) conduct forming part of an offence; and
  - (b) an event necessary to the completion of an offence.
- (4) A person who, because of this Section, is criminally responsible for an offence is liable to the same penalty to which the person would have been liable if the person was criminally responsible for the offence without the operation of this Section.

- 
- (5) A requirement under a law of Nauru that affects a proceeding, or criminal responsibility, for an offence under subsection (1), also applies to a proceeding or criminal responsibility for the offence that arises because of this Section.
- (6) In this Section:
- ‘*Nauruan aircraft*’ has the meaning given in Section 6; and
- ‘*Nauruan ship*’ has the meaning given in Section 6.

[The next page is 240,801]

## PART 2 — INTERPRETATION

### 8 Definitions

In this Act:

**‘abuse material’** means any material, whether pornographic or not, that:

- (a) describes, depicts or represents a person, or part of a person:
  - (i) as a victim of extreme violence or cruelty;
  - (ii) in a degrading or dehumanising manner;
  - (iii) doing any activity that involves physical contact by the person with a dead person for sexual gratification or sexual arousal of a person, whether of the people involved or some other person; or
  - (iv) doing any activity that involves physical contact by the person with an animal for sexual gratification or sexual arousal of a person, whether of the people involved or some other person; or
- (b) describes, depicts or represents the death of a person;

**‘adult’** has the meaning given to it in Section 65 of the *Interpretation Act 2011*;

**‘animal’** means a vertebrate animal other than a human being;

**‘arrangement’** includes a scheme, agreement, understanding, promise or undertaking, whether express or implied;

**‘blackmail’** means an offence against Section 181;

**‘burglary’** means an offence against Section 160;

**‘causes’** a person’s conduct **‘causes’** death or harm if the conduct substantially contributes to the death or harm;

**‘child’** means an individual who is under 18 years old;

**‘commercial sexual service’** a person provides a **‘commercial sexual service’** if the person, under an arrangement of a commercial character:

- (a) engages or offers to engage in sexual intercourse with another person;
- (b) engages, continues to engage, offers to engage, or offers to continue to engage in:
  - (i) masturbation of that person or another person; or
  - (ii) sexual self-penetration;
- (c) engages, continues to engage, offers to engage, or offers to continue to engage in any activity that involves physical contact by 1 person with another person, including a dead person, for sexual gratification or sexual arousal of a person, whether of the people involved or some other person; or
- (d) engages, continues to engage, offers to engage, or offers to continue to engage in any activity that involves physical contact by the person with an object or an animal for sexual gratification or sexual arousal of a person;

**‘conduct’** means an act, an omission to do an act, or a state of affairs, and includes a series of acts, or omissions to do acts;

**‘consent’** has the meaning given in Section 9;

**‘describes, depicts or represents’** includes describing, depicting or representing on or in a film, audiotape, videotape, photograph, drawing, painting, carving, sculpture, computer game or the internet;

**‘detain’** a person **‘detains’** another person, if the person:

- (a) forcibly restrains the other person; or
- (b) uses any means to get the other person to remain in a particular place or with a particular person;

**‘duty’**, of a person who is a public official, means a function that:

- (a) is given to the person as a public official; or
- (b) the person holds himself or herself out as having as a public official;

**‘endanger’** conduct that **‘endangers’** the life of another person includes:

- (a) exposing a person to the risk of catching a disease that may give rise to a danger of death or serious harm; and
- (b) conduct that is ordinarily capable of creating a real, and not merely a theoretical, danger of death or serious harm;

**‘engage in conduct’** means:

- (a) do an act;
- (b) omit to do an act; or
- (c) be in a state of affairs;

**‘evidential burden’** has the meaning given in Section 26;

**‘fault element’** has the meaning given in Section 16;

**‘forgery’** means an offence against Section 186 (Forgery — making false document);

**‘harm’** means physical harm or mental harm or both;

**‘intention’** has the meaning given in Section 17;

**‘intimidation’** or **‘intimidates’** means the use of violence or threats to compel a person to do or abstain from doing any act which he or she has a legal right to do or abstain from doing;

[def insrt Act 29 of 2020 s 4, opn 23 Oct 2020]

**‘knowledge’** has the meaning given in Section 18;

**‘law of Nauru’** includes adopted law;

**‘legal burden’**, in relation to a matter, means the burden of proving the existence of the matter;

**‘mental harm’** includes psychological harm, whether temporary or permanent, but does not include an emotional reaction such as distress, grief, fear or anger unless the reaction results in psychological harm;

**‘mental illness’** means an underlying pathological infirmity of the mind, whether of long or short duration and whether permanent or temporary, but does not include a condition resulting from the reaction of a healthy mind to extraordinary external stimuli;

**‘mental impairment’** includes the following:

- (a) senility;
- (b) intellectual disability;
- (c) mental illness;
- (d) brain damage;
- (e) severe personality disorder; or
- (f) a psychological condition that involves abnormality and is prone to recur;

**‘offensive weapon’** means:

- (a) a firearm, including an airgun;
- (b) a device that imitates or has the appearance of a firearm regardless of whether it is capable of being discharged or not;
- (c) an explosive, including anything producing the sound or other effect of an explosives;
- (d) anything that might reasonably be taken to be or contain an explosive; or
- (e) anything else that is made or adapted for use for causing injury to or incapacitating a person;

***‘oral sex’*** means the bringing into contact of any part of the genitals or anus of a person with any part of the mouth (including the lips or tongue) of another person;

***‘perjury’*** means an offence against Section 222;

***‘physical harm’***:

- (a) includes any of the following, whether temporary or permanent:
  - (i) unconsciousness;
  - (ii) pain;
  - (iii) disfigurement;
  - (iv) infection with a disease; or
  - (v) any physical contact with a person to which the person might reasonably object in the circumstances, whether or not the person was aware of it at the time; but
- (b) does not include being subject to any force or impact that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or to life in the community;

***‘pornographic or abusive performance’*** means a live performance in which:

- (a) a person does an act of the following kind:
  - (i) sexual intercourse;
  - (ii) masturbation or sexual self-penetration;
  - (iii) any activity that involves physical contact by the person with another person, including a dead person, for sexual gratification or sexual arousal of a person, whether of the people involved or some other person; or
  - (iv) any activity that involves physical contact by the person with an animal for sexual gratification or sexual arousal of a person, whether of the people involved or some other person; or
- (b) a person or part of a person is described, depicted or represented:
  - (i) as a victim of extreme violence or cruelty;
  - (ii) in a degrading or dehumanising manner; or
  - (iii) in a sexual context;

***‘pornography’*** means any material that describes, depicts or represents a person, or part of a person:

- (a) doing an act of the following kind:
  - (i) sexual intercourse;
  - (ii) masturbation or sexual self-penetration; or
  - (iii) any activity that involves physical contact by the person with another person, other than a dead person, for sexual gratification or sexual arousal of a person, whether of the people involved or some other person; or

(b) in a sexual context;

**‘private act’** means:

(a) an act of the following kind:

(i) sexual intercourse;

(ii) masturbation or sexual self-penetration; or

(iii) any activity that involves physical contact by the person with another person for sexual gratification or sexual arousal of a person, whether of the people involved or some other person;

(b) an act involving an intimate bodily function (for example, using the toilet);

(c) an act involving undressing so that the body is clothed only in underwear;  
or

(d) an act involving nudity;

**‘private parts’** means:

(a) a person’s genitals, pubic area, buttocks; or

(b) a female’s breasts;

**‘property’** includes the following:

(a) real or personal property (including money);

(b) a legal or equitable estate, right or interest;

(c) an intangible personal property right recognised and protected by law, including money, shares, rights under a trust, copyright and the right to sue under a contract;

(d) electricity; or

(e) a wild creature that is tamed or ordinarily kept in captivity or that is in, or is being taken into, someone’s possession;

**‘public duty’** means a duty of a public official;

**‘public official’** means an official having public official functions or acting in a public official capacity for the Republic, and includes the following:

(a) a Member of Parliament;

(b) a Minister;

(c) a judicial officer;

(d) a public officer;

(e) a police officer;

(f) a person appointed by the Government, a government agency or an instrumentality of the Republic to a statutory or other office;

(g) a person employed by the government, a government agency or an instrumentality of the Republic; or

(h) a contractor who exercises a function or performs work for the government;

**‘reckless’** has the meaning given in Section 19;

**‘reckless indifference’** to consent has the meaning given in Section 20;

**‘robbery’** means an offence against Section 158;

**‘serious harm’** (except in Part 14) means harm, including the cumulative effect of any harm, whether or not treatment is, or could have been, available:

(a) that endangers, or is likely to endanger, a person’s life; or

(b) that is or is likely to be significant and longstanding;

**‘sexual intercourse’** means:

(a) the penetration, to any extent, of or by any part of a person’s genitals with any part of the body of another person;

- (b) the penetration, to any extent, of the anus of a person by any part of the body of another person;
- (c) the penetration, to any extent, of or by any part of a person's genitals by an object, carried out by another person;
- (d) the penetration, to any extent, of the anus of a person by an object, carried out by another person;
- (e) oral sex; or
- (f) the continuation of an activity covered by paragraphs (a) to (e);

**'sexual self-penetration'** means the penetration by a person of the person's genitals or anus by any part of the body of that person or by any object;

**'take'** a person **'takes'** another person if the person compels, entices or persuades the other person to accompany the person or another person;

**'take an image'** a person **'takes an image'** of another person if the person captures moving or still images of the other person by a camera or any other means in such a way that:

- (a) a recording is made of the images;
- (b) the images are capable of being transmitted in real time with or without retention or storage in a physical or electronic form; or
- (c) the images are otherwise capable of being distributed;

**'theft'** means an offence against Section 154;

**'threat'** means a threat directly or indirectly communicated by words, written or spoken, or by conduct, or partly by words and partly by conduct;

**'unlawful'** means without authorisation, justification or excuse; and

**'voluntary'** conduct is **'voluntary'** if:

- (a) in the case of conduct that is an act, the act is a product of the will of the person who engages in the act;
- (b) in the case of conduct that is an omission to do an act, the omission is one that the person is capable of performing; and
- (c) in the case of conduct that is a state of affairs, the person is capable of exercising control over the state of affairs.

## 9 Definition of consent

- (1) **'Consent'** means free and voluntary agreement by a person with the cognitive capacity to give that agreement.
- (2) Without limiting subsection (1), a person's consent to do an act is not freely and voluntarily given if the consent is obtained by any of the following:
  - (a) force;
  - (b) threat or intimidation;
  - (c) fear of harm;
  - (d) exercise of authority;
  - (e) false, misleading or fraudulent representations about the nature or purpose of that to which the person consents; or
  - (f) mistaken belief induced by another person.
- (3) Without limiting subsection (1), a person does not have the cognitive capacity to give consent to an act if one of the following applies:
  - (a) the act occurs while the person is asleep or unconscious;

- (b) the act occurs while the person is intoxicated to the extent that the person cannot choose to consent or not to consent; or
  - (c) the person is unable to understand the nature of the act.
- (4) Without limiting subsection (1), (2) or (3), a person who does not protest or offer actual physical resistance to an act is not, by reason only of that fact, to be regarded as consenting to the act.

[The next page is 241,001]



## **PART 3 — PRINCIPLES OF CRIMINAL RESPONSIBILITY**

### **DIVISION 3.1 — PURPOSE AND APPLICATION**

#### **10 Purpose of this Part**

The purpose of this Part is to codify the general principles of criminal responsibility under laws of Nauru.

#### **11 Application of this Part**

This Part applies to:

- (a) all offences created by this Act; and
- (b) offences committed under other written laws on or after the commencement of this Act.

### **DIVISION 3.2 — ELEMENTS OF AN OFFENCE**

#### **12 Elements of an offence**

- (1) An offence consists of physical elements and fault elements.
- (2) Notwithstanding subsection (1), the written law that creates the offence may provide:
  - (a) different fault elements for different physical elements; or
  - (b) that there is no fault element for one or more physical elements.

#### **13 Establishing criminal responsibility for offences**

A person shall not be found guilty of an offence unless the prosecution proves:

- (a) each physical element of the offence that is specified in the written law creating the offence that is relevant to establishing guilt; and
- (b) for each physical element for which a fault element is required, the fault element or one of the fault elements for the physical element.

#### **14 Physical elements**

- (1) A **‘physical element’** of an offence may be:
  - (a) conduct;
  - (b) a result of conduct; or
  - (c) a circumstance in which conduct, or a result of conduct, occurs.
- (2) Conduct can only be a physical element, if it is voluntary.

#### **15 Omissions**

An omission to do an act can only be a physical element if:

- (a) the written law creating the offence makes it a physical element; or
- (b) the written law creating the offence impliedly provides that the offence is committed by an omission to do an act that there is a duty to do under a law of Nauru.

#### **16 Fault elements**

A **‘fault element’** for a particular physical element may be:

- (a) intention;
- (b) knowledge;
- (c) recklessness;
- (d) reckless indifference to consent;
- (e) negligence; or
- (f) another fault element specified in the written law that creates that offence.

## 17 Intention

- (1) A person has **‘intention’** with respect to conduct, if the person means to engage in the conduct.
- (2) A person has **‘intention’** with respect to a circumstance, if the person believes that it exists or will exist.
- (3) A person has **‘intention’** with respect to a result, if the person means to bring it about or is aware that it will occur in the ordinary course of events.

## 18 Knowledge

- (1) A person has **‘knowledge’** of something if the person is aware that the thing does or does not exist or will or will not exist in the ordinary course of events.
- (2) Where knowledge is specified as the fault element required to prove an offence, proof of intention or knowledge will satisfy that fault element for the offence.

## 19 Recklessness

- (1) A person is **‘reckless’** about a matter if:
  - (a) the person is aware of a substantial risk that:
    - (i) in the case of a circumstance, the circumstance exists or will exist; and
    - (ii) in the case of a result, the result will occur; and
  - (b) having regard to the circumstances known to the person, it is unjustifiable to take the risk.
- (2) The question whether taking a risk is unjustifiable, is one of fact.
- (3) Where recklessness is specified as the fault element required to prove an offence, proof of intention, knowledge or recklessness will satisfy that fault element for the offence.

## 20 Reckless indifference to consent

- (1) A person is **‘recklessly indifferent’** to consent of another person if:
  - (a) the other person’s consent is required in relation to an act; and
  - (b) one of the following applies:
    - (i) the person is aware of the possibility that the other person might not consent to the act but decides to act regardless of that possibility;
    - (ii) the person is aware of the possibility that the other person might not consent to the act but fails to take reasonable steps to ascertain whether the other person does in fact consent to the act; or
    - (iii) the person does not give any thought as to whether or not the other person consents to the act.

[Note for subsection (1), **Consent** is defined in Section 9.]

- (2) The question whether a person is recklessly indifferent to consent is one of fact.

## 21 Negligence

A person is ‘negligent’ with respect to a physical element if the person’s conduct involves both of the following to such an extent that the conduct merits criminal punishment for the offence:

- (a) a great falling short of the standard of care that a reasonable person would exercise in the circumstances; and
- (b) a high risk that the physical element exists or will exist.

## 22 Offences that do not provide fault elements

- (1) Where the written law creating an offence does not provide a fault element for a physical element that consists only of conduct, intention is the fault element for the physical element.
- (2) Where the written law creating an offence does not provide a fault element for a physical element that consists of a circumstance or a result, recklessness is the fault element for the physical element.
- (3) This Section does not apply to create a fault element for a physical element that consists of the existence or content of an Act or law.

*[Note for subsection (3), If a physical element of an offence consists of the existence or content of an Act or law, Section 46 applies unless the law is expressly to the contrary.]*

## 23 Strict liability

- (1) Where a written law that creates an offence provides that the offence is an offence of strict liability:
  - (a) no fault element is required to prove the physical elements of the offence; and
  - (b) the defence of mistake or ignorance of fact under Section 45 is available.
- (2) Where a written law that creates an offence provides that strict liability applies to a particular physical element of the offence:
  - (a) no fault element is required to prove that physical element; and
  - (b) the defence of mistake or ignorance of fact under Section 45 is available in relation to the physical element.
- (3) The existence of strict liability does not make any other defence unavailable.

## 24 Absolute liability

- (1) Where a written law that creates an offence provides that the offence is an offence of absolute liability:
  - (a) no fault element is required to prove the physical elements of the offence; and
  - (b) the defendant may be found guilty of the offence regardless of any mistake or ignorance of fact under Section 45 by the defendant.
- (2) Where a written law that creates an offence provides that absolute liability applies to a particular physical element of the offence:
  - (a) no fault element is required to prove that physical element; and

- (b) the defendant may be found guilty of the offence regardless of any mistake or ignorance of fact under Section 45 by the defendant.
- (3) The existence of absolute liability does not make any other defence unavailable.

#### DIVISION 3.3 — PROOF OF CRIMINAL RESPONSIBILITY

### 25 **Burden of proof on prosecution**

- (1) The prosecution has a legal burden of proving each element of the offence.
- (2) The prosecution also has a legal burden of disproving any matter in relation to which the defendant has discharged an evidential burden of proof imposed on the defendant.
- (3) The legal burden of proof on the prosecution shall be discharged beyond reasonable doubt, unless the written law in which the offence is set out specifies a different standard of proof.

### 26 **Evidential burden of proof on defendant**

- (1) Subject to Section 27, a burden of proof that a written law imposes on a defendant is a burden (the ‘**evidential burden**’) of presenting or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.
- (2) A defendant has an evidential burden in relation to any of the following that is provided by a written law creating an offence, whether or not it accompanies the description of the offence, and on which the defendant wishes to rely:
  - (a) an exception;
  - (b) an exemption;
  - (c) an excuse;
  - (d) a qualification; or
  - (e) a justification.
- (3) The defendant no longer has the evidential burden in relation to a matter if evidence sufficient to discharge the burden is presented by the prosecution or the court.
- (4) The question whether an evidential burden has been discharged is one of law.

### 27 **Legal burden of proof on defendant**

- (1) A burden of proof that a written law imposes on the defendant is a legal burden if the Act expressly:
  - (a) specifies that the burden of proof in relation to the matter in question is a legal burden;
  - (b) requires the defendant to prove the matter; or
  - (c) creates a presumption that the matter exists unless the contrary is proved.
- (2) A legal burden of proof on the defendant shall be discharged on the balance of probabilities.

### 28 **Use of averments**

A law that allows the prosecution to make an averment, however expressed, is taken not to allow the prosecution:

- (a) to aver any fault element required for the offence; or
- (b) to make an averment in prosecuting for an offence that is directly punishable by imprisonment.

DIVISION 3.4 — EXTENSIONS OF CRIMINAL RESPONSIBILITY

## 29 Aiding, abetting, counselling and procuring

- (1) A person commits an offence if:
  - (a) the person's conduct in fact aids, abets, counsels or procures the commission of an offence by another person (the '**other offender**');
  - (b) the other offender in fact commits the offence; and
  - (c) the person:
    - (i) intends the conduct to aid, abet, counsel or procure the commission of an offence of the type the other offender commits; or
    - (ii) intends the conduct to aid, abet, counsel or procure the commission of an offence and the person is reckless about the commission of the particular offence that the other offender in fact commits.
- (2) The offence is punishable as if the person had committed the offence in subsection (1)(b).
- (3) A person is not guilty of the offence if, before the offence is committed, the person:
  - (a) terminates his or her involvement; and
  - (b) takes all reasonable steps to prevent the commission of the offence.
- (4) This Section applies regardless of whether the other offender or another person is prosecuted or found criminally responsible for the offence that the person aids, abets, counsels or procures.

## 30 Incitement

- (1) A person commits an offence if the person:
  - (a) urges an offence to be committed; and
  - (b) intends that the offence incited be committed.
- (2) A person may be found guilty of an offence even if it is impossible to commit the offence incited.

Penalty: the lesser of:

- (i) half the penalty the person would have been liable for if the person had committed the offence incited; and
- (ii) 10 years imprisonment.
- (3) It is not an offence to incite the commission of an offence against this Section, Section 31 or Section 34.

## 31 Conspiracy

- (1) A person commits an offence if:
  - (a) the person enters into an arrangement with one or more other people;
  - (b) the person and at least one other party to the arrangement intend to commit an offence under the arrangement; and
  - (c) at least one party to the arrangement commits an overt act under the arrangement.
- (2) The offence is punishable as if the person had committed the offence mentioned in subsection (1)(b).

- (3) For the purposes of subsection (1)(c), the question whether an act is overt is one of fact.
- (4) A person is not guilty of the offence if before the offence is committed, the person:
  - (a) withdraws from the arrangement; and
  - (b) takes all reasonable steps to prevent the commission of the offence.
- (5) A person may be found guilty of the offence even if:
  - (a) it is impossible to commit the offence that the person conspired to commit;
  - (b) the person and each other party to the arrangement is a corporation;
  - (c) each other party to the arrangement is a person:
    - (i) who is not criminally responsible; or
    - (ii) for whose benefit or protection the offence exists; or
  - (d) all other parties to the arrangement are acquitted of the conspiracy, unless to find the person guilty would be inconsistent with their acquittal.
- (6) A court may dismiss a charge of conspiracy if it considers that the interests of justice require it to do so.

## 32 Joint commission

- (1) A person commits an offence, if:
  - (a) a person enters into an arrangement with one or more other people;
  - (b) the person and at least one other party to the arrangement intend to commit an offence and to assist one another to commit the offence; and
  - (c) either:
    - (i) an offence is committed in accordance with the arrangement; or
    - (ii) an offence is committed in the course of carrying out the arrangement.
- (2) The offence is punishable as if the person had committed the offence mentioned in subsection (1)(b).
- (3) For the purposes of subsection (1)(b), to prove that the parties to the arrangement intend to commit an offence, it is not necessary to prove that the parties intend to commit a particular offence.
- (4) For the purposes of subsection (1)(c)(i), an offence is committed in accordance with an arrangement, if:
  - (a) the conduct of one or more parties in accordance with the arrangement makes up the conduct required for an offence (the ‘**joint offence**’) of the same type as the offence agreed to;
  - (b) to the extent that a physical element of the joint offence consists of a result of conduct, the result arises from the conduct engaged in; and
  - (c) to the extent that a physical element of the joint offence consists of a circumstance, the conduct engaged in, or a result of the conduct engaged in, happened in the circumstance.
- (5) For the purposes of subsection (1)(c)(ii), an offence is committed in the course of carrying out an arrangement if a person is reckless about the commission of an offence that another person in fact commits in the course of carrying out the arrangement.
- (6) An arrangement:

- (a) may consist of a non-verbal understanding; and
  - (b) may be entered into before, or at the same time as, the conduct making up any of the physical elements of the joint offence was engaged in.
- (7) A person is not guilty of the offence if, before any offence is committed, the person:
- (a) withdraws from the arrangement; and
  - (b) takes all reasonable steps to prevent the commission of an offence by the parties to the arrangement.
- (8) A person may be found guilty of the offence even if:
- (a) another party to the arrangement is not prosecuted or found guilty; or
  - (b) the person was not present when any of the conduct making up the physical elements of the joint offence was engaged in.
- (9) A person may be found guilty of the offence even if it is impossible to commit the offence mentioned in subsection (1)(b).

### 33 Commission by proxy

- (1) A person commits an offence if:
- (a) the person procures someone else to engage in conduct that, whether or not together with conduct engaged in by the person, makes up the physical elements of the offence consisting of conduct; and
  - (b) when the person procures the other person to engage in the conduct, the person has a fault element applying to each physical element of the offence.
- (2) The offence is punishable as if the person had committed the offence mentioned in subsection (1)(a).

### 34 Attempts

- (1) A person commits an offence if the person attempts to commit an offence.
- (2) The offence is punishable as if the offence attempted had been committed.
- (3) For a person to be guilty under this Section, the person's conduct shall be more than merely preparatory to the commission of the offence.
- (4) The question whether conduct is more than merely preparatory is one of fact.
- (5) A person may be found guilty of the offence even if:
- (a) it is impossible to commit the offence attempted; or
  - (b) the person in fact commits the offence.
- (6) Where a person is found guilty of attempting to commit an offence, the person cannot later be charged with committing the offence.

### 35 Accessory after the fact

A person commits an offence if:

- (a) the person assists another person (the '**other offender**');
- (b) the other offender commits an offence;
- (c) the person knows the other offender committed the offence; and
- (d) the person assists the other offender in order to enable the other offender to escape punishment or to dispose of the proceeds of the offence.

Penalty: the lesser of:

- (i) half the penalty the person would have been liable for if the person had committed the offence; or
- (ii) 10 years imprisonment.

### 36 Offences under this Division

- (1) A reference in a written law to an offence under a law of Nauru includes a reference to an offence under this Division that relates to the offence.
- (2) A defence, procedure, limitation or qualification that applies to an offence under a law of Nauru also applies to a related offence under this Division.

#### DIVISION 3.5 — CORPORATE CRIMINAL RESPONSIBILITY

### 37 Act applies to bodies corporate

- (1) This Act applies to a corporation in the same way as it applies to an individual with any modifications:
  - (a) set out in this Division; or
  - (b) that are otherwise necessary to apply this Act, or a provision of this Act, to the corporation, rather than an individual.
- (2) A corporation may be found guilty of any offence (whether under this Act or another written law), including an offence punishable by imprisonment.

*[Note for this Section. The Interpretation Act 2011, Section 80 contains rules about how a penalty applies to corporations.]*

### 38 Application of physical elements to bodies corporate

A physical element of an offence is attributed to a corporation, if:

- (a) an employee, agent or officer of a corporation engages in the conduct constituting the physical element; and
- (b) one of the following applies:
  - (i) in the case of an employee, the employee is acting within the actual or apparent scope of the employee's employment; or
  - (ii) in the case of an agent or officer, the agent or officer is acting within the person's actual or apparent authority.

### 39 Application of fault elements to bodies corporate

- (1) Where there is a fault element in relation to a physical element of an offence, that fault element shall be attributed to a corporation if the corporation expressly, tacitly or impliedly authorised or permitted the commission of the offence.
- (2) An authorisation or permission may be established by means including, but not limited to, the following:
  - (a) proving that one of the following expressly, tacitly or impliedly authorised or permitted the commission of the offence:
    - (i) the corporation's board of directors; or
    - (ii) a high managerial agent of the corporation;
  - (b) proving that one of the following had the relevant fault element when the relevant physical element was carried out:
    - (i) the corporation's board of directors; or
    - (ii) a high managerial agent of the corporation;



- (c) proving that a corporate culture existed within the corporation that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or
- (d) proving that the corporation failed to create and maintain a corporate culture that required compliance with the relevant provision.
- (3) Subsections (2)(a)(ii) and (2)(b)(ii) do not apply if the corporation proves that it exercised due diligence to prevent the conduct, or the authorisation or permission.
- (4) Factors relevant to the application of subsection (2)(c) or (d) include:
  - (a) whether authority to commit an offence of the same or a similar character had been given by a high managerial agent of the corporation; and
  - (b) whether the employee, agent or officer of the corporation who commits the offence believed on reasonable grounds, or entertained a reasonable expectation, that a high managerial agent of the corporation would have authorised or permitted the commission of the offence.
- (5) Where the fault element for a physical element of an offence is intention or knowledge:
  - (a) the prosecution shall prove that fault element; and
  - (b) evidence of recklessness by the board of directors, or a high managerial agent, of the corporation is insufficient for that purpose.
- (6) In this Section:
  - ‘board of directors’*, of a corporation, means the body exercising the executive authority of the corporation;
  - ‘corporate culture’*, in relation to a corporation, means an attitude, policy, rule, course of conduct or practice existing within the corporation generally or in the part of the corporation in which the relevant activities take place; and
  - ‘high managerial agent’*, of a corporation, means an employee, agent or officer of the corporation with duties of such responsibility that the person’s conduct may fairly be assumed to represent the corporation’s policy.

#### DIVISION 3.6 — CIRCUMSTANCES WHERE THERE IS NO CRIMINAL RESPONSIBILITY

### 40 Children under 10 years old

A child under 10 years old is not criminally responsible for an offence.

### 41 Children aged 10 to 14 years

- (1) A child aged 10 years or more but under 14 years old can only be criminally responsible for an offence if the child knows that the child’s conduct is wrong.
- (2) The question whether a child knows that the child’s conduct is wrong is one of fact.
- (3) The prosecution has the burden of proving that a child knows that the child’s conduct is wrong.

### 42 Mental impairment

- (1) A person is not criminally responsible for an offence if, at the time of

engaging in the conduct constituting the offence, the person was suffering from a mental impairment that had the effect that:

- (a) the person did not know the nature and quality of the conduct;
  - (b) the person did not know that the conduct was wrong; or
  - (c) the person was unable to control the conduct.
- (2) For the purposes of subsection (1)(b), a person does not know that conduct is wrong if the person cannot reason with a moderate degree of sense and composure about whether the conduct, as perceived by reasonable people, is wrong.
- (3) A person is presumed not to have been suffering from a mental impairment.
- (4) The presumption is displaced only if it is proved on the balance of probabilities, by the prosecution or the defence, that the person was suffering from the mental impairment.
- (5) The question whether the person was suffering from a mental impairment is one of fact.
- (6) Where the court is satisfied that a person engaged in conduct as a result of a delusion caused by a mental impairment, the person cannot also rely on the delusion as a defence.
- (7) The prosecution may rely on this Section only with the leave of the court.
- (8) Where the court is satisfied that a person is not criminally responsible for an offence only because of a mental impairment, the court shall return a special verdict that the person is not guilty of the offence because of mental impairment.

## 43 Intoxication

- (1) A person is not criminally responsible for an offence if the person's conduct constituting the offence was as a result of intoxication that was not self-induced.
- (2) Evidence of self-induced intoxication cannot be considered in deciding whether a fault element of intention existed for a physical element that consists only of conduct.
- (3) This Section does not prevent evidence of self-induced intoxication being considered in deciding whether conduct is voluntary.
- (4) In this Section:
- 'dentist'** means a health practitioner registered in the class of dentist;
  - 'intoxication'** means intoxication because of the influence of alcohol, a drug or another substance; and
  - 'self-induced'** intoxication is **'self-induced'** unless it came about:
    - (a) involuntarily;
    - (b) because of fraud, sudden or extraordinary emergency, accident, reasonable but mistaken belief, duress or force;
    - (c) from the use of a drug for which a prescription is required and that was used in accordance with the directions of a health practitioner or dentist who prescribed it; or

- (d) from the use of a drug for which no prescription is required and that was used for a purpose, and in accordance with the dosage level, recommended by the manufacturer.

*[Note for paragraph (c) 'Medical practitioner' has the meaning given in the Interpretation Act 2011, Section 65.]*

#### **44 Mistake or ignorance of fact — fault elements other than negligence**

A person is not criminally responsible for an offence that has a physical element for which there is a fault element other than negligence if:

- (a) when engaging in the conduct making up the physical element, the person is under a reasonable but mistaken belief about, or ignorance of, the facts; and
- (b) the existence of the mistaken belief or ignorance negates a fault element applying to the physical element.

#### **45 Mistake or ignorance of fact — strict liability**

A person is not criminally responsible for an offence that has a physical element for which there is no fault element, if:

- (a) when engaging in the conduct making up the physical element, the person:
  - (i) considered whether or not facts existed; and
  - (ii) was under a reasonable but mistaken belief about, or ignorance of, the facts; and
- (b) had the facts existed the conduct would not have been an offence.

#### **46 Mistake of law**

- (1) A person can be criminally responsible for an offence even if, at the time of the conduct constituting the offence, the person is mistaken about, or ignorant of:
  - (a) the existence or content of an Act or law that directly or indirectly creates the offence; or
  - (b) the existence or content of an Act or law that directly or indirectly affects the scope or operation of the offence.
- (2) Subsection (1) does not apply, and the person is not criminally responsible for the offence in those circumstances, if the Act or law expressly states to the contrary.

#### **47 Claim of right**

- (1) A person is not criminally responsible for an offence that has a physical element relating to property if:
  - (a) at the time of the conduct constituting the offence, the person is under an honest and reasonable but mistaken belief about a proprietary or possessory right in relation to the property; and
  - (b) the existence of that right would negate a fault element for any physical element of the offence.
- (2) This Section does not negate criminal responsibility for an offence relating to the use of force against a person.

**48 Intervening events**

A person is not criminally responsible for an offence, if:

- (a) strict liability or absolute liability applies to all or any of the physical elements of the offence;
- (b) the physical element to which strict liability or absolute liability applies exists:
  - (i) because another person over whom the person has no control engages in conduct constituting the physical element; or
  - (ii) because of an act or event over which the person has no control; and
- (c) the person could not reasonably be expected to guard against the bringing about of the physical element.

**49 Duress**

- (1) A person is not criminally responsible for an offence if the person engages in the conduct constituting the offence under duress.
- (2) A person engages in conduct under duress only if the person reasonably believes that:
  - (a) a threat has been made that will be carried out unless an offence is committed;
  - (b) there is no reasonable way that the threat can be rendered ineffective; and
  - (c) the conduct is a reasonable response to the threat.
- (3) This Section does not apply if the threat is made by, or on behalf of, a person with whom the person under duress is voluntarily associating for the purpose of engaging in the conduct carried out.

**50 Sudden or extraordinary emergency**

- (1) A person is not criminally responsible for an offence if the person engages in the conduct constituting the offence in response to circumstances of sudden or extraordinary emergency.
- (2) This Section applies only if the person engaging in the conduct reasonably believes that:
  - (a) circumstances of sudden or extraordinary emergency exist;
  - (b) committing the offence is the only reasonable way to deal with the emergency; and
  - (c) the conduct is a reasonable response to the emergency.

**51 Self-defence**

- (1) A person is not criminally responsible for an offence if the person engages in the conduct constituting the offence in self-defence.
- (2) A person engages in conduct in self-defence only, if:
  - (a) the person believes the conduct is necessary:
    - (i) to defend the person or another person;
    - (ii) to prevent or end the unlawful imprisonment of the person or another person;
    - (iii) to protect property from unlawful appropriation, destruction, damage or interference;
    - (iv) to prevent unlawful entry to land or premises; or

- (v) to remove from land or premises a person who unlawfully entered; and
  - (b) the conduct is a reasonable response in the circumstances as the person perceives them.
- (3) This Section does not apply if:
  - (a) the person uses force that involves the intentional infliction of death or serious harm:
    - (i) to protect property;
    - (ii) to prevent criminal trespass; or
    - (iii) to remove a person committing criminal trespass; or
  - (b) the person is responding to conduct that the person knows is lawful.
- (4) For the purposes of subsection (3)(b), conduct is not lawful merely because the person carrying out the conduct is not criminally responsible for it.

## **52 Lawful authority**

A person is not criminally responsible for an offence if the conduct constituting the offence is authorised, justified or excused by or under a written law of Nauru.

## **53 Surgical operations and medical treatment**

A person is not criminally responsible for an offence, if:

- (a) the conduct constituting the offence involved performing a surgical operation on, or giving medical treatment to:
  - (i) a person for the person's benefit; or
  - (ii) an unborn child for the preservation of the mother's life;
- (b) the operation or treatment was performed or given in good faith and with reasonable care and skill; and
- (c) performing the operation or giving the treatment was reasonable, having regard to the patient's state at the time and all the circumstances of the case.

[The next page is 241,201]

## **PART 4 — OFFENCES CAUSING DEATH**

### **DIVISION 4.1 — GENERAL**

#### **54 Abolition of particular rules about murder**

- (1) A law is abolished if the law provides that:
  - (a) a death that occurs more than a year and a day after the injury that caused it is to be conclusively presumed not to have been caused by the injury; or
  - (b) a person commits an offence if the person commits, or attempts to commit, suicide.
- (2) This Section does not apply in respect of conduct causing death that was engaged in before the commencement of this Section.

### **DIVISION 4.2 — CAUSING DEATH**

#### **55 Murder**

A person commits the offence of murder, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes the death of another person; and
- (c) the person intends to cause, or is reckless about causing, the death of that or any other person by the conduct.

Penalty: life imprisonment.

#### **55A Attempt to murder**

A person commits an offence, if the person:

- (a) attempts to kill another person; or
- (b) does any act which is capable of or likely to endanger human life or kill another person.

Penalty: life imprisonment.

[s 55A insrt Act 10 of 2020 s 4, opn 4 June 2020]

#### **56 Manslaughter**

A person commits the offence of manslaughter, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes the death of another person; and
- (c) the person intends to cause, or is reckless about causing, serious harm to that or any other person by the conduct.

Penalty: 25 years imprisonment.

#### **57 Causing death by criminal negligence**

- (1) A person commits an offence, if:
  - (a) the person intentionally engages in conduct;
  - (b) the conduct causes the death of another person; and
  - (c) the person is negligent about causing the death of that or any other person by the conduct.

Penalty: 20 years imprisonment.

- (2) For the avoidance of any doubt, an omission that constitutes a breach of a statutory duty under Section 96, 97, 98 or 99 may constitute conduct for the purposes of subsection (1).

## **58 Causing death — criminal responsibility despite certain other factors**

- (1) A person may be criminally responsible for an offence against this Division for conduct by the person that causes the death of another person, even if:
  - (a) when the conduct happened, the other person was in a condition, including because of a disease or disorder, or under circumstances that would have resulted in the person's death;
  - (b) when the conduct happened, the other person's death as a result of the conduct was preventable by taking reasonable steps; or
  - (c) the other person consented to the conduct or to the own person's death being caused by the conduct.
- (2) A person may be criminally responsible for an offence against this Division, if:
  - (a) the person engages in conduct causing serious harm to another person; and
  - (b) the death of the other person is caused by treatment for the harm, even if the treatment is proper and administered in good faith.
- (3) A person may be criminally responsible for an offence against this Division for conduct by the person:
  - (a) that is actual or threatened violence towards another person (the '*victim*'); and
  - (b) that causes the victim to engage in conduct that causes the victim's own death, such conduct being a means of avoiding the violence that would, in the circumstances, appear natural to the victim.

## **59 Defence of provocation**

- (1) A person who would otherwise be guilty of murder under Section 55 shall not be convicted of that offence if the defence of provocation applies.
- (2) The person who would, but for this Section, be liable to be convicted of murder under Section 55 shall instead be convicted of manslaughter under Section 56.
- (3) The defence of provocation applies, if:
  - (a) the conduct causing death was the result of the person's loss of self-control induced by conduct of the deceased towards, or affecting, the person; and
  - (b) the conduct of the deceased was such as could have caused an ordinary person to have lost self-control to an extent that the ordinary person would have formed an intent to kill, or cause serious harm to, the deceased.
- (4) Grossly indecent or offensive words or gestures towards or affecting the person may be conduct of a kind that induces the person's loss of self-control.
- (5) The question whether words or gestures are grossly indecent or offensive is one of fact.



- (6) A defence of provocation may arise regardless of whether the conduct of the deceased occurred immediately before the conduct causing death or at an earlier time.
- (7) The conduct of the deceased consisting of non-violent sexual advances towards the person:
  - (a) is not, by itself, a sufficient basis for a defence of provocation; but
  - (b) may be taken into account together with other conduct of the deceased in deciding whether the defence has been established.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

#### DIVISION 4.3 — SUICIDE

### 60 Aiding or abetting suicide

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the person intends that the person's conduct will aid or abet another person to commit, or attempt to commit, suicide; and
- (c) the conduct in fact aids or abets another person to commit, or attempt to commit, suicide.

Penalty: 14 years imprisonment.

### 61 Encouraging suicide

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the person intends that the person's conduct will encourage another person to commit, or attempt to commit, suicide; and
- (c) the conduct in fact encourages another person to commit, or attempt to commit, suicide.

Penalty: 10 years imprisonment.

### 62 Defence of using reasonable force to prevent suicide

A person is not criminally responsible for an offence if the person uses reasonable force to prevent:

- (a) the suicide of another person; or
- (b) any conduct that the person believes on reasonable grounds would, if committed, result in the suicide of another person.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

#### DIVISION 4.4 — CAUSING DEATH OF CHILDREN

### 63 Meaning of 'lawful medical procedure'

(1) In this Division:

**'lawful medical procedure'** means a procedure that:

- (a) is carried out by a health practitioner;
- (b) is carried out on a person who the practitioner believes on reasonable grounds is not more than 20 weeks pregnant;

- (c) the practitioner considers appropriate because in the practitioner's opinion:
  - (i) the continuation of the person's pregnancy would result in serious danger, not being danger normally associated with childbirth, to the life, or to the physical or mental health, of the person;
  - (ii) there is a substantial risk that the child, if born, would suffer a serious physical or mental impairment;
  - (iii) the pregnancy is a result of rape or incest; or
  - (iv) the person suffers a severe developmental impairment; and
- (d) is carried out with the consent of:
  - (i) if the person is capable of consenting to the procedure, the person; or
  - (ii) if the person is not capable of consenting to the procedure, another person lawfully entitled to consent on behalf of the person; and

**'lawful medical procedure'** also means a procedure that:

- (a) is carried out by a health practitioner;
- (b) is carried out on a person who the practitioner believes on reasonable grounds is more than 20 weeks pregnant;
- (c) the practitioner considers necessary to:
  - (i) save the life of the person; or
  - (ii) prevent serious permanent injury to the person's physical or mental health; and
- (d) is carried out with the consent of:
  - (i) if the person is capable of consenting to the procedure, the person; or
  - (ii) if the person is not capable of consenting to the procedure, another person lawfully entitled to consent on behalf of the person.

[Note for subsection (1): 'Medical practitioner' has the meaning given in the Interpretation Act 2011, Section 65.]

- (2) For this Section, the following may be taken into account when determining serious danger to life, or physical or mental health of a person:
  - (a) the age of the person; and
  - (b) whether the pregnancy is a result of a sexual offence.
- (3) In this Section:

**'severe developmental impairment'** means an intellectual, mental, or physical condition, or combination of conditions, that results in a substantial impairment of the person's capacity to:

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

## 64 Meaning of 'miscarriage'

In this Division:

**'miscarriage'** means:

- (a) the destruction or death of an embryo or foetus after implantation; or

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

## 65 Infanticide

- (1) A person commits an offence, if:
  - (a) the person is a woman;
  - (b) the person engages in conduct that causes the death of her child;
  - (c) the child was not more than 2 years old;
  - (d) at the time of the conduct the balance of the person's mind was disturbed, to the extent that the person was not fully responsible, as a result of:
    - (i) not having fully recovered from the birth of the child; or
    - (ii) any other disorder arising from giving birth to the child; and
  - (e) the conduct would, without this Section, be an offence of murder or manslaughter.

Penalty: 5 years imprisonment.

- (2) In a trial for an offence of murder or manslaughter of a child who is under 2 years old by a defendant who is the child's mother:
  - (a) the court may, if satisfied beyond reasonable doubt that the defendant is criminally responsible for the offence of infanticide, find the defendant guilty of infanticide whether or not the defendant raised infanticide in the trial; and
  - (b) if the defendant raises infanticide in the trial, the defendant has a legal burden in relation to the matters mentioned in subsection (1)(d).
- (3) Nothing in this Section prevents a court that returns a verdict of guilty to infanticide for a defendant from returning a verdict of guilty to murder or manslaughter to another defendant charged with a homicide offence arising from the same facts.
- (4) In this Section:
  - '*child*' means a living child that is physically separate from the body of its mother whether or not the child:
    - (a) has breathed;
    - (b) has an independent circulatory system; or
    - (c) has had its umbilical cord cut.

## 66 Killing unborn child

- (1) A person commits an offence, if:
  - (a) the person intentionally engages in conduct;
  - (b) the conduct causes the death of an unborn child; and
  - (c) the person is reckless about:
    - (i) the fact the child is unborn;
    - (ii) preventing the child from being born alive by engaging in the conduct; or
    - (iii) contributing to the child's death by engaging in the conduct.

Penalty: 14 years imprisonment.

- (2) A person is not criminally responsible for an offence under subsection (1), if the conduct is engaged in:

- (a) in good faith; and
  - (b) for the preservation of the life of the woman carrying the unborn child.
- [Note for this Section: A defendant has an evidential burden in relation to the matters in subsection (2): see Section 26.]*
- (3) The offence does not apply if the conduct is carried out as part of a lawful medical procedure.
  - (4) In this Section:
    - ‘unborn child’** means:
      - (a) a child of more than 27 weeks’ gestation; or
      - (b) a child otherwise capable of being born alive.

## 67 Concealing body of dead child

A person commits an offence, if:

- (a) a child dies before, during or after the child’s birth;
- (b) the person intentionally disposes of the child’s body; and
- (c) the person intends to conceal the child’s birth.

Penalty: 3 years imprisonment.

## 68 Carrying out abortion

(1) A person commits an offence, if:

- (a) the person intentionally:
  - (i) causes a drug to be given or taken by a woman; or
  - (ii) uses an instrument or other thing on a woman;
- (b) the person does so intending to cause the woman’s miscarriage; and
- (c) the conduct is not a lawful medical procedure.

Penalty: 10 years imprisonment.

(2) Strict liability applies to subsection (1)(c).

## 69 Supplying items for miscarriage

A person commits an offence, if:

- (a) the person supplies a poison, drug, noxious substance, instrument or thing to another person; and
- (b) the person believes that the other person intends to use the poison, drug, noxious substance, instrument, or thing to commit an offence against Section 68.

Penalty: 5 years imprisonment.

### DIVISION 4.5 — OTHER OFFENCES

## 70 Misconduct in relation to dead human bodies

(1) A person commits an offence if:

- (a) the person intentionally engages in conduct;
- (b) the conduct relates to a dead human body or human remains, whether buried or not; and
- (c) the conduct is indecent or improper and the person is reckless about that fact.

Penalty: 2 years imprisonment.

(2) Strict liability applies to subsection (1)(b).

- (3) The question whether conduct in relation to a dead human body or human remains is indecent or improper is one of fact to be determined by applying the standards of an ordinary person.
- (4) A person commits an offence, if:
  - (a) the person has a legal duty in relation to the burial or cremation of a dead human body or human remains, whether buried or not; and
  - (b) the person intentionally fails to comply with the duty.

Penalty: 2 years imprisonment.

- (5) Strict liability applies to subsection (4)(a).

[The next page is 241,401]

## PART 5 — OFFENCES CAUSING HARM AND RELATED OFFENCES

### DIVISION 5.1 — ASSAULT

#### **71 Intentionally causing serious harm**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes serious harm to another person; and
- (c) the person intends to cause serious harm to that or any other person by the conduct.

Penalty:

- (i) if aggravating circumstances apply — 20 years imprisonment; or
- (ii) in any other case — 15 years imprisonment.

#### **72 Recklessly causing serious harm**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes serious harm to another person; and
- (c) the person is reckless about causing serious harm to that or any other person by the conduct.

Penalty:

- (i) if aggravating circumstances apply — 15 years imprisonment; or
- (ii) in any other case — 12 years imprisonment.

#### **73 Negligently causing serious harm**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes serious harm to another person; and
- (c) the person is negligent about causing serious harm to that or any other person by the conduct.

Penalty:

- (i) if aggravating circumstances apply — 13 years imprisonment; or
- (ii) in any other case — 10 years imprisonment.

#### **74 Intentionally causing harm**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes harm to another person without the person's consent; and
- (c) the person intends to cause harm to that or any other person by the conduct.

Penalty:

- (i) if aggravating circumstances apply — 9 years imprisonment; or
- (ii) in any other case — 7 years imprisonment.

#### **75 Recklessly causing harm**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes harm to another person without the person's consent; and
- (c) the person is reckless about causing harm to that or any other person by the conduct.

Penalty:

- (i) if aggravating circumstances apply — 7 years imprisonment; or
- (ii) in any other case — 5 years imprisonment.

## 76 **Causing harm to public official**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes harm to another person without the person's consent;
- (c) the person intends to cause harm to the other person because the person believes the other person is a public official; and
- (d) the other person is in fact a public official.

Penalty:

- (i) if aggravating circumstances apply — 10 years imprisonment; or
- (ii) in any other case — 8 years imprisonment.

## 77 **Causing harm to police officer**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes harm to another person without the person's consent;
- (c) the person intends to cause harm to the other person because the person believes the other person is a police officer; and
- (d) the other person is in fact a police officer.

Penalty:

- (i) if aggravating circumstances apply — life imprisonment of which at least 12 years imprisonment to be served without any parole or probation; or
- (ii) in any other case — 20 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[s 77 am Act 29 of 2020 s 5, opn 23 Oct 2020]

## 77A **Intimidating or threatening a police officer**

A person commits an offence, if the person intimidates or threatens a police officer in the execution of the police officer's duties.

Penalty: a maximum term of 5 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[s 77A insrt Act 29 of 2020 s 6, opn 23 Oct 2020]

## 78 **Common assault**

(1) A person (the '**defendant**') commits an offence, if:

- (a) the defendant intentionally:
  - (i) engages in conduct that results in a direct or indirect application of force to another person; or
  - (ii) makes physical contact, directly or indirectly, with another person knowing that the person might reasonably object to the contact in the circumstances, whether or not the person was aware of the contact at the time; or



(iii) makes a threat to another person of a direct or indirect application of force that:

- (A) the defendant intends the other person to apprehend; and
- (B) the other person believes on reasonable grounds is able to be carried out by the defendant; and

(b) the other person does not consent, or consents because of a dishonest representation by the defendant, to the conduct, contact or threat.

Penalty:

- (i) if aggravating circumstances apply — 2 years imprisonment; or
  - (ii) in any other case — 12 months imprisonment.
- (2) Notwithstanding subsection (1), conduct that is within the limits of what would be acceptable to a reasonable person as incidental to social interaction or community life cannot amount to an offence under this Section.

## **79 Aggravating circumstances for assault offences**

- (1) Where an offence under this Division provides for a penalty if aggravating circumstances apply, then that penalty may be imposed if the conduct constituting the offence occurs in any of the following circumstances:
  - (a) the defendant is, or pretends to be, armed with an offensive weapon;
  - (b) the defendant is in company with one or more other people;
  - (c) the defendant intends to commit another offence; or
  - (d) the defendant intends to avoid the lawful arrest or detention of a person.
- (2) For the purposes of subsection (1)(c), it is not necessary to prove that the defendant intends to commit a particular offence.

### **DIVISION 5.2 — ENDANGERING LIFE OR SAFETY**

## **80 Endangering life**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct endangers another person's life; and
- (c) the person is reckless about endangering the other person's life.

Penalty: 10 years imprisonment.

## **81 Risking serious harm**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes risk of serious harm to another person; and
- (c) the person is reckless about causing the risk.

Penalty: 7 years imprisonment.

## **82 Risking serious harm intending to commit offence or avoid apprehension**

- (1) A person commits an offence, if:
  - (a) the person intentionally engages in conduct;
  - (b) either of the following applies:
    - (i) the person intends to commit an offence; or

- (ii) the person intends to avoid the lawful arrest or detention of a person;
- (c) the conduct causes risk of serious harm to another person; and
- (d) the person is reckless about causing the risk.

Penalty: 10 years imprisonment.

- (2) To prove for subsection (1)(b)(i) that a person intends to commit an offence, it is not necessary to prove that the person intends to commit a particular offence.

### **83 Risking harm**

A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) the conduct causes risk of harm to another person; and
- (c) the person is reckless about causing the risk.

Penalty: 5 years imprisonment.

### **84 Risking harm with intent to commit offence or avoid apprehension**

- (1) A person commits an offence, if:

- (a) the person intentionally engages in conduct;
- (b) either of the following applies:
  - (i) the person intends to commit an offence; or
  - (ii) the person intends to avoid the lawful arrest or detention of a person;
- (c) the conduct causes risk of harm to another person; and
- (d) the person is reckless about causing the risk.

Penalty: 8 years imprisonment.

- (2) To prove for subsection (1)(b)(i) that a person intends to commit an offence, it is not necessary to prove that the person intends to commit a particular offence.

### **85 Obstructing medical personnel**

- (1) A person commits an offence if the person intentionally obstructs any medical personnel who is responding to a medical issue or attempting to administer medical treatment to another person.

Penalty: 2 years imprisonment.

- (2) For the purposes of this Section, it does not matter whether the medical personnel is employed in the public service.

[The next page is 241,601]

## PART 6 — OTHER OFFENCES AGAINST THE PERSON

### 86 Stalking

- (1) A person commits an offence, if:
- (a) the person intentionally engages in conduct in relation to another person:
    - (i) on one occasion, and the conduct is for an extended period; or
    - (ii) on more than one occasion;
  - (b) the conduct consists of one or more of the following:
    - (i) following, loitering near, watching or approaching another person;
    - (ii) contacting another person;
    - (iii) loitering near, watching, approaching or entering a place where another person lives, works or visits;
    - (iv) giving offensive material to another person directly or indirectly;
    - (v) leaving offensive material where it will be found by, given to, or brought to the attention of, another person;
    - (vi) an intimidating, harassing or threatening act against another person, whether or not involving violence or a threat of violence; or
    - (vii) an action of violence, or a threat of violence, against the person, or against the person's, or another person's, property;
  - (c) the conduct of the person would cause a reasonable person to fear or apprehend violence:
    - (i) to a person; or
    - (ii) against a person's property; and
  - (d) the person is reckless about causing fear or apprehended violence by the person's conduct.

Penalty: 3 years imprisonment.

- (2) The question whether conduct would cause a reasonable person to fear or apprehend violence for the purposes of subsection (1)(c) is one of fact.
- (3) This Section does not apply to:
- (a) reasonable conduct engaged in for the execution of a law or administration of an Act or for a purpose authorised by an Act;
  - (b) reasonable conduct engaged in for the purposes of a genuine industrial dispute;
  - (c) reasonable conduct engaged in for the purposes of a genuine political or other genuine public dispute or issue carried on in the public interest;
  - (d) reasonable conduct engaged in by a person for the person's lawful trade, business or occupation; and
  - (e) reasonable conduct engaged in by a person to obtain or give information that the person has a legitimate interest in obtaining or giving.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in subsection (3): see Section 26.]*

### 87 Kidnapping

- (1) A person (the '**defendant**') commits an offence, if:

- (a) the defendant intentionally takes or detains another person;
- (b) the defendant takes or detains the other person intending to:
  - (i) hold the person to ransom or as a hostage;
  - (ii) unlawfully take or send the person out of Nauru; or
  - (iii) commit an offence against a person, if the offence is punishable by imprisonment for not less than 12 months; and
- (c) either of the following applies:
  - (i) the other person is an adult and does not consent to being taken or detained, and the defendant is recklessly indifferent to consent of the other person; or
  - (ii) the other person is a child.

Penalty:

- (i) if the other person is a child — 20 years imprisonment; or
  - (ii) in any other case — 15 years imprisonment.
- (2) To prove for subsection (1)(b)(iii) that the defendant intends to commit an offence, it is not necessary to prove that the defendant intends to commit a particular offence.
- (3) Strict liability applies to subsection (1)(c)(ii).

## 88 Deprivation of liberty

- (1) A person (the ‘**defendant**’) commits an offence, if:
- (a) the defendant intentionally takes or detains another person;
  - (b) the defendant intends to unlawfully cause the other person to be confined or imprisoned; and
  - (c) either of the following applies:
    - (i) the other person is an adult and does not consent to being confined or imprisoned, and the defendant is recklessly indifferent to consent of the other person; or
    - (ii) the other person is a child.

Penalty:

- (i) if the other person is a child — 10 years imprisonment; or
  - (ii) in any other case — 7 years imprisonment.
- (2) Strict liability applies to subsection (1)(c)(ii).

## 89 Removing child unlawfully

- (1) A person commits an offence, if:
- (a) the person intentionally:
    - (i) takes a child from the care of a third person; or
    - (ii) refuses or fails to deliver or return a child to a third person; and
  - (b) the person intends to prevent the exercise or performance of any of the powers, duties or responsibilities of another person who has all of the legal duties, powers, responsibilities and authority of a parent in relation to the child.

Penalty: 7 years imprisonment.

- (2) Strict liability applies to the circumstance that the person taken, or not delivered or returned, is a child.

**90 Defences for deprivation of liberty offences**

- (1) A person is not criminally responsible for an offence under Section 87, 88 or 89, if:
  - (a) the person engages in the conduct constituting the offence in relation to a child;
  - (b) the person is:
    - (i) a parent of the child;
    - (ii) a guardian of the child;
    - (iii) a teacher at a school attended by the child; or
    - (iv) a person with the legal duties, powers, responsibilities and authority of a parent in relation to the child;
  - (c) the person takes or detains the child for the purposes of correcting behaviour of the child; and
  - (d) the detention is reasonable.
- (2) The question whether detention is reasonable is one of fact.
- (3) A person is not criminally responsible for an offence under Section 87, 88 or 89, if:
  - (a) the person claims, in good faith, that the person has, or is entitled to have, a right of lawful control of a child; and
  - (b) the person takes or detains the child to exercise that right.
- (4) A person is not criminally responsible for an offence under Section 89, if the person believes on reasonable grounds that taking, or not returning, the child was necessary for the child's safety.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

**91 Threatening to kill**

A person commits an offence, if the person:

- (a) threatens to kill another person, or someone else;
- (b) the person:
  - (i) intends the other person to fear the threat will be carried out; or
  - (ii) is reckless about whether the other person fears the threat will be carried out; and
- (c) the threat is made in circumstances in which a reasonable person would fear the threat will be carried out.

Penalty: 7 years imprisonment.

**92 Threatening to cause serious harm**

A person commits an offence, if:

- (a) the person threatens to cause serious harm to another person, or someone else;
- (b) the person:
  - (i) intends the other person to fear the threat will be carried out; or
  - (ii) is reckless about whether the other person fears the threat will be carried out; and
- (c) the threat is made in circumstances in which a reasonable person would fear the threat will be carried out.

Penalty: 5 years imprisonment.

**93 Threatening to cause serious harm to public official**

A person commits an offence, if:

- (a) the person threatens to cause serious harm to another person;
- (b) the person threatens to cause the serious harm because the person believes the other person is a public official;
- (c) the other person is in fact a public official;
- (d) the person:
  - (i) intends the public official to fear the threat will be carried out; or
  - (ii) is reckless about whether the public official fears the threat will be carried out; and
- (e) the threat is made in circumstances in which a reasonable person would fear the threat will be carried out.

Penalty: 6 years imprisonment.

**94 Neglecting child or vulnerable adult**

(1) A person commits an offence, if:

- (a) the person is a responsible carer for a child or vulnerable adult;
- (b) the person intentionally engages in any of the following conduct in relation to the child or vulnerable adult:
  - (i) fails to provide the child or vulnerable adult with adequate food, clothing, accommodation or care when it is available to the person from the person's own resources;
  - (ii) fails to take all steps necessary to obtain adequate food, clothing, accommodation or care for the child or vulnerable adult when it is not available to the person from the person's own resources;
  - (iii) deserts the child or vulnerable adult; or
  - (iv) leaves the child or vulnerable adult without means of support;
- (c) the conduct causes a significant temporary or permanent detrimental effect to the child's or vulnerable adult's physical, psychological or emotional wellbeing; and
- (d) the person is reckless about causing the effect to the child's or vulnerable adult's wellbeing.

Penalty: 10 years imprisonment.

(2) Strict liability applies to subsection (1)(a).

(3) In this Section:

**'responsible carer'**, for a child or vulnerable adult, means a person who is:

- (a) responsible for the short-term or ongoing care or supervision of the child or vulnerable adult; or
- (b) a temporary or permanent staff member at a hospital or institution providing care or supervision to the child or vulnerable adult; and

**'vulnerable adult'** means a person who is:

- (a) at least 18 years old; and
- (b) unable to withdraw from the care or supervision of another person because of the person's detention, age, health or physical or mental condition, or any other reason.

## 95 Failure to protect child or vulnerable adult

- (1) A person commits an offence, if the person:
  - (a) has a duty of care to a child or vulnerable adult;
  - (b) knows that there is a likelihood that the child or vulnerable adult will die or suffer serious harm or sexual assault because of another person's:
    - (i) unlawful conduct; or
    - (ii) negligent failure to perform a statutory duty owed by the other person to the child or vulnerable adult; and
  - (c) fails to take reasonable steps to protect the child or vulnerable adult from the risk.

Penalty: 10 years imprisonment.

- (2) This Section does not apply to a person who was under 18 years old when the offence happened.
- (3) Strict liability applies to subsection (1)(a).
- (4) For the purposes of this Section, a person has a **'duty of care'** to a child or vulnerable adult if the person is:
  - (a) a member of the same household as the child or vulnerable adult;
  - (b) a member of a household being visited by the child or vulnerable adult; or
  - (c) a temporary or permanent staff member at a hospital or institution providing care or supervision to the child or vulnerable adult.
- (5) For the purposes of subsection (4), a person who does not live in the same household as a child or vulnerable adult but who visits the child or vulnerable adult may be taken to be a member of the child's or vulnerable adult's household if the person has a close association with the household having regard to:
  - (a) the reasons for, or frequency and length of, the visits;
  - (b) the nature of the person's relationship to members of the household; or
  - (c) any other relevant matter.
- (6) In this Section:
 

**'vulnerable adult'** has the meaning given in Section 94.

## 96 Statutory duty — carer to provide necessities of life to child or vulnerable adult

- (1) A carer for a child or vulnerable adult has a statutory duty to:
  - (a) provide the child or vulnerable adult with the necessities of life; and
  - (b) take reasonable steps to protect the child or vulnerable adult from death or injury.
- (2) In this Section:
 

**'carer'**, for a child or vulnerable adult, means:

  - (a) a person who is caring for or taking charge of the child or vulnerable adult, whether or not the care or charge is under a legal requirement; and
  - (b) for a child — includes the child's parent or guardian;

[Note for paragraph (b) 'Parent' has the meaning given in the Interpretation Act 2011, Section 74.]

**'guardian'**, of a child, includes:

- (a) a legal guardian;
- (b) a customary guardian; and
- (c) a person temporarily acting in place of a parent; and

**‘vulnerable adult’** means a person who is:

- (a) at least 18 years old;
- (b) unable to withdraw from the care or supervision of another person because of the person’s detention, age, health or physical or mental condition, or any other reason; and
- (c) unable to provide the necessities of life, or prevent injury to, himself or herself.

## 97 **Statutory duty — person providing medical treatment**

- (1) A person providing medical treatment to another person has a statutory duty to:
  - (a) ensure the person has the necessary knowledge or skill to provide, or take the necessary attention or caution in providing, the treatment; and
  - (b) take reasonable steps to protect the other person from death or injury.
- (2) This Section does not apply to a person, including a medically qualified person, who, acting without expectation of payment or other consideration, comes to the aid of a person who is apparently:
  - (a) injured or at risk of being injured; or
  - (b) in need of emergency medical assistance.
- (3) In this Section:
 

**‘medical treatment’** means treatment or a medical procedure:

  - (a) that may be dangerous to the health of a person; and
  - (b) that requires special knowledge or skill, attention or caution.

## 98 **Statutory duty — person in charge of dangerous object, etc**

- (1) A person has a statutory duty to take reasonable steps to protect human life if the person:
  - (a) has an object, article, item or any other thing in the person’s care or control that may endanger human life; or
  - (b) designs, makes, operates or maintains an object, article, item or any other thing that may endanger human life.
- (2) In this Section:
 

**‘take reasonable steps’** includes take reasonable precautions and exercise reasonable care.

## 99 **Statutory duty — person to avoid omissions endangering life**

A person has a statutory duty to do an act if:

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

## 100 **Effect of breach of statutory duty**

A person (the **‘duty holder’**) who fails or omits to perform a statutory duty imposed on the duty holder under this Part is taken:



- (a) to have caused the consequences to the life or health of the person to whom the duty holder owed the duty because of the failure or omission; and
- (b) if the failure or omission constitutes an offence under this Act, to have committed the offence.

[The next page is 241,801]

## PART 7 — SEXUAL OFFENCES

### DIVISION 7.1 — GENERAL

#### **101 Abolition of particular rules about corroboration**

A law is abolished if the law provides that the corroboration of the evidence of a witness is required for a conviction for an offence under this Part.

#### **102 Aggravating circumstances for sexual offences**

- (1) Where an offence under this Part provides for a penalty if aggravating circumstances apply, that penalty may be imposed if the conduct constituting the offence occurs in any of the following circumstances:
  - (a) a person suffers physical harm as a result of, or in the course of the commission of the offence and the defendant is reckless about that fact;
  - (b) the defendant intentionally threatens to inflict physical harm with an offensive weapon or instrument on another person;
  - (c) the defendant intentionally breaks and enters into a building with the intention of committing the offence or any other offence punishable by imprisonment of 1 year or more;
  - (d) the defendant intentionally deprives the person in relation to whom the offence is committed of the person's liberty for a period before or after the commission of the offence;
  - (e) the defendant intentionally gives the person in relation to whom the offence is committed alcohol, a drug or other intoxicating substance;
  - (f) the defendant is intentionally in the company of another person; or
  - (g) either of the following facts applies and the defendant is reckless about that fact:
    - (i) the person in relation to whom the offence is committed has a serious physical disability; or
    - (ii) the person in relation to whom the offence is committed has a mental impairment.
- (2) For an offence under Section 107 or 119, the factors mentioned in subsection (1)(c) and (f) do not apply.

#### **103 Defence for offences under Part 7**

A person is not criminally responsible for an offence under this Part if the person engages in the conduct constituting the offence for:

- (a) a legitimate law enforcement purpose; or
- (b) a legitimate medical or hygienic purpose.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

### DIVISION 7.2 — UNLAWFUL SEXUAL ACTS

#### **104 Application to marriage and de facto partners**

For the avoidance of any doubt, this Division applies even if the person alleged to have committed the offence is married or a de facto partner of the person in relation to whom the offence is committed.

## 105 Rape

- (1) A person (the ‘**defendant**’) commits an offence if:
- (a) the defendant intentionally engages in sexual intercourse with another person; and
  - (b) the other person does not consent to the sexual intercourse and the defendant:
    - (i) knows that fact; or
    - (ii) is recklessly indifferent to consent of the other person.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 7, opn 23 Oct 2020]

- (2) A person (the ‘**defendant**’) commits an offence, if:
- (a) the defendant intentionally causes another person to do an act of the following kind:
    - (i) sexual intercourse with a third person;
    - (ii) an act of sexual self-penetration; or
    - (iii) conduct constituting an offence under Section 115; and
  - (b) the other person does not consent to do the act and the defendant:
    - (i) knows that fact; or
    - (ii) is recklessly indifferent to consent of the other person.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (2) am Act 29 of 2020 s 7, opn 23 Oct 2020]

## 106 Indecent acts

- (1) A person (the ‘**defendant**’) commits an offence if:
- (a) the defendant intentionally touches another person;
  - (b) the touching is indecent and the defendant is reckless about that fact; and
  - (c) the other person does not consent to the touching and the defendant:
    - (i) knows that fact; or
    - (ii) is recklessly indifferent to consent of the other person.

Penalty:

- (i) if aggravating circumstances apply — 20 years imprisonment; or
- (ii) in any other case — 10 years imprisonment.

[subs (1) am Act 29 of 2020 s 8, opn 23 Oct 2020]

- (2) A person (the ‘**defendant**’) commits an offence, if:
- (a) the defendant intentionally causes another person to touch:
    - (i) the defendant;
    - (ii) a third person;
    - (iii) the other person themselves; or
    - (iv) an animal;
  - (b) the touching is indecent and the defendant is reckless about that fact; and
  - (c) the other person does not consent to the touching and the defendant:
    - (i) knows that fact; or
    - (ii) is recklessly indifferent to consent of the other person.

Penalty:

- (i) if aggravating circumstances apply — 20 years imprisonment; or
- (ii) in any other case — 10 years imprisonment.

[subs (2) am Act 29 of 2020 s 8, opn 23 Oct 2020]

- (3) A person (the ‘**defendant**’) commits an offence, if:
  - (a) the defendant intentionally does an act towards another person;
  - (b) the act is indecent and the defendant is reckless about that fact; and
  - (c) the other person does not consent to the act and the defendant:
    - (i) knows that fact; or
    - (ii) is recklessly indifferent to consent of the other person.

Penalty:

- (i) if aggravating circumstances apply — 20 years imprisonment; or
- (ii) in any other case — 10 years imprisonment.

[subs (3) am Act 29 of 2020 s 8, opn 23 Oct 2020]

- (4) In this Section:

‘**touching**’ includes the following:

- (a) touching with any part of the body;
- (b) touching a person through clothing or other material; or
- (c) using an object to touch a person.
- (5) The question whether touching or an act is indecent is one of fact to be determined by applying the standards of an ordinary person.

## 107 Engaging person to provide commercial sexual services

A person commits an offence, if the person intentionally engages, employs, causes or permits another person to provide a commercial sexual service.

Penalty: life imprisonment, of which imprisonment term at least 12 years to be served without any parole or probation.

[s 107 am Act 29 of 2020 s 9, opn 23 Oct 2020]

## 108 Holding interest in premises used for commercial sexual services

- (1) A person commits an offence, if:
  - (a) one of the following applies:
    - (i) the person owns, leases, rents or otherwise has an interest in premises;
    - (ii) the person is entitled to occupy or use premises;
    - (iii) the person controls an entity that owns, leases, rents or otherwise has an interest in premises; or
    - (iv) the person controls an entity that is entitled to occupy or use premises; and
  - (b) the person knows that the premises, or a part of the premises are, or will be, made available for commercial sexual services by 2 or more people who are providing, or will provide, those services.

Penalty: 6 years imprisonment.

- (2) Strict liability applies to subsection (1)(a).

## 109 Compelling prostitution and giving of earnings from prostitution

- (1) A person (the ‘**defendant**’) commits an offence, if:

- (a) the defendant engages in conduct;
- (b) the conduct is intimidatory conduct;
- (c) the conduct substantially contributes to another person entering into, or remaining in, prostitution; and
- (d) the defendant intended the other person to enter into, or remain in, prostitution.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 10, opn 23 Oct 2020]

- (2) A person (the **‘defendant’**) commits an offence, if:
- (a) the defendant engages in conduct;
  - (b) the conduct is intimidatory conduct;
  - (c) the conduct substantially contributes to another person (**‘person B’**) giving the defendant or someone else any payment or reward earned by person B from prostitution; and
  - (d) the defendant intended person B to give any payment or reward earned by person B from prostitution.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (2) am Act 29 of 2020 s 10, opn 23 Oct 2020]

- (3) In this Section:

**‘intimidatory conduct’** means an explicit or implicit threat or promise that the defendant will:

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

## 110 Observing private acts

- (1) A person (the **‘defendant’**) commits an offence, if:
- (a) the defendant intentionally observes another person;
  - (b) the other person does not consent to being observed and the defendant:
    - (i) knows that fact; or
    - (ii) is recklessly indifferent to consent of the other person;
  - (c) the other person is doing a private act and the defendant is reckless about that fact; and
  - (d) in the circumstances, a reasonable person would reasonably expect to be afforded privacy for that act.

Penalty: a maximum term of 10 years imprisonment, of which imprisonment term at least half to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 11, opn 23 Oct 2020]

- (2) The question whether a reasonable person would reasonably expect to be afforded privacy for an act is one of fact.

## **111 Taking images of private acts without consent**

- (1) A person (the ‘defendant’) commits an offence, if:
- (a) the defendant intentionally takes an image of another person;
  - (b) the other person does not consent to the image being taken and the defendant:
    - (i) knows that fact; or
    - (ii) is recklessly indifferent to consent of the other person;
  - (c) the other person is doing a private act and the defendant is reckless about that fact; and
  - (d) in the circumstances, a reasonable person would reasonably expect to be afforded privacy for that act.

Penalty: a maximum term of 15 years imprisonment, of which imprisonment term at least half to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 12, opn 23 Oct 2020]

- (2) The question whether a reasonable person would reasonably expect to be afforded privacy for an act is one of fact.

## **112 Taking images of private parts without consent**

- (1) A person (the ‘defendant’) commits an offence, if:
- (a) the defendant intentionally takes an image of another person’s private parts, whether or not the other person’s private parts are covered by underwear;
  - (b) the other person does not consent to the image being taken and the defendant:
    - (i) knows that fact; or
    - (ii) is recklessly indifferent to consent of the other person; and
  - (c) in the circumstances, a reasonable person would reasonably expect that an image of the other person’s private parts would not be taken.

Penalty: a maximum term of 15 years imprisonment, of which imprisonment term at least half to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 13, opn 23 Oct 2020]

- (2) The question whether a reasonable person would reasonably expect that an image of the other person’s private parts would not be taken is one of fact.
- (3) A person cannot be convicted of this offence and an offence under Section 110 in respect of the same conduct.

## **113 Installing device to facilitate observation or image-taking**

A person commits an offence, if:

- (a) the person intentionally installs a device, or constructs or adapts any building, vehicle, vessel, tent or other structure, whether temporary or permanent; and
- (b) by doing so, the person intends to commit an offence under Section 110, 111 or 112.

Penalty: a maximum term of 15 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[s 113 am Act 29 of 2020 s 14, opn 23 Oct 2020]

**114 Incest**

- (1) A person (the ‘**defendant**’) commits an offence, if:
- (a) the defendant intentionally has sexual intercourse with another person; and
  - (b) the defendant knows that the other person has one of the following relationships with the defendant:
    - (i) great grandfather or great grandmother;
    - (ii) grandfather or grandmother;
    - (iii) father or mother;
    - (iv) uncle or aunt;
    - (v) mother’s sister’s son or daughter;
    - (vi) mother’s brother’s son or daughter;
    - (vii) father’s sister’s son or daughter;
    - (viii) father’s brother’s son or daughter;
    - (ix) brother or sister;
    - (x) niece or nephew;
    - (xi) son or daughter;
    - (xii) grandson or granddaughter; or
    - (xiii) great grandson or great granddaughter.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 15, opn 23 Oct 2020]

- (2) This Section applies only if the defendant and the other person are both 16 years old or older.

*[Note for subsection (2). See Division 7.3 for offences relating to children under 16 years old.]*

- (3) Consent of the other person is not a defence to an offence under this Section.
- (4) A person does not commit an offence under this Section if the person did not consent to the sexual intercourse.

**115 Bestiality**

A person commits an offence, if the person intentionally engages in one of the following acts:

- (a) sexual intercourse with an animal;
- (b) masturbation of an animal; or
- (c) any activity with an animal that involves physical contact by the person with the animal for sexual gratification or sexual arousal of the person.

Penalty: 14 years imprisonment.

DIVISION 7.3 — SEXUAL ACTS WITH CHILDREN

**116 Rape of child under 16 years old**

- (1) A person commits an offence, if:
- (a) the person intentionally engages in sexual intercourse with another person; and



- (b) the other person is a child under 16 years old.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 16, opn 23 Oct 2020]

- (2) A person commits an offence, if:

- (a) the person intentionally causes another person to:
  - (i) engage in sexual intercourse with a third person;
  - (ii) do an act of sexual self-penetration; or
  - (iii) engage in conduct that constitutes an offence under Section 115;
- and

- (b) the other person is a child under 16 years old.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (2) am Act 29 of 2020 s 16, opn 23 Oct 2020]

- (3) Absolute liability applies to subsections (1)(b) and (2)(b).

*[Note for subsection (3): Although absolute liability applies to the circumstance that the other person is under 16 years old (which means the defence of mistake of fact under Section 45 is not available), other defences apply to an offence against this Section: see Section 127.]*

## 117 Indecent acts in relation to child under 16 years old

- (1) A person commits an offence, if:

- (a) the person intentionally touches another person;
- (b) the touching is indecent and the person is reckless about that fact; and
- (c) the other person is a child under 16 years old.

Penalty: a maximum term of 30 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 17, opn 23 Oct 2020]

- (2) A person (the **‘defendant’**) commits an offence, if:

- (a) the defendant intentionally causes another person to touch:
  - (i) the defendant;
  - (ii) the other person themselves;
  - (iii) a third person; or
  - (iv) an animal;
- (b) the touching is indecent and the person is reckless about that fact; and
- (c) the other person is a child under 16 years old.

Penalty: a maximum term of 30 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (2) am Act 29 of 2020 s 17, opn 23 Oct 2020]

- (3) A person (the **defendant**) commits an offence, if:

- (a) the defendant intentionally does an act towards another person;
- (b) the act is indecent and the person is reckless about that fact; and
- (c) the other person is a child under 16 years old.

Penalty: a maximum term of 30 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (3) am Act 29 of 2020 s 17, opn 23 Oct 2020]

(4) Absolute liability applies to subsections (1)(c), (2)(c) and (3)(c).

*[Note for subsection (4): Although absolute liability applies to the circumstance that the other person is under 16 years old (which means the defence of mistake of fact under Section 45 is not available), other defences apply to an offence against this Section: see Section 127.]*

(5) In this Section:

**‘touching’** includes any of the following:

- (a) touching with any part of the body;
  - (b) touching a person through clothing or other material; or
  - (c) using an object to touch a person.
- (6) The question whether touching or an act is indecent is one of fact to be determined by applying the standards of an ordinary person.

## 118 **Causing etc child under 16 years old to engage in sexual activity**

(1) A person commits an offence, if:

- (a) the person intentionally engages in conduct in relation to another person;
- (b) the other person is a child under 16 years old; and
- (c) the person does so intending to cause or procure, or to make it easier to cause or procure, the child to do an act of any of the following kinds:
  - (i) sexual intercourse;
  - (ii) masturbation or sexual self-penetration;
  - (iii) any activity that involves physical contact by the child with the person or a third person, including a dead person, for sexual gratification or sexual arousal of a person, whether of the people involved or some other person;
  - (iv) any activity that involves physical contact by the child with an animal for sexual gratification or sexual arousal of a person;
  - (v) an act, for sexual gratification or sexual arousal of a person, involving undressing so that the child is clothed only in underwear;
  - (vi) an act involving nudity or exposure or partial exposure of a person’s private parts for sexual gratification or sexual arousal of a person; or
  - (vii) any other act with, or towards, the child that is indecent, but that is not covered by subparagraphs (i) to (vi).

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 18, opn 23 Oct 2020]

(2) Absolute liability applies to subsection (1)(b).

*[Note for subsection (2): Although absolute liability applies to the circumstance that the other person is under 16 years old (which means the defence of mistake of fact under Section 45 is not available), other defences apply to an offence against this Section: see Section 127.]*

(3) The question whether an act is indecent is one of fact to be determined by applying the standards of an ordinary person.

## 119 **Engaging child to provide commercial sexual services**

(1) A person commits an offence, if:

- (a) the person intentionally asks, engages, employs, causes or permits another person to provide a commercial sexual service; and
- (b) the other person is a child.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 19, opn 23 Oct 2020]

(2) Strict liability applies to subsection (1)(b).

## 120 Obtaining benefits from commercial sexual services with child

- (1) A person commits an offence, if:
- (a) the person intentionally makes an arrangement;
  - (b) the arrangement provides that the person will obtain a benefit because another person provides a commercial sexual service; and
  - (c) the other person is a child.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 20, opn 23 Oct 2020]

- (2) A person commits an offence, if:
- (a) the person intentionally obtains a benefit;
  - (b) the person knows that the benefit is proceeds of the provision of commercial sexual service by another person; and
  - (c) the other person is a child.

Penalty: life imprisonment, of which imprisonment term at least 15 years to be served without any parole or probation.

[subs (2) am Act 29 of 2020 s 20, opn 23 Oct 2020]

(3) Strict liability applies to subsection (1)(c) and (2)(c).

## 121 Observing private acts of child

- (1) A person commits an offence, if:
- (a) the person intentionally observes another person;
  - (b) the other person is a child;
  - (c) the child is doing a private act and the person is reckless about that fact; and
  - (d) in the circumstances, a reasonable person would reasonably expect that the child would be afforded privacy for that act.

Penalty: a maximum term of 20 years imprisonment, of which imprisonment term at least half to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 21, opn 23 Oct 2020]

- (2) Strict liability applies to subsection (1)(b).
- (3) The question whether a reasonable person would reasonably expect that a child would be afforded privacy for an act is one of fact.

## 122 Taking images of private acts of child

- (1) A person commits an offence, if:
- (a) the person intentionally takes an image of another person;
  - (b) the person whose image is taken is a child;
  - (c) the child is doing a private act and the person is reckless about that fact; and

- (d) in the circumstances, a reasonable person would reasonably expect that the child would be afforded privacy for that act.

Penalty: a maximum term of 25 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 22, opn 23 Oct 2020]

- (2) Strict liability applies to subsection (1)(b).
- (3) The question whether a reasonable person would reasonably expect that a child would be afforded privacy for an act is one of fact.

## **123 Taking images of private parts of child**

- (1) A person commits an offence, if:
- (a) the person intentionally takes an image of another person's private parts, whether or not the private parts are covered by underwear;
  - (b) the person whose private parts the image is taken of is a child; and
  - (c) in the circumstances, a reasonable person would reasonably expect that an image of the child's private parts would not be taken.

Penalty: a maximum term of 25 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 23, opn 23 Oct 2020]

- (2) Strict liability applies to subsection (1)(b).
- (3) The question whether a reasonable person would reasonably expect that an image of a child's private parts would not be taken is one of fact.
- (4) A person cannot be convicted of this offence and an offence under Section 121 in respect of the same conduct.

## **124 Installing device to facilitate observation or image-taking of child**

A person commits an offence, if:

- (a) the person intentionally installs a device, or constructs or adapts any building, vehicle, vessel, tent or other structure, whether temporary or permanent; and
- (b) by doing so, the person intends to commit an offence under Section 121, 122 or 123 in relation to a child.

Penalty: a maximum term of 25 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[s 24 am Act 29 of 2020 s 24, opn 23 Oct 2020]

## **125 Promoting or organising travel for unlawful sexual activity with child under 16 years old**

- (1) A person commits an offence, if the person:
- (a) is 16 years old or older; and
  - (b) does any of the following:
    - (i) organises or makes travel arrangements, or assists another person to organise or make travel arrangements for the other person, with the intention of assisting the other person to engage in unlawful sexual activity outside the Republic with a person under 16 years old;
    - (ii) transports, or assists someone else to transport, another person

outside Nauru with the intention of assisting the other person to engage in unlawful sexual activity outside Nauru with a person under 16 years old; or

- (iii) prints or publishes, or assists someone else to print or publish, information with the intention of promoting, or assisting another person to engage in, unlawful sexual activity outside Nauru with a person under 16 years old.

Penalty: life imprisonment without any parole or probation.

[subs (1) am Act 29 of 2020 s 25, opn 23 Oct 2020]

(2) In this Section:

‘**travel arrangements**’, includes purchases or reservations of:

- (a) tickets for travel outside Nauru; or
- (b) accommodation outside Nauru.

## 125A Offences against a child in trust of a person

- (1) Where a person, who commits an offence under this Part against a child who is in the care, custody or trust of such a person, he or she shall, in addition to the minimum penalty provided under this Act be liable to a further term of 5 years imprisonment.

*[For example, in case of life imprisonment, where a minimum term is to be served of 15 years, in such case, the minimum term to be served will be 20 years.]*

- (2) In this Section, a person is in a relationship of trust with the child if the child is under such person’s care, supervision or authority, including but not limited to:

- (a) a parent, guardian or person who is related through full-blood or half blood or through marriage or adoption, including de facto adoption;
- (b) a person who looks after one or more children for valuable consideration for any period of time;
- (c) a teacher or principal of a pre-school, primary school or high school;
- (d) a person providing health and medical care services in a public health care facility or private health care facility;
- (e) a sports administrator, member of selection committee or body of a sports team, trainer or coach; and
- (f) a religious minister, pastor, deacon, elder or priest.

[s 125A insrt Act 29 of 2020 s 26, opn 23 Oct 2020]

## 126 Consent not a defence

Consent is not a defence to an offence under this Division.

## 127 Defences for certain offences under Division 7.3

- (1) This Section applies to an offence against Section 116, 117 or 118, if:
  - (a) the person in relation to whom the offence was committed was at least 13 years old; and
  - (b) none of the aggravating circumstances mentioned in Section 102(1) apply to the offence.
- (2) It is a defence to a prosecution for the offence if the defendant proves that:
  - (a) the defendant:
    - (i) took reasonable steps to determine the age of the other person; and

- (ii) honestly believed on reasonable grounds that the other person was 16 years old or older; and
- (b) the other person wished to consent to the relevant conduct.
- (3) It is also a defence to a prosecution for the offence, if the defendant proves that at the time of the alleged offence:
  - (a) the defendant was within 2 years of age of the other person; and
  - (b) the other person wished to consent to the relevant conduct.
- (4) In this Section:
 

***‘relevant conduct’***, in relation to an offence, means the conduct making up the physical elements of the offence.

#### DIVISION 7.4 — EVIDENCE ABOUT COMPLAINANT

### 128 Application — Division 7.4

- (1) This Division applies to a criminal proceeding that relates, wholly or partly to a charge for an offence against this Part.
- (2) This Division applies to all complainants in a criminal proceeding mentioned in subsection (1).
- (3) This Division applies despite anything in this or any other Act or any rule of law to the contrary.
- (4) In this Section:
 

***‘criminal proceeding’*** includes the following:

  - (a) a proceeding in relation to bail;
  - (b) a committal proceeding;
  - (c) a trial;
  - (d) a sentencing proceeding; or
  - (e) an appeal relating to a proceeding mentioned in paragraphs (a) to (c).

### 129 Meaning of ‘sexual history evidence’

In this Division:

***‘sexual history evidence’*** means evidence that relates to or tends to establish the fact that the complainant:

- (a) was accustomed to engaging in sexual activities; or
- (b) had freely agreed to engage in sexual activity, other than that to which the charge relates, with the defendant or another person.

### 130 No questions or evidence about complainant’s sexual reputation

The court shall not allow any questions about, or admit any evidence of, the sexual reputation of the complainant.

### 131 Leave required for questions or evidence about complainant’s sexual activities

The complainant shall not be cross-examined, and the court shall not admit any evidence, about the sexual activities, whether consensual or non-consensual, of the complainant, other than those to which the charge relates, without the leave of the court.

**132 Notice of application for leave**

- (1) An application for leave under Section 131 shall be filed with the court and served on the Director of Public Prosecutions at least 7 days before the hearing commences.
- (2) Where it is in the interests of justice to do so, the court may hear and decide an application for leave without 7 days notice.

**133 Content of application for leave**

- (1) An application for leave under Section 131, shall be in writing unless the court waives the requirement in the interests of justice.
- (2) An application for leave to cross-examine the complainant as to the sexual activities of the complainant shall set out:
  - (a) the initial questions sought to be asked of the complainant;
  - (b) the scope of the questioning sought to flow from the initial questioning; and
  - (c) how the evidence sought to be elicited from the questioning has substantial relevance to facts in issue or why it is an appropriate matter for cross-examination as to credibility.
- (3) An application for leave to admit evidence as to the sexual activities of the complainant shall:
  - (a) identify the evidence that is sought to be admitted; and
  - (b) set out how the evidence has substantial relevance to facts in issue.

**134 Hearing application for leave**

An application for leave under Section 131 shall be heard in the absence of the complainant if the defendant so requests.

**135 Deciding application for leave**

The court shall not grant leave under Section 131 unless it is satisfied that the evidence has substantial relevance to a fact in issue and that it is in the interests of justice to allow the cross-examination or to admit the evidence, having regard to:

- (a) whether the probative value of the evidence outweighs the distress, humiliation and embarrassment that the complainant may experience as a result of the cross-examination or the admission of the evidence, in view of the age of the complainant and the number and nature of the questions that the complainant is likely to be asked;
- (b) the need to respect the complainant's personal dignity and privacy; and
- (c) the right of the defendant to fully answer and defend the charge.

**136 Court shall give reasons if leave granted**

- (1) Where the court grants leave under Section 131, it shall:
  - (a) give written reasons for granting leave; and
  - (b) record the reasons.
- (2) The failure of a court to comply with subsection (1) does not invalidate any order made by it.

**137 Admissibility of sexual history evidence**

Sexual history evidence is not admissible to support an inference that the

complainant is the kind of person who is more likely to have consented to the sexual activity to which the charge relates.

### **138    Limitation on sexual history evidence**

Sexual history evidence is not to be regarded:

- (a) as having a substantial relevance to the facts in issue because of any inferences it may raise as to general disposition; or
- (b) as being proper matter for cross-examination as to credibility unless, because of special circumstances, it would be likely to materially impair confidence in the reliability of the evidence of the complainant.

[The next page is 242,001]



## PART 8 — OFFENSIVE MATERIAL AND OTHER OFFENCES

### 139 Dealing with pornography

- (1) A person commits an offence, if:
  - (a) the person intentionally:
    - (i) advertises or offers material for sale, distribution or supply;
    - (ii) sells, distributes or supplies material;
    - (iii) exhibits material;
    - (iv) sends, communicates, transmits or makes material available;
    - (v) produces material for a purpose in subparagraphs (i) to (iv); or
    - (vi) enters into an arrangement to do any of the acts in subparagraphs (i) to (iv);
  - (b) the material is pornography and the person is reckless about that fact; and
  - (c) the way that the material describes, depicts or represents a person is likely to offend an ordinary person and the person is reckless about that fact.

Penalty: 2 years imprisonment.

- (2) The question whether the way the material describes, depicts or represents a person is likely to offend an ordinary person is one of fact.

### 140 Dealing with abuse material

- (1) A person commits an offence, if:
  - (a) the person intentionally:
    - (i) possesses or controls material;
    - (ii) accesses or solicits material;
    - (iii) produces material;
    - (iv) advertises or offers material for sale, distribution or supply;
    - (v) sells, distributes or supplies material;
    - (vi) exhibits material;
    - (vii) sends, communicates, transmits or makes material available; or
    - (viii) enters into an arrangement to do any of the acts in subparagraph (i) to (vii);
  - (b) the material is abuse material and the person is reckless about that fact; and
  - (c) the way that the material describes, depicts or represents a person is likely to offend an ordinary person and the person is reckless about that fact.

Penalty: 3 years imprisonment.

- (2) The question whether the way the material describes, depicts or represents a person is likely to offend an ordinary person is one of fact.

### 141 Involving child to produce or perform in offensive material

- (1) A person commits an offence, if:
  - (a) the person intentionally engages in conduct in relation to a child;

- (b) the person engages in the conduct intending to cause or procure, or to make it easier to cause or procure, the child to be involved in any way in the production of material;
- (c) the material is pornography or abuse material and the person is reckless about that fact; and
- (d) the way that the material describes, depicts or represents the child is likely to offend an ordinary person and the person is reckless about that fact.

Penalty: a maximum term of 25 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 27, opn 23 Oct 2020]

- (2) A person commits an offence, if:
- (a) the person intentionally engages in conduct in relation to a child;
  - (b) the person engages in the conduct intending to cause or procure or to make it easier to cause or procure, the child to be involved in any way in a performance;
  - (c) the performance is a pornographic or abusive performance and the person is reckless about that fact; and
  - (d) the way in which the child does an act or is subject to behaviour in the performance is likely to offend an ordinary person and the person is reckless about that fact.

Penalty: a maximum term of 25 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (2) am Act 29 of 2020 s 27, opn 23 Oct 2020]

- (3) For the purposes of subsection (1)(a) and (2)(a), strict liability applies to the circumstance that the person in relation to whom the conduct was engaged in was a child.
- (4) For the purposes of subsection (1)(d), the question whether the way the material describes, depicts or represents the child is likely to offend an ordinary person is one of fact.
- (5) For the purposes of subsection (2)(d), the question whether the way in which the child does the act or is subject to the behaviour is likely to offend an ordinary person is one of fact.

## 142 Dealing with offensive material involving child

- (1) A person commits an offence, if:
  - (a) the person intentionally:
    - (i) possesses or controls material;
    - (ii) accesses or solicits material;
    - (iii) produces material;
    - (iv) advertises or offers material for sale, distribution or supply;
    - (v) sells, distributes or supplies material;
    - (vi) exhibits material;
    - (vii) sends, communicates, transmits material or makes it available; or
    - (viii) enters into an arrangement to do any of the acts in subparagraphs (i) to (vii);
  - (b) the material is pornography or abuse material and the person is reckless about that fact;

- (c) a person described, depicted or represented in the pornography or abuse material is, or appears or is implied to be, under 18 years old; and
- (d) the way that the material describes, depicts or represents the person is likely to offend an ordinary person and the person is reckless about that fact.

Penalty: a maximum term of 25 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 28, opn 23 Oct 2020]

- (2) Strict liability applies to subsection (1)(c).
- (3) The question whether the way the material describes, depicts or represents the person is likely to offend an ordinary person is one of fact.

### **143 Exposing child to offensive material**

- (1) A person commits an offence, if:
  - (a) the person intentionally sends, shows or makes material available to another person;
  - (b) the material is pornography or abuse material and the person is reckless about that fact;
  - (c) the other person is under the age of 18 years; and
  - (d) the way that the material describes, depicts or represents the person in the pornography or abuse material is likely to offend an ordinary person and the person is reckless about that fact.

Penalty: a maximum term of 25 years imprisonment, of which imprisonment term at least one third to be served without any parole or probation.

[subs (1) am Act 29 of 2020 s 29, opn 23 Oct 2020]

- (2) Strict liability applies to subsection (1)(c).
- (3) The question whether the way the material describes, depicts or represents the person is likely to offend an ordinary person is one of fact.

### **144 Forfeiture of offensive material to Government**

- (1) Where a person is charged with an offence under Section 139, 140, 141, 142 or 143, the court may order that:
  - (a) the material to which the charge relates be forfeited to the Republic; and
  - (b) any material forfeited is destroyed or disposed of.
- (2) The court may make an order under subsection (1), whether or not the person is convicted of the offence.
- (3) This Section does not limit any other powers of the court.

### **145 Defences for offensive material offences**

- (1) A person is not criminally responsible for an offence under Section 139, 140, 141, 142 or 143, if:
  - (a) the possession, production, sale or distribution of the pornography or abuse material is in good faith for the advancement or dissemination of legal, medical or scientific knowledge;
  - (b) the pornography or abuse material is, or forms part of, a work of artistic or literary merit if, having regard to the artistic or literary nature and purposes of the work as a whole, there is no undue emphasis on the aspects of the work that are pornographic or offensive material;

- (c) both of the following apply:
  - (i) the person is an internet service provider; and
  - (ii) the person did not know, or could not reasonably have been aware, that the facilities of the internet service provider were used to engage in the conduct constituting the offence; or
- (d) both of the following apply:
  - (i) the person did not solicit the possession or control of the pornography or abuse material; and
  - (ii) as soon as the person became aware of the person's possession or control of the pornography or abuse material, the person took reasonable steps to dispose of, or destroy, the material.
- (2) A person is not criminally responsible for an offence under Section 142 for possessing, controlling or producing material, if:
  - (a) the material is pornography; and
  - (b) the person depicted, described or represented in the material:
    - (i) was at least 13 years old and within 2 years of age of the person; and
    - (ii) consented to the person possessing, controlling or producing the material.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

## 146 Distributing image of private act

- (1) A person (**'the defendant'**) commits an offence, if:
  - (a) the defendant intentionally distributes to a third person a moving or still image of another person (**'person B'**) doing a private act;
  - (b) person B has not expressly or impliedly consented, or could not reasonably be considered to have expressly or impliedly consented, to:
    - (i) the distribution of the image; or
    - (ii) the way in which it was distributed; and
  - (c) the distribution of the image is contrary to community standards of acceptable conduct.

Penalty: 5 years imprisonment.

- (2) This Section does not apply if the conduct constituting the offence was for medical, legal, law enforcement or scientific reasons.

*[Note for subsection (2): A defendant has an evidential burden in relation to the matters in subsection (2): see Section 26.]*

- (3) In this Section:

**'community standards of acceptable conduct'**, in relation to the distribution of an image, includes standards of conduct having regard to the following:

- (a) the nature and content of the image;
- (b) the circumstances in which the image was captured;
- (c) the circumstances in which the image was distributed;
- (d) the age, intellectual capacity, vulnerability or other relevant circumstances of a person depicted in the image; and
- (e) the degree to which the distribution of the image affects the privacy of a person depicted in the image.

**147 Threatening to distribute image of private act**

- (1) A person (**‘the defendant’**) commits an offence, if:
- (a) the defendant makes a threat to another person (**‘person B’**) to distribute a moving or still image of person B doing a private act or of a third person doing a private act;
  - (b) the distribution of the image would be contrary to community standards of acceptable conduct;
  - (c) the defendant:
    - (i) intends person B to fear the threat will be carried out; or
    - (ii) is reckless about whether person B fears the threat will be carried out; and
  - (d) the threat is made in circumstances in which a reasonable person would fear the threat will be carried out.

Penalty: 3 years imprisonment.

- (2) In this Section:

**‘community standards of acceptable conduct’**, in relation to the distribution of an image, has the meaning given in Section 146(3).

**148 Serious animal cruelty**

- (1) A person commits an offence, if:
- (a) the person intentionally engages in conduct in relation to an animal;
  - (b) the conduct amounts to cruelty towards an animal; and
  - (c) the conduct causes pain or death to the animal and the person is reckless as to that result.

Penalty: 5 years imprisonment.

- (2) A person is not criminally responsible for an offence against this Section, if the conduct happened in the course of or for the purposes of routine agricultural or animal husbandry activities, recognised religious or cultural practices, the extermination of pests or veterinary practice.

**149 Bigamy**

- (1) A person commits an offence, if:
- (a) the person intentionally goes through a form or ceremony of marriage with another person;
  - (b) the person is married to a third person (the **‘person’s first spouse’**); and
  - (c) the person’s first spouse is alive.

Penalty: 7 years imprisonment.

[Note for this Section: **‘Spouse’** has the meaning given in the Interpretation Act 2011, Section 74 (1).]

- (2) Strict liability applies to subsection (1)(b) and (c).
- (3) The defence in Section 45 is not a defence to an offence under subsection (1), however, a person is not criminally responsible for the offence if:
- (a) at the time of the form or ceremony mentioned in subsection (1)(a):
    - (i) the person was under a mistaken but reasonable belief that the person’s first spouse was dead; and
    - (ii) the person’s first spouse had been continuously absent from the person for the last 7 years; or

- (b) at the time of the form or ceremony mentioned in subsection (1)(a), the person was under a mistaken but reasonable belief that the marriage between the person and the person's first spouse had been dissolved or declared void by a court of competent jurisdiction.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in subsection (3): see Section 26.]*

[The next page is 242,201]

## PART 9 — THEFT, FRAUD, BRIBERY AND RELATED OFFENCES

### DIVISION 9.1 — INTERPRETATION

#### 150 Meaning of ‘dishonest’ and ‘dishonestly’

- (1) For the purposes of this Part, a person is ‘**dishonest**’, if the person:
  - (a) is dishonest according to the standards of ordinary people; and
  - (b) knows he or she is being dishonest by the standards of ordinary people.
- (2) For the purposes of this Part, a person acts ‘**dishonestly**’, if the person:
  - (a) engages in conduct that is dishonest; or
  - (b) engages in conduct with a dishonest intent.
- (3) The question whether a person is dishonest, or acts dishonestly, is one of fact.

#### 151 Meaning of ‘gain’ and ‘loss’, etc

In this Part:

‘*cause a loss*’, means cause a loss to another person;

‘*gain*’ means a gain in property, whether temporary or permanent, or a gain by way of the supply of services, and includes keeping what one has;

‘*loss*’ means a loss in property, whether temporary or permanent, and includes not getting what one might get; and

‘*obtain a gain*’, includes obtaining a gain for another person.

#### 152 When does property ‘belong’ to a person

- (1) Property ‘**belongs**’ to a person having possession or control of it, or having in it any proprietary right or interest.
- (2) Where property belongs to 2 or more people, a reference in this Part to the person to whom the property belongs is a reference to each of them.

#### 153 Permanently deprive another person of property

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

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

### DIVISION 9.2 — THEFT

#### 154 Theft

- (1) A person (the ‘**defendant**’) commits an offence, if the defendant:
  - (a) dishonestly takes or carries away property belonging to another person, or to the defendant and another person, with the intention of permanently depriving the other person of the property; or

- (b) dishonestly uses or deals with property belonging to another person, or to the defendant and another person, with the intention of permanently depriving the other person of the property.

Penalty:

- (i) if the value of the property is more than \$1,000 — 7 years imprisonment;
- (ii) if the value of the property is more than \$500 but not more than \$1,000 — 5 years imprisonment; or
- (iii) if the value of the property is not more than \$500 — 1 year imprisonment.

*[Note for subsection (1). The Interpretation Act 2011, Section 56 (b) provides that words in the singular include the plural (for example, 'person' includes 'people').]*

- (2) For the purposes of subsection (1), taking, carrying away, using or dealing with property does not include obtaining ownership or possession of, or control over, any property with the consent of the person from whom it is obtained, whether or not the consent is obtained by deception.

## 155 Theft in fiduciary relationship

- (1) A person commits an offence, if the person:
  - (a) is a fiduciary in relation to another person's property;
  - (b) engages in conduct in relation to the property; and
  - (c) intentionally:
    - (i) fails to account to the other person for the property or any proceeds from the property in accordance with the terms or circumstances of the fiduciary relationship; or
    - (ii) deals with the property or any proceeds from the property other than in accordance with the terms or circumstances of the fiduciary relationship.

Penalty: 10 years imprisonment.

- (2) A person is a **'fiduciary'** in relation to another person's property, if the person received or is in possession of, or has control over, any property of the other person under terms or in circumstances that the person knows require the person:
  - (a) to account to the other person for the property, or for any proceeds arising from the property; or
  - (b) to deal with the property, or any proceeds arising from the property, in accordance with the requirements of the other person.
- (3) For the purposes of this Section, it does not matter whether or not the person was required to deliver over the identical property received or in the person's control.
- (4) The question whether circumstances require a person to account or act in accordance with particular requirements is a question of law.

## 156 Looting

A person commits an offence, if:

- (a) the person commits theft;
- (b) the theft was committed in circumstances of natural disaster, civil unrest or an industrial dispute; and
- (c) at the time of the theft, the property stolen was left unattended because of the death, incapacity or absence of a person with lawful possession or control of the property.

Penalty:



- (i) if the value of the property is more than \$1,000 — 10 years imprisonment;
- (ii) if the value of the property is more than \$500 but not more than \$1,000 — 7 years imprisonment; or
- (iii) if the value of the property is not more than \$500 — 3 years imprisonment.

## **157 Making off without payment**

- (1) A person commits an offence, if:
  - (a) the person knows the person is required or expected to make payment for goods or services supplied by another person; and
  - (b) the person dishonestly makes off:
    - (i) without having paid the amount owing; and
    - (ii) with intent to avoid payment of the amount owing.

Penalty:

- (i) if the value of the goods or services is more than \$1,000 — 7 years imprisonment;
  - (ii) if the value of the goods or services is more than \$500 but not more than \$1,000 — 5 years imprisonment; or
  - (iii) if the value of the goods or services is not more than \$500 — 1 year imprisonment.
- (2) This Section does not apply if the transaction for the supply of the goods or services is:
    - (a) unlawful; or
    - (b) unenforceable as contrary to public policy.

## **158 Robbery**

A person commits an offence, if:

- (a) the person commits theft; and
- (b) immediately before, at the time of, or immediately after committing the theft the person:
  - (i) uses force on another person; or
  - (ii) threatens to use force then and there on another person, with intent to commit theft or to escape from the scene.

Penalty: 12 years imprisonment.

## **159 Aggravated robbery**

A person commits an offence, if the person:

- (a) commits robbery in company with one or more other people;
- (b) commits robbery and, at the time of the robbery, is armed with an offensive weapon; or
- (c) commits robbery and, immediately before, at the time of, or immediately after committing the robbery, causes physical harm to another person.

Penalty: 14 years imprisonment.

## **160 Burglary**

- (1) A person commits an offence, if:
  - (a) the person enters or remains in a building;
  - (b) the person does not have the right to enter or remain in the building;and

- (c) the person enters or remains in the building with intent to commit:
  - (i) theft of any property in the building;
  - (ii) an offence that involves causing harm, or threatening to cause harm, to anyone in the building; or
  - (iii) a serious property offence.

Penalty: 10 years imprisonment.

(2) In this Section:

***‘building’*** includes the following:

- (a) a part of any building;
- (b) a home, mobile home or caravan;
- (c) any other structure, whether or not moveable, vehicle, or vessel, that is used, designed or adapted for residential purposes;
- (d) a shop;
- (e) a school;
- (f) a warehouse;
- (g) an office; or
- (h) a place of religious worship; and

***‘serious property offence’*** means an offence that:

- (a) involves causing damage to property; and
- (b) is punishable by imprisonment for 5 years or longer.

## 161 Aggravated burglary

- (1) A person commits an offence, if the person:
- (a) commits burglary in company with one or more other persons;
  - (b) commits burglary and, at the time of the burglary, is armed with an offensive weapon; or
  - (c) commits burglary at night.

Penalty: 12 years imprisonment.

(2) In this Section:

***‘night’*** means the period between 9pm on one day and 6am on the next day.

## 162 Going equipped for theft, etc

- (1) A person commits an offence, if the person:
- (a) has with the person an article with intent to use it in the course of or in relation to theft or a related offence; or
  - (b) is disguised or has the person’s face covered with intent to commit theft or a related offence.

Penalty: 3 years imprisonment.

(2) In this Section:

***‘related offence’*** means an offence against any of the following:

- (a) Section 158 (Robbery);
- (b) Section 159 (Aggravated robbery);
- (c) Section 160 (Burglary); or
- (d) Section 161 (Aggravated burglary).

**163 Going equipped with offensive weapon for theft, etc**

- (1) A person commits an offence, if the person has with the person an offensive weapon with intent to use it in the course of or in relation to theft or a related offence.

Penalty: 5 years imprisonment.

- (2) In this Section:

*‘related offence’* means an offence against any of the following:

- (a) Section 158 (Robbery);
- (b) Section 159 (Aggravated robbery);
- (c) Section 160 (Burglary); or
- (d) Section 161 (Aggravated burglary).

**164 Being found in certain places without lawful authority or excuse**

A person commits an offence, if the person:

- (a) enters or remains in any of the following places:
- (i) a dwelling-house, shop, office, factory, garage, out-house or other building;
  - (ii) an enclosed yard, garden or other area;
  - (iii) a ship or other vessel; or
  - (iv) an area in which mining operations are being carried on; and
- (b) does not have the consent of the owner to enter or remain in the place.

Penalty: 1 year imprisonment.

**165 Receiving**

- (1) A person commits an offence, if:
- (a) the person receives property;
  - (b) the property was obtained as a result of an offence (**‘unlawfully obtained’**); and
  - (c) the person:
    - (i) knows the property was unlawfully obtained; or
    - (ii) is reckless as to whether the property was unlawfully obtained.

Penalty:

- (i) if the value of the property is more than \$1,000 — 7 years imprisonment;
  - (ii) if the value of the property is more than \$500 but not more than \$1,000 — 5 years imprisonment; or
  - (iii) if the value of the property is \$500 or less — 1 year imprisonment.
- (2) For the purposes of subsection (1)(b), property obtained by conduct engaged in outside the Republic is taken to be property unlawfully obtained if the conduct would be an offence against this Act or any other written law, if it happened in the Republic.
- (3) The act of receiving any property obtained as a result of an offence is complete when the person, either exclusively or jointly with another person, takes possession or control over, or helps in concealing or disposing of, the property.
- (4) This Section does not apply to receiving of property that has previously been unlawfully obtained, even though the receiver knows the property has been previously unlawfully obtained, if:

- (a) the property has been returned to the owner; or
- (b) legal title to the property has been acquired by another person.

*[Note for subsection (4): A defendant has an evidential burden in relation to the matters in subsection (4): see Section 26.]*

### DIVISION 9.3 — FRAUD

## 166 Meaning of ‘deception’

In this Division:

‘**deception**’ means any deception, by words or conduct, as to fact or law, including:

- (a) a deception as to the intention of the person using the deception or any other person; or
- (b) conduct by a person that causes a computer system or machine to make a response that the person is not authorised to cause it to do.

## 167 Obtaining property by deception

- (1) A person (the ‘**defendant**’) commits an offence, if the defendant, by deception, dishonestly obtains property belonging to another person, or to the defendant and another person, with the intention of permanently depriving the other person of the property.

Penalty:

- (i) if the value of the property is more than \$1,000 — 7 years imprisonment;
- (ii) if the value of the property is more than \$500 but not more than \$1,000 — 5 years imprisonment; or
- (iii) if the value of the property is not more than \$500 — 1 year imprisonment.

*[Note for subsection (1): The Interpretation Act 2011, Section 56 (b) provides that words in the singular include the plural (for example, ‘person’ includes ‘persons’).]*

- (2) For the purposes of this Section, a person is to be treated as ‘**obtaining property**’ if the person obtains ownership, possession or control of it, and ‘**obtain**’ includes obtain for another person or enabling oneself or another person to obtain or retain.
- (3) For the purposes of this Section, a person’s obtaining of property may be dishonest even if the person is willing to pay for it.
- (4) A person may be convicted of an offence against this Section involving all or any part of a general deficiency in money or other property even though the deficiency is made up of a number of particular sums of money or items of other property that were obtained over a period of time.

## 168 Obtaining financial advantage or causing financial disadvantage by deception

A person commits an offence, if the person, by deception, dishonestly obtains a financial advantage from, or causes a financial disadvantage to, another person.

Penalty:

- (i) if the value of the financial advantage or disadvantage is more than \$1,000 — 7 years imprisonment;
- (ii) if the value of the financial advantage or disadvantage is more than \$500 but not more than \$1,000 — 5 years imprisonment; or

- (iii) if the value of the financial advantage or disadvantage is not more than \$500 — 1 year imprisonment.

## 169 False statement by promoter

A person commits an offence, if the person:

- (a) makes, concurs in making or publishes a false statement in relation to a body, whether incorporated or unincorporated and whether formed or intended to be formed;
- (b) the person knows or is reckless about whether the statement is false in a material particular; and
- (c) the person makes, concurs in making or publishes the statement with intent:
  - (i) to induce a person, whether ascertained or not, to apply for, acquire or dispose of securities;
  - (ii) to cause an increase, reduction, maintenance or stabilisation of the price for trading in particular securities;
  - (iii) to deceive or cause loss to a person, whether ascertained or not; or
  - (iv) to induce a person, whether ascertained or not, to entrust or advance any property to another person.

Penalty: 7 years imprisonment.

*[Note for this Section: The Corporations Act 1972 includes other offences for fraudulent conduct by corporations, directors and other officers.]*

## 170 Dishonestly damaging property

A person (the ‘defendant’) commits an offence, if the defendant:

- (a) causes damage to property belonging to another person, or to the defendant and another person; and
- (b) does so dishonestly and with the intention of obtaining a gain for the defendant or another person.

Penalty: 7 years imprisonment.

## 171 Removing boundary marks

A person commits an offence, if:

- (a) the person intentionally and dishonestly removes or defaces an object or mark that has been lawfully erected or made as an indication of the boundary of any land; and
- (b) the person does so:
  - (i) with the intention of obtaining a gain; or
  - (ii) with the intention of causing a loss or being reckless about causing a loss.

Penalty: 7 years imprisonment.

[The next page is 242,301]

## DIVISION 9.4 — BRIBERY AND CORRUPTION

**172 Interpretation — Division 9.4**

(1) In this Division:

**‘agent’** includes the following:

- (a) a person who acts on behalf of another person with the other person’s actual or implied authority, in which case the other person is the principal;
- (b) a public official, in which case the government, government agency or instrumentality of the Republic for which the official acts is the principal;
- (c) an employee, in which case the employer is the principal;
- (d) a legal practitioner acting on behalf of a client, in which case the client is the principal;
- (e) a partner, in which case the partnership is the principal;
- (f) an officer of a corporation or other organisation, whether or not employed by it, in which case the corporation or other organisation is the principal; or
- (g) a consultant to a person, in which case that person is the principal;

**‘benefit’** includes any advantage and is not limited to property;

**‘exercise’** a function includes perform a duty;

**‘favour’** - an agent provides a **‘favour’** if the agent:

- (a) is influenced or affected in the exercise of the agent’s function as agent;
- (b) does or does not do something as agent or because of the agent’s position as agent; or
- (c) causes or influences the agent’s principal, or another agent of the principal, to do or not do something; and

**‘function’** of an agent includes any power, authority or duty of the agent or any function that the agent holds himself or herself the agent out as having.

- (2) For the purposes of this Division, a person is an agent or principal if the person is, or has been or intends to be an agent or principal.
- (3) For the purposes of this Division, the provision of a benefit may be dishonest even if the provision of the benefit is customary in any trade, business, profession or calling.

**173 Bribery**

- (1) A person commits an offence, if the person:
  - (a) dishonestly provides, or offers or promises to provide, a benefit to an agent or another person; and
  - (b) does so with the intention that the agent will provide a favour.

Penalty: 7 years imprisonment.

- (2) An agent commits an offence, if the agent:
  - (a) dishonestly asks for, or receives or agrees to receive, a benefit for the agent or another person; and
  - (b) does so with the intention of providing a favour.

Penalty: 7 years imprisonment.

**174 Giving or receiving other corrupting benefits**

- (1) A person commits an offence, if:
- (a) the person dishonestly provides, or offers or promises to provide, a benefit to an agent or another person; and
  - (b) the receipt, or expectation of the receipt, of the benefit would tend to influence the agent to provide a favour.

Penalty: 5 years imprisonment.

- (2) An agent commits an offence, if:
- (a) the agent dishonestly asks for, or receives or agrees to receive, a benefit for the agent or another person; and
  - (b) the receipt, or expectation of the receipt, of the benefit by the agent would tend to influence the agent to provide a favour.

Penalty: 5 years imprisonment.

**175 Bribery of foreign public official**

- (1) A person commits an offence, if:
- (a) the person dishonestly provides, or offers or promises to provide, a benefit to another person; and
  - (b) the person does so with intent:
    - (i) to influence a foreign public official in relation to any act or omission of that official in the official's official capacity, whether or not the act or omission is within the scope of the official's authority; or
    - (ii) to obtain or retain business, or to obtain an improper advantage in the conduct of business.

Penalty: 7 years imprisonment.

- (2) In this Section:

***'foreign government'*** includes all levels and divisions of government;

***'foreign public agency'*** means a person or body, wherever situated, that carries out a public function under the laws of a foreign country;

***'foreign public enterprise'*** means:

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



- (ii) enjoys subsidies or other privileges that are enjoyed only by companies, people or bodies to which subparagraph (i) or paragraph (a)(i) apply;

***‘foreign public official’*** includes any of the following:

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

***‘public international organisation’*** means any of the following organisations, wherever situated:

- (a) an organisation that has 2 or more countries or 2 or more governments as members of, or represented on, the organisation;
- (b) an organisation constituted by persons representing 2 or more such organisations;
- (c) an organisation constituted by persons representing 2 or more countries or 2 or more governments; or
- (d) an organisation that is part of an organisation referred to in any of paragraphs (a) to (c).

## **176 Bribery outside Nauru of foreign public official**

- (1) A person commits an offence, if the person does something outside Nauru that, if done in Nauru, would be an offence against Section 175.
- (2) An offence against subsection (1), is punishable as if the offence against Section 175 had been committed.
- (3) In this Section:  
***‘person’*** means:
  - (a) a Nauru citizen;
  - (b) a person ordinarily resident in Nauru;
  - (c) a body corporate incorporated in Nauru; or
  - (d) a corporation sole incorporated in Nauru.

## **177 Exception for acts lawful in country of foreign public official**

Section 176 does not apply if the conduct that is alleged to constitute the offence:

- (a) was engaged in outside Nauru; and
- (b) was not, when the conduct was engaged in, an offence against the law of the foreign country for which the foreign public official was acting.

*[Note: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

## **178 Abuse of public office**

- (1) A public official commits an offence, if:
  - (a) the official:

- (i) exercises any influence that the official has in the official's capacity as a public official;
- (ii) engages in any conduct in the exercise of the official's functions as a public official; or
- (iii) uses any information that the official has obtained in the official's capacity as a public official; and
- (b) the official does so with the intention of:
  - (i) dishonestly obtaining a benefit for themselves or for another person; or
  - (ii) dishonestly causing a detriment to another person.

Penalty: 7 years imprisonment.

- (2) A person commits an offence, if:
- (a) the person has ceased to be a public official in a particular capacity;
  - (b) the person uses any information that the person obtained in that capacity as a public official; and
  - (c) the person does so with the intention of:
    - (i) dishonestly obtaining a benefit for themselves or for another person; or
    - (ii) dishonestly causing a detriment to another person.

Penalty: 7 years imprisonment.

- (3) Subsection (2)(a) applies to a cessation by a person:
- (a) whether or not the person continues to be a public official in some other capacity; and
  - (b) whether the cessation occurred before, at or after the commencement of this Section.

## 179 Embezzlement

- (1) A public official commits an offence, if:
- (a) the official is lawfully permitted or required to deal with property in the name of, on behalf of, or on account of the Republic in the exercise of the official's functions as a public official;
  - (b) the official engages in conduct that deals with property:
    - (i) in the name of, on behalf of, or on account of the Republic; and
    - (ii) before the property comes into the possession of the Republic; and
  - (c) the official engages in the conduct dishonestly for the official's own benefit or the benefit of another person or entity.

Penalty: 7 years imprisonment.

- (2) In this Section:
- 'deals'*, with property, includes the following:
    - (a) acquires, receives, possesses, uses or disposes of property; or
    - (b) carries out a transaction relating to property.

### DIVISION 9.5 — BLACKMAIL

## 180 Interpretation — Division 9.5

- (1) For the purposes of this Division, a demand with a threat is **'unwarranted'** unless the person making the demand believes that:

- (a) the person is entitled to obtain the gain, cause the loss or influence the exercise of the public duty; and
  - (b) in the circumstances, using the threat is a reasonable and proper way of reinforcing the demand.
- (2) For the purposes of this Division, **‘threat’** includes:
  - (a) an express or implied threat of any action detrimental or unpleasant to another person; and
  - (b) a general threat of detrimental or unpleasant action that is implied because the person making the threat holds a public office.
- (3) A threat to an individual does not constitute a threat for this Division unless:
  - (a) the threat would cause an individual of normal stability and courage to act unwillingly in response to the threat; or
  - (b) the threat would cause the particular individual to act unwillingly in response to the threat and the person who makes the threat is aware of the vulnerability of the particular individual to the threat.
- (4) A threat to a government or body corporate does not constitute a threat for this Division unless:
  - (a) the threat would ordinarily cause an unwilling response; or
  - (b) the threat would cause an unwilling response because of a particular vulnerability of which the person making the threat is aware.

## **181 Blackmail**

A person commits an offence, if the person:

- (a) makes an unwarranted demand with a threat; and
- (b) does so with the intention of obtaining a gain or causing a loss.

Penalty: 10 years imprisonment.

## **182 Aggravated blackmail**

A person commits an offence, if the person:

- (a) commits blackmail; and
- (b) if the threat was carried out, it would likely cause:
  - (i) death or serious harm to a person; or
  - (ii) substantial economic loss to:
    - (A) the Republic;
    - (B) an instrumentality of the Republic; or
    - (C) an industrial or commercial activity whether conducted by a public or private entity.

Penalty: 14 years imprisonment.

## **183 Unwarranted demand on public official**

A person commits an offence, if:

- (a) the person makes an unwarranted demand with a threat of a public official;
- (b) the demand is directly or indirectly related to:
  - (i) the official’s capacity as a public official; or
  - (ii) the influence the official has as a public official; and
- (c) the person makes the demand with the intention of:
  - (i) obtaining a gain or causing a loss; or

- (ii) influencing the exercise of the official's public duties.  
Penalty: 12 years imprisonment.

DIVISION 9.6 — FORGERY

**184 Meaning of 'document'**

In this Division:

**'document'** includes any of the following:

- (a) anything on which there are figures, marks, numbers, perforations, symbols or anything else that can be responded to by a computer, machine or electronic device;
- (b) a credit card or debit card; or
- (c) a formal or informal document.

**185 Meaning of 'false' document**

- (1) For the purposes of this Division, a document is **'false'** if, and only if, the document, or any part of the document, purports:
  - (a) to have been made in the form in which it is made by a person who did not in fact make it in that form;
  - (b) to have been made in the form in which it is made on the authority of a person who did not in fact authorise its making in that form;
  - (c) to have been made in the terms in which it is made by a person who did not in fact make it in those terms;
  - (d) to have been made in the terms in which it is made on the authority of a person who did not in fact authorise its making in those terms;
  - (e) to have been altered in any way by a person who did not in fact alter it in that way;
  - (f) to have been altered in any way on the authority of a person who did not in fact authorise its alteration in that way;
  - (g) to have been made or altered by, or on the authority of, a person who did not in fact exist; or
  - (h) to have been made or altered on a date on which, at a place at which, or otherwise in circumstances in which it was not in fact made or altered.
- (2) For the purposes of this Division, a person is to be treated as **'making'** a false document if the person alters the document so as to make it false within the meaning of this Section, whether or not it is false in some other way apart from that alteration.

**186 Forgery — making false document**

A person commits an offence, if the person makes a false document with the intention that the person or another person will dishonestly use it:

- (a) to induce a person to accept it as genuine; and
- (b) because that person accepts it as genuine, to obtain a gain or cause a loss or influence the exercise of a public duty.

Penalty: 8 years imprisonment.

**187 Using false document**

A person commits an offence, if the person dishonestly uses a false document, knowing that it is false, with the intention of:

- (a) inducing a person to accept it as genuine; and
- (b) because that person accepts it as genuine, obtaining a gain or causing a loss or influencing the exercise of a public duty.

Penalty: 8 years imprisonment.

### **188 Possessing false document**

A person commits an offence, if the person possesses a false document, knowing that it is false, with the intention that the person or another person will dishonestly use it:

- (a) to induce a person to accept it as genuine; and
- (b) because that person accepts it as genuine, to obtain a gain or cause a loss or influence the exercise of a public duty.

Penalty: 5 years imprisonment.

### **189 Making or possessing device etc for making false document**

- (1) A person commits an offence, if the person makes or possesses a device, material or other thing designed or adapted for the making of a false document:

- (a) knowing that it is designed or adapted for the making of a false document; and
  - (b) with the intention that the person or another person will use it to commit forgery.

Penalty: 8 years imprisonment

- (2) A person commits an offence, if the person makes or possesses a device, material or other thing designed or adapted for the making of a false document knowing that it is designed or adapted for the making of a false document.

Penalty: 5 years imprisonment.

### **190 False accounting**

- (1) A person commits an offence, if the person dishonestly, with the intention of obtaining a gain or causing a loss:

- (a) destroys, defaces, conceals or falsifies an accounting document; or
  - (b) in providing information for any purpose, produces or makes use of an accounting document that the person knows is or may be misleading, false or deceptive in a material particular.

Penalty: 8 years imprisonment.

- (2) For the purposes of this Section, a person is to be treated as falsifying an accounting document if the person:

- (a) makes or concurs in making an entry in the document that is or may be misleading, false or deceptive in a material particular; or
  - (b) omits or concurs in omitting from the document a material particular.

- (3) In this Section:

***‘accounting document’*** means any account, record or other document made or required for any accounting purpose.

## **DIVISION 9.7 — COUNTERFEITING**

### **191 Counterfeit money**

- (1) A person commits an offence, if the person:

- (a) makes counterfeit money with the intention that the counterfeit money be acted on as genuine; or
- (b) possesses a thing capable of being used in the making of counterfeit money with the intention of using the thing to make counterfeit money.

Penalty: 10 years imprisonment.

(2) A person commits an offence, if the person:

- (a) deals in counterfeit money at a lower value than the face value of the counterfeit money;
- (b) imports or takes steps to import counterfeit money into Nauru knowing that it is counterfeit money; or
- (c) exports or takes steps to export counterfeit money from Nauru knowing that it is counterfeit money.

Penalty: 7 years imprisonment.

(3) A person commits an offence, if the person:

- (a) possesses:
  - (i) counterfeit money knowing that it is counterfeit money;
  - (ii) money that is no longer current money (**‘lapsed currency’**) knowing that it is lapsed currency; or
  - (iii) any other substance or thing; and
- (b) passes the counterfeit money, lapsed currency or other substance or thing into circulation.

Penalty: 5 years imprisonment.

(4) In this Section:

**‘counterfeit money’** means:

- (a) anything that is not current money but that resembles or is apparently intended to resemble or pass for current money; or
- (b) current money that has been altered in a material way and in a way that conceals or is apparently intended to conceal the alteration;

**‘current money’** means any coin or currency note that is lawfully current in Nauru or in any other country;

**‘deal’**, in counterfeit money, means:

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

**‘possess’** a thing includes:

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

## 192 Defacing or destroying currency

A person commits an offence, if the person:

- (a) mutilates or defaces any coin or currency note that is lawfully current in Nauru (for example, by writing, printing or stamping marks on it); or
- (b) destroys any coin or currency note that is lawfully current in Nauru (for example, by melting a coin or tearing up a banknote).

Penalty: 1 year imprisonment.

### DIVISION 9.8 — IDENTITY CRIME

## 193 Definitions — Division 9.8

In this Division:

**‘deal’**, in identification information, includes make, supply or use the information; and

**‘identification information’** means information, or a document, relating to a person, whether living or dead, real or fictitious, that is capable of being used, whether alone or together with other information or documents, to identify or purportedly identify the person, including any of the following:

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

[Note for this definition: ‘De facto partner’ has the meaning given in the Interpretation Act 2011, Section 74.]

## 194 Dealing in identification information

- (1) A person commits an offence, if:
  - (a) the person deals in identification information;
  - (b) the person intends to use, or intends that someone else will use, (in either case, a **‘user’**) the identification information to pretend to be, or to pass the user off as, another person, whether living or dead, real or fictitious, for the purpose of:
    - (i) committing an offence; or
    - (ii) facilitating the commission of an offence; and
  - (c) the offence mentioned in paragraph (b) is an offence under:
    - (i) a written law of Nauru punishable by imprisonment for longer than 12 months; or
    - (ii) a law of a foreign country, or part of a foreign country, that is formed by conduct that, if engaged in within Nauru, would constitute an offence under a written law of Nauru punishable by imprisonment for longer than 12 months.

Penalty: 7 years imprisonment

[Notes for this Section

- 1. Section 7 (Extraterritorial jurisdiction — transnational crime) applies to this Section.
- 2. Conduct that forms an offence under this Section may also be an offence under Section 17 of the Cybercrime Act 2015.]

- (2) This Section applies:
  - (a) even if:
    - (i) committing the offence mentioned in subsection (1)(b) is impossible; or
    - (ii) the offence mentioned in subsection (1)(b) is to be committed at a later time; and

- (b) whether or not the person to whom the identification information relates consented to the dealing in the identification information.
- (3) This Section does not apply to a person dealing in the person's own identification information.

## **195 Possession of identification information**

- (1) A person commits an offence, if:
  - (a) the person possesses identification information;
  - (b) the person intends to use, or intends that someone else will use, the identification information to engage in conduct; and
  - (c) the conduct forms an offence under Section 194.

Penalty: 5 years imprisonment.

*[Notes for this Section*

- 1. Section 7 (Extraterritorial jurisdiction — transnational crime) applies to this Section.*
- 2. Conduct that forms an offence under this Section may also be an offence under Section 17 of the Cybercrime Act 2015.]*
- (2) This Section applies whether or not the person to whom the identification information relates consented to the possession of the identification information.
- (3) This Section does not apply to a person's possession of the person's own identification information.

## **196 Possession of equipment used to make identification information**

A person commits an offence, if:

- (a) the person possesses equipment;
- (b) the person intends to use, or intends that someone else will use, the equipment to make identification information;
- (c) the person intends to use, or intends that someone else will use, the identification information to engage in conduct; and
- (d) the conduct forms an offence under Section 194.

Penalty: 5 years imprisonment.

*[Notes for this Section*

- 1. Section 7 (Extraterritorial jurisdiction — transnational crime) applies to this Section.*
- 2. Conduct that forms an offence under this Section may also be an offence under Section 11 of the Cybercrime Act 2015.]*

## **197 Attempt**

It is not an offence to attempt to commit an offence against this Division.

[The next page is 242,501]



## PART 10 — PROPERTY DAMAGE, FIREARMS AND OTHER OFFENCES

### DIVISION 10.1 — PROPERTY DAMAGE

#### 198 Definitions — Division 10.1

In this Division:

*'belong'* has the meaning given to it in Section 152; and

*'damage'* to property includes the following:

- (a) destroying the property;
- (b) causing the physical loss of the property by interfering with the property, including by removing any restraint over the property or abandoning the property;
- (c) causing loss of a use or function of the property by interfering with the property;
- (d) defacing the property;
- (e) for a document, obliterating or making illegible the whole or any part of the document;
- (f) for an animal, killing or harming the animal; or
- (g) for a plant or other thing forming part of land, severing it from the land.

#### 199 Sabotage

- (1) A person commits an offence, if the person:
  - (a) damages a public facility; and
  - (b) does so with the intention of causing:
    - (i) major disruption to government functions;
    - (ii) major disruption to the use of public services; or
    - (iii) major economic loss to another person.

Penalty: 20 years imprisonment.

- (2) In this Section:

*'public facility'* means any of the following, whether publicly or privately owned:

- (a) a Government facility, including vehicles and premises used by Government employees, including Ministers and Members of Parliament, in connection with official duties;
- (b) a public infrastructure facility, including:
  - (i) a facility providing or distributing water, sewerage, energy, fuel, communication or other services for the benefit of the public;
  - (ii) a seaport and airport; and
  - (iii) loading and unloading facilities;
- (c) a public information system, including a system used to generate, send, receive, store or otherwise process electronic communications;
- (d) a public place, including any premises, land or water open to the public; or
- (e) a building, plant, equipment and associated facilities, including conveyors, locomotives, rails, cables for carriage of electric power or communications and pipes for carriage of fuel, water or gas owned or

operated by an instrumentality of the Republic for the mining, crushing, treatment, conveyance, delivery and other activities connected with the mining, treatment and sale of phosphate rock.

## **200 Threatening to sabotage**

- (1) A person commits an offence, if the person:
- (a) makes to another person a threat to damage a public facility; and
  - (b) is reckless about causing the person to fear that the threat will be carried out and that the damage will cause:
    - (i) major disruption to government functions;
    - (ii) major disruption to the use of public services; or
    - (iii) major economic loss to another person.

Penalty: 5 years imprisonment.

- (2) In a prosecution for an offence against this Section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.
- (3) For the purposes of this Section:
- (a) a threat may be explicit or implicit, conditional or unconditional;
  - (b) a threat to a person includes a threat to a group of people; and
  - (c) fear that a threat will be carried out includes apprehension that it will be carried out.

## **201 Damaging property**

A person (the ‘defendant’) commits an offence, if the person:

- (a) causes damage to property belonging to another person, or to the defendant and another person; and
- (b) is reckless about causing damage to the property.

Penalty: 5 years imprisonment

## **202 Threatening to damage property — fear of death or serious harm**

- (1) A person commits an offence, if the person:
- (a) makes to another person a threat to damage property; and
  - (b) is reckless about causing that person to fear that the carrying out of the threat will kill or cause serious harm to that person or another person.

Penalty: 7 years imprisonment.

- (2) In a prosecution for an offence, against this Section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

## **203 Threatening to damage property**

- (1) A person commits an offence, if the person:
- (a) makes to another person a threat to damage property belonging to that person or another person; and
  - (b) is reckless about causing that person to fear that the threat will be carried out.

Penalty: 3 years imprisonment.

- (2) In a prosecution for an offence against this Section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

## 204 Possessing article with intent to damage property

- (1) A person commits an offence, if the person possesses an article with the intention that the person or another person will use it to damage property belonging to another person.

Penalty: 2 years imprisonment.

- (2) In this Section:

**‘possess’** an article includes:

- (a) have control over the disposal of the article, whether or not the article is in the custody of the person; or
- (b) have joint possession of the article.

## 205 Arson

- (1) A person commits an offence, if the person:
- (a) causes damage to a building or vehicle by fire or explosives; and
  - (b) intends to cause, or is reckless about causing, damage to that or any other building or vehicle.

Penalty: 10 years imprisonment.

- (2) A person commits an offence, if the person:
- (a) makes to another person a threat to damage a building or vehicle belonging to that person or a third person by fire or explosives; and
  - (b) intends to cause, or is reckless about causing, that person to fear that the threat will be carried out.

Penalty: 5 years imprisonment.

- (3) In a prosecution for an offence against subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

- (4) In this Section:

**‘building’** includes:

- (a) part of a building; or
- (b) any structure, whether or not moveable, that is used, designed or adapted for residential purposes; and

**‘vehicle’** means motor vehicle, motorised vessel or aircraft.

## 206 Marking graffiti on property

- (1) A person commits an offence, if the person intentionally marks graffiti on property.

Penalty: 6 months imprisonment.

- (2) In this Section:

**‘mark graffiti’** on property, means write, draw, mark, scratch or otherwise deface the property by any means so that the defacement is not readily removable by wiping with a dry cloth; and

**‘property’** means physical property including a building, structure, vehicle, vessel, sign, tree and road.

**207 Defence — consent**

A person is not criminally responsible for an offence against this Division if, when the conduct constituting the offence was carried out:

- (a) a person entitled to consent to the damage to the property had consented; or
- (b) the person believed that a person entitled to consent to the damage to the property:
  - (i) had consented; or
  - (ii) would have consented if the person had known about the damage to the property and the circumstances.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

**208 Defence — claim of right**

- (1) A person is not criminally responsible for an offence against this Division if, when engaging in the conduct required for the offence, the person believed that the person had a right or interest in the property concerned that entitled the person to engage in the conduct.

- (2) In this Section:

**‘right or interest in property’** includes a right or privilege in or over land or water whether created by grant, licence or otherwise.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

## DIVISION 10.2 — FIREARMS OFFENCES

**209 Meaning of ‘firearm’**

- (1) In this Division:

**‘firearm’:**

- (a) means a gun, or other weapon, that is, or at any time was, capable of propelling a projectile by means of an explosive force, however caused; and
- (b) includes the following:
  - (i) a blank firearm;
  - (ii) an airgun;
  - (iii) a paintball marker;
  - (iv) a modified item;
  - (v) a firearm frame or firearm receiver that does not form part of a firearm; or
  - (vi) an imitation or replica of anything mentioned in paragraph (a) or this paragraph; but
- (c) does not include:
  - (i) a spear gun; or
  - (ii) something prescribed by regulations not to be a firearm.

- (2) In this Section:

**‘modified item’** means something that would be a firearm, if:

- (a) it did not have something missing from it, or a defect or obstruction; or
- (b) something had not been added to it.

## 210 Meaning of ‘possess’

(1) In this Division:

*‘physical possession’* means a person has **‘physical possession’** of a firearm if the person has the firearm on the person’s body, including in something carried or worn by the person; and

*‘possess’* a person **‘possesses’** a firearm, if the person:

- (a) has physical possession of the firearm;
- (b) has the firearm at or in premises owned or occupied by the person; or
- (c) otherwise has the care, control or management of the firearm.

(2) Also, for this Division, a person **‘possesses’** a firearm, if:

- (a) part of the firearm is in the person’s possession;
- (b) other parts of the firearm are in the possession of one or more other persons;
- (c) at least one of the other persons is in possession of the other part or parts for an agreed purpose with the person; and
- (d) the parts would make up the firearm if fitted together.

(3) In this Section:

*‘premises’* includes any land, building, part of a building, vehicle, vessel or aircraft.

## 211 Possession of firearm

A person commits an offence, if he or she possesses a firearm.

Penalty: 4 years imprisonment.

[s 211 subst Act 29 of 2020 s 30, opn 23 Oct 2020]

## 212 Possession of firearm in public place

(1) A person commits an offence, if he or she possesses a firearm in a public place.

Penalty: 5 years imprisonment.

(2) This Section does not apply to a police officer or any other person, who has been authorised by the Cabinet to possess or carry a firearm.

[s 212 subst Act 29 of 2020 s 31, opn 23 Oct 2020]

## 213 Unlawful entry of property with firearm

(1) A person commits an offence, if:

- (a) the person enters a building or land (other than a public place); and
- (b) does so while unlawfully in physical possession of a firearm.

Penalty:

- (i) if aggravating circumstances apply — 5 years imprisonment; or
- (ii) in any other case — 3 years imprisonment.

(2) Subsection (1) does not apply, if the person:

- (a) is the owner or occupier of the building or land;
- (b) has the permission of the owner or occupier of the building or land to enter the building or land; or
- (c) has a reasonable excuse for entering the building or land.

[Note for subsection (2): A defendant has an evidential burden in relation to the matters in subsection (2): see Section 26.]

**214 Recklessly discharging firearm**

A person commits an offence, if the person discharges a firearm with reckless disregard for the safety of a person or property.

Penalty:

- (i) if aggravating circumstances apply — 10 years imprisonment; or
- (ii) in any other case — 5 years imprisonment.

**215 Aggravating circumstances for firearm offences**

- (1) Where an offence under this Division provides for a penalty if aggravating circumstances apply, then that penalty may be imposed if the conduct constituting the offence occurs in any of the following circumstances:
  - (a) the defendant intends to commit another offence; or
  - (b) the defendant intends to avoid the lawful arrest or detention of a person.
- (2) For the purposes of subsection (1)(a), it is not necessary to prove that the defendant intends to commit a particular offence.

**215A Amnesty for firearms**

- (1) The Minister may, by order published in the Gazette, declare an amnesty period for the surrender of any firearm.
- (2) No proceedings shall lie against a person in respect of the possession of a firearm surrendered to the Commissioner of Police during an amnesty period for safekeeping.
- (3) The Minister may prescribe any form of compensation that needs to be paid to a person who owns and surrenders his or her firearms under this Section.

[s 215A insrt Act 29 of 2020 s 32, opn 23 Oct 2020]

**215B Manufacturing, selling, importing or supplying of firearms**

A person who manufactures, sells, imports or supplies a firearm, commits an offence.

Penalty: 10 years imprisonment.

[s 215B insrt Act 29 of 2020 s 33, opn 23 Oct 2020]

## DIVISION 10.3 — ENDANGERING TRANSPORT AND PIRACY

**216 Endangering transport**

- (1) A person commits an offence, if:
  - (a) the person:
    - (i) interferes with a transport facility; or
    - (ii) does anything to a transport facility that is likely to cause danger to people or property; and
  - (b) the person does so with the intention of causing danger to people or property or with reckless disregard for the safety of people or property.

Penalty: 14 years imprisonment.

- (2) In this Section:

***‘transport facility’:***

- (a) means:
  - (i) a vehicle, ship or aircraft; and

- (ii) any property used in connection with the transport of persons or goods; and
- (b) includes any equipment used for navigation or guidance of a vehicle, ship or aircraft.

## 217 Piracy

(1) A person commits an offence, if the person engages in an act of piracy.  
Penalty: life imprisonment.

(2) In this Section:

***‘act of piracy’*** means an act of violence, detention or depredation committed for private ends by a crew or passenger of a private ship or aircraft, and directed that is:

- (a) if the act is done on the high seas or in the coastal sea of Nauru, against another ship or aircraft, or against persons on board such ship or aircraft; or
- (b) if the act is done in a place, other than the high seas, beyond the territorial jurisdiction of any State, against a ship, aircraft, persons or property;
- (c) [repealed]

***‘coastal sea’*** of Nauru, means the territorial sea and internal waters of Nauru, as defined in the *Sea Boundaries Act 1997* and includes the airspace over those seas and waters;

***‘high seas’*** means seas that are beyond the territorial sea of Nauru and of any other country and includes the airspace over those seas; and

***‘private ship or aircraft’*** means a ship or aircraft that is not being operated for naval, military, customs or law enforcement purposes by Nauru or another country, and includes a ship or aircraft that has been taken over by its crew or passengers.

[subs (2) am Act 31 of 2019 Sch 1 item 2, opn 1 Feb 2020]

## 218 Operating a pirate-controlled ship or aircraft

- (1) A person commits an offence, if the person:
- (a) intentionally participates in the operation of a ship or aircraft; and
  - (b) knows the ship or aircraft is a pirate-controlled ship or aircraft.

Penalty: 15 years imprisonment.

(2) In this Section:

***‘act of piracy’*** has the meaning given to it in Section 217;

***‘pirate-controlled ship or aircraft’*** means a private ship or aircraft which is under the control of a person that:

- (a) has used, is using or intends to use the ship or aircraft in the commission of an act of piracy; or
- (b) has seized control of the ship or aircraft for an act of piracy; and

***‘private ship or aircraft’*** has the meaning given to it in Section 217.

## 219 Seizure of pirate-controlled ship or aircraft, etc

- (1) An authorised officer may seize:

- (a) a ship or aircraft that the officer reasonably believes is a pirate-controlled ship or aircraft; and
  - (b) anything on the ship or aircraft that appears to be connected with the commission of an offence under Section 217 or 218.
- (2) A seizure may be made:
- (a) in Nauru; or
  - (b) on the high seas.
- (3) The Supreme Court may:
- (a) on application by the custodian of, or a person with an interest in, a ship, aircraft or thing seized under this Section, order that the ship, aircraft or thing be returned to its lawful owner;
  - (b) on its own motion, or on application, order that the ship, aircraft or thing be forfeited to the Republic if:
    - (i) a person has been convicted of an offence under Section 217 or 218; and
    - (ii) the ship, aircraft or thing was used in or otherwise involved in the commission of the offence; or
  - (c) make any other order relating to the seizure, detention or disposal of the ship, aircraft or thing.
- (4) An order to return a ship, aircraft or thing may be made subject to conditions, including conditions about:
- (a) paying the Republic the reasonable costs incurred in the seizure and detention of the ship, aircraft or thing; and
  - (b) giving security for payment of those costs.
- (5) In this Section:
- ‘authorised officer’* means:
    - (a) a police officer; or
    - (b) a person authorised in writing by the Minister for Justice;
  - ‘high seas’* has the meaning given to it in Section 217; and
  - ‘pirate-controlled ship or aircraft’* has the meaning given to it in Section 218.

## 220 Consent to prosecution for piracy offence

- (1) A prosecution for an offence against Section 217 or 218 shall not be started without the consent of the Minister for Justice.
- (2) Subsection (1) does not prevent:
  - (a) the arrest, or the issue of a warrant for the arrest, of a person for the offence; or
  - (b) the remanding in custody or on bail of a person charged with the offence.

## 221 Evidentiary certificate for piracy offence

For a proceeding for an offence under Section 217 or 218, a certificate by the Minister for Foreign Affairs, or a person authorised in writing by the Minister, that stated waters were, at a stated time, part of the high seas or within the coastal sea of Nauru is evidence of the matter.

[The next page is 242,701]



## PART 11 — ADMINISTRATION OF JUSTICE OFFENCES

### DIVISION 11.1 — GENERAL OFFENCES

#### 222 Perjury

- (1) A person commits an offence, if:
- (a) the person makes a sworn statement in a legal proceeding;
  - (b) the statement is false;
  - (c) the person knows, or believes, the statement is false; and
  - (d) the statement is material to the proceeding.
- Penalty: 14 years imprisonment.
- (2) The question whether a sworn statement is material to a proceeding is one of law.
- (3) An interpreter commits an offence, if:
- (a) the person, by sworn statement, gives an interpretation of a statement or other thing in or for a legal proceeding;
  - (b) the interpretation is false or misleading; and
  - (c) the person:
    - (i) knows, or believes, the interpretation is false or misleading; or
    - (ii) is reckless about the interpretation being false or misleading.

Penalty: 14 years imprisonment.

- (4) A person shall not be prosecuted for an offence against this Section, if:
- (a) the prosecution relies on the evidence of one witness only in a proceeding for the offence; and
  - (b) the evidence of the witness is not corroborated.
- (5) Where the court is satisfied beyond reasonable doubt that a person committed perjury in relation to one or 2 sworn statements made by the person that are irreconcilably in conflict, the court may find the person guilty of perjury even though the court cannot decide which of the statements is false.
- (6) For the purposes of subsection (5), it does not matter whether the 2 statements were made in the same legal proceeding.
- (7) In this Section:
- ‘legal proceeding’*** means a proceeding before, or an investigation by, any of the following, regardless of any defect in the institution of the proceeding, or the appointment of a person or constitution of an entity hearing the proceeding:
- (a) a court;
  - (b) a non-judicial tribunal with jurisdiction to decide a right or liability;
  - (c) the Parliament of Nauru, including a committee of the Parliament; or
  - (d) any entity:
    - (i) authorised by law to take evidence on oath; or
    - (ii) given power to conduct a proceeding as a court or non-judicial tribunal to decide a right or liability.

**223 Making false sworn statement**

- (1) A person commits an offence, if:
- (a) the law requires or allows the person to make a sworn statement;
  - (b) the person makes the statement in documentary form; and
  - (c) if the statement were used as evidence in a legal proceeding, the person would be guilty of perjury.

Penalty: 5 years imprisonment.

- (2) A person shall not be prosecuted for an offence against this Section, if:
- (a) the prosecution relies on the evidence of one witness only in a proceeding for the offence; and
  - (b) the evidence of the witness is not corroborated.

- (3) In this Section:

*‘legal proceeding’* has the meaning given in Section 222.

**224 Making false statement**

- (1) A person commits an offence, if:
- (a) the law requires or allows the person to make a statement, other than a sworn statement, before another person authorised by law to witness the statement;
  - (b) the person makes the statement; and
  - (c) if the statement were used as evidence in a legal proceeding, the person would be guilty of perjury.

Penalty: 3 years imprisonment.

- (2) A person shall not be prosecuted for an offence against this Section, if:
- (a) the prosecution relies on the evidence of one witness only in a proceeding for the offence; and
  - (b) the evidence of the witness is not corroborated.

- (3) In this Section:

*‘legal proceeding’* has the meaning given to it in Section 222.

**225 Taking sworn statement, etc without authority**

A person commits an offence, if:

- (a) the person administers an oath, or takes or witnesses a sworn statement in relation to a matter; and
- (b) the person does not have lawful authority to do so.

Penalty: 5 years imprisonment.

**226 Particular information**

- (1) In an information for an offence against Section 222, 223, 224 or 225, it is not necessary to set out the words of the statement or oath and it is sufficient to set out as much of the tenor or meaning of the statement or oath as is material.
- (2) In an information for an offence against Section 222, it is not necessary to allege the jurisdiction of the court or other entity before which the sworn statement was given.

**227 Perverting the course of justice**

- (1) A person commits an offence, if the person intentionally perverts the course of justice.

Penalty: 5 years imprisonment.

- (2) In this Section:

*‘perverts’* includes obstructs, prevents or defeats.

**DIVISION 11.2 — CUSTODY OFFENCES****228 Interpretation — Division 11.2**

- (1) In this Division:

*‘lawful custody’* means a person is:

- (a) under arrest;
- (b) remanded for appearance before a court or tribunal;
- (c) imprisoned:
  - (i) following conviction for an offence; or
  - (ii) for contempt of Parliament, a court, or any other body authorised by a law to punish for contempt;
- (d) in custody under an order of a Resident Magistrate under Section 7 of the *Mental Health Act 1963*; or
- (e) detained as a prisoner of war, or interned generally, in accordance with international law; and

[The title of the *Mentally-disordered Persons Act 1963* was changed to the *Mental Health Act 1963* by Act 38 of 2020.]

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

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

**229 Escape from custody**

A person commits an offence, if the person escapes from lawful custody.

Penalty: 5 years imprisonment.

**230 Damage place of custody for purpose of escape**

- (1) A person commits an offence, if the person:
- (a) directly or indirectly alters, damages, breaches, or excavates beneath or through premises used as a place of custody; and
  - (b) does so with the intention of escaping, or assisting another person to escape, from lawful custody.

Penalty: 7 years imprisonment.

- (2) In this Section:

*‘premises’* includes any land, building, part of a building, vehicle, vessel or aircraft.

**231 Assist escape from custody**

A person commits an offence, if the person:

- (a) does any of the following:

- (i) frees, or causes the release of, another person held in lawful custody;
- (ii) assists a person to escape, or attempt to escape, from lawful custody; or
- (iii) brings, or causes to be brought, into a place of custody a thing reasonably able to be used by a person to escape from lawful custody; and

(b) intends to assist the person to escape.

Penalty: 7 years imprisonment.

## 232 Permit escape from custody

A person commits an offence, if:

- (a) the person has a legal duty to ensure a person (a ‘**prisoner**’) is held in lawful custody;
- (b) the person engages in conduct that results in the prisoner’s escape from lawful custody; and
- (c) the person’s conduct is negligent.

Penalty: 1 year imprisonment.

## 233 Assist prisoner of war, internee, or parolee to escape

(1) A person commits an offence, if the person:

(a) does any of the following:

- (i) frees, or causes the release of, a prisoner of war or internee (a ‘**prisoner**’) held in lawful custody;
- (ii) assists a prisoner to escape, or attempt to escape, from lawful custody; or
- (iii) brings, or causes to be brought, into a place of custody a thing reasonably able to be used by a prisoner to escape from custody; and

(b) intends to assist the prisoner to escape.

Penalty: 7 years imprisonment.

(2) A person commits an offence, if:

- (a) the person assists a parolee to leave, or attempt to leave, a place of parole;
- (b) it is a condition of the parolee’s parole that the parolee shall not leave the place of parole; and
- (c) the person:
  - (i) knows about the condition of parole; and
  - (ii) intends to assist the parolee to leave the place of parole.

Penalty: 7 years imprisonment.

(3) In this Section:

‘*place of parole*’ means the place where a parolee is permitted to be in accordance with the conditions of the parolee’s parole.

## 234 Harboursing escaped prisoner

A person commits an offence, if the person:

- (a) aids, harbours, conceals or shelters a person who has escaped from lawful custody; and

(b) knows the person has escaped from lawful custody.  
Penalty: 7 years imprisonment.

[The next page is 242,901]

## PART 12 — CRIMES AGAINST THE REPUBLIC AND PARLIAMENT

[Pt 12 heading subst Act 10 of 2020 s 5, opn 4 June 2020]

### 235 Treason

- (1) A citizen of, or person ordinarily resident in, Nauru commits an offence, if the person:
  - (a) intentionally causes the death of or serious harm to the President of Nauru;
  - (b) intentionally takes or detains the President of Nauru unlawfully;
  - (c) starts war or prepares to start war against the Republic;
  - (d) uses force for the purpose of overthrowing the Republic; or
  - (e) materially assists a public enemy at war with the Republic.

Penalty: life imprisonment.

- (2) A person cannot be tried for an offence against this Section, unless the information for the offence is filed with the court within 2 years after the offence was committed.
- (3) An information for an offence against this Section shall allege the overt acts relied on for the offence.
- (4) On the trial of a person charged with treason, evidence cannot be admitted of any overt act not alleged in the information.

### 236 Concealment of treason

- (1) A person commits an offence, if the person:
  - (a) knows that another person intends to commit an offence under Section 235; and
  - (b) does not:
    - (i) within a reasonable period give information about that intention to a police officer; or
    - (ii) otherwise use reasonable endeavours to stop the commission of the offence.

Penalty: 7 years imprisonment.

- (2) A person cannot be tried for an offence against this Section, unless the information for the offence is filed with the court within 2 years after the offence was committed.

### 237 Provoking mutiny

- (1) A person commits an offence, if the person tries to persuade:
  - (a) a person in a foreign military force to defy the person's duty in the force; or
  - (b) if a foreign military force is involved in war or hostilities, a person in an allied military force to defy the person's duty in the force.

Penalty: 10 years imprisonment.

- (2) In this Section:

‘*defy*’ duty in a military force means:

- (a) overthrow the lawful authority of the force; or

- (b) resist the lawful authority of the force to an extent that it substantially affects the operation of the force; and

***‘foreign military force’*** means a military force of another country present in Nauru at the request of the Nauruan Government.

## 238 Interference with Members of Parliament

A person commits an offence, if the person engages in any conduct, which interferes or is capable of interfering with the exercise or performance of any of the powers, duties or responsibilities of a Member of Parliament.

Penalty: 10 years imprisonment.

[s 238 subst Act 10 of 2020 s 6, opn 4 June 2020]

## 239 Disturbing Parliament

- (1) A person commits an offence, if the person:
- (a) engages in conduct in the immediate view and presence of Parliament when it is sitting; or
  - (b) engages in conduct when the Parliament is in session; and
  - (c) does so with the intention of:
    - (i) disrupting the proceedings of the Parliament; or
    - (ii) impeding the function, power or authority of the Parliament.
- (2) For the purposes of this Part, the meaning of **‘session’** or **‘sitting’** in Article 81 of the *Constitution* applies.

Penalty: 10 years imprisonment.

[s 239 subst Act 10 of 2020 s 7, opn 4 June 2020]

## 240 Unlawful possession of offensive weapon in precincts of Parliament

- (1) A person commits an offence, if the person has unlawful physical possession of an offensive weapon in the precincts of Parliament.

Penalty: 5 years imprisonment.

- (2) In this Section:

***‘offensive weapon’*** includes any object that is capable of being used to cause injury or incapacitate a person;

***‘physical possession’*** is where a person has **‘physical possession’** of a weapon if the person has the weapon on the person’s body, including in something carried or worn by the person; and

***‘precincts of Parliament’*** means the Chamber and offices of the Parliament and all places provided for the use or accommodation of members, officers or strangers, and includes, while the Parliament is sitting, and subject by exceptions made by the direction of the Speaker, the entire building in which the Chamber of the Parliament is situated, and any forecourt, yard, garden enclosure or open space adjoining or appertaining to that building and used or provided for the purposes of the Parliament.

[s 240 subst Act 10 of 2020 s 8, opn 4 June 2020]

## 241 Failure to attend or give evidence before Parliament

A person commits an offence, if the person:



- (a) is required by the Parliament or a committee of the Parliament to:
    - (i) appear before the Parliament or committee;
    - (ii) produce a document or other thing in the person's possession to the Parliament or committee; or
    - (iii) if before the Parliament or committee, answer a lawful and relevant question; and
  - (b) fails or refuses to do so.
- Penalty: 2 years imprisonment.

## **242 Obstructing public official**

A person commits an offence, if:

- (a) the person obstructs, hinders, intimidates or resists another person in the exercise of the other person's functions as a public official; and
- (b) the person believes the other person is a public official.

Penalty: 2 years imprisonment.

## **243 Impersonating public official**

(1) A person commits an offence, if the person:

- (a) on a particular occasion, impersonates someone else in the other person's capacity as a public official; and
- (b) does so:
  - (i) knowing it to be in circumstances when the official is likely to be performing the official's duty; and
  - (ii) with intent to deceive.

Penalty: 3 years imprisonment.

(2) A person commits an offence, if the person:

- (a) falsely represents the person to be a public official in a particular capacity, whether or not that capacity exists or is fictitious; and
- (b) does so in the course of doing an act, or attending a place, in the assumed capacity of such an official.

Penalty: 3 years imprisonment.

[The next page is 243,101]

## PART 12A — SEDITION

[Pt 12A insrt Act 10 of 2020 s 9, opn 4 June 2020]

### 243A Seditious offences

- (1) A person commits an offence, if the person with seditious intention:
  - (a) does or attempts to do, or makes any preparation to do, or conspires with a person to produce any seditious material;
  - (b) utters or livestreams any seditious words or information including through the media or any other digital or electronic device or means;
  - (c) prints, publishes, posts or messages any seditious words in the media in print, digital or electronic form; or
  - (d) imports, sells, offers for sale, transmits, distributes or reproduces any seditious printing, publication, posts or messages by any device, equipment, digitally, electronically or by any other medium or form of communication.

Penalty: 10 years imprisonment.

- (2) For the purposes of proving the commission of any offence under this Section, the intention of the person charged shall be deemed to be irrelevant if such person's actions, words, publication or material, had a seditious intention.
- (3) A person commits a summary offence if without lawful excuse the person stores in any print, electronic, digital or any other form or means has in his or her possession any seditious publication.

Penalty: 12 months imprisonment.

- (4) In this Section:

*'media'* includes livestreaming, audio or video recorded messages, Facebook, Twitter, Instagram, IMO, messenger, podcasts, Whatsapp, Viber or other social or mass media, print, television or radio;

*'seditious'* when applied or used in respect of any act, uttering, speech, words, publication or in any manner whatsoever, means having a seditious intention; and

*'seditious material'* means any document, picture, diagram, photograph, caricature, sketch, audio or video recording in print or digital or electronic form which has a seditious intention.

### 243B Seditious Intention

*'Seditious intention'* means an intention to effect any of the following:

- (a) to bring into hatred or contempt or to incite disaffection against the Government or the *Constitution of Nauru* as established by law or against the administration of justice;
- (b) to incite the citizens of or the persons ordinarily resident in the Republic to attempt to procure the alteration of any matter in the Republic as by law established;
- (c) to raise discontent or disaffection amongst the citizens or the persons ordinarily resident in the Republic; or

- (d) to promote feelings of ill-will and enmity between the different communities or classes of persons in the Republic.

### **243C Innocent intention**

It is lawful for a person to:

- (a) in good faith show that the Government of Nauru has been mistaken or misled in any of its measures taken;
- (b) point out in good faith errors or defects in the Government or *Constitution* as by law established or in legislation or in the administration of justice, with a view to the reformation of such errors or defects;
- (c) persuade the citizens or the persons ordinarily resident in the Republic to procure by lawful means the alteration of any matter established in the Republic by law; or
- (d) point out in good faith with a view to their removal any matters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of persons in the Republic.

### **243D Extended jurisdiction for offences under this Part**

A person commits an offence against the provisions of this Part:

- (a) whether or not the conduct constituting the alleged offence occurs in the Republic; and
- (b) whether or not a result of the conduct constituting the alleged offence occurs in the Republic.

### **243E Definition of seditious conspiracy**

For the purposes of this Part:

- (a) a conspiracy under this Part means an arrangement entered into by one or more persons with the intention of carrying out a seditious act;
- (b) seditious words are words expressive of a seditious intention; and
- (c) the term ‘**seditious publication**’ includes anything intended to be read, and any sign or visible representation, which is expressive of a seditious intention.

[The next page is 243,301]

## PART 13 — CRIMES AGAINST PUBLIC ORDER AND RELATED OFFENCES

### DIVISION 13.1 — PUBLIC ORDER

#### 244 Unlawful assembly

- (1) A person commits an offence, if:
- (a) the person and 2 or more other people are present together (an **‘assembly’**) for a common purpose; and
  - (b) the conduct of the assembly, taken as a whole, would cause a reasonable person in the vicinity to fear that the assembly would:
    - (i) use unlawful violence against people or property; or
    - (ii) provoke others to use unlawful violence against people or property.

Penalty: 1 year imprisonment.

- (2) For the purposes of subsection (1):
- (a) it does not matter:
    - (i) whether there is, or is likely to be, a person in the vicinity who holds the fear mentioned in the subsection; or
    - (ii) that the assembly may have begun as a lawful assembly;
  - (b) the common purpose of an assembly, or a member of an assembly, may be inferred from conduct; and
  - (c) the offence may be committed in a public or a private place.
- (3) Subsection (1) does not apply to an assembly with a common purpose to protect the premises of a member of the assembly from entry by someone else who intends to commit an offence on the premises.

#### 245 Rioting

- (1) A person commits an offence, if:
- (a) the person and 2 or more other persons are present together (an **‘assembly’**) for a common purpose;
  - (b) the conduct of the assembly, taken as a whole:
    - (i) involves the use of unlawful violence against people or property; and
    - (ii) would cause a reasonable person in the vicinity to fear for that person’s safety; and
  - (c) the person as a member of the assembly:
    - (i) approves the use of violence;
    - (ii) intends using violence; or
    - (iii) knows that the person’s conduct is violent.

Penalty: 10 years imprisonment.

[subs (1) am Act 10 of 2020 s 10, opn 4 June 2020]

- (2) For the purposes of subsection (1):
- (a) it does not matter:
    - (i) whether there is, or is likely to be, a person in the vicinity who holds the fear mentioned in the subsection; or
    - (ii) that the assembly may have begun as a lawful assembly;

- (b) the common purpose of an assembly, or a member of an assembly, may be inferred from conduct; and
- (c) the offence may be committed in a public or a private place.

## 246 Riotous damage

- (1) A person commits an offence, if the person:
  - (a) is criminally responsible for an offence against Section 245; and
  - (b) causes damage to property when committing the offence.

Penalty: 7 years imprisonment.

- (2) In this Section:

*‘damage’* has the meaning given to it in Section 198.

## 247 Forcible entry and possession of land

- (1) A person commits an offence, if:
  - (a) the person enters land:
    - (i) using force or the threat of force; or
    - (ii) in a way that would cause a reasonable person to fear or apprehend violence to a person or property;
  - (b) the person intends to take possession of the land; and
  - (c) the land is in the actual and lawful possession of another person.

Penalty: 2 years imprisonment.

- (2) A person commits an offence, if:

- (a) the person:
  - (i) has actual possession of land; but
  - (ii) has no right to lawful possession of the land; and
- (b) the person keeps actual possession of the land in opposition to another person with a lawful right to possess the land:
  - (i) using force or the threat of force; or
  - (ii) in a way that would cause a reasonable person to fear or apprehend violence to a person or property.

Penalty: 2 years imprisonment.

## 248 Public nuisance

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

Penalty: 6 months imprisonment.

- (2) Without limiting subsection (1)(b), conduct amounts to a **‘public nuisance’** if the conduct:

- (a) unreasonably interferes, or is likely to unreasonably interfere, with the peaceful use of a public place and involves behaviour that:
  - (i) is disorderly;
  - (ii) is offensive;
  - (iii) is threatening;
  - (iv) is violent;
  - (v) is drunken; or

- (vi) disturbs public worship; or
- (b) involves challenging, encouraging or subscribing to a fight, either orally or in writing.
- (3) In a prosecution for an offence against this Section, evidence of more than one kind of behaviour mentioned in subsection (2)(a) may be relied on to prove the offence.
- (4) A police officer may charge a person with an offence against this Section despite the absence of a complaint by another person.
- (5) In this Section:
  - ‘offensive’* behaviour includes the use of obscene, indecent or abusive language;
  - ‘public place’* means a place, whether or not covered by water, or premises that is open to the public, or is used by the public, whether or not:
    - (a) payment of money or other consideration is required to use the place or premises;
    - (b) the place or premises is ordinarily open or used by the public; or
    - (c) the public to whom it is open consists only of a class of people; and
  - ‘threatening behaviour’* includes the use of threatening language.

#### DIVISION 13.2 — DEFAMATION

### 249 Definitions — Division 13.2

In this Division:

*‘defamatory’* matter is **‘defamatory’** if it makes an imputation about a person, or the person’s family, whether living or dead, and whether expressed directly or by insinuation or irony, by which:

- (a) the reputation of the person is likely to be injured;
- (b) the person is likely to be injured in the person’s trade or profession; or
- (c) other people are likely to be induced to shun or avoid or ridicule or despise the person;

*‘matter’* includes:

- (a) an article, report, advertisement or other things communicated by means of a newspaper, magazine or other periodical;
- (b) a program, report, advertisement or other thing communicated by means of television, radio, the internet or any other form of electronic communication;
- (c) a letter, note or other writing;
- (d) a picture, gesture or oral utterance; and
- (e) any other thing by means of which something may be communicated to a person; and

*‘publish’* defamatory matter of another person (the **‘victim’**) means:

- (a) for spoken words or audible sounds, say the words or make the sounds in the presence and hearing of a person other than the victim;
- (b) for signs, signals or gestures, make the signs, signals or gestures so as to be seen or felt by, or otherwise come to the knowledge of, a person other than the victim; and
- (c) for any other defamatory matter, exhibit it in public or cause it to be read or seen, or show or deliver it or cause it to be shown or delivered, with a view to it being read or seen by a person other than the victim.

## 250 Criminal defamation

- (1) A person commits an offence, if:
  - (a) the person publishes defamatory matter of another living person (the ‘victim’);
  - (b) the person:
    - (i) knows the matter is false; or
    - (ii) does not have regard to whether the matter is true or false; and
  - (c) the person publishes the matter being reckless as to whether serious harm is caused to the victim or another person.

Penalty: 3 years imprisonment.

- (2) A proceeding for an offence against this Section, shall not be started without the consent of the Director of Public Prosecutions.
- (3) The commencement of a criminal proceeding for an offence against this Section, does not prevent:
  - (a) the commencement of a civil proceeding for defamation against the defendant in the criminal proceeding; or
  - (b) the determination of the civil proceeding pending the determination of the criminal proceeding.
- (4) In addition to the other defences under this Division, a person is not criminally responsible for an offence against this Section if the person would have had a defence for the publication if the victim had brought a civil proceeding for defamation.
- (5) In this Section:
 

‘**harm**’ means harm of any kind, and includes:

  - (a) personal injury;
  - (b) damage to property; and
  - (c) economic loss.

## 251 Defence of absolute privilege

- (1) A person is not criminally responsible for an offence against Section 250, if the defamatory matter was published on an occasion of absolute privilege.

*[Note for this subsection (1): A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

- (2) Without limiting subsection (1), matter is published on an occasion of absolute privilege if:
  - (a) the matter is published in the course of proceedings of the Parliament of Nauru, including, but not limited to:
    - (i) the publication of any matter in the course of a speech made by a Member of Parliament during proceedings of Parliament;
    - (ii) the publication of any matter while giving evidence, submitting or presenting a document before Parliament; and
    - (iii) the publication of any matter by order, or under the authority, of Parliament;
  - (b) the matter is published in the course of proceedings before a court or tribunal of Nauru, including, but not limited to:
    - (i) the publication of matter in any document filed or lodged with, or otherwise submitted to, the court or tribunal, including any originating process;



- (ii) the publication of matter while giving evidence before the court or tribunal; and
- (iii) the publication of matter in any judgment, order or other determination of the court or tribunal; or
- (c) the matter is published in the course of proceedings of an inquiry made under the authority of the law of Nauru or of Parliament, including, but not limited to:
  - (i) the publication of any matter while giving evidence, submitting or presenting a document before the inquiry; and
  - (ii) the publication of the result of the inquiry.

## 252 Defence for publication of public documents

- (1) A person is not criminally responsible for an offence against Section 250, if the defamatory matter was contained in:
  - (a) a public document or a fair copy of a public document; or
  - (b) a fair summary of, or a fair extract from, a public document.

*[Note for this subsection (1): A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

- (2) For the purposes of subsection (1), if a report or other document under the law of Nauru would be a public document except for noncompliance with a provision of that law about:
  - (a) the formal requirements for the content or layout of the report or document; or
  - (b) the time within which the report or document is prepared, or presented, submitted, tabled or laid to or before a person or body,
 the report or document is a public document despite that non-compliance.
- (3) A defence established under subsection (1) is defeated if, and only if, the prosecution proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.
- (4) In this Section:

**‘public document’** means:

- (a) any report or paper published by a parliamentary body, or a record of votes, debates or other proceedings relating to a parliamentary body published by or under the authority of the body or any law;
- (b) any judgment, order or other determination of a court or arbitral tribunal of any country in civil proceeding and including:
  - (i) any record of the court or tribunal relating to the judgment, order or determination or to its enforcement or satisfaction; and
  - (ii) any report of the court or tribunal about its judgment, order or determination and the reasons for its judgment, order or determination;
- (c) any report or other document that under the law of any country:
  - (i) is authorised to be published; or
  - (ii) is required to be presented or submitted to, tabled in, or laid before, a parliamentary body;
- (d) any document issued by the Government, including a local government of a country, or by an officer, employee or agency of the government, for the information of the public;

- (e) any record or other document open to inspection by the public that is kept:
  - (i) by the Government of Nauru;
  - (ii) by a statutory authority of Nauru;
  - (iii) by a court of Nauru; or
  - (iv) under any written law of Nauru; or
- (f) an official report made by a person authorised to undertake an inquiry authorised by a written law of Nauru.

## 253 Defences of fair report of proceedings of public concern

- (1) A person is not criminally responsible for an offence against Section 250, if the defamatory matter was, or was contained in, a fair report of any proceedings of public concern.
- (2) A person is not criminally responsible for an offence against Section 250, if:
  - (a) the defamatory matter was, or was contained in, an earlier published report of proceedings of public concern;
  - (b) the defamatory matter was, or was contained in, a fair copy of, a fair summary of, or a fair extract from, the earlier published report; and
  - (c) the person had no knowledge that would reasonably make the person aware that the earlier published report was not fair.

*[Note for subsections (1) and (2): A defendant has an evidential burden in relation to the matters in subsections (1) and (2): see Section 26.]*

- (3) A defence established under subsection (1) or (2) is defeated if the prosecution proves that the defamatory matter was not published honestly for the information of the public or the advancement of education.
- (4) In this Section:
 

**‘proceedings of public concern’** means:

  - (a) any proceedings in public of a parliamentary body;
  - (b) any proceedings in public of an international organisation of any country or of the government of any country;
  - (c) any proceedings in public of an international conference at which the government of any country is represented;
  - (d) any proceedings in public of:
    - (i) the International Court of Justice, or any other judicial or arbitral tribunal, for the decision of any matter in dispute between nations; or
    - (ii) any other international judicial or arbitral tribunal;
  - (e) any proceedings in public of a court or arbitral tribunal of any country;
  - (f) any proceedings in public of an inquiry held under the law of any country or under the authority of the government of any country;
  - (g) proceedings of a learned society, or of a committee or governing body of the society, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Nauru about:
    - (i) a member or members of the society; or
    - (ii) a person subject by contract or otherwise by law to control by the society;
  - (h) proceedings of a sport or recreation association, or of a committee or governing body of the association, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Nauru about:

- (i) a member or members of the association; or
  - (ii) a person subject by contract or otherwise by law to control by the association;
- (i) proceedings of a trade association, or of a committee or governing body of the association, under its relevant objects, but only to the extent that the proceedings relate to a decision or adjudication made in Nauru about:
  - (i) a member or members of the association; or
  - (ii) a person subject by contract or otherwise by law to control by the association;
- (j) any proceedings of a public meeting, with or without restriction on the people attending, of shareholders of a corporation under the *Corporations Act 1972* held anywhere in Nauru;
- (k) any proceedings of a public meeting, with or without restriction on the people attending, held anywhere in Nauru if the proceedings relate to a matter of public interest, including the advocacy or candidature of a person for public office;
- (l) any proceedings of an ombudsman of any country if the proceedings relate to a report of the ombudsman; or
- (m) any proceedings in public of a law reform body of any country.

(5) In this Section:

**‘law reform body’** of a country, means a body, however described and whether or not permanent or full-time, established by law to conduct inquiries into, and to make recommendations on, reforming the laws of that country;

**‘learned society’** means a body, wherever formed:

- (a) the objects of which include the advancement of any art, science or religion or the advancement of learning in any field; and
- (b) authorised by its constitution:
  - (i) to exercise control over, or adjudicate on, matters connected with those objects; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Nauru;

**‘ombudsman’** of a country, means a person, however described and whether or not permanent or full-time, authorised by law to investigate complaints about the actions or other conduct of any public official or public body of that country;

**‘relevant objects’:**

- (a) of a learned society, means objects of the kind referred to in this subsection, definition of **learned society**, paragraph (a);
- (b) of a sport or recreation association, means objects of the kind referred to in this subsection, definition of **sport or recreation association**, paragraph (a); and
- (c) of a trade association, means objects of the kind referred to in this subsection, definition of **trade association**, paragraph (a);

**‘sport or recreation association’** means a body, wherever formed:

- (a) the objects of which include the promotion of any game, sport, or pastime to the playing of which or exercise of which the public is

admitted as spectators or otherwise and the promotion or protection of the interests of people connected with the game, sport, or pastime; and

- (b) authorised by its constitution:
  - (i) to exercise control over, or adjudicate on, matters connected with the game, sport, or pastime; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Nauru; and

**‘trade association’** means a body, wherever formed:

- (a) the objects of which include the promotion of any calling, that is to say, a trade, business, industry or profession and the promotion or protection of the interests of people engaged in any calling; and
- (b) authorised by its constitution:
  - (i) to exercise control over, or adjudicate on, matters connected with a calling or the conduct of people engaged in the calling; and
  - (ii) to make findings or decisions having effect, by law or custom, in any part of Nauru.

## 254 Defence of justification

A person is not criminally responsible for an offence against Section 250, if:

- (a) the defamatory matter was substantially true; and
- (b) it was for the public benefit that the matter should be published.

*[Note for this Section: A defendant has an evidential burden in relation to the matters in this Section: see Section 26.]*

### DIVISION 13.3 — OTHER OFFENCES

## 255 Unlawful vilification

- (1) A person (the **‘defendant’**) commits an offence, if:
  - (a) the defendant intentionally engages in conduct;
  - (b) the conduct is a public act;
  - (c) the defendant is reckless as to whether the act incites hatred towards, serious contempt for, or severe ridicule of, a person or group of people on the ground of their race or religion; and
  - (d) the defendant:
    - (i) by that act, intentionally threatens physical harm to, or towards the property of, the person or members of the group; or
    - (ii) is reckless about whether the act incites others to threaten such physical harm.

Penalty: 3 years imprisonment.

- (2) In a prosecution for an offence against this Section, it is not necessary to prove that the person threatened actually feared that the threat would be carried out.
- (3) A prosecution for an offence against this Section, shall not be started without the consent of the Director of Public Prosecutions.
- (4) Subsection (3) does not prevent:
  - (a) the arrest, or the issue of a warrant for the arrest, of a person for the offence; or
  - (b) the remanding in custody or on bail of a person charged with the offence.

(5) In this Section:

***‘public act’*** includes:

- (a) any form of communication to the public, including speaking, writing, printing, displaying notices, using the internet, broadcasting, telecasting, screening and playing of recorded material;
- (b) any conduct, other than a form of communication mentioned in paragraph (a), observable by the public, including actions and gestures and the wearing or display of clothing, signs, flags, emblems and insignia; and
- (c) the distribution or dissemination of any matter to the public.

## **256 Interference with political liberty**

A person commits an offence if the person, by threats or intimidation, hinders or interferes with the free exercise of a political right by another person.

Penalty:

- (i) if the person is acting in his or her capacity as a public official — 3 years imprisonment; or
- (ii) in any other case — 2 years imprisonment.

[The next page is 243,501]

## PART 14 — CRIMES AGAINST HUMANITY AND RELATED OFFENCES

### DIVISION 14.1 — SLAVERY

#### 257 Dealing with person as a commodity

- (1) A person commits an offence, if the person:
- (a) deals with a person (the **‘affected person’**) as, or for the purpose of making the affected person, a slave;
  - (b) permits another person to deal with a person (the **‘affected person’**) as, or for the purpose of making the affected person, a slave;
  - (c) induces a person (the **‘affected person’**) to deal with:
    - (i) themselves as, or for the purpose of making the affected person, a slave; or
    - (ii) any other person as, or for the purpose of making the affected person, a slave;
  - (d) in exchange for material benefit:
    - (i) causes a person, without the person’s consent, to marry another person; or
    - (ii) gives a person, without the person’s consent, to another person under an inheritance or otherwise;
  - (e) permits a child, for whom the person is a parent or guardian, to be put under the care or control of another person so that the child may be exploited; or
  - (f) deals with transport for the purpose of any activity mentioned in paragraphs (a) to (e).

Penalty: 25 years imprisonment.

- (2) In this Section:

**‘deal’** with:

- (a) a person includes:

- (i) sell, buy, transfer, barter, let, hire, employ or otherwise use the person; or
  - (ii) detain, take, receive, transport or import the person; and
- (b) transport includes build, fit out, sell, buy, transfer, let, hire, use, operate, navigate or work on the transport;

**‘debt-bondage’** means the status or condition arising from a person promising their personal services, or the personal services of another person under the person’s care or control, as security for a debt if:

- (a) the value of the services, as reasonably assessed, is not applied to the discharge of the debt; or
- (b) the period in which the services are to be provided, and the nature of the services, are not limited or defined;

**‘forced labour’** means the status or condition of a person who provides labour or personal services in circumstances in which a reasonable person in the same circumstances would not consider the person to be free to:

- (a) stop providing the labour or services; or

- (b) leave the place where the labour or services are provided, even if escape from the place is practically possible or the person has previously attempted escaping;

**‘serfdom’** means the status or condition of a person who is by law, custom or agreement:

- (a) required to live and work on land belonging to another person;
- (b) required to provide some determined service to the other person; and
- (c) not free to change that status or condition;

**‘slave’** means a person:

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

**‘transport’** means a ship, aircraft or any other form of transporting a person.

#### DIVISION 14.2 — TORTURE

### 258 Torture

- (1) A person commits an offence, if:
  - (a) the person engages in conduct that inflicts severe physical or mental pain or suffering on another person;
  - (b) the person engages in the conduct for the purpose of:
    - (i) obtaining information or a confession from the other person, or someone else;
    - (ii) punishing the other person for conduct that the other person, or someone else, has engaged in or is suspected of having engaged in;
    - (iii) intimidating or coercing the other person or someone else;
    - (iv) discrimination of any kind; or
    - (v) any purpose related to a purpose mentioned in subparagraphs (i) to (iv); and
  - (c) the person is:
    - (i) a public official or public official of another jurisdiction;
    - (ii) acting in an official capacity; or
    - (iii) acting at the instigation, or with the consent or acquiescence, of a person mentioned in subparagraph (i) or (ii).

Penalty: 25 years imprisonment.

- (2) Absolute liability applies to subsection (1)(c).
- (3) This Section does not apply to conduct engaged in by a person, if:
  - (a) the conduct is, or is an inherent or incidental part of, a lawful sanction; and
  - (b) the lawful sanction is consistent with the *Constitution*.
- (4) This Section applies:
  - (a) whether or not the conduct constituting the offence happens in Nauru; and
  - (b) whether or not a result of the conduct constituting the offence happens in Nauru.



**259 Exceptional circumstances or superior orders no defence**

- (1) It is not a defence to a prosecution for an offence against Section 258 that the conduct constituting the offence was engaged in because of:
  - (a) a necessity arising from the existence of a state of war, a threat of war, internal political instability, a public emergency or any other exceptional circumstance; or
  - (b) the orders of a superior officer or public authority.
- (2) In deciding how an offender should be sentenced for the offence, a court may take into account the matters mentioned in subsection (1).

**260 Consent to prosecution for torture offence**

- (1) A prosecution for an offence against Section 258 shall not be started without the consent of the Minister for Justice.
- (2) Subsection (1) does not prevent:
  - (a) the arrest, or the issue of a warrant for the arrest, of a person for the offence; or
  - (b) the remanding in custody or on bail of a person charged with the offence.

## DIVISION 14.3 — ROME STATUTE OFFENCES

**261 Meaning of ‘Rome Statute’**

In this Division:

*‘Rome Statute’* means the *Rome Statute of the International Criminal Court 1998*.

**262 Geographical jurisdiction for Rome Statute offences**

A person is criminally responsible for an offence under this Division regardless of:

- (a) the nationality or citizenship of the person accused;
- (b) whether or not any act forming part of the offence occurred in Nauru; or
- (c) whether or not the person accused was in Nauru at the time that the act constituting the offence occurred or at the time a decision was made to charge the person with an offence.

**263 Interpretation of Rome Statute offences**

For the purposes of interpreting an offence provision in this Division, a Nauruan court exercising jurisdiction in the proceeding:

- (a) may have regard to any elements of crimes adopted or amended in accordance with article 9 of the Rome Statute; and
- (b) may not have regard to any other offence provision in this Act outside this Division.

**264 Principles of criminal responsibility applying to Rome Statute offences**

- (1) For the purposes of a proceeding for an offence under this Division:
  - (a) the following provisions of the Rome Statute apply, with any necessary modifications:

- (i) article 20 (which relates to crimes for which a person has previously been acquitted or convicted);
- (ii) article 22(2) (which relates to principles of interpretation to be applied to the definition of crimes);
- (iii) article 24(2) (which relates to the effect of changes in the law);
- (iv) article 25 (which relates to principles of individual criminal responsibility);
- (v) article 26 (which relates to the exclusion of jurisdiction over persons under 18 years);
- (vi) article 28 (which relates to the responsibility of commanders and other superiors);
- (vii) article 29 (which excludes any statute of limitations);
- (viii) article 30 (which relates to the mental element of crimes);
- (ix) article 31 (which specifies grounds for excluding criminal responsibility);
- (x) article 32 (which relates to mistakes of fact or law); and
- (xi) article 33 (which relates to superior orders and prescription of law);
- (b) the law of Nauru and the principles of criminal responsibility applicable to the offence under the law of Nauru apply;
- (c) a person charged with the offence may rely on any justification, excuse, or defence available under the law of Nauru or under international law; and
- (d) despite paragraphs (b) and (c), the fact that an act done outside Nauru is not an offence under the law of the place where it was done is not a justification, excuse, or defence.
- (2) For the purposes of subsection (1)(a), the articles of the Rome Statute mentioned in that subsection (other than article 20) apply as if:
  - (a) a reference to the International Criminal Court were a reference to the Nauruan court exercising jurisdiction in relation to the proceeding; and
  - (b) a reference to the Rome Statute includes a reference to this Act.
- (3) Where there is any inconsistency between the provisions mentioned in subsection (1)(a) and the provisions and principles specified in subsection (1)(b) and (c), the provisions mentioned in subsection (1)(a) prevail.

## **265 Consent to prosecution for Rome Statute offence**

- (1) A prosecution for an offence against this Division shall not be started without the consent of the Minister for Justice.
- (2) Subsection (1) does not prevent:
  - (a) the arrest, or the issue of a warrant for the arrest, of a person for the offence; or
  - (b) the remanding in custody or on bail of a person charged with the offence.

## **266 Genocide**

- (1) A person commits an offence, if the person engages in an act of genocide.  
Penalty: life imprisonment.
- (2) In this Section:

**‘genocide’** means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group; or
- (e) forcibly transferring children of the group to another group.

## 267 Crimes against humanity

- (1) A person commits an offence, if the person engages in a crime against humanity.

Penalty: 25 years imprisonment.

- (2) In this Section:

**‘crime against humanity’** means any of the following acts when committed as part of a widespread or systemic attack directed against any civilian population, with knowledge of the attack:

- (a) murder;
- (b) extermination;
- (c) enslavement;
- (d) deportation or forcible transfer of population;
- (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) torture;
- (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognised as impermissible under international law, in connection with any act referred to in this subsection or any crime within the jurisdiction of the court;
- (i) enforced disappearance of persons;
- (j) the crime of apartheid; or
- (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

- (3) In subsection (2):

- (a) **‘attack directed against any civilian population’** means a course of conduct involving the multiple commission of acts referred to in subsection (2) against any civilian population, pursuant to or in furtherance of a State or organisational policy to commit such attack;
- (b) **‘deportation or forcible transfer of population’** means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (c) **‘enforced disappearance of persons’** means the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a political organisation, followed by a refusal to acknowledge that deprivation of freedom or to give

information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time;

- (d) **‘extermination’** includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (e) **‘enslavement’** means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (f) **‘forced pregnancy’** means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) **‘gender’** refers to the 2 sexes, male and female, within the context of society;
- (h) **‘persecution’** means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (i) **‘the crime of apartheid’** means inhumane acts of a character similar to those referred to in subsection (2), committed in the context of an institutionalised regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime; and
- (j) **‘torture’** means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused, except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

## 268 War crimes

(1) A person commits an offence, if the person engages in a war crime.

Penalty: 25 years imprisonment.

(2) In this Section:

**‘war crime’** means any of the following:

- (a) a grave breach of the *Geneva Conventions of 12 August 1949*, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:
  - (i) wilful killing;
  - (ii) torture or inhuman treatment, including biological experiments;
  - (iii) wilfully causing great suffering, or serious injury to body or health;
  - (iv) extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
  - (v) compelling a prisoner of war or other protected person to serve in the forces of a hostile power;
  - (vi) wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;

- (vii) unlawful deportation or transfer or unlawful confinement; or
- (viii) taking of hostages;
- (b) other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
  - (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) intentionally directing attacks against civilian objects, that is, objects which are not military objectives;
  - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the *Charter of the United Nations*, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated;
  - (v) attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives;
  - (vi) killing or wounding a combatant who, having laid down his arms or having no longer means of defence, has surrendered at discretion;
  - (vii) making improper use of a flag of truce, of the flag or of the military insignia and uniform of the enemy or of the United Nations, as well as of the distinctive emblems of the Geneva Conventions, resulting in death or serious personal injury;
  - (viii) the transfer, directly or indirectly, by the occupying power of parts of its own civilian population into the territory it occupies, or the deportation or transfer of all or parts of the population of the occupied territory within or outside this territory;
  - (ix) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (x) subjecting persons who are in the power of an adverse party to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xi) killing or wounding treacherously individuals belonging to the hostile nation or army;
  - (xii) declaring that no quarter will be given;

- (xiii) destroying or seizing the enemy's property unless such destruction or seizure be imperatively demanded by the necessities of war;
  - (xiv) declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party;
  - (xv) compelling the nationals of the hostile party to take part in the operations of war directed against their own country, even if they were in the belligerent's service before the commencement of the war;
  - (xvi) pillaging a town or place, even when taken by assault;
  - (xvii) employing poison or poisoned weapons;
  - (xviii) employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;
  - (xix) employing bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
  - (xx) employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to the *Rome Statute*, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123;
  - (xxi) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
  - (xxii) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in the Rome Statute, article 7, paragraph 2 (f), enforced sterilisation, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions;
  - (xxiii) utilising the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations;
  - (xxiv) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (xxv) intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including wilfully impeding relief supplies as provided for under the Geneva Conventions; or
  - (xxvi) conscripting or enlisting children under the age of 15 years into the national armed forces or using them to participate actively in hostilities;
- (c) in the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (i) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) committing outrages upon personal dignity, in particular humiliating and degrading treatment;
- (iii) taking of hostages; or
- (iv) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognised as indispensable; or
- (d) other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:
  - (i) intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
  - (ii) intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
  - (iii) intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the *Charter of the United Nations*, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
  - (iv) intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives;
  - (v) pillaging a town or place, even when taken by assault;
  - (vi) committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in the *Rome Statute*, article 7, paragraph 2 (f), enforced sterilisation, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
  - (vii) conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities;
  - (viii) ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (ix) killing or wounding treacherously a combatant adversary;
  - (x) declaring that no quarter will be given;
  - (xi) subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons; or

- (xii) destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict.
- (3) Subsection (2)(c) applies to armed conflicts not of an international character and does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.
- (4) Subsection (2)(d) applies to an armed conflict:
  - (a) not of an international character and does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature; and
  - (b) that takes place in the territory of a State when there is protracted armed conflict between governmental authorities and organised armed groups or between such groups.
- (5) Nothing in subsection (2)(c) and (d) affects the responsibility of a government to maintain or re-establish law and order in the State or to defend the unity and territorial integrity of the State, by all legitimate means.
- (6) Nothing in this Section affects or limits the operation of Section 3 of the *Geneva Conventions Act 1958*, which makes a grave breach of the Geneva Conventions an offence under the law of Nauru.

## 269 Superior orders

The fact that an offence against Section 268 has been committed by a person pursuant to an order of a government or of a superior, whether military or civilian, does not relieve the person of criminal responsibility unless:

- (a) the person was under a legal obligation to obey orders of the government or the superior in question;
- (b) the person did not know that the order was unlawful; and
- (c) the order was not manifestly unlawful.

[The next page is 243,701]



## PART 15 — ARREST, OFFENCES, PENALTIES AND SENTENCING

### DIVISION 15.1 — ARREST WITHOUT WARRANT

#### 270 Arrest without warrant — police

- (1) A police officer may arrest a person without warrant, if the police officer:
  - (a) suspects, on reasonable grounds, that the person has committed, is committing or is about to commit an offence against this Act; and
  - (b) considers that the arrest is reasonably necessary.
- (2) For the purposes of subsection (1)(b), an arrest may be considered reasonably necessary for one or more of the following reasons:
  - (a) because the police officer reasonably suspects the offence is punishable by imprisonment for more than 5 years;
  - (b) to stop the person committing, or repeating, the offence or another offence;
  - (c) to inquire into the person's identity if their identity cannot be established or the police officer believes on reasonable grounds that identity information given is false;
  - (d) to ensure the person appears before a court;
  - (e) to obtain evidence relating to the offence;
  - (f) to prevent the loss, concealment, destruction or fabrication of evidence relating to the offence;
  - (g) to protect the safety or welfare of a person;
  - (h) to prevent the harassment of, or interference with, a person who may give evidence in relation to the offence; or
  - (i) to prevent the suspect from fleeing from the police or the location of an offence.

#### 271 Arrest without warrant — other people

A person, other than a police officer, may arrest a person (the 'other person') without warrant, if the person:

- (a) suspects, on reasonable grounds, that the other person has just committed or is committing an offence against this Act that is punishable by imprisonment for more than 5 years; and
- (b) considers that the arrest is reasonably necessary.

### DIVISION 15.2 — OFFENCES AND PENALTIES

#### 272 Offences under 2 or more Acts

Where a conduct constitutes an offence under 2 or more Acts or 2 or more provisions under the same Act, the defendant is liable to be prosecuted and punished under any of those Acts or provisions, but is not liable to be punished more than once for the same conduct.

#### 273 Alternative verdicts

- (1) Where, on a trial for an offence mentioned in column 1 of the table in

Schedule 1 (the ‘**first offence**’), the court is not satisfied that the defendant is guilty of the first offence, but is satisfied beyond reasonable doubt that the defendant is guilty of an offence mentioned in column 2 of the table in Schedule 1 in relation to the first offence (an ‘**alternative offence**’), the court may find the defendant not guilty of the first offence but guilty of the alternative offence.

- (2) A defendant may be found guilty of an alternative offence only if the defendant has been afforded procedural fairness in relation to that finding of guilt.

[Note for this Section:

1. *Clauses (2) and (3) of Article 10 of the Constitution set out procedural requirements for a fair hearing.*
2. *A reference in Schedule 1 to an offence includes a reference to an offence under Division 3.4 (Extensions of criminal responsibility) that relates to the offence: see s 36.]*

## 274 Conversion of term of imprisonment to fine

- (1) This Section applies if:
- (a) a person is convicted of an offence; and
  - (b) the only penalty stated for the offence is a term of imprisonment.
- (2) The court may, instead of, or in addition to, the term of imprisonment, impose a fine:
- (a) in the case of the District Court, of not more than \$5,000; and
  - (b) in the case of the Supreme Court, of an amount that is not excessive and that the court considers appropriate.

[subs (2) am Act 40 of 2018 s 9, opn 18 Dec 2018]

## 275 Non-payment of fines

- (1) This Section applies if:
- (a) a court orders that a fine be paid by a person for an offence;
  - (b) the person does not pay the fine in accordance with the court order or any relevant law; and
  - (c) the court is satisfied that it is appropriate to re-sentence the person to serve a term of imprisonment.
- (2) The court may order the person to be imprisoned for a term not exceeding the lower of the following:
- (a) one day for each 80 cents of the fine remaining unpaid; or
  - (b) 6 months.

## 276 Penalty for continuation of offence

In addition to a penalty or fine that may be imposed in relation to an offence, a court may also impose a penalty for each day or part of a day during which the offence continues if:

- (a) the written law specifying the penalty or fine for the offence refers to the penalty or fine as a daily penalty or a daily fine; and
- (b) the reference indicates that a penalty or a fine not exceeding that daily penalty or daily fine may be imposed by the court.

## DIVISION 15.3 — SENTENCING

**277 Kinds of sentences**

Where a court finds a person guilty of an offence, it may, subject to any particular provision relating to the offence and subject to this Act, do any of the following:

- (a) record a conviction and order that the offender serve a term of imprisonment;
- (b) with or without recording a conviction, order the offender to pay a fine;
- (c) record a conviction and order the discharge of the offender;
- (d) without recording a conviction, order the dismissal of the charge for the offence; or
- (e) impose any other sentence or make any order that is authorised by this or any other written law of Nauru.

**278 Purposes of sentencing**

The purposes for which a court may impose a sentence on an offender are as follows:

- (a) to ensure that the offender is adequately punished for the offence;
- (b) to prevent crime by deterring the offender and other people from committing similar offences;
- (c) to protect the community from the offender;
- (d) to promote the rehabilitation of the offender;
- (e) to make the offender accountable for the offender's actions;
- (f) to denounce the conduct of the offender; and
- (g) to recognise the harm done to the victim and the community.

**279 Sentencing considerations — general**

- (1) In deciding the sentence to be passed, or the order to be made, in relation to a person for an offence against a law of Nauru, a court shall impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.
- (2) In addition to any other matters, the court shall take into account whichever of the following matters are relevant and known to the court:
  - (a) the nature and circumstances of the offence;
  - (b) any other offences required or permitted to be taken into account;
  - (c) if the offence forms part of a course of conduct consisting of a series of criminal acts of the same or a similar character, the course of conduct;
  - (d) any injury, loss or damage resulting from the offence;
  - (e) the personal circumstances of any victim of the offence;
  - (f) the effect of the offence on any victim of the offence;
  - (g) any victim impact statement available to the court;
  - (h) the degree to which the person has shown contrition for the offence by taking action to make reparation for any injury, loss or damage resulting from the offence or in any other way;
  - (i) if the person pleaded guilty to the charge for the offence, that fact;
  - (j) the degree to which the person cooperated in the investigation of the offence;
  - (k) the deterrent effect that any sentence or order may have on the person or on anyone else;

- (l) the need to ensure that the person is adequately punished for the offence;
  - (m) the character, antecedents, age, means and physical or mental condition of the person;
  - (n) the prospects of rehabilitation of the person;
  - (o) the probable effect that any sentence or other order under consideration would have on any of the person's family or dependants; or
  - (p) if the offence was committed by an adult in circumstances where the offending conduct was seen or heard by a child, other than another offender or a victim of the offence, those circumstances.
- (3) For the purposes of subsection (1), the appropriate severity of a sentence not only include mitigating factors but other aggravating considerations such as:
- (a) deterrence of prevailing nature of common crimes;
  - (b) the impact on the victims and the community; or
  - (c) matters that in the opinion of the court are appropriate for the prevention of prevailing or certain nature of offences or protection of the vulnerable members of the community.

[subs (3) insrt Act 29 of 2020 s 34, opn 23 Oct 2020]

## **280 Sentencing considerations — imprisonment**

A sentence of imprisonment may be imposed on a person only if:

- (a) in the opinion of the court:
  - (i) the person has shown a tendency to violence towards other people;
  - (ii) the person is likely to commit a serious offence if allowed to go at large;
  - (iii) the person has previously been convicted of an offence punishable by imprisonment;
  - (iv) any other sentence would be inappropriate having regard to the gravity or circumstances of the offence; or
  - (v) the protection of the community requires it; or
- (b) a sentence of imprisonment is necessary to give proper effect to Sections 278 and 279.

## **281 Sentencing considerations — fines**

- (1) Subject to Sections 278 and 279, if a court decides to fine a person for an offence, it shall take into account the following matters as far as possible in deciding the amount of the fine to be imposed:
  - (a) the means of the person; and
  - (b) the extent to which payment of the fine will burden the person.
- (2) A court may fine an offender even though it has been unable to find out about the matters in subsection (1).

## **282 Power to reduce penalties**

- (1) Where, under this Act, an offender is liable to life imprisonment, a court may nevertheless impose a sentence of imprisonment for a stated term.
- (2) Where, under this Act, an offender is liable to imprisonment for a stated term, a court may nevertheless impose a sentence of imprisonment for a lesser term.

- (3) Where, under this Act, an offender is liable to a fine of a stated amount, a court may nevertheless impose a fine of a lesser amount.
- (4) The power conferred on a court by this Section is not limited by any other provision of this Division.
- (5) This Section does not limit any discretion the court has, apart from this Section, in relation to the imposition of penalties.

**282A Pre-trial detention not to be taken into account in certain offences for sentencing purposes**

In determining the final term of imprisonment, the court shall not make provision to discount any period served in remand pending or prior to a trial, for offences under Part 7.

[s 282A insrt Act 29 of 2020 s 35, opn 23 Oct 2020]

[The next page is 243,901]

## **PART 16 — REGULATIONS**

### **283 Regulation making power**

The Cabinet may make regulations, not inconsistent with this Act, prescribing all matters that are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

[The next page is 244,101]



## PART 17 — TRANSITIONAL

### 284 Definitions — Part 17

In this Part:

*‘commencement day’* means the day this Act, Section 2 commences; and

*‘repealed Code’* means the *Criminal Code 1899* as in force immediately before the commencement day.

### 285 Application of this Act and repealed Code

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

### 286 General saving

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

[The next page is 244,301]

## PART 18 — AMENDMENT AND REPEAL OF LAWS

### **287 Acts amended**

Schedule 2 amends the Acts mentioned in it.

### **288 Repeals**

- (1) The *Criminal Code 1899* (as amended by Schedule 2) is repealed.
- (2) The *Summary Offences Act 1967* is repealed.

[The next page is 244,501]

## SCHEDULE 1

[Section 273]

### ALTERNATIVE VERDICTS

	<b>column 1: first offence</b>	<b>column 2: alternative offence</b>
1	Section 55 (murder)	Section 56 (manslaughter) Section 57 (causing death by criminal negligence) Section 66 (killing unborn child) Section 67 (concealing body of dead child)
2	Section 56 (manslaughter)	Section 57 (causing death by criminal negligence) Section 66 (killing unborn child) Section 67 (concealing body of dead child) <i>Motor Traffic Act 2014, Section 67A (dangerous driving occasioning death)</i>
3	Section 57 (causing death by criminal negligence)	Section 66 (killing unborn child) Section 67 (concealing body of dead child)
4	Section 60 (aiding or abetting suicide)	Section 61 (encouraging suicide)
5	Section 66 (killing unborn child)	Section 67 (concealing body of dead child) Section 68 (carrying out abortion) Section 69 (supplying items for miscarriage)
6	Section 68 (carrying out abortion)	Section 66 (killing unborn child) Section 69 (supplying items for miscarriage)
7	Division 5.1 — Assault	A person found not guilty of the offence charged may be found guilty of any other offence in Division 5.1 that is proven on the evidence provided that the maximum penalty for the alternative offence is equal to or less than the maximum penalty for the offence charged.
8	Section 76 (causing harm to public official)	Section 242 (obstructing public official)
9	Section 77 (causing harm to police officer)	Section 242 (obstructing public official)
10	Section 87 (kidnapping)	Section 88 (deprivation of liberty) Section 89 (removing child unlawfully)
11	Section 88 (deprivation of liberty)	Section 89 (removing child unlawfully)

12	Section 91 (threatening to kill)	Section 92 (threatening to cause serious harm) Section 93 (threatening to cause serious harm to public official)
13	Section 93 (threatening to cause serious harm to public official)	Section 92 (threatening to cause serious harm) Section 242 (obstructing public official)
14	Section 94 (neglecting child or vulnerable adult)	Section 95 (failure to protect child or vulnerable adult)
15	Section 95 (failure to protect child or vulnerable adult)	Section 94 (neglecting child or vulnerable adult)
16	Part 7 — Sexual Offences	A person found not guilty of the offence charged may be found guilty of any other offence in Part 7 that is proven on the evidence provided that the maximum penalty for the alternative offence is equal to or less than the maximum penalty for the offence charged.
17	Section 140 (dealing with abuse material)	Section 139 (dealing with pornography) Section 146 (distributing image of private act)
18	Section 139 (dealing with pornography)	Section 140 (dealing with abuse material) Section 146 (distributing image of private act)
19	Section 141 (involving child to produce or perform in offensive material)	Section 122 (taking images of private acts of child) Section 123 (taking images of private parts of child) Section 124 (installing device to facilitate observation or image-taking of child) Section 142 (dealing with offensive material involving child) Section 143 (exposing child to offensive material)
20	Section 146 (distributing image of private act)	Section 139 (dealing with pornography) Section 147 (threatening to distribute image of private act)
21	Section 155 (theft in fiduciary relationship)	Section 154 (theft) Section 165 (receiving) Section 167 (obtaining property by deception) Section 168 (obtaining financial advantage or causing financial disadvantage by deception)

22	Section 154 (theft)	Section 157 (making off without payment) Section 162 (going equipped for theft etc) Section 163 (going equipped with offensive weapon for theft etc) Section 165 (receiving) Section 167 (obtaining property by deception) Section 168 (obtaining financial advantage or causing financial disadvantage by deception)
23	Section 156 (looting)	Section 154 (theft) Section 162 (going equipped for theft etc) Section 163 (going equipped with offensive weapon for theft etc) Section 165 (receiving)
24	Section 157 (making off without payment)	Section 154 (theft)
25	Section 158 (robbery)	Section 154 (theft) Section 162 (going equipped for theft etc) Section 163 (going equipped with offensive weapon for theft etc) Section 165 (receiving)
26	Section 159 (aggravated robbery)	Section 154 (theft) Section 158 (robbery) Section 162 (going equipped for theft etc) Section 163 (going equipped with offensive weapon for theft etc) Section 165 (receiving)
27	Section 160 (burglary)	Section 154 (theft) Section 162 (going equipped for theft etc) Section 163 (going equipped with offensive weapon for theft etc) Section 164 (being found in certain places without lawful authority or excuse) Section 165 (receiving)
28	Section 161 (aggravated burglary)	Section 154 (theft) Section 160 (burglary) Section 162 (going equipped for theft etc) Section 163 (going equipped with offensive weapon for theft etc) Section 164 (being found in certain places without lawful authority or excuse) Section 165 (receiving)
29	Section 167 (obtaining property by deception)	Section 154 (theft) Section 165 (receiving)

30	Section 168 (obtaining financial advantage or causing financial disadvantage by deception)	Section 154 (theft) Section 155 (theft in fiduciary relationship) Section 165 (receiving)
31	Section 173 (bribery)	Section 174 (giving or receiving other corrupting benefits) Section 175 (bribery of foreign public official) Section 176 (bribery outside Nauru of foreign public official) Section 178 (abuse of public office)
32	Section 178 (abuse of public office)	Section 173 (bribery) Section 174 (giving or receiving other corrupting benefits) Section 175 (bribery of foreign public official) Section 176 (bribery outside Nauru of foreign public official) Section 179 (embezzlement)
33	Section 181 (blackmail)	Section 202 (threatening to damage property — fear of death or serious harm) Section 203 (threatening to damage property)
34	Section 182 (aggravated blackmail)	Section 181 (blackmail) Section 183 (unwarranted demand on public official) Section 202 (threatening to damage property — fear of death or serious harm) Section 203 (threatening to damage property)
35	Section 183 (unwarranted demand on public official)	Section 181 (blackmail)
36	Division 9.6 — Forgery	A person found not guilty of the offence charged may be found guilty of any other offence in Division 9.6 that is proven on the evidence provided that the maximum penalty for the alternative offence is equal to or less than the maximum penalty for the offence charged.
37	Division 9.8 — Identity Crimes	A person found not guilty of the offence charged may be found guilty of any other offence in Division 9.8 that is proven on the evidence provided that the maximum penalty for the alternative offence is equal to or less than the maximum penalty for the offence charged.



38	Section 199 (sabotage)	Section 200 (threatening to sabotage) Section 201 (damaging property) Section 204 (possessing article with intent to damage property) Section 205 (Arson) Section 216 (endangering transport)
39	Section 170 (dishonestly damaging property)	Section 201 (damaging property) Section 202 (threatening to damage property — fear of death or serious harm) Section 203 (threatening to damage property) Section 204 (possessing article with intent to damage property) Section 206 (marking graffiti on property)
40	Section 201 (damaging property)	Section 203 (threatening to damage property) Section 204 (possessing article with intent to damage property) Section 206 (marking graffiti on property)
41	Section 202 (threatening to damage property — fear of death or serious harm)	Section 203 (threatening to damage property)
42	Section 205 (arson)	Section 170 (dishonestly damaging property) Section 201 (damaging property) Section 204 (possessing article with intent to damage property)
43	Section 212 (possession of firearm in public place)	Section 211 (possession of firearm)
44	Section 213 (unlawful entry of property with firearm)	Section 163 (going equipped with offensive weapon for theft etc) Section 164 (being found in certain places without lawful authority or excuse) Section 211 (possession of firearm) Section 247 (forcible entry and possession of land)
45	Section 214 (recklessly discharging firearm)	Section 81 (risking serious harm) Section 83 (risking harm)
46	Section 216 (endangering transport)	Section 170 (dishonestly damaging property) Section 201 (damaging property)
47	Section 217 (piracy)	Section 216 (endangering transport) Section 218 (operating a pirate-controlled ship or aircraft)
48	Section 218 (operating a pirate-controlled ship or aircraft)	Section 216 (endangering transport)

49	Section 222 (perjury)	Section 223 (making false sworn statement) Section 224 (making false statement) Section 227 (perverting the course of justice)
50	Section 223 (making false sworn statement)	Section 224 (making false statement)
51	Section 227 (perverting the course of justice)	Section 222 (perjury) Section 223 (making false sworn statement) Section 224 (making false statement)
52	Section 230 (damage place of custody for purpose of escape)	Section 229 (escape from custody) Section 231 (assist escape from custody) Section 232 (permit escape from custody) Section 233 (assist prisoner of war, internee, or parolee to escape) Section 234 (harbouring escaped prisoner)
53	Section 231 (assist escape from custody)	Section 230 (damage place of custody for purpose of escape) Section 232 (permit escape from custody) Section 233 (assist prisoner of war, internee, or parolee to escape) Section 234 (harbouring escaped prisoner)
54	Section 233 (assist prisoner of war, internee, or parolee to escape)	Section 230 (damage place of custody for purpose of escape) Section 231 (assist escape from custody) Section 232 (permit escape from custody) Section 234 (harbouring escaped prisoner)
55	Section 234 (harbouring escaped prisoner)	Section 230 (damage place of custody for purpose of escape) Section 231 (assist escape from custody) Section 232 (permit escape from custody) Section 233 (assist prisoner of war, internee, or parolee to escape)
56	Section 235 (treason)	Section 236 (concealment of treason) Section 237 (provoking mutiny)
57	Section 244 (unlawful assembly)	Section 248 (public nuisance)
58	Section 245 (rioting)	Section 244 (unlawful assembly) Section 248 (public nuisance)
59	Section 246 (riotous damage)	Section 201 (damaging property) Section 244 (unlawful assembly) Section 245 (rioting) Section 248 (public nuisance)

60	Section 238 (interference with members of Parliament)	Section 239 (disturbing Parliament) Section 240 (unlawful possession of offensive weapon in precincts of Parliament) <i>Parliamentary Powers, Privileges and Immunities Act 1976</i> , Section 18 and Section 19(a), 19(e), 19(g)
61	Section 239 (disturbing Parliament)	Section 238 (interference with members of Parliament) Section 240 (unlawful possession of offensive weapon in precincts of Parliament) <i>Parliamentary Powers, Privileges and Immunities Act 1976</i> , Sections 18 and 19(a), 19(e), 19(g)
62	Section 257 (dealing with person as a commodity)	Section 88 (deprivation of liberty)
63	Section 258 (torture)	Section 71 (intentionally causing serious harm) Section 74 (intentionally causing harm)

[The next page is 244,701]

## SCHEDULE 2

[Section 287]

### AMENDMENTS

#### PART 1 — ADOPTION OF CHILDREN ACT 1965

**1 Section 17(8)**

*omit*

Sections 222 and 223 of the *Criminal Code 1899*

*substitute*

Section 114 of the *Crimes Act 2016*

#### PART 2 — APPEALS ACT 1972

**2 New Section 36A**

*insert*

**Appeal from Arrest of Judgment**

**36A** (1) If the District Court arrests judgment, the Court shall, on application of counsel for the prosecution, reserve a case for consideration of the Supreme Court.

(2) On the hearing of the case, the Supreme Court may affirm or reverse the order arresting judgment.

(3) If the Court reverses the order:

(a) the Court shall direct that judgment be pronounced on the offender and order the offender to appear at a stated place and time to receive judgment; and

(b) any magistrate may issue a warrant for arrest of the offender.

(4) An offender so arrested may be admitted to bail by order of the Court or a judge of the Court made when the Court directs that judgment be pronounced or at a later time.

#### PART 3 — ASYLUM SEEKERS (REGIONAL PROCESSING CENTRE) ACT 2012

**3 Section 20(2)**

*omit*

*Criminal Code 1899*

*substitute*

*Crimes Act 2016*

**4 Section 20(2) example**

*omit*

Section 261 of the *Criminal Code 1899* and Section 11(2) of the *Criminal Procedure Act 1972*

*substitute*

Sections 11(2) and 42B of the *Criminal Procedure Act 1972*

**PART 4 — CIVIL AVIATION ACT 2011****5 Sections 132 and 155(1)(b)**

*omit each mention of*  
Criminal Code  
*substitute*  
*Crimes Act 2016*

**PART 5 — COURTS ACT 1972****6 New Section 43A**

*insert in part V*

**Execution of sentence**

**43A** is lawful for a person who is charged by law with the duty of executing or giving effect to the lawful sentence of a Court to execute or give effect to that sentence.

**7 New Sections 45A and 45B**

*insert in part VI*

**Execution of process**

**45A** is lawful for a person who is charged by law with the duty of executing the lawful process of a Court and who is required to arrest or detain another person under that process, and for every person lawfully assisting a person so charged, to arrest or detain the other person according to the terms of the process.

**Execution of warrants**

**45B** is lawful for a person who is charged by law with the duty of executing a lawful warrant issued by a Court or magistrate or other person having jurisdiction to issue it, and who is required to arrest or detain another person under the warrant, and for every person lawfully assisting a person so charged, to arrest or detain the other person according to the terms of the warrant.

[This Act has been repealed by the *Supreme Court Act 2018* and this has been left as a historical note].

**PART 6 — CRIMINAL CODE 1899****8 Section 19C(1)**

*omit*  
under Section 19B of this Code  
*substitute*  
under Section 9A

**9 Section 19C(3)**

*omit*  
provisions of this Code  
*substitute*  
provisions of this Act and the *Crimes Act 2016*

**10 Section 19E**

*omit*

provisions of this Code

*substitute*

provisions of this Act

**11 Sections 19B to 20 (as amended)**

*relocate to the Criminal Procedure Act 1972, part IIA as Sections 9A to 9E*

**12 Section 250**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144A*

**13 Section 251**

*omit*

, under the provisions of the last four preceding Sections,

**14 Section 251 (as amended)**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144B*

**15 Section 252**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144C*

**16 Section 253**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144D*

**17 Section 254**

*omit*

, or in making any arrest

**18 Section 254**

*omit*

or arrest

**19 Section 254 (as amended)**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144E*

**20 Section 255**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144F*

**21 Section 362**

*omit*

, and to a fine of two hundred pounds

**22 Sections 361 and 362 (as amended)**

*relocate to the Births, Deaths and Marriages Act 1957, part IV as Sections 27A and 27B*

**23 Section 573**

*omit each mention of*

indictment  
*substitute*  
information

**24 Section 573 (as amended)**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144G*

**25 Section 583**

*omit the 1st and 4th paragraphs*

**26 Section 583**

*omit each mention of*  
indictment  
*substitute*  
information

**27 Section 583 (as amended)**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144H*

**28 Section 590**

*omit*  
before any Court for any indictable offen  
*substitute*  
before the Supreme Court

**29 Section 590**

*omit*  
indictment  
*substitute*  
information

**30 Section 590 (as amended)**

*relocate to the Criminal Procedure Act 1972, part VII as Section 186A*

**31 Section 593**

*omit each mention of*  
indictment  
*substitute*  
information

**32 Section 593 (as amended)**

*relocate to the Criminal Procedure Act 1972, part VII as Section 186B*

**33 Section 596**

*omit each mention of*  
indictment



*substitute*  
information

**34 Section 596 (as amended)**

*relocate to the Criminal Procedure Act 1972, part VIII as Section 190A*

**35 Section 627**

*omit 1st paragraph, substitute*

This Section applies if the presiding Judge becomes incapable of proceeding with the trial.

**36 Section 627 (as amended)**

*relocate to the Criminal Procedure Act 1972, part IX as Section 212A*

**37 Section 632**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144I*

**38 Section 634**

*omit each mention of*  
indictment  
*substitute*  
information

**39 Section 634 (as amended)**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144J*

**40 Section 639**

*omit*  
indictment  
*substitute*  
information

**41 Section 639 (as amended)**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144K*

**42 Section 643**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144L*

**43 Section 650**

*relocate to the Criminal Procedure Act 1972, part IV as Section 144M*

**44 Section 671H(1) and (2)**

*omit each mention of*  
Court  
*substitute*  
Supreme Court

- 45 Section 671H(4)**  
*omit*
- 46 Section 671H (as amended)**  
*relocate to the Appeals Act 1972 as Section 9A.*
- 47 Section 683**  
*omit*  
If the thing seized or taken  
*substitute*  
If a thing seized or taken under this Act
- 48 Section 683 (as amended)**  
*relocate to the Criminal Procedure Act 1972, part III as Section 17A*
- 49 Section 702**  
*relocate to the Criminal Procedure Act 1972, part IX as Section 218A*  
[This Act has been repealed and this has been left as a historical note].

## **PART 7 — CRIMINAL PROCEDURE ACT 1972**

- 50 Section 2, definition of ‘sentence’**  
*omit*  
Part I of the *Criminal Code 1899*  
*substitute*  
Division 15.3 of the *Crimes Act 2016*
- 51 Sections 3 to 8**  
*omit each mention of*  
*Criminal Code 1899*  
*substitute*  
*Crimes Act 2016*
- 52 New Section 15A**  
*insert*  
**Examination of person in custody**  
**15A** (1) This Section applies if a person is in lawful custody charged with an offence and there are reasonable grounds for believing that an examination of the private person of the person will provide evidence relevant to the commission of the offence.  
(2) It is lawful for a legally qualified medical practitioner, acting at the request of a police officer, and for anyone assisting under the medical practitioner’s direction:  
(a) to carry out an examination of the private person of the person that is reasonably necessary for the purpose of obtaining evidence relevant to the commission of the offence; and  
(b) to use the force that is reasonable and necessary for that purpose.
- 53 New Part IIA heading**  
*insert*

## PART IIA — ENFORCEMENT

**54 New Sections 42A to 42D***insert in Part III***Prevention of unlawful assembly****42A** (1) It is lawful for a person who witnesses an unlawful assembly:

- (a) to interfere to prevent the continuance or renewal of it, using the force that is reasonably necessary for that purpose and proportionate to the danger from the assembly; and
- (b) to detain a person who is committing or about to join in or renew the unlawful assembly for the period that is reasonably necessary to give the person into the custody of a police officer.

(2) It is lawful for a police officer who witnesses an unlawful assembly, and for anyone lawfully assisting the police officer, to arrest a person the officer:

- (a) finds taking part in the unlawful assembly; or
- (b) believes on reasonable grounds to be about to join in or renew the unlawful assembly.

(3) It is lawful for a police officer to receive and detain in custody a person given into the officer's custody as having taken part in an unlawful assembly.

**Suppression of riot****42B** is lawful for a person to suppress a riot, using the force that is reasonably necessary for that purpose and proportionate to the danger from the riot.**Suppression of riot by magistrates and police officers****42C** is lawful for a magistrate to use or order to be used, and for a police officer to use, the force the magistrate or police officer believes on reasonable grounds to be necessary to suppress a riot and proportionate to the danger from the riot.**Suppression of riot by person acting under lawful orders****42D** (1) It is lawful for a person acting in good faith under orders, not manifestly unlawful, given by a magistrate for the suppression of a riot, to use the force the person believes on reasonable grounds to be necessary for carrying out the orders.

(2) The question whether an order is or is not manifestly unlawful is a question of law.

**55 Section 61(4)***omit*Section 19A of the *Criminal Code 1899**substitute*Section 276 of the *Crimes Act 2016***56 Sections 88(3) and 92(1)(c)***omit**Criminal Code 1899**substitute**Crimes Act 2016***57 Section 92(1)(e)***omit*

Chapters XXXVI to XLIV, inclusive, of the *Criminal Code 1899*  
*substitute*

Division 9.2, 9.3 or 9.5 of the *Crimes Act 2016*

**58 Section 97**

*omit*

Section 16 of the *Criminal Code 1899*

*substitute*

Section 273 (Offences under 2 or more Acts) of the *Crimes Act 2016*

**59 Section 105(1)(b)**

*omit*

Chapter XXII or Section 360 of the *Criminal Code 1899*

*substitute*

Part 7 (Sexual offences) or Section 149 (Bigamy) of the *Crimes Act 2016*

**60 Sections 110 and 111**

*omit*

Section 27 of the *Criminal Code 1899*

*substitute*

Section 42 of the *Crimes Act 2016*

**61 Section 116**

*omit*

*Criminal Code 1899*

*substitute*

*Crimes Act 2016*

**62 Section 125**

*omit*

Chapters XXXVI to XLIV, inclusive, of the *Criminal Code 1899*

*substitute*

Division 9.2, 9.3 or 9.5 of the *Crimes Act 2016*

**63 Sections 131 to 143**

*omit*

**64 Section 220(1)**

*omit*

and those provisions of the *Criminal Code 1899* which relate to the jurisdiction,  
 practice or procedure of the Courts

**PART 8 — CUSTOMS ACT 2014**

**65 Sections 166 and 210**

*omit*

Section 154 or 155 of the *Crimes Act 2013*

*substitute*

Section 57, 58 or 64 of the *Counter Terrorism and Transnational Organised Crimes Act 2004*

**66 Section 268(m) and (n)**

*omit*

*Criminal Code 1899*

*substitute*

*Crimes Act 2016*

**PART 9 — FISHERIES ACT 1997**

**67 Sections 22(8), 23(3) and 24(5)**

*omit*

Section 24 (Mistake of Fact) of the *Criminal Code 1899* is

*substitute*

Sections 44 and 45 of the *Crimes Act 2016* are

**68 Section 26(4)**

*omit*

Section 24 of the *Criminal Code* is

*substitute*

Sections 44 and 45 of the *Crimes Act 2016* are

**PART 10 — INSOLVENCY ACT 1912**

**69 Sections 98 and 188**

*omit*

Chapter LIII of the *Criminal Code*

*substitute*

Division 9.3 of the *Crimes Act 2016*

**70 Section 188**

*omit*

provisions of the *Criminal Code*

*substitute*

provisions of the *Crimes Act 2016*

**PART 11 — INTERPRETATION ACT 2011**

**71 Section 65, definition of ‘Criminal Code 1899’**

*omit*

**PART 12 — LAWS REPEAL AND ADOPTING ACT 1922**

**72 Section 12 and Schedule 2**

*omit*

**PART 13 — LEGAL PRACTITIONERS ACT 1973***[Repealed]*

[Pt 13 omitted by the Law Revision Commission under powers authorised by Act 10 of 2019.]

**PART 14 — MOTOR TRAFFIC ACT 2014****75 Section 75***omit*

Section 328 of the *Criminal Code of Queensland* in its application to Nauru

*substitute*

Section 73 of the *Crimes Act 2016*

**PART 15 — REFERENDUM PROCEDURES ACT 2009****76 Section 28***omit***77 Section 29(2)***omit*

Criminal Code

*substitute*

*Crimes Act 2016*

[The next page is 280,001]