



Tuvalu

**COUNTER TERRORISM AND  
TRANSNATIONAL ORGANISED CRIME  
ACT 2009**





Tuvalu

## COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME ACT 2009

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Tuvalu

# COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME ACT 2009

Act No. 6 of 2009

## AN ACT TO MAKE PROVISIONS TO COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME IN TUVALU AND FOR RELATED MATTERS

ENACTED BY THE PARLIAMENT OF TUVALU  
30th November, 2009

Commencement [3rd December, 2009]

### PART 1 - PRELIMINARY

#### 1 Short title and commencement

- (1) This Act shall be cited as the Counter Terrorism and Transnational Organised Crime Act 2009.
- (2) This Act shall come into force on a date to be published on exhibition.

#### 2 Principal objects

The principal objects of this Act are:

- (a) to implement the United Nations Security Council Resolutions and Conventions dealing with terrorism and transnational organized crime; and
- (b) to prevent terrorists from operating in Tuvalu; and

- (c) to prevent persons in Tuvalu from taking part in terrorist activities or supporting terrorism.

### 3 Interpretation

- (1) In this Act, unless the context otherwise requires:

“**aircraft**” means any aircraft, whether or not a Tuvalu-controlled aircraft, other than an aircraft in the military, customs or police services;

“**authorized officer**” means-

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

“**child**” means a person under 18 years;

“**commander**”, for an aircraft, means the person who is for the time being in command of the aircraft;

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

“**consular office**” means a consular office of Tuvalu, including a consul-general, consul, pro-consul and consular agent of Tuvalu;

“**Convention country**” means a country that is declared by the Minister, by Order published in the Gazette, to be a party to a Convention;

“**counter terrorism convention**” means an instrument mentioned in Schedule 1;

“**Court**” means the High Court of Tuvalu ;

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

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

“**entity**” means a person, group, trust, partnership, fund or unincorporated association or organization;

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



**“explosive or other lethal device”** means-

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

**“financial institution”** means a person that carries on a business of any of the following:

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

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

**“forfeiture order”** means an order made by the Court under section 27;

**“fraudulent travel or identity document”** means a travel or identity document that:

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

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

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

“**illegal entry**” means entering Tuvalu or any other country without complying with the requirements for lawful entry of that country;

“**international nuclear transport**” means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the country where the ship originates:

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

“**international organization**” means an organization of States or Governments of States or any organ or any agency of any organization of that kind;

“**internationally protected person**” means:

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

“**landing**” includes alighting on water;

“**material benefit**” includes any type of financial or non-financial inducement, payment, bribe, reward, advantage or service;

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

“**military aircraft**” means an aircraft of the naval, military or air forces of any country;

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

“**military service**” includes naval and air force service;

“**Minister**” means the Minister responsible for Foreign Affairs;

“**Montreal Convention**” means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971;

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

“**Nuclear, chemical or biological weapon**” means:

- (a) nuclear weapons and other nuclear explosive devices;
- (b) chemical weapon which are, together or separately:
  - (i) toxic chemicals and their precursors, except where intended for:
    - (A) industrial, agricultural, research, medical pharmaceutical, or other peaceful purposes; or
    - (B) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons; or
    - (C) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or
    - (D) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes:
  - (ii) munitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (i), which would be released as a result of the employment of such munitions and devices:

- (iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii):
- (c) biological weapons which are:
  - (i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective or other peaceful purposes; or
  - (ii) weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict;

“**nuclear facility**” means:

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

“**nuclear materials**” means any of the following:

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

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

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

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

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

“**people smuggling**” means the arranging or assisting of an unauthorized person’s illegal entry into any country;

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

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

“**plastic explosive**” means an explosive that:

- (a) is formulated with 1 or more high explosives that in their pure form have a vapour pressure less than 10<sup>-4</sup> Pa at a temperature of 25 °C; and
- (b) is formulated with a binder material; and
- (c) is, when mixed, malleable or flexible at normal room temperature;

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

“**premises**” includes the whole or any part of a structure, building, craft or vehicle;

“**privileged communication**” means a confidential communication, whether made directly or indirectly through an agent:

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

“**property**” includes:

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible; and
- (b) legal documents or instruments in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travelers, cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“**public officer**” has the same meaning given to it under section 10 of the Interpretation Act (Cap.1A);

“**radioactive device**” means:

- (a) any nuclear explosive device; or
- (b) any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, serious bodily injury or substantial damage to property or to the environment.

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

“**receiving country**” means:

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

“**registrable property**” means property the title to which is passed by registration on a register kept under a law in force in Tuvalu;

“**ship**” means a vessel that is not permanently attached to the sea bed:

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

“**specified entity**” means a person or entity:

- (a) that is a United Nations listed entity as described in section 5; or
- (b) for which a declaration under section 6 has been made;

“**specified means**” means any of the following:

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

“**terrorist act**” has the meaning given by section 4;

“**terrorist group**” means:

- (a) an entity that has as 1 of its activities or purposes committing, or facilitating the commission of, a terrorist act; or
- (b) a group that is a specified entity;

“**terrorist property**” means:

- (a) property that has been, is being, or is likely to be used to commit a terrorist act; or
- (b) property that has been, is being, or is likely to be used by a terrorist group; or
- (c) property owned or controlled, or derived or generated from property owned or controlled, by or on behalf of a specified entity;

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

“**trafficked person**” means a person who is the victim of trafficking in persons;

“**trafficking in persons**” means the recruitment, transportation, transfer, harbouring or receipt of a person for the purpose of exploitation;

“**Transaction Tracking Unit**” has the same meaning given to it under the Proceeds of Crime Act 2004;

“**Tuvalu-controlled aircraft**” means an aircraft that is for the time being registered in Tuvalu;

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

“**unlawful employee**”, for an employer, means a person whom the employer knows or ought reasonably to know, is not entitled under the Immigration Act (Cap.77);

“**unmarked plastic explosive**” means a plastic explosive that:

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

“**weapon**” includes a firearm, chemical, biological or nuclear weapon;

(2) For this Act:

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

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

#### **4 Interpretation of a terrorist act**

- (1) For this Act:

“terrorist act” means an act or omission in or outside Tuvalu that:

  - (a) constitutes an offence within the scope of a counter terrorism convention; or
  - (b) is mentioned in subsection (2).
- (2) For paragraph (1)(b), the act or omission:
  - (a) must:
    - (i) involve death or serious bodily injury to a person; or
    - (ii) involve serious damage to property; or
    - (iii) endanger a person’s life; or
    - (iv) create a serious risk to the health or safety of the public or a section of the public; or
    - (v) involve the use of weapons; or
    - (vi) involve introducing into the environment, disturbing or exposing the public to any:
      - (A) dangerous, hazardous, radioactive or harmful substance; or
      - (B) toxic chemical; or
      - (C) microbial or other biological agent or toxin; or
    - (vii) involve serious disruption to any system or the provision of services directly related to essential infrastructure; and



- (b) must be intended or, by its nature and context, reasonably be regarded as being intended:
  - (i) to intimidate the public or a section of the public; or
  - (ii) to compel a government or an international organization to do; or refrain from doing, any act; and
- (3) However an act or omission mentioned in subsection (2) does not include an act or omission that:
  - (a) is committed as part of an advocacy, protest, demonstration, dissent or industrial action and is not intended to result in any harm mentioned in subparagraph (2)(i), (ii), (iii), (iv), (v) or (vi); or
  - (b) occurs in a situation of armed conflict and is, at the time and in the place it occurred, in accordance with rules of international law applicable to the conflict.

## **PART 2 – SPECIFIED ENTITIES**

### **5 United Nations listed entities to be specified entities**

- (1) For the purposes of this Act, the entities listed from time to time by the Security Council of the United Nations as terrorist entities are “specified entities”.
- (2) The Minister must, by notice published in the Gazette, give notice of the list of terrorist entities referred to in subsection (1), and continue to give notice as and when the Security Council of the United Nations adds or removes any terrorist entity from that list.
- (3) A list of the United Nations terrorist entities prepared and certified by the Minister is deemed to be prima facie evidence that the list is a correct list of entities by the Security Council of the United Nations as terrorist entities.

### **6 Declarations that certain entities are specified entities**

- (1) Subject to subsection (2), the Attorney General may declare an entity to be a specified entity.
- (2) In acting under subsection (1) the Attorney General must have reasonable grounds to believe that:
  - (a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act; or
  - (b) an entity is knowingly acting on behalf of, at the direction of, or in association with an entity mentioned in paragraph (a); or

- (c) an entity (other than an individual) is wholly owned or effectively controlled directly or indirectly by an entity mentioned in paragraph (a) or (b).
- (3) The declaration must be published in the Gazette.

## **7 Revocation of declarations**

- (1) The Attorney General must revoke a declaration under section 6 where there are reasonable grounds to do so.
- (2) A revocation under subsection (1) must be published in the Gazette.

## **8 Judicial review**

- (1) Upon application by a specified entity the Court may revoke a declaration under section 6 concerning the specified entity.
- (2) The Court must:
  - (a) If the Court decides that there are reasonable grounds for the Attorney General's actions under section 6, dismiss the application.
  - (b) If the Court decides that there are no reasonable grounds for the Attorney General's actions under section 6, revoke the declaration.
- (3) Where the Court revokes a declaration the Attorney General must publish notice of the revocation in the Gazette.

## **9 Procedure**

For a hearing under this Part:

- (1) The specified entity must give reasonable written notice of the application to the Attorney General.
- (2) The Court:
  - (a) must hear from the Attorney General;
  - (b) may hear any evidence or information presented by the Attorney General in the absence of the specified entity or counsel representing the specified entity, or the public, if the Court thinks that disclosure of the information would prejudice national security or endanger the safety of any person;
  - (c) may receive in evidence anything that would not otherwise be admissible as evidence (including information from any source) that the Court thinks is reliable and relevant; and
  - (d) where the Court acts under paragraph (b), give the specified entity a statement summarizing the information available to the Court, without

disclosing any information that the Court thinks could prejudice national security or endanger the safety of any person.

## 10 Appeal

The Attorney General or a specified entity may appeal to the Court of Appeal against a decision made by a Court under this Part.

## PART 3 – OFFENCES

### 11 Terrorism financing

- (1) A person must not provide or collect, by any means, directly or indirectly, any property, intending, knowing or having reasonable grounds to believe that the property will be used, in full or in part, to carry out a terrorist act.
- (2) A person must not provide or collect, by any means, directly or indirectly, any property intending, knowing, or having reasonable grounds to believe that they will benefit an entity that the person knows is a specified entity.
- (3) In a prosecution for an offence against subsection (1), it is not necessary for the prosecutor to prove that the property collected or provided was actually used, in full or in part, to carry out a terrorist act.
- (4) Any person who breaches subsections (1) or (2) commits an offence and is liable on conviction to an imprisonment not exceeding 25 years.

### 12 Terrorist act

Any person commits an offence who engages in a terrorist act is liable on conviction to life imprisonment.

### 13 Provision of property or services to specified entity

- (1) A person must not directly or indirectly, knowingly make available property or financial or other related services to, or for the benefit of, a specified entity.
- (2) Subsection (1) does not apply if the provision of the property or services is of a kind that is authorized by a resolution of the United Nations Security Council.
- (3) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

**14 Dealing with terrorist property**

- (1) A person must not knowingly:
  - (a) deal, directly or indirectly, in any terrorist property; or
  - (b) collect or acquire or possess terrorist property; or
  - (c) enter into, facilitate, directly or indirectly, any transaction in respect of terrorist property; or
  - (d) convert, conceal or disguise terrorist property.
- (2) A person does not commit an offence under paragraph (1)(a), (b) or (c) if the person:
  - (a) tells the Attorney-General, in writing, as soon as the person becomes aware that the property is terrorist property; and
  - (b) acts in accordance with any directions of the Attorney-General for the property.
- (3) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 25 years.

**15 Harboursing of persons committing terrorist acts**

- (1) A person must not harbour or conceal, or prevent, hinder or interfere with the apprehension of, any other person knowing or having reason to believe that the other person:
  - (a) has committed or is planning or is likely to commit a terrorist act; or
  - (b) is a member of a specified entity.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment not exceeding 25 years.

**16 Provision of weapons to terrorist groups**

- (1) Any person must not knowingly offer to provide, or provide, a weapon or explosive or other lethal device to:
  - (a) a specified entity; or
  - (b) a member of a specified entity; or
  - (c) any other person for use by, or for the benefit of, a specified entity or a member of a specified entity.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 25 years.

## **17 Participation in terrorist group**

- (1) A person must not participate (whether as a member, associate member or prospective member) in a terrorist group that is a specified entity, knowing that it is a specified entity.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 25 years.

## **18 Recruitment of persons to be members of terrorist groups or to participate in terrorist acts**

- (1) A person must not knowingly agree to recruit, or recruit, another person:
  - (a) to be a member of a terrorist group that is a specified entity; or
  - (b) to participate in the commission of a terrorist act.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 25 years.

# **PART 4 – MANAGEMENT AND FORFEITURE OF PROPERTY OF SPECIFIED ENTITIES**

## **DIVISION 1**

## **MANAGEMENT**

## **19 Direction to take control of property**

- (1) The Attorney General may direct a Court appointed receiver to take custody and control of property if the Attorney General has reasonable grounds to believe that the property is terrorist property.
- (2) The direction:
  - (a) must specify the property concerned; and
  - (b) may be subject to conditions.
- (3) A person who has custody or control of property mentioned in the direction must allow the Court appointed receiver to take custody and control of the property in accordance with the direction.

## **20 Notice of direction**

- (1) Notice of the making of a direction under sections 19 and 21 must be given:

- (a) as soon as possible to the person who owns or controls the property, if practicable, if the person or a representative of the person is in Tuvalu; and
  - (b) to any other person that the Attorney General thinks may have an interest in the property.
- (2) Failure to comply with subsection (1) does not affect the validity of the direction.

## **21 Variation, revocation or expiry of direction**

- (1) The Attorney General may:
- (a) make another direction under section 19 varying the conditions of the direction or the property that is subject to the direction.
  - (b) revoke the direction.
- (2) Notice of any direction under this section must be given in accordance with the provisions of section 20(1).
- (3) If not earlier revoked, a direction under section 19 or this section expires if:
- (a) for property of a specified entity – the entity ceases to be a specified entity; or
  - (b) a forfeiture order is made under section 24 in relation to the property.

## **22 Judicial review and appeal**

- (1) Upon application by a person who owns or controls property subject to a direction under this Division, the Court may vary or revoke the direction.
- (2) The Court must:
- (a) if the Court decides that there are reasonable grounds for the Attorney General's actions under sections 16 or 18, dismiss the application.
  - (b) if the Court decides that there are no reasonable grounds for the Attorney General's actions under sections 16 or 18, revoke the direction.
- (3) Reasonable written notice of an application under subsection (1) must be given to the Attorney General by the applicant.
- (4) Before deciding on the application, the Court must hear from the Attorney-General.
- (5) If the Court revokes the direction, the Attorney General must:
- (a) tell the person who owns or controls the property in writing; and
  - (b) publish a notice of revocation in the Gazette.

- (6) The Attorney General or a person whose property is subject to a direction may appeal to the Court of Appeal against a decision made by a Court under this Division.

### **23 Further provisions on management of property of specified entity**

The Proceeds of Crime Act 2004 applies, with all other necessary modifications, to property that is the subject of a direction under section 19, as if the direction were a restraining order under Part 4 of that Act.

### **24 Third parties may apply for relief**

- (1) A person, other than the person who owns or controls the property, who claims an interest in property that is subject to a direction under section 19 (not being property to which subsection (2) applies) may apply to the Court for an order under section 27.
- (2) The person must give written notice of the application to the Attorney-General, who is a party to any proceedings on the application.

### **25 Court may grant relief to third party**

- (1) Subsection (2) applies if:
  - (a) a person makes an application under section 26; and
  - (b) the Court is satisfied that the person's claim to the interest is valid.
- (2) The Court must make an order:
  - (a) declaring the nature, extent, and value of the person's interest in the property; and
  - (b) declaring that the interest is no longer subject to the order under section 19; and
  - (c) if the interest is held by the court appointed receiver:
    - (i) directing the court appointed receiver to transfer the interest to the person; or
    - (ii) declaring that there is payable by the court appointed receiver to the person an amount equal to the value of the interest declared by the Court.
- (3) However the Court may, if it thinks fit, refuse to make an order if it is satisfied that:
  - (a) the person was knowingly involved in any way in the carrying out of the terrorist act that are the basis of the designation of the entity as a

- specified entity, or is an entity that is wholly owned or effectively controlled, directly or indirectly, by the specified entity; or
- (b) if the person acquired the interest at the time of or after the designation of the entity as a specified entity, the applicant did not acquire the interest in the property in good faith and for value, without knowing or having reason to believe that the property was, at the time of the acquisition, property subject to a direction under section 19.

## DIVISION 2 – FORFEITURE

### 26 Application for forfeiture order

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

### 27 Making forfeiture order

- (1) If the Court is satisfied, on the balance of probabilities, that the property the subject of the application is terrorist property, the Court must order that the property be forfeited to the State.
- (2) If the Court is satisfied that a person mentioned in paragraph 26(2)(a) or (3)(a):
- (a) has an interest in the property the subject of the application; and
  - (b) has exercised reasonable care to ensure that the property is not terrorist property; and
  - (c) is not a member of a specified entity;



the Court must order that the interest is not affected by the order and declare the nature and extent of the interest.

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

## **28 Effect of forfeiture order**

- (1) If the Court makes a forfeiture order against property (other than registrable property), the order vests the property absolutely in the State.
- (2) If the Court makes a forfeiture order against registrable property:
  - (a) the order vests the property in the State in equity, but does not vest it in the State at law until the applicable registration requirements have been complied with;
  - (b) the State is entitled to be registered as the owner of the property; and
  - (c) the Attorney-General may do, or authorize the doing of, anything necessary or convenient to obtain the registration of the State as owner, including the execution of any necessary instrument; and
  - (d) the Attorney-General may do anything necessary or convenient to give notice of, or otherwise protect the State's equitable interest in the property; and
  - (e) anything done by the Attorney-General's under paragraph (d) is not a dealing for paragraph (3)(a).
- (3) If the Court makes a forfeiture order against property (including registrable property):
  - (a) the property must not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or for the State, before 6 months after the forfeiture order was made; and
  - (b) the property may be disposed of, and the proceeds applied or otherwise dealt with as the Attorney-General directs, after 6 months after the forfeiture order was made.

## **29 Protection of third parties**

- (1) A person who claims an interest in property that has been forfeited and who has not been given notice under paragraph 26(2)(a) or (3)(a) may apply to the Court, within 6 months after the forfeiture order was made, for an order under subsection (4).

- (2) The person must give reasonable written notice of the application to the Attorney-General.
- (3) The Attorney-General:
  - (a) is a party to the proceedings in an application under subsection (1); and
  - (b) may make an application under subsection (1) for a person.
- (4) If a person applies to the Court for an order about the person's interest in property, the Court must make an order declaring the nature, extent and value (as at the time the order is made) of the person's interest if the Court is satisfied in accordance with subsection 27(2).
- (5) An appeal lies to the Court of Appeal from an order under subsection (4).

### **30 Return of property**

- (1) The Attorney-General must, on application by a person who has obtained an order under subsection (4), if the period for appeals has expired and any appeal from that order has been determined or has lapsed:
  - (a) return the property, or the part of it to which the interest of the applicant relates, to the applicant; or
  - (b) if the interest in the property is no longer vested in the State, pay an amount equal to the value of the interest of applicant, as declared in the order, to the applicant.
- (2) Subsection (1) does not apply to any property returned or amount paid, to the person under section 25.

### **31 Appeal**

The Attorney-General or a person affected by a decision made by the Court under this Part may appeal to the Court of Appeal against the decision.

## **DIVISION 3 – INFORMATION**

### **32 Disclosure of information**

- (1) A financial institution must immediately tell the Transaction Tracking Unit about the existence of any property in its possession or control:
  - (a) that is owned or controlled, directly or indirectly, by or for a specified entity, including property derived or generated from that property; or
  - (b) for which there are reasonable grounds to suspect is property of a kind mentioned in paragraph (1).

- (2) The Transaction Tracking Unit may tell the financial intelligence authority or other appropriate authority of a foreign country about any information it has about any property of the kind mentioned in subsection (1), if the Unit thinks the information would be relevant to the foreign country.
- (3) Information may be given under subsection (2) subject to any conditions that the Transaction Tracking Unit determines.
- (4) A financial institution must tell the Transaction Tracking Unit about every dealing that occurs in the course of its activities and for which there are reasonable grounds to suspect is related to the commission of a terrorist act.
- (5) No civil or criminal proceedings lie against a person for making a disclosure or report in good faith, under subsection (1), (2) or (4).
- (6) Nothing in subsection (1) or (4) requires a lawyer to disclose a privileged communication, other than information about a financial transaction recorded for a trust account of the lawyer facilitated by the lawyer.
- (7) A person who receives information under subsection (1), (2) or (4) must not disclose the information or its sources except:
  - (a) for the purposes of:
    - (i) the enforcement of this Act; or
    - (ii) the detection, investigation or prosecution of an offence under this Act; or
    - (iii) providing assistance under the Mutual Assistance in Criminal Matters Act 2004; or
  - (b) in accordance with an order of a court.
- (8) Any person who breaches subsection (1) or (4) commits an offence and is liable on conviction to an imprisonment term not exceeding 10 years.

## PART 5 – GENERAL POWERS

### 33 Controlled delivery of property

- (1) This section applies to an authorized officer who has reasonable grounds to believe that a person has committed, is committing or is about to commit an offence under this Act.
- (2) The authorized officer may allow property, that the authorized officer reasonably suspects has been, is being or may be used to commit an offence under this Act, to enter, leave or move through Tuvalu for the purpose of gathering evidence to identify a person or to facilitate a prosecution for the offence.

- (3) An authorized officer does not commit an offence under this Act if:
- (a) the authorized officer is engaged in investigation of a suspected offence under this Act; and
  - (b) the offence involves property that the authorized officer reasonably suspects has been, is being or may be used to commit an offence under this Act; and
  - (c) the authorized officer does not take action, that the authorized officer would otherwise be required to take under this Act, for the purpose of the investigation.

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

- (1) The operator of a craft:
- (a) arriving in or departing from Tuvalu; or
  - (b) registered in Tuvalu, departing from any place outside Tuvalu;
- must give the Immigration Department any information in his or her possession, relating to persons or goods on board, or expected to be on board, the craft.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 10 years.
- (3) The Immigration Department may give the competent authority in a foreign country any information:
- (a) in his or her possession relating to persons entering or leaving Tuvalu; and
  - (b) that is required by the laws of the foreign country.
- (4) The provision of information under subsection (1) or (3) is taken not to be a contravention of any provision of law prohibiting the disclosure of the information.
- (5) No information provided to the Immigration Department under subsection (1) may be used or disclosed by the Immigration Department except for the purpose of protecting border security, national security or public safety.
- (6) The Minister may make regulations generally to give effect to the purposes of this section, including regulations prescribing the types or classes of information that may be:
- (a) provided under this section; or
  - (b) disclosed to the competent authority of a foreign country.

### **35 Power to prevent and order the removal of persons**

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

### **36 Exchange of information relating to terrorist groups and terrorist acts**

The Immigration Department may disclose to the appropriate authority of a foreign country any information in its possession relating to any of the following:

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

if the disclosure is not prohibited by any provision of law and will not, in the Immigration officer's view, prejudice national security or public safety.

### **37 Regulations**

The Minister may make regulations in relation to all matters for which regulations are required or authorised to be made by this Act, including the power to add or omit to or from Schedule 1.

**38 Detention of goods suspected to be terrorist property**

An authorised officer may, without warrant, seize and detain goods if-

- (a) the goods came to his or her attention, or into his or her possession, during a search, inspection, audit, or examination under-
  - (i) the Customs Act (Cap.55);
  - (ii) Part 4 of the Proceeds of Crime Act 2004; and
- (b) the goods are in Tuvalu and he or she is satisfied that they either:
  - (i) are being, or are intended to be, exported out of Tuvalu; or
  - (ii) are being, or have been, imported into Tuvalu; and
- (c) he or she has good cause to suspect that the goods are terrorist property.

**39 Return of cash necessary to satisfy essential human needs**

- (1) The power to detain goods under section 38 does not extend to, and the authorised officer must if practicable return immediately, cash seized under section 38 if the authorised officer is satisfied that the cash is (or things for which it might be exchanged are) necessary to satisfy the essential human needs:
  - (a) of or of a dependent of an individual from whom the cash has been seized; and
  - (b) arising on, or within 7 days after, the date on which the detention would otherwise be effected;
- (2) Nothing in subsection (1) requires the authorised officer to return any cash that the authorised officer is satisfied is not necessary for the purpose specified in that subsection.
- (3) If the 7 day period referred to in section 41 is extended under section 42, subsection (1) applies to the extension, and the reference in subsection (1)(b) to 7 days must be read as a reference to the number of days (not exceeding 21) of that 7 day period as extended.

**40 Further provisions about detention under section 38**

- (1) Reasonable force may be used if it is necessary for any of the following purposes:
  - (a) to seize goods under section 38;
  - (b) to detain goods under section 38;
- (2) If the person for whom the goods have been seized and detained under section 38 is identified but is not present when the seizure and detention occurs (for example, because of the goods concerned are in mail or cargo or in

unaccompanied baggage), the authorised officer must make all reasonable efforts to notify that person of the detention and seizure as soon as practicable.

- (3) Goods detained under section 38 must be taken to such a place of security as an authorised officer directs, and there detained, unless section 43(1) applies.
- (4) An authorised officer or a person lawfully assisting an authorised officer is not liable for the loss of or damage to any property occasioned by anything done or omitted to be done or purported to have been done by an authorised officer or person lawfully assisting in the exercise of any power conferred on him or her sections 38 to 43.
- (5) Nothing in this section limits or affects powers under the Customs Act (Cap.55) and Proceeds of Crime Act 2004.

#### **41 Return of goods detained under section 38**

- (1) In this section, investigation period, in relation to goods seized and detained under section 38:
  - (a) means the period of 7 days after the date on which the goods were seized and detained; and
  - (b) includes any extension of that period granted by the Court under section 42.
- (2) Goods seized and detained under section 38 must be returned to the person from whom they were seized as soon as practicable after whichever of the following occurs first:
  - (a) the completion of all relevant investigations, if they show that the goods are not terrorist property; or
  - (b) the expiry of all relevant investigations, if they show that the goods are not terrorist property.
- (3) However, the authorised officer need not return the goods as provided in subsection (2), and may continue to detain them pending an application of the Court for a direction under section 19, if the authorised officer is advised by, or on behalf of, the Attorney-General that the goods are terrorist property.

#### **42 Extension of 7 day period in section 40(1)(a)**

- (1) The 7 day period in section 41(1)(a) may be extended (but once only) by order of the Court for a period no longer than 3 months, that the Court is satisfied:
  - (a) that the good cause to suspect required by section 38(1)(c) exists; and
  - (b) that the extension to be granted is necessary to enable investigations in or outside Tuvalu in relation to the goods or entity to be completed.

- (2) The application must be made in writing and served on the person from whom the goods were seized (if that person can be identified and located), and must include the following particulars:
  - (a) a description of the goods detained;
  - (b) the date on which the detention commenced;
  - (c) a statement of the facts supporting the good cause to suspect required by section 38(1)(c); and
  - (d) a statement of the reasons why the extension sought is necessary to enable investigations in or outside Tuvalu in relation to the goods or entity to be completed.
- (3) The person from whom the goods were seized is entitled to appear and be heard on the application.
- (4) The authorised officer must make all reasonable efforts to notify the person from whom the goods were seized, at least 24 hours before the hearing of the application, of the time and place of that hearing.

#### **43 Custody of certain goods detained under section 38**

- (1) If goods detained under section 38 are a craft, vehicle or animal, an authorised officer may leave those goods in the custody of either:
  - (a) the person from the goods have been seized; or
  - (b) any other person authorised by the authorised officer and who consents to having such custody.
- (2) Every person who has the custody of goods under subsection (1) must, until a final decision is made under section 41 as to whether or not they are to be returned, hold them in safekeeping, without charge to the State and in accordance with any reasonable conditions that may be imposed by the authorised officer.
- (3) A person to whom subsection (2) applies must also:
  - (a) make the goods available to an authorised officer on request; and
  - (b) not alter, or dispose of, or remove the goods from Tuvalu, unless he or she is authorised to do so by the authorised officer; and
  - (c) return the goods on demand to the custody of the authorised officer.

#### **44 Offences in relation to certain detained goods**

- (1) A person, having custody of goods pursuant to section 43(1), must not act in breach of any requirement of, or imposed pursuant to, section 43(2) or (3).



- (2) A person must not, without the permission of the authorised officer, take or carry away or otherwise convert to his or her own use goods to which section 43(2) and (3) applies.
- (3) Any person who breaches subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding \$10,000 or an imprisonment term not exceeding 5 years respectively.

## **PART 6 – COUNTER-TERRORISM CONVENTIONS**

### **DIVISION 1 – TOKYO CONVENTION – AIRCRAFT**

#### **45 Application of criminal law to aircraft**

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

#### **46 Specified aircraft**

If the Minister responsible for Civil Aviation is satisfied that the requirements of Article 18 of the Tokyo Convention have been satisfied, the Minister may, by notification published in the Gazette, declare that a specified aircraft is taken to be registered in a specified Convention country.

#### **47 General powers of commander of aircraft**

- (1) The commander of an aircraft in flight may take any reasonable measures necessary for the purposes mentioned in subsection (2) in relation to any person on board the aircraft, including restraint of the person and the use of force, if the commander has reasonable ground to believe:
  - (a) that the flight has done or is about to do any act on the aircraft while it is in flight that jeopardizes or may jeopardize:
    - (i) the safety of the aircraft or of persons or property on board the aircraft; or
    - (ii) good order and discipline on board the aircraft; or
  - (b) that the person has done on the aircraft while in flight any act that in the opinion of the commander is a serious offence under a law in force in

the country is a serious offence under a law in force in the country in which the aircraft is registered, not being a law of a political nature or based on a racial or religious discrimination.

- (2) The purposes mentioned in subsection (1) are:
  - (a) to protect the safety of the aircraft or of persons or property on board the aircraft; or
  - (b) to maintain good order and discipline on board the aircraft; or
  - (c) to enable the commander to disembark or deliver that person in accordance with subsection (4).
- (3) A member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and a member must if required by the commander, render assistance in restraining any person whom the commander is entitled under subsection (1) to restrain.
- (4) At any time when the aircraft is in flight, a member of the crew of the aircraft or any other person may, without obtaining the authority of the commander, take any measures mentioned in subsection (1) in relation to any person on board the aircraft that the member or other person has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

#### **48 Restraint of persons on aircraft**

- (1) Any restraint imposed on a person on board an aircraft under section 47 may be continued after the time when the aircraft first ceases to be in flight only if:
  - (a) the aircraft first ceases to be in flight in the territory of a country that is not a party to the Tokyo Convention and its authorities refuse to permit the disembarkation of the person in order to deliver that person to the competent authorities of the country; or
  - (b) the aircraft makes a forced landing and the commander is unable to deliver that person to the competent authorities; or
  - (c) the person agrees to continued restraint for onward carriage.
- (2) The commander must as soon as is reasonably practicable, and if possible before landing in a country's territory, cause notification to be given to the appropriate authority of the country where the aircraft ceases to be in flight of the fact that a person on board the aircraft is under restraint and of the reasons of the restraint.
- (3) Subject to the notification mentioned in subsection (2), restraint may be continued after the aircraft first ceases to be in flight:
  - (a) for any period (including the period of any further flight) between that time and the first occasion on which the commander is able with any

- requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with section 49; or
- (b) if the person under restraint agrees to continue his or her journey under restraint on board the aircraft.

#### **49 Disembarkation and delivery of person**

- (1) The commander of an aircraft may disembark any person on board an aircraft in any country in which the aircraft may be if, for any person on board the aircraft, the commander:
  - (a) has reasonable grounds to believe that the person is about to do any act mentioned in paragraph 47(1)(a); and
  - (b) believes that it is necessary to do so in order to protect the safety of the aircraft or of persons or property on board the aircraft or to maintain good order and discipline on board the aircraft.
- (2) For any person on board the aircraft that the commander of an aircraft has reasonable grounds to believe as mentioned in paragraph 47(1)(b), the commander may deliver the person:
  - (a) in Tuvalu to a police officer; or
  - (b) in any other country that is a party to the Tokyo Convention, to an officer having functions corresponding to the function of either a police officer or of an immigration officer in Tuvalu.

#### **50 Reporting and notification obligations**

- (1) If the commander of an aircraft:
  - (a) if he or she disembarks a person under subsection 49(1), for an aircraft, in any country or, in Tuvalu, must report the fact of, and the reason for, the disembarkation to:
    - (i) an appropriate authority in the country of disembarkation; or
    - (ii) the appropriate diplomatic or consular office of the country of nationality of that person; and
  - (b) if he or she intends to deliver a person under section 49 in Tuvalu or, for an aircraft, in any other country that is a Convention country, must, before as soon as reasonably practicable after landing, give notification of his or her intention and of the reasons:
    - (i) if the country is Tuvalu, to a police officer or immigration officer or, for any other country, to an officer having functions corresponding to the functions either of a police officer or of an immigration officer in Tuvalu; and

- (ii) in either case to the appropriate diplomatic or consular office of the country of nationality of the person; and
  - (c) must give to the appropriate authority evidence in his or her possession about the person's behaviour.
- (2) A commander of an aircraft who, without reasonable cause, fails to comply with the requirements of this section commits an offence and is liable on conviction to an imprisonment term not exceeding 5 years.
- (3) If the person is delivered to a police officer:
  - (a) the police officer must take the person into custody unless he or she has reasonable grounds to believe that the person has not committed the offence; and
  - (b) if the police officer refuses to take the person into custody – give written reasons for the refusal.

## 51 Indemnity for actions under this Division

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

### DIVISION 2 – HAGUE CONVENTION – HIJACKING

## 52 Offence of hijacking

- (1) Subject to subsections (2) and (3), a person on board an aircraft in flight must not lawfully, by the use of force or by threats of any kind, seize the aircraft or exercise control of it, whether the aircraft is in Tuvalu or not.
- (2) Proceedings may be brought for an offence under subsection (1) only if:
  - (a) the offence is committed on board an aircraft registered in Tuvalu; or
  - (b) the aircraft on board which an aircraft is committed lands in Tuvalu's territory and the alleged offender is on board; or
  - (c) the offence is committed on board an aircraft leased without crew to a lessee who has his or her principal place of business in Tuvalu or, if the lessee has no principal place of business in Tuvalu, if the lessee is a permanent resident of Tuvalu.
- (3) Subsection (1) applies to an act committed in relation to an aircraft used in military, customs or police service only if:
  - (a) the act is committed in or over Tuvalu; or

- (b) if the act is committed outside Tuvalu, the person committing the act is a citizen of Tuvalu.
- (4) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment not exceeding 10 years.

## DIVISION 3 – MONTREAL CONVENTION AND PROTOCOL – CIVIL AVIATION

### **53 Offence to destroy, damage or endanger safety of aircraft**

- (1) A person must not unlawfully and intentionally:
  - (a) destroy an aircraft in service or so damage an aircraft as to render it incapable of flight or as to be likely to endanger its safety in flight; or
  - (b) commit on board an aircraft in flight an act of violence that is likely to endanger the safety of the aircraft.
- (2) A person must not unlawfully and intentionally place or cause to be placed on an aircraft in service a device or substance that is likely to destroy the aircraft or is likely to damage it so as to render it incapable of flight or so as to be likely to endanger its safety in flight.
- (3) Subsections (1) and (2) apply to an act committed in relation to an aircraft used in military, customs or police service only if:
  - (a) the act is committed in or over Tuvalu; or
  - (b) if the act is committed outside Tuvalu, the person committing the act is a citizen of Tuvalu.
- (4) Any person who breaches subsection (1) or (2) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 and 10 years respectively.

### **54 Offences involving other acts endangering or likely to endanger the safety of aircraft**

- (1) A person must not unlawfully and intentionally destroy or damage any property to which this section applies or interferes with the operation of that property, if the destruction, damage or interference is likely to endanger the safety of aircraft in flight.
- (2) Subsection (1) applies to any property used for the provision of air navigation, facilities including any land, building, ship, apparatus or equipment, whether it is on board an aircraft or elsewhere.
- (3) A person must not intentionally communicate any information which he or she knows to be false, misleading or deceptive in a material particular, if the

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

- (4) Subsections (1) and (3) applies to the commission of an act only if:
- (a) the act is committed in Tuvalu, or
  - (b) if the act is committed outside Tuvalu:
    - (i) if the person committing the act is a citizen of Tuvalu; or
    - (ii) the commission of the act endangers or is likely to endanger the safety in flight of an aircraft registered in Tuvalu or chartered by demise to a lessee whose principal place of business, or (if none) whose permanent residence, is in Tuvalu; or
    - (iii) the act is committed on board an aircraft that is registered or chartered in Tuvalu; or
    - (iv) the act is committed on board an aircraft that lands in Tuvalu with the person who committed the act still on board; or
    - (v) the person is present in Tuvalu.
- (5) Subsection (1) also applies to an act committed outside Tuvalu and that is committed in relation to property that is situated outside Tuvalu and is not used for the provision of air navigation facilities in connection with international air navigation, only if the person committing the act is a citizen of Tuvalu.
- (6) Any person who breaches subsection (1) or (3) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 or 10 years respectively.

## **55 Offences involving acts of violence at airports serving international civil aviation**

- (1) A person must not unlawfully and intentionally, using any device, substance or weapon:
- (a) perform an act of violence, against a person at an airport serving international civil aviation, that causes or is likely to cause serious injury or death; or
  - (b) destroy or seriously damage the facilities of an aircraft serving international civil aviation or an aircraft not in service located there or disrupt the services of the airport;
- if the act endangers or is likely to endanger safety at the airport.
- (2) Any person who breaches subsection (1) commits an offence and is liable conviction to an imprisonment term not exceeding 15 years.

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DIVISION 4 – INTERNATIONALLY PROTECTED PERSONS

**56 Offences against internationally protected person**

- (1) A person must not intentionally:
  - (a) commit murder, kidnapping or other attack on the person or liberty of an internationally protected person; or
  - (b) commit a violent attack on the official premises, private accommodation or means of transport, of an internationally protected person, likely to endanger that person or that person's liberty; or
  - (c) threaten to commit an attack.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

DIVISION 5 – NUCLEAR MATERIAL

**57 Movement of nuclear material**

- (1) A person must not knowingly import or export nuclear material to or from Tuvalu except in accordance with a licence or written permit given by the Minister for Home Affairs.
- (2) A person must not knowingly, without licence or written permission from the Minister for Home Affairs, transport nuclear material:
- (3) A person must not knowingly transport nuclear between 2 places in Tuvalu, through international waters or airspace, without licence or written permission from the Minister of Home Affairs.
- (4) A licence or written permission mentioned in subsection (1), (2) or (3) may be given only if the Minister of Home Affairs has received a written assurance from the person that the material will, during international nuclear transport, be protected at the levels mentioned in the Nuclear Material Convention.
- (5) A person must not knowingly make a false statement or provide a false assurance to Minister of Home Affairs under subsection (1), (2) or (3).
- (6) Any person who breaches subsections (1), (2), (3), (4) or (5) commits an offence and is liable on conviction to an imprisonment not exceeding 25 years.

**58 Offences relating to nuclear material**

- (1) A person must not:

- (a) without lawful authority intentionally receive, possess, use, transfer, alter, dispose of or disperse nuclear material in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property or to the environment; or
  - (b) steal nuclear material; or
  - (c) embezzle or fraudulently obtain nuclear material; or
  - (d) demand nuclear material by threat or use of force or any other form of intimidation; or
  - (e) threaten:
    - (i) to use nuclear material to cause death or serious injury to any person or substantial damage to any property or to the environment; or
    - (ii) to steal nuclear material to compel a person, state or an international organization to do or refrain from doing an act; or
  - (f) without lawful authority commit an act, or threaten to commit an act, or threaten to commit an act against a nuclear facility, or interfere with a nuclear facility in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property or to the environment.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 25 years.

## DIVISION 6 – MARITIME SAFETY

### 59 Offences

- (1) A person must not unlawfully and intentionally:
- (a) seize, or exercise control over, a ship or fixed platform by force or threat of force or other form of intimidation; or
  - (b) commit an act of violence against a person on board a ship or fixed platform, that is likely to endanger the safe navigation of the ship or safety of the fixed platform; or
  - (c) destroy a ship or fixed platforms; or
  - (d) cause damage, to a ship or its cargo or a fixed platform, that is, likely to endanger the safe navigation of the ship or safety of the fixed platform; or
  - (e) place or cause to be placed, on a ship or fixed platform a device or substance, likely:
    - (i) for a ship – to destroy the ship, or to cause damage to the ship or its cargo likely to endanger the safe navigation of ship; or



- (ii) for a fixed platform – to destroy the fixed platform or to endanger its safety; or
  - (f) destroy or seriously damage maritime navigational facilities or seriously interfere with their operation in a way that is likely to endanger the safe navigation of a ship; or
  - (g) communicate information, that he or she knows to be false, endangering the safe navigation of a ship; or
  - (h) injure or kill a person in connection with the commission, or attempted commission, of an offence mentioned in paragraph (a), (b), (c), (d), (e), (f) or (g).
- (2) A person must not, with the intention of compelling another person to do or to refrain from doing an act, threaten to commit an offence mentioned in paragraph (1)(b), (c), (d) or (f) in relation to a ship or fixed platform, if the threat is likely to endanger the safety of the ship or fixed platform.
- (3) Any person who breaches subsections (1) or (2) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 or 10 years respectively.

## 60 Protocol offences

- (1) A person must not unlawfully and intentionally:
- (a) with the intention of intimidating a population or compelling a government or international organization to do or to refrain from doing any act:
    - (i) use against or on or discharge from a fixed platform or ship any nuclear, chemical or biological weapon or radioactive or nuclear material in a manner that causes or is likely to cause death or serious injury or damage:
    - (ii) discharge from a fixed platform or ship oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered by paragraph (a)(i) in such quantity or concentration that causes or is likely to cause death or serious injury or damage:
    - (iii) use a ship in a manner that causes death or serious injury or damage:
    - (iv) threaten to commit an offence in paragraphs (a)(i), (ii) or (iii):
  - (b) transport on a craft:
    - (i) any explosive or radioactive material knowing that it is intended to cause or threatened to be used to cause death or serious injury to damage with the intention to intimidate a population or compel a government or international organization to do or refrain for doing an act:

- (ii) any nuclear, chemical or biological weapon:
  - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguard pursuant to an International Atomic Energy Agency comprehensive safeguards agreement:
  - (iv) any equipment, material, or software or related technology that is intended to significantly contribute to the design, manufacture, or delivery of a nuclear, chemical or biological weapon:
  - (v) a person who has committed an act that constitutes an offence under this section with the intent to assist that person to avoid criminal prosecution:
- (c) injure or cause the death of another person in connection with the commission of any offence under this section.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

## **61 Arrest and delivery**

- (1) The master of a ship registered in Tuvalu who has reasonable grounds to believe that a person has committed an offence under section 60 against, or on board, may:
- (a) arrest and detain the person; and
  - (b) deliver the person to the appropriate authorities in any other Convention State.
- (2) The master of the ship must:
- (a) notify the authorities in the other Convention State before delivering the person; and
  - (b) give to the authorities evidence in his or her possession that the person has committed an offence.
- (3) If the person is delivered to a police officer:
- (a) the police officer must take the person into custody unless he or she has reasonable grounds to believe that the person has not committed the offence; and
  - (b) if the police officer refuses to take the person into custody – give written reasons for the refusal.

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DIVISION 7 – PLASTIC EXPLOSIVES

**62 Plastic explosives offences**

- (1) A person must not manufacture unmarked plastic explosives, knowing that they are unmarked.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 10 years.
- (3) Subject to subsection (5), it is not an offence under subsections (1) or (2) if:
  - (a) the person manufactures or holds unmarked plastic explosives in a quantity approved in writing by the Commissioner of Police solely for use:
    - (i) in research, development or testing of new or modified explosives; or
    - (ii) in training in explosives detection or in the development or testing of explosives detection equipment; or
    - (iii) for forensic science purposes; or
  - (b) the unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military device in Tuvalu within 3 years after the coming into force of the Plastic Explosives Convention in Tuvalu.
- (4) It is not an offence under subsection (2) if the person possesses or transports unmarked plastic explosives in a quantity approved in writing by the Commissioner of Police solely for a use mentioned in subsection (3).
- (5) If unmarked plastic explosives have been manufactured in, or imported into, Tuvalu before the commencement of this Act:
  - (a) if they are held by authorities performing military or police functions and are not incorporated as an integral part of a military device, they must be destroyed, marked or rendered permanently ineffective within 15 years after the commencement of this Act; and
  - (b) if they are held by any other person, they must be destroyed, marked or rendered permanently ineffective within 3 years after the commencement of this Act.
- (6) A person must not import or export unmarked plastic explosives, if not they commit an offence and that person is liable on conviction to an imprisonment term not exceeding 25 years.

**63 Power of entry**

- (1) An officer authorised in writing by the Commissioner of Police may enter premises where he or she has reasonable grounds to believe that explosives are being manufactured, kept or stored and do any of the following:
  - (a) investigate and make inquiries on the premises to find out whether an offence under section 63 is being committed;
  - (b) inspect any records, documents or equipment found on the premises;
  - (c) take copies of, or extracts from, the records or documents.
- (2) A person must not:
  - (a) resist or obstruct an officer authorised for subsection (1) exercising the powers mentioned in subsection (1); or
  - (b) knowingly give false information in response to an inquiry under subsection (1); or
  - (c) suppress any material information in response to an inquiry under subsection (1).
- (3) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

**DIVISION 8 – TERRORIST BOMBING****64 Terrorist bombing offences**

- (1) Subsection (2) applies to an action that is intended by a person:
  - (a) to cause death or serious bodily injury; or
  - (b) to cause extensive damage to a place mentioned in paragraph (2)(a) or (b), a facility mentioned in paragraph (2)(c) or a system mentioned in paragraph (2)(d), if the damage results in or is likely to result in major economic loss.
- (2) The person must not unlawfully and intentionally deliver, place, discharge or detonate an explosive or other lethal device in, into or against:
  - (a) a part of a building, land, street or waterway or other location that is accessible or open to members of the public, whether continuously, periodically or occasionally, including a commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place; or
  - (b) a facility or conveyance that is used or occupied, in connection with his or her official duties, by:
    - (i) a representative of any Government; or

- (ii) the Head of State of any country; or
  - (iii) the Prime Minister or a Minister of any country; or
  - (iv) a member of the legislature of any country; or
  - (v) a judge of any country; or
  - (vi) an official or employee of a Government or public authority or an inter-governmental organization; or
- (c) a facility, conveyance or instrumentality, whether public or privately owned, that is used inn or for a publicly available service for the transportation of persons or cargo; or
- (d) a publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel or communications.
- (3) Any person who breaches subsections (1) or (2) commits an offence and is liable on conviction to an imprisonment term not exceeding 25 years.

## DIVISION 9 – NUCLEAR TERRORISM

### 65 Nuclear terrorism

- (1) A person must not:
- (a) unlawfully possess radioactive material or make or possess a radioactive device:
    - (i) with the intent to cause death or serious bodily injury; or
    - (ii) with the intent to cause substantial damage to property or to the environment;
  - (b) unlawfully use in any way radioactive material or a radioactive device, or use or damage a nuclear facility in a manner which causes a release or increases the risk of the release of radioactive material:
    - (i) with the intent to cause death or serious bodily injury; or
    - (ii) with the intent to cause substantial damage to property or to the environment;
    - (iii) with the intent to compel a person, State or an international organization to do or refrain from doing an act.
- (2) A person must not:
- (a) threaten to commit an offence committed under subsection (1)(b); or
  - (b) unlawfully and intentionally make a demand supported by a threat or use of force:
    - (i) for the supply of radioactive material or a radioactive device; or

- (ii) for a nuclear facility to be made available or for access to a nuclear facility.
- (3) A threat referred to in subsection (2) must be made in circumstances which indicate the credibility of the threat.
- (4) Any person who breaches subsections (1) or (2) commits an offence and is liable on conviction to imprisonment not exceeding 25 years.

## PART 7 – TRANSNATIONAL ORGANISED CRIME

### 66 Participation in organized criminal group

- (1) A person must not participate (whether as a member, associate member or prospective member) in an organized criminal group, knowing that it is an organised criminal group:
  - (a) knowing that his or her participation contributes to the occurrence of criminal activity; or
  - (b) reckless as to whether his or her participation contributes to the occurrence of criminal activity.
- (2) A group of people is capable of being an organized criminal group for the purposes of this section whether or not:
  - (a) some of them are subordinates or employees of others; or
  - (b) only some of the people involved in it at a particular time are involved in the planning, arrangement or execution at that time of any particular action, activity, or transaction; or
  - (c) its membership changes from time to time.
- (3) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

## PART 8 – PEOPLE TRAFFICKING

### 67 Offence of trafficking in persons

- (1) A person must not engage in trafficking in a person or be involved in the arranging of trafficking in a person, knowing that the person's entry into Tuvalu or any other state is or was arranged by specified means.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 25 years.

## **68 Offence of trafficking in children**

- (1) A person must not intentionally engage in trafficking in a person who is a child or be involved in the arranging of trafficking in a person who is a child, regardless of whether the child's entry into Tuvalu, or any other state is or was for arranged by specified means.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 20 years.

## **69 Exploitation of people not legally entitled to work**

- (1) An employer who allows an unlawful employee to undertake employment in the employer's service must not take an action with the intention of preventing or hindering the employee from:
  - (a) leaving Tuvalu; or
  - (b) ascertaining or seeking that person's entitlement under the law of Tuvalu;
  - (c) disclosing to any person the circumstances of that person's employment by the employer.
- (2) Without the limiting the generality of subsection (1), the following are examples of actions of the kind mentioned in that subsection:
  - (a) taking or retaining possession or control of a person's passport, any other travel or identity document, or travel tickets;
  - (b) preventing or hindering a person from:
    - (i) having access to a telephone; or
    - (ii) using a telephone; or
    - (iii) using a telephone privately; or
    - (iv) leaving premises; or
    - (v) leaving premises unaccompanied;
  - (c) preventing or hindering a labour officer from entering or having access to any place or premises to which the person is entitled to have access under any law.
- (3) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

## **70 Consent of trafficked person**

For sections 67 and 68, it is not a defense:

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

**71 Offence relating to fraudulent travel documents**

- (1) A person must not knowingly, in order to obtain a material benefit:
  - (a) produce a fraudulent travel or identity document; or
  - (b) procures, produces or possess a fraudulent travel or identity document.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term up to 5 years.

**72 Protection for trafficked persons**

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

**73 Obligation on commercial carriers**

- (1) A commercial carrier must not transport a person into a receiving country if, on entry into the receiving country, the person does not have the travel documents required for lawful entry into that country.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$20,000.
- (3) A commercial carrier is not guilty of an offence under subsection (1) if:
  - (a) the commercial carrier had reasonable grounds to believe that the documents that the person has are travel documents required for lawful entry of that person into the receiving country; or
  - (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
  - (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.



- (4) A commercial carrier that is guilty of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

## **PART 9 – PEOPLE SMUGGLING**

### **74 Offence of people smuggling**

- (1) A person must not, in order to obtain a material benefit, engage in people smuggling either knowing or being reckless as to the fact that the entry of the person being or to be smuggled into the country is illegal.
- (2) Subsection (1) applies whether or not the person being smuggled enters or arrives in the receiving country.
- (3) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 20 years.

### **75 Offence to facilitate stay of an unauthorized person**

- (1) A person must not knowingly facilitate the continued presence of an unauthorized person in a receiving country in order to obtain a material benefit.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

### **76 Offence related to fraudulent travel or identity documents**

- (1) A person must not knowingly, in order to obtain a material benefit:
  - (a) produce a fraudulent travel or identity document; or
  - (b) procure, provide or possess a fraudulent travel or identity document.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

### **77 Aggravated offences**

- (1) A person commits an aggravated offence of any of the offences mentioned in subsection (2) who commits that offence in 1 or more of the following circumstances:
  - (a) the unauthorized person is subjected to torture or to any other cruel, inhuman or degrading treatment (including exploitation);

- (b) the life or safety of the person being smuggled is, or is likely to be, endangered.
- (2) The offences are offences against sections 74, 75 and 76.
- (3) Any person who breaches the offences in sections 74, 75 and 76 is liable on conviction to an imprisonment term not exceeding 15 years.

## **78 Obligation on commercial carriers**

- (1) A commercial carrier must not transport a person into a receiving country if, on entry into the receiving country, the person does not have the travel documents required for lawful entry into that country.
- (2) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment not exceeding 15 years.
- (3) A commercial carrier is not guilty of an offence under subsection (1) if:
  - (a) the commercial carrier had reasonable grounds to believe that the documents that the person has are the travel documents required for lawful entry of that person into the receiving country; or
  - (b) the person possessed the travel documents required for lawful entry into the receiving country when that person boarded, or last boarded, the means of transport to travel to the receiving country; or
  - (c) entry into the receiving country occurred only because of illness of or injury to a person on board, emergency, stress of weather or other circumstances beyond the control of the commercial carrier.
- (4) A commercial carrier that is guilty of an offence under this section is liable to pay the costs of the person's detention in, and removal from, the receiving country.

## **79 Boarding, search and detention of craft**

- (1) This section applies to a craft, except for a foreign warship.
- (2) An authorized officer may stop and board the craft within Tuvalu if the authorized officer has reasonable grounds to believe the craft:
  - (a) is being used to commit an offence against section 74; and
  - (b) the craft is in:
    - (i) Tuvalu; or
    - (ii) the contiguous zone of Tuvalu.
- (3) The authorized officer may, when reasonably necessary for the exercise of his or her functions in connection with an offence against section 74:

- (a) direct the craft to stay where it is, or direct it to be taken to a suitable place in Tuvalu, for the purpose of search; and
  - (b) search and detain the craft, anyone on it and anything on it; and
  - (c) question any person on board the aircraft; and
  - (d) require the production of any documents relating to the craft or any travel or identity documents of a person on the craft; and
  - (e) take a copy of any documents produced; and
  - (f) seize and detain anything found on the craft that appears to him or her to be evidence of an offence against this Act;
  - (g) remain on the craft for such period as is reasonably necessary for the purpose of boarding, searching and directing the craft or carrying out an investigation for an offence against section 74.
- (4) If the craft fails to stop at the request of an authorized officer, the officer may pursue it into international waters and take any action that is reasonably necessary to stop the craft to enable it to be boarded (other than in the territorial sea of another country).
- (5) The authorized officer may require the person in charge of the craft, a member of the crew or any person on board to take any action that may be directed by the officer for paragraph (3)(a).
- (6) The person in charge of the craft must give any authorized officer who remains on board the craft proper and sufficient food and suitable accommodation without charge.
- (7) A person must comply with a direction of the authorized officer under paragraph (3)(a).
- (8) Any person who contravenes subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 15 years.

## PART 10 GENERAL PROVISIONS

### 80 Jurisdiction

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

- (a) if the act or omission:
  - (i) is committed in Tuvalu; or
  - (ii) is committed on board a ship, aircraft registered in Tuvalu; or
  - (iii) is committed by a person who is in Tuvalu; and

- (b) whether or not the act or omission constituting the offence is committed in or outside Tuvalu, if the act or omission:
  - (i) is committed by a citizen of Tuvalu or a citizen of any country who is ordinarily resident in Tuvalu; or
  - (ii) is committed in order to compel the Government of Tuvalu to do or abstain from doing an act; or
  - (iii) is committed against a citizen of Tuvalu; or
  - (iv) is committed by a person who is, after the commission of the offence, present in Tuvalu; or
  - (v) is intended to be committed in Tuvalu; or
  - (vi) originates in or transits Tuvalu.

### **81 Aiding, abetting etc commission of an offence**

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

### **82 Incitement to commit an offence**

- (1) A person who intentionally urges the commission of an offence under this Act commits an offence.
- (2) A person commits an offence under subsection (1) even if committing the offence incited is impossible.
- (3) Any person who breaches subsection (1) commits an offence and is liable on conviction to an imprisonment term not exceeding 5 years.

### **83 Conspiring to commit an offence**

- (1) A person who conspires with another person, whether inside or outside Tuvalu, to commit an offence under this Act commits the offence of conspiracy and is punishable as if the offence to which the conspiracy relates had been committed.
- (2) A person is not guilty of conspiracy to commit an offence if, before the taking of action under the agreement, the person:
  - (a) withdrew from the agreement; and

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

#### **84 Attempting to commit an offence**

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

#### **85 Liability of a company**

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

#### **86 Obligation to extradite or prosecute**

If a request from another country to extradite a person from Tuvalu under the Extradition Act is refused, and the extradition request relates to an act or omission under this Act, the Attorney-General must consider prosecuting the matter, for which the court shall have jurisdiction if the person is present in Tuvalu.

#### **87 Restricted grounds for refusal to extradite or provide mutual assistance**

- (1) Despite anything in the Extradition Act 2004 or Mutual Assistance in Criminal Matters Act 2004, an offence under this or any other Act, where the act or omission constituting the offence also constitutes a terrorist act, is taken, for the purposes of extradition or mutual assistance, not to be:

an offence of a political character or an offence connected with a political offence or an offence inspired by political motives; or  
a fiscal offence.

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

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**SCHEDULE**

**Schedule 1                      Counter terrorism conventions**

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

14. Amendment to the Convention on the Physical Protection of Nuclear Material 2005
15. Protocol of 2005 to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 2005
16. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 2005.