



COUNTER-TERRORISM BILL 2009

(BILL NO. 13 OF 2009)



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A

BILL

Entitled

AN ACT TO PROVIDE MEASURES TO PREVENT AND SUPPRESS THE FINANCING, PREPARATION, FACILITATION AND COMMISSION OF ACTS OF TERRORISM IN SOLOMON ISLANDS AND TO PROTECT THE POLITICAL, SOCIAL AND ECONOMIC SECURITY OF SOLOMON ISLANDS AND RELATED MATTERS

ENACTED by the National Parliament of Solomon Islands

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COUNTER-TERRORISM BILL 2009

PART 1 - PRELIMINARY

1. This Act may be cited as the Counter-Terrorism Act 2009 and commences on a date appointed by the Minister, by notice in the *Gazette*.

Short title and commencement

2. (1) In this Act, unless the context otherwise requires –

Interpretation

“aircraft” has the meaning given to it in the Civil Aviation Act 2008;

“communication” includes a communication received or transmitted by post or a telegraphic, telephonic or other communication received or transmitted by electricity, magnetism, or any other means;

“communications service provider” means a person who provides services for the transmission or reception of communications;

“counter terrorism convention” means any of the United Nations Conventions or protocols set out in the Schedule;

“data” means information recorded in a form in which it can be processed by equipment operating automatically in response to instructions given for that purpose;

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

“financial institution” has the meaning given to it in the Financial Institutions Act 1998;

“fixed platform” means an artificial island, installation or structure permanently attached to the sea-bed for the purpose of exploration, exploitation of resources or other economic purpose, but does not include an artificial island constructed and used primarily for residential or recreational purposes;

“foreign country” includes a Commonwealth country, a state of a federal country, a territory or any place outside Solomon Islands;

“international organisation” means any regional or international organisation any organ or agency of such organisation;

“internationally protected person” means –

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

“master” in relation to a vessel, means the owner or person for the time being apparently having charge of the vessel but does not include a harbour master or pilot;

“member” of an organisation, includes the following –

- (a) a person who is an informal member of the organisation;
- (b) a person who has taken steps to become a member of the organisation;

- (c) in the case of an organisation that is a corporation, a director or an officer of the corporation;

“Minister” means the Minister responsible for National Security;

“nuclear weapon” means any nuclear weapon or other nuclear explosive device or chemical weapon which is, together or separately –

- (a) toxic chemical and its precursor, except where intended for –
 - (i) industrial, agricultural, research, medical, pharmaceutical or other peaceful purpose;
 - (ii) protective purpose, such as purpose directly related to protection against toxic chemical and to protection against chemical weapon;
 - (iii) military purpose not connected with the use of chemical weapon and not dependent on the use of the toxic properties of chemical as a method of warfare; or
 - (iv) law enforcement, including domestic riot control purpose:

PROVIDED THAT the type and quantity are consistent with such purpose;

- (b) munitions and device specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (a), which would be released as a result of the employment of such munitions and device;
- (c) any equipment specifically designed for use directly in connection with the employment of munitions and device specified in paragraph (b); or
- (d) biological weapons which is–
 - (i) microbial or other biological agent, or toxin whatever its origin or method of production or

of types and in quantities that has no justification for prophylactic, protective or other peaceful purpose; or

- (ii) weapon, equipment or means of delivery designed to use such agent or toxin for hostile purposes or in armed conflict;

and “chemical weapon” or “biological weapon” has a corresponding meaning;

“nuclear facility” means –

- (a) any nuclear reactor, including a reactor installed on a vessel, vehicle, aircraft (whether or not used for military, customs or police service) or space object for use as an energy source in order to propel the vessel, vehicle, aircraft or space object or for any other purpose;
- (b) any plant or convenience being used for the production, storage or processing or transportation 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;

“operator” in relation to an aircraft, means the owner or person for the time being in charge, command or control of the aircraft;

“property” includes –

- (a) assets of every kind, whether corporeal or incorporeal, moveable or immovable, tangible or intangible, however acquired;
- (c) legal document or instrument in any form including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit; or
- (d) a legal or equitable interest, whether full or partial in any such assets or property described in paragraph (a) or (b),

whether situated in Solomon Islands or a foreign country;

“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 harm to persons or substantial damage to property or to the environment;

“radioactive material” means nuclear material or other radioactive substance which contains 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 its radiological or fissile properties, cause death, serious bodily injury or harm to persons or substantial damage to property or to the environment;

“recruit” includes induce, entice, incite or encourage;

“terrorist” means an individual who –

- (a) by unlawful and wilful means, commits or attempts to commit a terrorist act;

- (b) participates as an accomplice in a terrorist act;
- (c) organises or directs other individuals to commit a terrorist act;
- (d) facilitates the formation of or establishes a terrorist organisation; or
- (e) contributes to the commission of a terrorist act by a group of individuals acting with a common purpose where the contribution is made intentionally with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist act”, subject to subsection (2), means an action or threat where the act or threat—

- (a) causes serious physical injury or harm to a person;
- (b) causes serious damage to property;
- (c) causes a person's death;
- (d) endangers a person's life, other than the life of the person taking the action;
- (e) creates a serious risk to the health or safety of the public or a section of the public;
- (f) is contrary to or constitutes an offence under any counter-terrorism convention; or
- (g) seriously interferes with, seriously disrupts, or destroys, an electronic system including, but not limited to –
 - (i) an information system;
 - (ii) a telecommunication system;
 - (iii) a financial system;

- (iv) a system used for the delivery of essential government services;
- (v) a system used for, or by, an essential public utility, such as water or electricity; or
- (vi) a system used for, or by, a transport system; and

the action is done or the threat is made with the intention of

–

- (aa) advancing a political, religious, radical, ethnic or ideological cause;
- (bb) coercing, or influencing or attempting to influence by intimidation the Government, provincial government, international organization or foreign country; or
- (cc) intimidating the public or a section of the public;

“terrorist organisation” means an organisation that–

- (a) is directly or indirectly engaged in, preparing, planning, assisting in or fostering the doing of a terrorist act (whether or not the terrorist act occurs);
- (b) is declared to be a terrorist organisation under section 13(1);
- (c) participates as an accomplice in a terrorist act; or
- (d) contributes to the commission of a terrorist act by a group of individuals acting with a common purpose where the contribution is made intentionally with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist property” means –

- (a) proceeds from the commission of a terrorist act;

- (b) money or other property which has been, is being, or is likely to be used to commit a terrorist act;
- (c) money or other property which has been, is being, or is likely to be used by a terrorist organisation; or
- (d) property owned, controlled, derived or generated from property owned or controlled, by or on behalf of a terrorist organisation;

“vehicle” means any conveyance used on land;

“vessel” means any thing made or adapted for the conveyance by water, of people or property;

“weapon” includes a firearm, explosive, chemical, radioactive, biological or nuclear weapon.

- (2) In the definition of “terrorist act”, an action is not a terrorist act if the act –
- (a) is advocacy, protest, dissent or industrial action done under any law;
 - (b) is not intended –
 - (i) to cause serious physical injury or harm to a person;
 - (ii) to cause a person's death;
 - (iii) to endanger the life of a person, other than the person taking the action; or
 - (iv) to create a serious risk to the health or safety of the public or a section of the public; or
 - (c) occurs in a situation of armed conflict, and is at the time and in the place it occurred, in accordance with the rules of international law applicable to conflict.

PART 2 –TERRORIST OFFENCES

3. (1) A person who engages in a terrorist act commits an offence and is liable on conviction to life imprisonment.

Terrorist act and
harbouring
terrorists

(2) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years, if the person –

- (a) harbours a terrorist or member of a terrorist organisation; or
- (b) knowingly, offers to provide, or provides, a weapon or other lethal device to a terrorist, terrorist organization or member of such organisation.

4. (1) A person who knowingly provides training or instruction, or receives training or instruction –

Training for
terrorist act

- (a) in the making or use of any weapon;
- (b) in the carrying out of any terrorist act; or
- (c) in the practice of military exercises or movements;

in connection with preparation for, the engagement of a person in, or assistance in the commission or planning of any terrorist act commits an offence and is liable on conviction to imprisonment for a term not exceeding fifteen years.

(2) A person commits an offence under this section even if the terrorist act does not occur.

5. A person who–

Use of property for
terrorist act

- (a) uses property, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act; or
- (b) possesses property intending or knowing that it is to be used, directly or indirectly, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act,

commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

Terrorist financing

6. (1) A person who, directly or indirectly, knowingly, makes available, provides or collects, funds or property or provides other financial services, for one or more of the following purposes –

- (a) for facilitating, planning or carrying out a terrorist act;
- (b) for facilitating any other activity of a terrorist or terrorist organisation; or
- (c) for the use or benefit of a terrorist or a terrorist organisation,

commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) An offence under subsection (1) is committed –

- (a) even if the terrorist act under subsection (1) does not occur or is not attempted; or
- (b) even if the funds were not actually used to commit or attempt the terrorist act in subsection (1); and
- (c) regardless of the foreign country in which the terrorist is intended or does occur.

(3) A person commits an offence if the person –

- (a) participates as an accomplice for an offence under subsection (1);
- (b) organises or directs others to commit an offence under subsection (1); or
- (c) intentionally contributes to the commission of an offence under subsection (1) by a group of individuals acting with the common purpose, where –

- (i) the contribution is to further the criminal activity or purpose of the group that includes commission of an offence under subsection (1); or
- (ii) the contribution is made knowing the intention of the group is to commit an offence under subsection (1).

(4) A person who is convicted of an offence under subsection (3) is liable –

- (a) for an individual, to a fine not exceeding 50,000 penalty units; or
- (b) for other entity, to a fine not exceeding 100,000 penalty units.

(5) Subsection (1) does not apply to the person's receipt of funds from the terrorist organisation if the person proves that the funds were received solely for the purpose of legal representation for a person in proceedings relating to this Act, or for assistance to the organisation to comply with any law of Solomon Islands.

(6) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years, if the person–

- (a) commits an assault upon the person of an internationally protected person;
- (b) deprives an internationally protected person of his liberty;
- (c) kidnaps an internationally protected person; or
- (d) commits a violent attack on the official premises, private accommodation or means of transport of an internationally protected person.

7. Any person who –
- (a) seizes or detains another person; and
 - (b) threatens to kill, injure or harm or continue to detain that other person;

for the purpose of compelling the government of a foreign country, an international organisation, a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of that other person, commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

8. A person commits an offence and is liable on conviction to imprisonment for a term not exceeding fifteen years, if the person –
- (a) without lawful authority receives, possesses, uses, transfers, alters, disposes of or disperses nuclear or radioactive material, radioactive device, chemical weapon or biological weapon, in a way that causes or is likely to cause death, serious injury or harm to a person or damage to property or the environment;
 - (b) steals nuclear or radioactive material, radioactive device, chemical weapon or biological weapon;
 - (c) embezzles or fraudulently obtains nuclear or radioactive material, radioactive device, chemical weapon or biological weapon;
 - (d) demands nuclear or radioactive material, radioactive device, biological weapon or chemical weapon by threat or use of force, coercion or intimidation;
 - (e) threatens to –
 - (i) use nuclear or radioactive material, radioactive device, biological weapon or chemical weapon to cause death, serious injury or harm to any person or damage to property or to the environment; or
 - (ii) steal nuclear or radioactive material, radioactive device, chemical weapon or biological weapon

to compel a person, foreign country or international organisation to do or refrain from doing an act; or

- (f) commits, or threatens to commit, an unlawful act against a nuclear facility, or interferes with a nuclear facility in a way that causes or is likely to cause death, serious injury or harm to a person or damage to property or the environment.

9. A person commits an offence and is liable on conviction to imprisonment for a term not exceeding fifteen years, if the person, without lawful authority –

Safety of vessels
and fixed
platforms

- (a) seizes, or exercises control over, a vessel or fixed platform by force, threat of force or other means of intimidation;
- (b) commits an act of violence against a person on a vessel or fixed platform that is likely to endanger the safe navigation of the vessel or the safety of a fixed platform;
- (c) destroys a vessel or a fixed platform or any part of it;
- (d) causes damage to a vessel or a fixed platform that is likely to endanger the safe navigation of the vessel or safety of the fixed platform;
- (e) places or cause to be placed, on a vessel or fixed platform a device or substance likely to destroy or endanger the safety of the vessel or fixed platform;
- (f) destroys or maliciously damages maritime navigational facilities;
- (g) communicates information, that the person knows to be false that could endanger the safe navigation of a vessel; or
- (h) threatens to commit any offence in this section for the purpose of compelling another person to do or refrain from doing any act.

10. A person commits an offence and is liable on conviction to imprisonment for life, if the person, with the intention of intimidating

Offences relating
to obtaining
harmful material

another person or group of persons, or compelling a person, the Government, provincial government, the government of a foreign country or international organisation to do or refrain from doing any act –

- (a) uses against, or discharges on or from, any vessel, aircraft, vehicle or place any nuclear or radioactive substance or device, chemical weapon or biological weapon that causes or is likely to cause death, serious injury, harm or damage;
- (b) discharges from any fixed platform, place, vessel, vehicle or aircraft, any liquefied natural gas or other hazardous, noxious or toxic substance in such quantity and concentration that it causes or is likely to cause death, serious injury, harm or damage;
- (c) uses a vessel, vehicle, aircraft or fixed platform in any manner that causes death, serious injury harm or damage; or
- (d) threatens to commit any of the offences in this section.

Transportation of
harmful materials

11. (1) A person commits an offence and is liable on conviction to life imprisonment, if the person transports the following, in a vessel, vehicle or aircraft –

- (a) any explosive, radioactive or nuclear material weapon, knowing that it is intended to cause or threaten to be used to cause death, serious injury or damage with the intention of intimidating a person or persons, or the Government or a government of a foreign country or international organisation to do or refrain from doing some act;
- (b) any nuclear, chemical or biological weapon;
- (c) any source material, special fissionable material, or equipment or material 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 not under protection pursuant to an

International Atomic Energy Agency
comprehensive safeguards agreement;

- (d) any equipment, material, software or technology that is intended to contribute to the design, manufacture or delivery of a nuclear, chemical or biological weapon.

(2) A person who intentionally assists a person who has committed an offence under this section to avoid being investigated or prosecuted commits an offence and is on conviction liable –

- (a) for an individual, to a fine not exceeding 50,000 penalty units; or
- (b) for other entity, to a fine not exceeding 100,000 penalty units.

12. (1) A person commits an offence and is liable on conviction to life imprisonment, if the person unlawfully places, delivers, discharges or detonates an explosive device in, into or against–

Terrorist bombing
and plastic
explosive offences

- (a) a part of any premises, land, street, waterway or other location that is accessible or open for any period to members of the public;
- (b) any premises, vessel, vehicle, aircraft place that is used or occupied, in connection with official duties by –
 - (i) a representative of the Government or of the government of a foreign country;
 - (ii) the Governor General or the Head of State of a foreign country;
 - (iii) the Prime Minister or a Minister of Solomon Islands or of a foreign country;
 - (iv) a member of the National Parliament or of the legislature of any foreign country;

- (v) a member of the judiciary of Solomon Islands or of any foreign country; or
 - (vi) an official or employee of the Government, provincial government, statutory body or of an international organisation;
 - (c) any premises, vessel, vehicle, aircraft place, whether publicly or privately owned, that is used for a publicly available service for the transportation of persons or cargo; or
 - (d) a publicly or privately owned premises or place providing or distributing services for the benefit of the public, such as water, electricity, energy, fuel or communications.
- (2) A person commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years, if the person –
- (a) manufactures any unmarked plastic explosive, knowing that it is unmarked;
 - (b) possesses or transports any unmarked plastic explosive knowing that it is unmarked; or
 - (c) sells, imports or exports any unmarked explosive knowing that it is unmarked,

unless –

- (aa) the person manufactures, possesses or transports, sells, imports or exports any unmarked plastic explosive in a quantity approved under subsection (3); or
- (ab) the unmarked plastic explosive is destined to be, and are incorporated as, an integral part of authorised Police or military device in Solomon Islands within three years after the coming into force of the Plastic Explosives Convention in Solomon Islands.

- (3) The Minister may, subject to conditions, grant an approval to a person mentioned in subsection (2)(aa) solely for use of such explosive—
- (a) in research, development or testing of new or modified explosive;
 - (b) in training in explosive detection or in the development or testing of explosive detection equipment; or
 - (c) for the purpose of forensic science.
- (4) Any unmarked plastic explosive manufactured or imported before the commencement of this Act –
- (a) if held by the Police or other authorities performing military functions and is not incorporated as an integral part of the Police or military device, must be destroyed, marked or rendered permanently ineffective within fifteen years after the commencement of this Act; or
 - (b) if held by another person, must be destroyed, marked or rendered permanently ineffective within three years after the commencement of this Act.

PART 3 –TERRORIST ORGANISATIONS

13. (1) The Minister may, by order in the *Gazette*, declare any entity to be a terrorist organisation if the Minister is satisfied that there are reasonable grounds to support any recommendation under subsection (2).

Order declaring
certain entities to
be terrorist
organisations

- (2) The Commissioner of Police may recommend to the Minister that an order be made under subsection (1) in respect of that entity if the Commissioner has reasonable grounds to believe that an entity –
- (a) has committed a terrorist act;
 - (b) has attempted to commit a terrorist act;

- (c) has participated in committing or has facilitated the commission of a terrorist act;
- (d) is directly or indirectly engaged in preparing, planning, assisting or facilitating the doing of a terrorist act (whether or not the terrorist act has or will occur); or
- (e) is an entity –
 - (i) that the Security Council of the United Nations has made a decision relating wholly or partly to terrorism;
 - (ii) identified in the decision, or using a mechanism identified under the decision, as an entity to which the decision relates; and
 - (iii) that is engaged in any of the activities in paragraph (a), (b), (c) or (d).

Revocation of
declarations

14. (1) An entity that has been declared a terrorist organisation under section 13, may apply to the Commissioner of Police requesting the Commissioner to make a recommendation to the Minister to revoke the order in respect of it.

(2) If, on an application made under subsection (1), the Commissioner –

- (a) decides that there are reasonable grounds for making the recommendation requested in the application, the Commissioner shall make the requested recommendation to the Minister; or
- (b) decides that there are no reasonable grounds for making the recommendation requested in the application, the Commissioner shall refuse the application.

(3) A request to the Commissioner under subsection (1) must be determined within sixty days of receipt and the applicant must be informed of the decision.

- (4) If the Commissioner refuses the application, or the Minister decides not to act on the recommendation of the Commissioner, the applicant may apply to a Judge for a review of the decision.
- (5) Upon an application being made under subsection (4), the Judge shall –
- (a) examine in Chambers any material considered in recommending or making the order in respect of the applicant and hear any other evidence or information that may be presented by or on behalf of the Commissioner or the Minister;
 - (b) provide the applicant with a statement summarising the information available to the Judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information which would, in the Judge's opinion be prejudicial to national security or endanger the safety of any person;
 - (c) provide the applicant with a reasonable opportunity to be heard; and
 - (d) determine whether the decision is reasonable on the basis of the information available to the Judge and, if found not to be reasonable, make an order revoking the order made under section 13.
- (6) The Judge may –
- (a) for the purpose subsection (5)(a) and at the request of the Commissioner or Minister, hear all or part of that evidence in the absence of the applicant or any legal practitioner representing the applicant, if the Judge is of the opinion that the disclosure of the information would be prejudicial to national

security or endanger the safety of any person;
or

- (b) receive in evidence, anything that, in the opinion of the Judge is reliable and relevant, (including information obtained from the government or institution or agency of a foreign country or an international organisation) even if the thing would not otherwise be admissible in law, and may base the decision on that evidence.

(7) The Commissioner may review all the orders made under section 13 to determine whether there are still reasonable grounds for any such order to continue to apply to a terrorist organisation, and if the Commissioner determines that there are no such reasonable grounds, shall recommend to the Minister, the revocation of the order in respect of that terrorist organisation.

Funding to or from
a terrorist
organisation

15. A person who, directly or indirectly, or intentionally or recklessly, receives funds from or makes funds available to an entity which is a terrorist organisation commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty years.

Training for
terrorist
organisation

16. A person who intentionally provides training to, or intentionally receives training from, a terrorist organisation commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty years.

Recruitment for
terrorist
organisation

17. A person who intentionally agrees to recruit or recruits another person to join a terrorist organisation or to participate in the activities of a terrorist organisation, commits an offence and is liable on conviction to imprisonment for a term not exceeding twenty years.

Membership of
terrorist
organisation

18. (1) A person who is a member of a terrorist organisation commits an offence and is liable on conviction to imprisonment for a term not exceeding ten years.

(2) It is a defence for a person charged under this section to prove –

- (a) that the entity in respect of which the charge is being brought was not a terrorist

organisation at the date on which the person became a member;

- (b) the person has not taken part in any activities of the entity after it became a terrorist organisation; and
- (c) the person took all reasonable steps to cease to be a member of the entity as soon as practicable after the person knew that the entity was a terrorist organisation.

19. A person who conspires with another person, whether inside or outside Solomon Islands, to commit an offence under this Act, commits the offence of conspiracy and, on conviction is liable to the same penalty prescribed for the offence to which the conspiracy relates.

Conspiracy to
commit an offence

20. A person who aids and abets the commission of an offence or an attempt to commit an offence, or counsels or procures the commission of an offence shall on conviction, be liable to the same penalty prescribed for that offence.

Aiding and
abetting

PART 4 – LAW ENFORCEMENT

21. (1) A police officer may arrest without warrant any person who has committed or is committing or whom the police officer has reasonable grounds for suspecting to have committed or to be committing an offence under this Act.

Power of arrest
and to detain and
search persons, etc

- (2) If a police officer has reason to suspect that –
 - (a) any article upon, by or in respect of which an offence has been, is being or is about to be committed under this Act; or
 - (b) anything which is necessary to the conduct of an investigation into any offence under this Act is being carried on any person or in any package, vehicle, vessel or aircraft,

the police officer may, without warrant –

- (aa) detain and search the person, package, vehicle, vessel or aircraft;
- (bb) take possession of and detain such article; or

- (cc) detain any person conveying, carrying or concealing such article.

Search warrant

22. (1) A Magistrate may on application made by a police officer, issue a warrant authorising a police officer –

- (a) to enter any premises, vessel, vehicle or aircraft specified in the warrant;
- (b) to search the premises, vessel, vehicle or aircraft and any person found in or on the premises, vessel, vehicle or aircraft; and
- (c) to seize and retain any item or property, vessel, vehicle or aircraft that may provide evidence of the commission of an offence.

(2) A Magistrate shall not issue a warrant under subsection (1) unless the Magistrate is satisfied that –

- (a) the warrant is sought for the purpose of investigating an offence under this Act; or
- (b) there are reasonable grounds for believing that there may be item, material or person on the specified premises, vessel, vehicle or aircraft which will constitute evidence necessary for the investigation of an offence under this Act.

Power to enter and search in urgent cases

23. (1) In the case of an emergency, where communication with a Magistrate to obtain a warrant would cause delay that may be prejudicial to the safety of a person, a police officer of the rank of Inspector or above, may –

- (a) with the assistance of any police officer as may be necessary, enter and search any premises, if the officer has reasonable grounds to suspect that within the premises –
 - (i) an offence under this Act is being or likely to be or has been committed; and
 - (ii) there may be item, material or person which will constitute evidence of the

commission of an offence under this Act;

- (b) search any person or thing found on any premises or place which the police officer is empowered to search, provided that any search of a person be conducted by a person of the same gender;
 - (c) stop, board, and search any vessel, aircraft or vehicle if the police officer has reasonable cause to suspect that it contains evidence of the commission or likelihood of commission of an offence under this Act;
 - (d) seize and detain anything which appears likely to be or to contain evidence of the commission of an offence under this Act; or
 - (e) arrest and detain any person whom the police officer has reasonable grounds to suspect –
 - (i) of having committed an offence under this Act;
 - (ii) of having attempted to commit an offence under this Act;
 - (iii) may be about to commit an offence under this Act; or
 - (iv) is likely to commit an offence under this Act.
- (2) Any person found on or in any premises, vehicle, vessel or aircraft may be detained by a police officer until the completion of the search.
- (3) Where a search is effected under this Act, a notice stating the identity of the police officer who conducted the search and listing any item seized must forthwith be given to –
- (a) any person who was the subject of a search; and

- (b) the owner or occupier of the premises, vessel, vehicle or aircraft.

Communications
information

24. (1) The Minister may, at the request of the Commissioner of Police, the Attorney General or the Director of Public Prosecutions, for the prevention and detection of offences or the prosecution of offenders under this Act, give such directions as appear to the Minister to be necessary to any communication service provider.

- (2) A direction under this section shall specify the maximum period for which a communication service provider may be required to retain communication data.

Hindering an
investigation

25. Any person who fails to comply with a reasonable direction or hinders or obstructs any person acting in accordance with section 22, 23 or 24 commits an offence and is liable on conviction to imprisonment for a term not exceeding two years.

Detention after
arrest

26. Where a person is arrested under reasonable suspicion of having committed any offence under this Act, a police officer of or above the rank of inspector may direct that the person be detained in police custody for a period not exceeding thirty-six hours after arrest without having access to any person other than a Government medical practitioner or a legal practitioner.

Order prohibiting
the funding of
terrorist acts

27. (1) Where the Minister has reasonable grounds to believe that a person, group or organisation outside Solomon Islands is committing or likely to commit or has committed a terrorist act in Solomon Islands, the Minister may, by order in the *Gazette*, prohibit –

- (a) any person in Solomon Islands; and
- (b) all citizens of Solomon Islands resident outside Solomon Islands, including a resident when is outside Solomon Islands,

from making funds available to, or for the use or benefit, of such person, group or organisation specified in the order.

- (2) Any order made under this section shall cease to have effect twenty-eight days from the date of its publication in the *Gazette*, subject to the power to amend or revoke the order or to make a new order.

(3) Any person who does any act in contravention of an order made under this section commits an offence and is liable on conviction, to imprisonment for a term not exceeding three years.

28. (1) The Minister and the Minister responsible for Finance shall both sign a certificate stating that they believe on reasonable grounds that an applicant registered, or applying for registration as a charitable organisation has made, or is likely to make, funds or resources available, directly or indirectly, to a terrorist organisation or to a person who has committed or is likely to commit a terrorist act.

De-registration of charities linked to terrorist groups

(2) Upon signing the certificate under subsection (1), the Minister or a person authorised by the Minister shall cause the applicant or registered charitable organisation to be served, personally or by registered post to the last known address, with a copy of the certificate and a notice stating that the applicant will not be eligible to be registered as a charitable organisation or any existing registration will be revoked.

(3) An applicant who has been served with a certificate and notice under subsection (2), may apply to a Judge within thirty days of service, for a review of the decision.

(4) Upon an application being made under subsection (3), the Judge—

- (a) shall examine in Chambers any material considered in issuing the certificate and hear any other evidence or information presented by or on behalf of the Attorney General or Minister;
- (b) for the purposes of paragraph (a), may, at the request of the Attorney General or Minister, hear all or part of that evidence in the absence of the applicant or any legal practitioner representing the applicant, if the Judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;

- (c) shall provide the applicant with a statement summarising the information available to the Judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information which would, in the Judge’s opinion be prejudicial to national security or endanger the safety of any person;
- (d) shall provide the applicant with a reasonable opportunity to be heard; and
- (e) shall determine whether the decision is reasonable on the basis of the information available to the Judge and, if found not to be reasonable, make an order allowing the applicant to be registered as a charitable organisation.

(5) In this section, “charitable organisation” means an entity registered under the Charitable Trusts Act (Cap.55), and includes any other similar entity or body registered or established under any other law.

Information about
persons leaving and
entering Solomon
Islands

29. (1) The operator of an aircraft or master of a vessel departing from Solomon Islands or registered in Solomon Islands departing from any place outside Solomon Islands may provide –

- (a) to the Commissioner of Police any information in his or her possession, relating to persons on board, or expected to be on board, the aircraft or vessel; and
- (b) to a competent authority in any foreign country that is a party to a counter-terrorism convention to which Solomon Islands is a party, any information in his or her possession relating to persons on board, or expected to be on board the aircraft or vessel.

(2) Notwithstanding any provision of law prohibiting the disclosure of the information, the Director of Immigration may provide –

- (a) the Commissioner of Police; or
- (b) any competent authority in another foreign country that is party to a counter-terrorism convention to which Solomon Islands is also a party,

any information in his or her possession relating to persons entering or leaving Solomon Islands.

30. (1) The Director of Immigration or other authorised officer under the Immigration Act (Cap.60) shall not grant an endorsement or other authority permitting a person to enter Solomon Islands if the officer suspects, on reasonable grounds, that the person has been, is or will be involved in any act which would be an offence under this Act.

Power to refuse entry or to remove persons

(2) Where the Minister responsible for Immigration has reasonable grounds to believe that a person in Solomon Islands has been, is, or will be involved in any act or omission which would be an offence under this Act, the Minister may make an order requiring that person to leave Solomon Islands and to remain outside Solomon Islands.

(3) A person subject to an order under subsection (2) shall leave Solomon Islands, or may be detained in such a manner as the Minister may direct, or may be placed on an aircraft or a vessel leaving Solomon Islands.

31. The Minister responsible for Immigration may, having regard to the interests of national security and public safety, refuse the application of any person applying for refugee status, if the Minister has reasonable grounds to suspect that the applicant has committed or is likely to commit, in any foreign country, an act or omission which would be an offence under this Act.

Power to refuse refugee application

PART 5 – PROSECUTIONS

32. (1) The High Court shall have jurisdiction to try offences under this Act if the offence is committed in Solomon Islands.

Jurisdiction of High Court

(2) For the purposes of subsection (1), an act committed outside Solomon Islands which would constitute an offence under this Act if committed in Solomon Islands, shall be deemed to have been committed in Solomon Islands if the

person who committed the act is in Solomon Islands and cannot be extradited to a foreign country having jurisdiction over the offence.

DPP to prosecute all offences

33. The Director of Public Prosecutions shall prosecute all offences under this Act.

Evidence by certificate

34. Where in any proceedings for an offence under this Act, a question arises as to whether an item or substance is a weapon, hazardous, radioactive, harmful or is toxic chemical or is microbial or biological agent or toxin, a certificate purporting to be signed by an appropriate authority to the effect that the item or substance described in the certificate is a weapon, hazardous, radioactive or harmful substance, toxic chemical or microbial or other biological agent or toxin, shall –

- (a) be admissible in evidence without proof of the signature or authority of the person appearing to have signed the certificate; and
- (b) in the absence of evidence to the contrary, be proof of the facts stated in the certificate.

Alternative offences

35. (1) This section applies if, in a prosecution for an offence, the High Court is not satisfied that the defendant is guilty of the offence, but is satisfied beyond reasonable doubt that the defendant is guilty of another offence (the alternative offence) under this Act.

(2) The High Court may find the defendant not guilty of the prosecuted offence but guilty of the alternative offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

PART 6 – FORFEITURE OF PROPERTY

Forfeiture of property after conviction

36. (1) Without limiting any other law, where any person is convicted of an offence under this Act, the High Court may order that any terrorist property used for, or in connection with or received as payment for reward for the commission of the offence be forfeited to the Crown.

(2) Before making an order under subsection (1), the Court shall give every person claiming or appearing to have an interest in the property, an opportunity to be heard.

37. (1) Where the Attorney General has reasonable grounds to believe that a property is a terrorist property, the Attorney General may apply to the Court for a forfeiture order against the property.

(2) The Attorney General shall –

- (a) name as a defendant to the application any person known to own or control the property the subject of the application; and
- (b) serve the application on the defendant.

(3) The Solomon Islands Courts (Civil Procedure) Rules 2007 apply to proceedings relating to forfeiture under this section unless the procedures, management, administration and control of forfeited properties are prescribed by regulations.

38. (1) If the High Court is satisfied, on the balance of probabilities, that the property the subject of the application is terrorist property, the Court shall order that the property be forfeited to the Crown.

(2) If the Court is satisfied that any defendant in the proceedings –

- (a) has any interest in the property the subject of the application;
- (b) did not know and could not reasonably be expected to know that the property was terrorist property; and
- (c) was not a member of any terrorist organisation,

the Court must determine the nature and extent of that interest and may order that any interest of the defendant is not affected by the forfeiture order.

(3) If the Court makes a forfeiture order over all or part of the property the subject of the application, the Court may give any directions that are necessary or convenient to give effect to the order.

39. (1) A person who claims an interest in the property the subject of a forfeiture order, and who was not served in accordance with section 37(2)(b), may apply to the High Court, within six months after the making of the order for revocation of the order.

(2) The person must name the Attorney General as the defendant in the proceedings and must serve the application on the Attorney General.

(3) If a person makes an application under this section, the Court shall determine –

- (a) the nature, extent and value of any interest of the person in the property subject to the forfeiture order; and
- (b) whether the person falls within the category of persons described in section 37(2)(a).

(4) If the Court determines that the person satisfies the requirement in section 38(2), the Court may –

- (a) revoke all or part of the forfeiture order and make an order for the return of the property, or part of the property in which the applicant has an interest, to the applicant; or
- (b) if the property is no longer vested in the Crown, revoke all or part of the forfeiture order and make an order for the payment of an amount of money equal to the value of the interest of the applicant, as specified in the order, to the applicant.

40. (1) Where a Judge is satisfied, on an *ex parte* application made to the Judge in chambers by the Attorney General, that there are reasonable grounds to believe that there is in any premises, place, vessel, vehicle or aircraft, any property in respect of which an order for forfeiture may be made under this Part, the Judge may issue –

- (a) a warrant authorising a police officer to search the premises, place, vessel, vehicle or aircraft and to seize any property the police officer believes, on reasonable grounds, may be the

subject of a forfeiture order under this Part;
and

- (b) a freezing order prohibiting any person from disposing of, or otherwise dealing with any interest in that property other than any property specified in the order.
- (2) On an application made under subsection (1) at the request of the Attorney General, if the Judge is of the opinion that the circumstances so require, the Judge may –
- (a) appoint a person to take control of, manage, or otherwise deal with the whole or any part of the property in accordance with the directions of the Judge; and
 - (b) require any person having possession of the property to give possession to the person appointed under paragraph (a).
- (3) The power to manage or otherwise deal with the property under subsection (2) includes –
- (a) in the case of perishable or rapidly depreciating property, the power to sell that property; and
 - (b) in the case of property that has little or no value, the power to destroy that property.
- (4) Before a person appointed under subsection (2) destroys any property, the person shall apply to a Judge for a destruction order.
- (5) Before making a destruction order, the Judge shall require notice to be given, in such manner as the Judge may direct, to any person who, in the opinion of the Judge, appears to have an interest in the property and may provide that person with a reasonable opportunity to be heard.
- (6) A Judge may order that any property in respect of which an application is made under subsection (4), be

destroyed if the Judge is satisfied that the property has little or no financial value, or may pose a health, safety or security risk if it is not destroyed.

(7) A management order under subsection (2) ceases to have effect when the subject property is returned to the applicant in accordance with the law or forfeited to the Crown.

(8) The Attorney General may apply to a Judge to cancel or vary an order issued under this section.

PART 7 – EXTRADITION AND MUTUAL ASSISTANCE IN CRIMINAL MATTERS

Exchange of
information about
terrorist acts

41. (1) The Commissioner of Police may, on a request made by a competent authority of a foreign country, disclose to that authority, any information in the Commissioner's possession or in the possession of another Ministry or other Government agency, relating to the following –

- (a) the actions or movements of a group or of a person suspected of involvement in the commission of a terrorist act;
- (b) the use of forged or falsified travel documents by any person suspected of involvement in the commission of a terrorist act;
- (c) trafficking in weapon or sensitive material by a group or person suspected of being involved in the commission of a terrorist act; or
- (d) the use of any communication technology by a group or person suspected of being involved in a terrorist act;

(2) The disclosure shall be made under this section if –

- (a) the disclosure is not prohibited by any law; or
- (b) the Commissioner is satisfied that the disclosure will not be prejudicial to national security, the safety of the public or the safety of any person.

- 42.** (1) Where –
- (a) Solomon Islands becomes a party to a counter-terrorism convention; and
 - (b) there is in force, an extradition arrangement between the Government of Solomon Islands and another foreign country which is a party to that convention,

the extradition arrangement shall be deemed, for the purposes of the Extradition Act (Cap.59), to include provision for extradition in respect of offences falling within the scope of the counter-terrorism convention.

- (2) Where –
- (a) Solomon Islands becomes a party to a counter-terrorism convention; and
 - (b) there is no extradition arrangement between the Government of Solomon Islands and another foreign country which is party to that convention,

the Minister may, by order in the *Gazette*, declare the counter-terrorism convention, for the purposes of the Extradition Act (Cap.59), as an extradition arrangement between the Government of Solomon Islands and that foreign country, providing for extradition in respect of offences falling within the scope of that counter-terrorism convention.

- 43.** (1) Where –
- (a) Solomon Islands becomes a party to a counter-terrorism convention; and
 - (b) there is in force, an arrangement between the Government of Solomon Islands and another foreign country which is a party to that convention, for mutual assistance in criminal matters,

the arrangement shall be deemed, for the purposes of the Mutual Assistance in Criminal Matters Act 2002, to include provision for mutual assistance in

criminal matters in respect of offences falling within the scope of that counter-terrorism convention.

- (2) Where –
- (a) Solomon Islands becomes a party to a counter-terrorism convention; and
 - (b) there is no arrangement between the Government of Solomon Islands and another foreign country which is party to that counter-terrorism convention for mutual assistance in criminal matters,

the Minister may, by order in the *Gazette*, declare the counter-terrorism convention as an arrangement between the Government of the Solomon Islands and that foreign country providing for mutual assistance in criminal matters in respect of offences falling within the scope of that counter-terrorism convention.

PART 8 - MISCELLANEOUS

Regulations

44. The Minister may make regulations to give effect to the provisions of and for the purposes of this Act, and in particular to make regulations for matters required to be prescribed in this Act.

Exemption of liability

45. The Government or any person performing any function or duty or exercising any power under this Act, shall not –

- (a) be subject to any action, liability, claim or demand; or
- (b) be liable for any matter or thing done or omitted to be done in good faith (whether negligently or not),

in the performance or for any purported performance of any function or duty, or exercise or purported exercise of any power under this Act.

SCHEDULE**(Section 2)****LIST OF UNITED NATIONS CONVENTIONS AND PROTOCOLS**

1. The 1963 Convention on Offences and Certain Other Acts Committed on Board Aircraft
2. The 1970 Convention for the Suppression of Unlawful Seizure of Aircraft
3. The 1971 Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation
4. The 1988 Protocol for the Suppression of Unlawful Acts against the Safety of Civil Aviation
5. The 1979 Convention on the Physical Protection of Nuclear Material
6. The 1991 Convention on the Marking of Plastic Explosives for the Purpose of Detection
7. The 1997 International Convention for the Suppression of Terrorist Bombings
8. The 2005 Convention for the Suppression of Acts of Nuclear Terrorism
9. The 2005 Amendment to the Convention on the Physical Protection of Nuclear Material
10. The 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons
11. The International Convention Against the Taking of Hostages of 1979
12. The 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
13. The Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf of 1988

14. 2005 Protocol to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation
15. 2005 Protocol to the Protocol for the Suppression of Unlawful Acts Against the Safety of fixed Platforms located on the Continental Shelf
16. The International Convention for the Suppression of the Financing of Terrorism of 1999

COUNTER-TERRORISM BILL 2009

OBJECTS AND REASONS

- 1.** The Commonwealth Heads of Government issued a statement in October 2001 calling for a concerted response and resolute action against terrorism and supporting United Nations Security Council Resolution 1373. The statement called for enhanced international co-operation to combat terrorism and recognized the need for increased efforts to prevent the use and abuse of the financial services sector by fully co-operating with the international community in the tracing, freezing and confiscation of the assets of terrorists, their agents, sponsors and supporters.
- 2.** In 1999 the United Nations enacted The International Convention for the Suppression of the Financing of Terrorism. This instrument obliges States to establish mechanisms for the identification, freezing and seizure of funds allocated for terrorist activities and co-operation with foreign authorities in the investigation of suspected terrorist financing offences. Based on Chapter VII of the United Nations Charter, the provisions of Resolution 1373 are binding on States as a matter of international law.
- 3.** Further, in 2007 Solomon Islands became a member of the Asia-Pacific Group on Money Laundering. A condition of membership is that each country must undergo a mutual evaluation, by a team of international legal, law enforcement and financial experts, of its implementation of the Financial Action Taskforce 40 recommendations on money laundering and 9 recommendations on terrorist financing. Non compliance can have severe consequences for a country's financial sector and economy, including closure of its banks.
- 4.** The Counter Terrorism Bill 2009 is local legislation that puts in place strong mechanisms that can be used to prevent and suppress acts of terrorism, identify and outlaw terrorist organisations and activities and to trace, freeze and confiscate the assets of terrorists and terrorist organisations. This legislation is part of a package that is necessary to fully comply with the relevant international obligations enshrined in the United Nations Resolutions and the obligations imposed by membership of the Asia-Pacific Group on Money Laundering.

5. The Bill is a clear indication to the international community that the Solomon Islands Government is intent on protecting the integrity of its legal and financial institutions and fighting criminal and terrorist activities.

EXPLANATORY MEMORANDUM

PART 1 contains the title of the Bill, the method of commencement and the definition of the terms used in the legislation.

PART 2 prescribes the offences and sets out the penalties in relation to terrorist acts and harbouring of terrorists. It prohibits the provision and receipt of military training, weapons training and other training relating to the commission or planning of terrorist acts. It prohibits the use and collection of property and funds for terrorist acts. It prescribes offences relating to internationally protected persons, kidnapping and hostage taking. It sets out offences for obtaining, possessing, using and transporting dangerous nuclear, radioactive, chemical or biological material or explosive materials and devices, terrorist bombing and manufacturing, etc of plastic explosives.

PART 3 provides for the identification of terrorist organisations and the process for the Commissioner of Police and the Minister to declare an entity a terrorist organisation. It provides an avenue for entities to apply to revoke the declaration and for the Court to review the decision. It provides an offence for funding terrorist organisations, and offences for training or recruiting for terrorist organisations. It provides that aiding, abetting and conspiring to commit any offence under the Act is an offence that carries the same penalty as the offence to which it relates.

PART 4 provides powers for law enforcement officers to investigate breaches of the Act, to detain persons, and to search and detain items, vessels, vehicles and aircraft. It makes provision for searches by senior police officers without warrant in urgent cases. It allows the Minister to give directions to communication service providers to obtain communication data for the prevention and detection of offences. It provides an offence for hindering or obstructing an investigation. It allows persons who have been arrested to be detained for 36 hours. It provides a process for the Minister to prevent persons from providing funds to people engaged in terrorist acts. It provides a process for the Minister to deregister or refuse registration of an entity as a charity. It contains a procedure for judicial review of the

Minister's decision. It allows transport operators to provide information to law enforcement agencies about persons entering or leaving the country. It allows the Minister for Immigration to refuse entry to, or to remove and detain persons suspected on being involved in terrorist activities. There is provision for the Minister to refuse a refugee application made by a person suspected of being involved in terrorist activities.

PART 5 confers jurisdiction on the High Court to try offences under the Act. It provides that the Director of Public Prosecutions shall institute or consent to any prosecutions for breaches of the Act. It allows evidence about harmful items and substances to be given by certificate issued from an appropriate authority. It allows the Court to find a person guilty of an alternative offence from the prosecuted offence.

PART 6 contains provisions dealing with the forfeiture of property used in connection with terrorist offences. It allows the Court to make a forfeiture order after a conviction. It provides for the Attorney General to apply to the Court for an order of forfeiture against the assets of terrorist organisations. It allows for judicial review of forfeiture orders by persons not involved in terrorist activities who have an interest in the forfeited property. It provides for the placing of freezing orders on any property which may be subject to a forfeiture order and allows the property to be seized and managed. Property which poses a health and safety risk may be destroyed.

PART 7 provides for mutual assistance between countries for dealing with terrorist activities and organisations. It allows the sharing of information between foreign law enforcement authorities and Solomon Island authorities. It provides for extradition of persons who commit offences falling within the scope of international counter terrorism conventions.

PART 8 provides a regulation making power for giving effect to the purposes of the Act and exemption of liability.

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MINISTER FOR JUSTICE AND LEGAL AFFAIRS

