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2008, No. 15An Act to -

- (a) give effect to the provisions of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, the Montreal Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, and for matters incidental thereto;
- (b) make provision for liability for certain offences against aviation security at domestic and international airports;
- (c) extend the functions and duties of the aviation security services;

- (d) define the powers and duties of the Director to require screening and search;
- (e) define the powers of a Commander of an aircraft;
- (f) make provision for liability for certain offences against aviation security by unruly passengers;
- (g) make provision for liability for certain offences despite extraterritoriality.

(24 September 2008)

BE IT ENACTED by the Parliament of the Cook Islands in session assembled and by the authority of the same as follows:

PART 1
PRELIMINARY

1. Short title - This Act may be cited as the Aviation Security Act 2008.
2. Interpretation - (1) In this Act, unless the context otherwise requires -

“Act of violence” means an act which, if committed in the Cook Islands, would constitute -

- (a) An assault as defined in sections 212, 213, 214 and 216 of the Crimes Act 1969; or
- (b) Any of the offences specified in sections 208, 209, 210, 211, 219, 220, 221, 222, 224, 225 or 231 of the Crimes Act 1969; or
- (c) Any of the offences specified in sections 9, and 18 of the Arms Ordinance of 1954;

“Air navigation facility” means premises used for the handling of cargo, baggage or mail, an aircraft hangar, a fuel storage area, an on board services preparation facility and any other premises, building, structure or place to which the public has no right of access and in which a service is rendered for the operation of a designated airport or aircraft or for the public at a designated airport or on board an aircraft, whether or not such premises, building, structure or place are situated within the boundaries of a designated airport;

“Airport Authority” means the Airport Authority established under the Airport Authority Act 1985;

“Airport Manager” means the Chief Executive Officer of the Airport Authority appointed pursuant to the Airport Authority Act 1985;

“Aircraft” has the same meaning as in the Civil Aviation Act 2002 and Rules adopted under it;

“Authorised person,” for the purposes of this Act, means -

- (a) Any aviation security officer;

- (b) Any person appointed in writing to be an authorised person for the purposes of this Act (subject to any conditions which may be imposed) by the Director or the Chief Executive Officer of an aviation security services provider authorised under section 5(1) of this Act;
- (c) Any police officer;

“Aviation security officer” means a person for the time being employed by an aviation security service organization pursuant to Civil Aviation Rule Part 140;

“Aviation Security Service” means the Aviation Security Service established under section 4(b) of this Act;

“Aviation security service organization” means an aviation security services provider certificated under Civil Aviation Rule Part 140;

“Baggage” in relation to any contract of carriage means checked baggage or baggage, personal effects, or other articles, not being checked baggage, in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger or a servant or agent of the carrier) whether the contract of carriage is for international carriage or domestic carriage;

“Cargo” in relation to any contract of carriage means all kinds of movable property, including animals; but does not include baggage and mails or postal articles whether the contract of carriage is for international carriage or domestic carriage;

“Carrier” in relation to any contract of carriage includes a contracting carrier and an actual carrier whether the contract of carriage is for international carriage or domestic carriage;

“Commander of an aircraft” means the pilot for the time being in lawful command of the aircraft;

“Contract” in relation to any contract of carriage includes an arrangement made without consideration whether the contract of carriage is for international carriage or domestic carriage;

“Cook Islands aircraft” means an aircraft that is registered or required to be registered in the Cook Islands under the Civil Aviation Act No. 6 of 2002;

“Dangerous goods” means articles or substances that are capable of posing risk to health, safety, property, or the environment and –

- (a) are listed in, or classified in accordance with the ICAO’s *Technical Instructions for the Safe Transportation of Dangerous Goods by Air*; or

- (b) while not so listed or classified, nevertheless have features or properties that in the opinion of the Director might reasonably qualify them for listing or classification as dangerous goods under the ICAO's *Technical Instructions for the Safe Transportation of Dangerous Goods by Air*;

"Director" means the Director of Civil Aviation appointed pursuant to the provisions of the Civil Aviation Act 2002;

"Foreign in-flight security officer" means an enforcement officer or person with authorisation from a country other than the Cook Islands who is -

- (a) authorised to act on an aircraft that is in flight by the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted; and
- (b) subject to an in-flight security officer arrangement or agreement between the Cook Islands and the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted;

"In-flight security officer" means a member of the Police authorised by the Commissioner of Police pursuant to section 71 to be an in-flight security officer

"International airport" means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out;

"Military service" includes naval and air-force service; and a certificate by the Cook Islands Minister of Foreign Affairs that any aircraft is or is not used in military service for the purposes of this Act shall be conclusive evidence of the fact certified;

"Minister" means the Minister responsible for civil aviation;

"Passenger" in relation to any contract of carriage means a person carried pursuant to a contract of carriage of that person whether the contract of carriage is for international carriage or domestic carriage and includes a person who has reported to an employee or agent of the carrier for the purpose of going on board an aircraft pursuant to a contract to carry him or her as a passenger;

“Prohibited Item” includes, in addition to the items described in paragraphs (a) to (d) of subsection 1 of section 35 of this Act and paragraphs (a) to (d) of subsection 1 of section 36 of this Act, any blunt, pointed or bladed item capable of being used to cause injury; any chemical, toxic, explosive or highly combustible substance posing a risk to the health of passengers or crew or the security or safety of aircraft; or any property or object capable, or appearing capable, of discharging a projectile or causing injury and further includes any items that -

- (a) are listed in, or classified in accordance with, the ICAO’s *Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference*; or
- (b) while not so listed or classified, nevertheless have features or properties that in the opinion of the Director might reasonably qualify them for listing or classification as prohibited items under the ICAO’s *Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference* or other document issued by ICAO after the commencement of this Act in replacement or substitution of the *Security Manual for Safeguarding International Civil Aviation Against Acts of Unlawful Interference*;

“Security area” means an area that the Director has declared to be a security area under section 9(1) of this Act;

“Security restricted area” means an area that the Director has declared to be a security restricted area under section 9(2) of this Act;

“Security designated aerodrome” means an aerodrome for the time being designated as a security aerodrome under section 10 of this Act;

“Security designated navigation installation” means a navigation installation for the time being designated as a security navigation installation under section 10 of this Act;

“Sterile area” means the area at an aerodrome, between the passenger inspection and screening station and the aircraft, into which access is strictly controlled;

“The Cook Islands” includes all waters within the outer limits of the territorial sea of the Cook Islands as defined by section 3 of the Territorial Sea and Exclusive Economic Zone Act No. 16 of 1977;

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

"The Montreal Convention" means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on the 23rd day of September 1971;

"The Montreal Protocol" means the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on 24 February 1988;

"The Tokyo Convention" means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on the 14th day of September 1963.

(2) For the purposes of this Act, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation provided that in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

(3) For the purposes of this Act, an aircraft is in service from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft's crew begins for a specific flight until either -

- (a) The flight is cancelled; or
- (b) Twenty-four hours after the aircraft, having commenced the flight, lands; or
- (c) The aircraft, having commenced the flight, makes a forced landing and any competent authorities referred to in subsection (2) of this section assume responsibility for the aircraft and for persons and property on board the aircraft; or
- (d) The aircraft, having commenced the flight, ceases to be in flight, - whichever is the latest.

PART 2

AVIATION SECURITY SERVICES

General Provisions

3. Aviation security - The prevention of the commission of offences against this Act at any security designated aerodrome or security designated navigation installation, and the protection of persons and property from dangers arising from the commission or attempted commission of such offences, shall be the joint responsibility of the Cook Islands Police and any authorised provider of aviation security services at that aerodrome or installation.

4. Responsibility of Minister to provide aviation security services -

- (a) The Minister shall ensure that aviation security services are provided at all security designated aerodromes and security designated navigation installations;

- (b) In order to provide the said aviation security services the Minister may establish and continue a service to be called the Aviation Security Service.

5. Authorised aviation security service providers - (1) Subject to subsection (2) of this section, aviation security services at any security designated aerodrome or security designated navigation installation may be provided by -

- (a) The Aviation Security Service; or
(b) The operator of that aerodrome or navigation installation.

(2) No operator of an aerodrome or navigation installation, and no person employed by any such operator to provide aviation security services, shall provide aviation security services at that aerodrome or installation, except pursuant to a current aviation document issued by the Director under section 26 of the Civil Aviation Act 2002.

(3) The holder of every such document shall comply with the relevant prescribed requirements and standards.

(4) Where aviation security services are provided by the Airport Authority as an authorised aviation security service provider pursuant to subsection (1) the powers, responsibilities and duties of the Airport Manager in relation to aviation and airport security shall be those defined in this Act and the Civil Aviation Act 2002 and the Rules made thereunder.

6. Further provisions relating to Aviation Security Service - (1) Notwithstanding section 28 of the Civil Aviation Act 2002 and section 5 of this Act, but subject to subsection (2) of this section, the Minister may from time to time by notice in the *Gazette* specify that only the Aviation Security Service may be granted an aviation document to provide aviation security services at any security designated aerodrome or security designated navigation installation. Any such notice may be amended or revoked by the Minister by notice in the *Gazette*.

(2) Where any person already holds an aviation document entitling that person to provide aviation security services at a security designated aerodrome or security designated navigation installation, the Director shall not give a notice under subsection (1) of this section in respect of that aerodrome or navigation installation without the consent of that person.

(3) Notwithstanding anything in section 5 of this Act, the Director may at any time, in the event of an emergency or other crisis, appoint the Aviation Security Service to provide aviation security services at any designated aerodrome or security designated navigation installation, notwithstanding that the operator of that aerodrome or navigation installation is providing aviation security services.

(4) Any appointment made by the Director under subsection (3) of this section shall have effect for a period specified by the Director, being not more than 10 days.

7. Functions and duties of other aviation security service providers - (1) Aviation security service providers (other than the Aviation Security Service) shall have such functions and duties as may be prescribed by rules made under this Act.

(2) Such aviation security service providers shall designate employees to be aviation security officers; and every such officer shall have and may exercise, in relation to the aerodrome or navigation installation at which he is employed, all the powers of an aviation security officer under this Act, except the powers to arrest and detain any person.

8. Powers, functions and duties of aviation security services - Without limiting the powers, functions, duties, or responsibilities of the Police under this Act or any other enactment, and without limiting the generality of section 4(a) of this Act, aviation security services shall have the following powers, functions and duties -

- (a) To carry out -
 - (i) crew, passenger, and baggage screening of all international aircraft passenger services; and
 - (ii) the screening, reasonable searches, or seizures specified in section 12(1);
- (b) To undertake, if necessary, reasonable searches of crew, passengers, baggage, cargo, aircraft, aerodromes and navigation installations;
- (c) To carry out aerodrome security patrols and patrols of navigation installations;
- (d) To review, inquire into, and keep itself informed on security techniques, systems, devices, practices, and procedures related to the protection of civil aviation and persons employed in or using it;
- (e) To prepare for every designated airport, with the concurrence and approval of the Director and the Commissioner of Police, an airport security program complying with the requirements of the National Civil Aviation Security Program (NCASP) for the purpose of protecting the safety, regularity and efficiency of the airport and the safety of persons using the airport;
- (f) To undertake, or encourage or supervise, such experimental or research work in respect of any aspect of aviation security as the Director may specify;
- (g) For the purpose of better carrying out any of its functions under this Act, to co-operate with the Police, Government departments, airport authorities, operators, and authorities administering the airport security services of other countries, and with any appropriate international organisation.

PART 3

SECURITY AREAS AND INSTALLATIONS

Security on the Ground

9. Security areas and security restricted areas - (1) The Director may declare, by a sign or signs affixed at the perimeter of the area, that an area within any security designated aerodrome or security designated navigation installation is a security area.

(2) The Director may declare, by appropriate notification, that an area within a security area is a security restricted area.

(3) No person other than a member of the Police on official duties or an aviation security officer on official duties may enter or remain in any security area or security restricted area unless the person is -

- (a) wearing an airport identity card issued under the rules (or other identity document approved by the Director under the rules) and worn in accordance with the rules; and
- (b) authorised by the Director or the airport manager or other person having control of the area.

(4) Every person in a security area or security restricted area shall, on the request of an aviation security officer, state his or her name, address, the purpose of his or her presence in the security area or security restricted area, and his or her authority to enter it, and shall produce satisfactory evidence of the correctness of his or her stated name and address.

(5) Where a person who fails or refuses to provide an aviation security officer with satisfactory evidence of his or her name and address when requested by the aviation security officer, or where a person fails to satisfy the aviation security officer that he or she is authorised to be there, the aviation security officer may order that person to leave the security area or security restricted area.

(6) An aviation security officer, and any person whom he or she calls to his or her assistance, may use such force as may be reasonably necessary to remove from any security area any person who fails or refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so under subsection (5) of this section.

(7) Any person who refuses to comply with subsection (4) or subsection (5) of this section and, after having been warned that he or she commits an offence, persists in its commission, may be detained by an aviation security officer and in that case he or she shall as soon as may be practicable be delivered to a member of the Police.

(8) Every person commits an offence who, on being found in a security area or security restricted area, -

- (a) refuses to state his or her name, address, and authority to enter the security area or security restricted area after -
 - (i) having been informed that he or she is in a security area or security restricted area; and
 - (ii) having been requested by an aviation security officer to state those particulars; or
- (b) refuses forthwith to leave the security area or security restricted area after having been ordered by an aviation security officer to do so.

(9) Every person who commits an offence under subsection (8) in relation to a -

- (a) security area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000;
- (b) security restricted area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000.

(10) An aviation security officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle in a security restricted area to stop the vehicle as soon as is practicable for the purpose of screening or searching the vehicle, and any item, substance, or person in the vehicle.

(11) The driver of a vehicle that is stopped by an aviation security officer must remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any item, substance, or person in the vehicle.

(12) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without lawful authority or reasonable excuse, fails to -

- (a) stop a vehicle in a security restricted area as soon as is practicable when required to do so by an aviation security officer; or
- (b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any item, substance, or person in the vehicle.

(13) Despite subsection (3), a passenger embarking or disembarking directly through a gateway or thoroughfare in an airport approved for that purpose by the airport manager may pass through a security area or security restricted area forming part of the gateway or thoroughfare without an airport identity card.

(14) Despite subsection (3), a person allowed under the rules may pass through a security area or security restricted area without an airport identity card.

10. Security designated aerodromes and navigation installations - (1) The Director may by notice in the Gazette, designate any aerodrome or navigation installation as a security designated aerodrome or security designated navigation installation.

(2) Any designation under subsection (1) of this section may at any time be revoked, in whole or in part, or amended by the Director by notice in the *Gazette*.

11. Right of access - (1) Subject to subsections (2) and (3) of this section, an aviation security officer while on duty may at any time enter any security designated aerodrome or a security designated navigation installation, or any aircraft, vehicle, building, or place in any part of a security designated aerodrome or security designated navigation installation, for the purpose of exercising and carrying out his or her powers, functions, and duties under this Act.

(2) Unless the aviation security officer is accompanied by an officer of the Police, the power of entry conferred by subsection (1) of this section shall be limited to peaceful and non-forceable entry.

(3) Where the Police have taken command of any situation at an aerodrome or navigation installation, the rights of aviation security officers to enter any part thereof or any aircraft, vehicle, building, or place shall be subject to such limitations as the senior member of the Police present at the aerodrome or navigation installation specifies.

(4) Where an aircraft or vehicle is not being used for commercial purposes, subsection (1) of this section shall not apply unless the aviation security officer believes on reasonable grounds that there is in that vehicle or aircraft a person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.

PART 4
POWERS AND DUTIES OF DIRECTOR TO REQUIRE SCREENING AND SEARCHES

12. Powers and duties of Director to require screening, searching and seizing - (1) The Director may, if he or she believes on reasonable grounds that a security risk exists, direct an aviation security service provider by notice in the *Gazette*, -

- (a) to screen -
 - (i) any person boarding an aircraft; or
 - (ii) any thing to be carried on an aircraft; or
 - (iii) any person, item, or substance -
 - (A) before the person, item, or substance enters a sterile area;
 - (B) present in a sterile area;
 - (iv) any person, item, substance, or vehicle -
 - (A) before the person, item, substance, or vehicle enters a security restricted area;
 - (B) present in a security restricted area;
 - (v) any unattended item, substance or vehicle in a security restricted area;
 - (vi) at random, and on a proportional basis determined by risk assessment, any person who either has access to or, in the opinion of the Director, the potential to access; any aircraft or any security area, security restricted area or sterile area at any airport or navigation installation or air navigation facility; or
- (b) if necessary, to undertake reasonable searches of -
 - (i) any person boarding an aircraft; or
 - (ii) any thing to be carried by an aircraft; or
 - (iii) any (as specified in the *Gazette* notice) -
 - (A) aircraft or class of aircraft;
 - (B) aerodrome or class of aerodrome;
 - (C) navigation installation or class of navigation installation;
 - (iv) any person, item, substance, or vehicle -
 - (A) before the person, item, substance, or vehicle enters a sterile area;
 - (B) present in a sterile area;
 - (v) any person, item, substance, or vehicle -
 - (A) before the person, item, substance, or vehicle enters a security restricted area;
 - (B) present in a security restricted area;

- (vi) any unattended item, substance or vehicle in a security restricted area; or
 - (vii) at random, and on a proportional basis determined by risk assessment, any vehicle within any security area, security restricted area or sterile area or in any defined area adjacent to any such area;
 - (viii) at random, and on a proportional basis determined by risk assessment any person, vehicle, facility or installation, having access to, or in the opinion of the Director, having the potential to access any aircraft or any security area, security restricted area or sterile area at any airport or navigation installation or air navigation facility;
- (c) to seize any item or substance specified in the *Gazette* notice if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.

(2) An aviation security service provider directed under subsection (1) must screen and search for any item or substance specified in the *Gazette* notice.

(3) Before directing an aviation security provider under subsection (1), the Director must, to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate and practical, representative groups in the aviation industry, and any government department.

(4) The Director may rescind a direction made under subsection (1).

(5) A direction remains in effect until it is rescinded.

(6) For the purposes of subsection (1)(b)(viii) "access" includes that which is attainable -

- (a) directly by way of personal entry into or proximate approach to the said aircraft, security area, security restricted area or sterile area at any airport or navigation installation or navigation facility.
- (b) Indirectly by way of placement, concealment or delivery of any item, thing, matter or substance, into, on, within, or in proximity to the said aircraft, security area, security restricted area or sterile area at any airport or navigation installation or navigation facility.

PART 5 **SECURITY CHECKS BY DIRECTOR**

13. Powers and duties of Director relating to security checks - (1) The Director may carry out a security check of a person who falls within a category of persons specified in the rules as requiring a security check if -

- (a) the security check is for the purpose of determining whether the person poses a threat to aviation security; and
- (b) the person consents.

(2) If a person refuses consent to a security check under sub-section (1), the person may not be granted any authorisation under the rules if the rules require a favorable security check determination.

(3) The Director may grant a favorable security check determination if the Director decides that the person has undergone an alternative security check that is acceptable to the Director.

(4) For the purpose of determining whether a person poses a threat to aviation security, the Director may -

- (a) seek and receive any information that the Director considers relevant;
- (b) give weight to any component of the information as the Director considers appropriate in the circumstances.

(5) If the Director determines that a person does not pose a threat to aviation security, the Director must advise the person of the favorable security check determination.

(6) The Director may reconsider any previous security check determination that the Director has made if -

- (a) new information is made available; or
- (b) the Director has reason to believe that the person may pose a threat to aviation security.

(7) If the Director proposes to reconsider any previous security check determination, the Director must -

- (a) advise the person to whom the security check determination relates that the Director is reconsidering that determination; and
- (b) complete the reconsideration of that determination within 20 working days of advising the person under paragraph (a); and
- (c) if the reconsideration results in an adverse security check determination or a proposed adverse security check determination, initiate the review process set out in section 14; and
- (d) if a favorable security check determination is required for any previous authorisation granted to the person under the rules, withdraw that authorisation for -
 - (i) the period of the reconsideration; and
 - (ii) any subsequent review period under section 14 and
- (e) if a favorable security check determination is required for any previous authorisation granted to the person by any other entity, require that entity to withdraw the authorisation for -
 - (i) the period of the reconsideration; and
 - (ii) any subsequent review period under section 5.

(8) Nothing in this section limits the power of the Director to grant an exemption under section 40 of the Civil Aviation Act 2002.

14. Review procedures for security check determinations - (1) If the Director proposes to make an adverse security check determination with respect to a person the Director must -

- (a) advise the person of the proposed determination and the reasons for the proposed determination; and
- (b) give the person written notice that, within 20 working days of the date of the notice, the person may -
 - (i) seek legal advice or assistance with respect to the proposed determination;
 - (ii) respond to, comment on, or make submissions on the proposed determination;
 - (iii) provide new information relevant to the proposed determination; and
- (c) give the person notice of the date on which the proposed determination will, unless the Director decides otherwise, be made (which must be a date that is as soon as practicable after the expiry of the 20 working day period referred to in paragraph (b); and
- (d) consider any response, comment, submission, or new information that the person provides along with the information on which the proposed determination was made; and
- (e) make a final determination and inform the person and any other affected party of, -
 - (i) in the case of the person, the final determination and the reasons for the final determination; and
 - (ii) in the case of any other affected party, the final determination but not the reasons for the final determination.

(2) If the Director makes a final adverse security check determination, the Director must -

- (a) revoke any authorisation granted to the person by the Director under the rules, if a favorable security check determination is required under the rules for the authorisation; and
- (b) require any other entity to revoke any authorisation granted to the person, if a favorable security check determination is required under the rules for the authorisation.

15. Offence to carry out activity while authorisation withdrawn or after authorisation revoked - (1) Every person commits an offence who carries out an activity that requires an authorisation -

- (a) during a period when that authorisation has been withdrawn under section 13(7)(d) or (e); or
- (b) if that authorisation has been revoked under section 14(2).

(2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$5,000.

16. Offence to fail to comply with Director's requirement to withdraw or revoke authorisation - (1) Every person commits an offence who fails, without reasonable excuse, to comply with the Director's requirement to -

- (a) withdraw an authorisation under section 13(7)(e); or
- (b) revoke an authorisation under section 14(2)(b).

(2) Every person who commits an offence against subsection (1) is liable on summary conviction to a fine not exceeding \$10,000.

PART 6

FURTHER FUNCTIONS, POWERS, DUTIES AND PROTECTIONS OF AVIATION SECURITY OFFICERS

17. Powers and duties of aviation security officer relating to dangerous goods - (1) Without limiting sections 8(a) and 8(b), an aviation security officer may screen any person boarding an aircraft or any thing to be carried by an aircraft for the purpose of detecting dangerous goods.

(2) If dangerous goods are detected and the aviation security officer has reasonable grounds to believe that they may not be lawfully carried on an aircraft, the aviation security officer may seize and detain the dangerous goods for the purpose of determining whether or not they may be lawfully carried on an aircraft.

(3) If the aviation security officer determines that the dangerous goods may not be lawfully carried on an aircraft, the aviation security officer must notify the relevant operator or delivery service as soon as practicable and -

- (a) may detain the dangerous good until they are dealt with in accordance with paragraph (b) or paragraph (c); or
- (b) may deliver the dangerous goods to the operator or delivery service; or
- (c) may, if the Director agrees, destroy or otherwise dispose of the dangerous goods.

(4) If the aviation security officer determines that the dangerous goods may be lawfully carried on an aircraft, the aviation security officer must, as far as practicable, return the dangerous goods to the owner of the dangerous goods.

(5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the dangerous goods pose an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the dangerous goods.

(6) The aviation security officer must report the detection of dangerous goods in accordance with the rules, or in the absence of rules, as the Director may direct.

18. Power of aviation security officers to search for and seize certain items or substances to be carried on aircraft or into sterile areas - (1) Without limiting sections 8 or 28 of this Act, an aviation security officer may, for the purpose of detecting any item or substance specified in a direction given under section 12, screen or search any person, item, substance, or vehicle -

- (a) before the person, item, substance, or vehicle enters a sterile area;
- (b) present in a sterile area.

(2) A search undertaken under subsection (1) must be carried out in accordance with the requirements for searches specified in section 28(4)(b) to (7) of this Act.

(3) If an item or substance specified in section 35(1) of this Act or a direction under section 12(1) is detected in a search undertaken under subsection (1) or section 28 of this Act, and an aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.

(4) If the aviation security officer determines that the item or substance may be lawfully carried into, or remain in, an aircraft or a sterile area, the aviation security officer must, -

- (a) if practicable, return the item or substance to the person from whom it was seized; or
- (b) if impracticable to return the item or substance to the person from whom it was seized, deliver the item or substance to the carrier of the aircraft that the person boarded or intended to board when the item or substance was seized.

(5) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may -

- (a) detain the item or substance until it is dealt with in accordance with paragraph (b) or (c); or
- (b) dispose of or destroy the item or substance; or
- (c) deliver the item or substance to a member of the Police.

(6) If an aviation security officer delivers an item or substance to a member of the Police under subsection (5)(c), the aviation security officer must record the delivery and the relevant details of the seizure.

(7) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that an item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

19. Further powers and duties of aviation security officers relating to security restricted areas - (1) Without limiting section 8, an aviation security officer may, for the purpose of detecting any item or substance specified in section 35(1) of this Act or a direction given under section 12(1), screen or search any person, item, substance, or vehicle -

- (a) before the person, item, substance, or vehicle enters a security restricted area;
- (b) present in a security restricted area.

(2) A search undertaken under subsection (1) must be carried out in accordance with the requirements for searches specified in section 28(4)(b) to (7) of this Act.

(3) If any item or substance specified in section 35(1) of this Act or a direction under section 12(1) is detected in a search undertaken under subsection (1) or section 28 of this Act, and the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security restricted area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security restricted area.

(4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security restricted area, the aviation security officer -

- (a) must -
 - (i) detain the item or substance until it is delivered to a member of the Police, or, if the Director agrees, destroyed or otherwise disposed of; or
 - (ii) deny entry into the security restricted area to any person in possession of the item or substance; or
 - (iii) direct the person in possession of the item to leave the security restricted area, with or without -
 - (A) the item or substance;
 - (B) any vehicle used to transport the item or substance; and
- (b) must make a record of the item or substance and the person from whom the item or substance was seized (if any).

(5) If the aviation security officer determines that the item or substance may be lawfully carried into or remain in the security restricted area, the aviation security officer must, if practicable, return the item or substance to the person from whom the item or substance was seized.

(6) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

20. Consent to be screened or searched - (1) The powers specified in section 19(1) may only be exercised with respect to -

- (a) a person to be screened or searched with the consent of the person;
- (b) an item, substance, or vehicle to be screened or searched with the consent of the person in possession of the item, substance, or vehicle.

(2) To avoid doubt, an item, substance, or vehicle may be screened or searched without consent if it is unattended.

21. Persons who refuse to consent to be screened or searched - (1) If a person refuses to consent to the screening or searching under section 19(1), an aviation security officer may -

- (a) deny that person entry into the security restricted area;
- (b) require that person to -

- (i) leave the security restricted area;
 - (ii) remove any item, substance, or vehicle in that person's possession from the security restricted area.
- (2) An aviation security officer may -
- (a) prevent a person from entering a security restricted area if the person is denied entry;
 - (b) remove a person from a security restricted area if the person is required to leave.
- (3) An aviation security officer may detain a person who -
- (a) refuses to leave when required to leave (or attempts to enter when denied entry) and persists in his or her refusal (or attempt) after being warned that he or she commits an offence by not complying;
 - (b) refuses to be screened or searched if the aviation security officer has reasonable grounds to suspect that -
 - (i) an offence against Parts 8, 9, 10 or 11 of this Act has been, is being, or is likely to be committed, whether by that person or by any other person; or
 - (ii) a search of the person refusing to consent is likely to disclose evidence that an offence against this Act has been, is being, or is likely to be, committed, whether by that person or any other person.
- (4) A person detained under subsection (3) must be delivered to a member of the Police as soon as practicable.
- (5) An aviation security officer, or any person assisting an aviation security officer, may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to -
- (a) prevent a person from entering a security restricted area under subsection (2)(a);
 - (b) remove a person from a security restricted area under subsection 2(b);
 - (c) detain a person under subsection (3).

22. Searches of persons refusing consent to be searched - (1) If a person refuses to consent to the screening or searching under section 19(1), a member of the Police may, without a warrant, search the person and any item, substance, or vehicle in the person's possession, and may detain the person for the purposes of the search, and may take possession of any item or substance found in the course of the search that is specified in section 35(1) of this Act, if the member of the Police has reasonable grounds to suspect that -

- (a) an offence against Parts 8, 9, 10 or 11 of this Act has been, is being, or is likely to be committed, whether by that person or by any other person; and

- (b) a search of the person refusing to consent, or any item, substance or vehicle in the person's possession, is likely to disclose evidence that an offence against Parts 8, 9, 10 or 11 of this Act has been, is being, or is likely to be, committed, whether by that person or any other person.

(2) The refusal of a person to consent to the searching of his or her person, or any item, substance, or vehicle in the person's possession, does not of itself constitute reasonable grounds for suspecting that an offence against Parts 9, 10, or 11 of this Act has been, is being, or is likely to be, committed.

(3) A member of the Police exercising the power of search under subsection (1) must, before the search is conducted, and on any subsequent request, -

- (a) provide evidence of his or her identity to the person to be searched; and
- (b) inform the person to be searched that the search is authorised under this section; and
- (c) if not in uniform, provide evidence, if asked, that he or she is a member of the Police to the person to be searched.

(4) If a member of the Police exercises the power of search under subsection (1), he or she must, within 3 days after the day on which he or she exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

23. Procedures for searches of persons - (1) With respect to a search made under section 19(1) -

- (a) a person must, if directed to do so by an aviation security officer, -
 - (i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the person is wearing to enable the search to be carried out, except where the person has no other clothing, or only underclothing, under the outer clothing;
 - (ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories;
 - (iii) allow an aviation security officer to carry out a pat down search;
- (b) a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device.

(2) For the purposes of this section, pat down search -

- (a) means a search of a clothed person in which the person conducting the search may do all or any of the following -
 - (i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person;

- (ii) —insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched;
- (iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely -
 - (A) open his or her mouth;
 - (B) display the palms of his or her hands;
 - (C) display the soles of his or her feet;
 - (D) lift or rub his or her hair; and
- (b) includes the authority to search -
 - (i) any item or substance carried by, or in the possession of the person; and
 - (ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
 - (iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

24. Protection of authorised persons - Nothing done by an authorised person under sections 18, 19, 28, 29, 30 and 31 may subject the authorised person to personal liability if done in -

- (a) good faith; and
- (b) the exercise of powers or the performance of duties under this Act.

25. Powers of arrest and seizure of items or substances - (1) Every aviation security officer is justified in arresting without warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation if he or she has reasonable grounds to believe that an offence has been or is being committed by that person against any of the following enactments -

- (a) Parts 8, 9 or 10 of this Act;
- (b) Sections 3, 9, or 18 of the Arms Ordinance of 1954 (which relate to unlawful possession or carriage of firearms, ammunition, or explosives, unlawful presentation of firearms at another person and the discharge of firearms without reasonable cause).

(2) An aviation security officer may -

- (a) search a person arrested under subsection (1);
- (b) seize any item or substance that may be evidence of an offence against an enactment specified in subsection (1), if the officer has reasonable grounds to believe that -
 - (i) the person has an item or substance hidden or in clear view on or about his or her person that is evidence of an offence against an enactment specified in subsection (1); and
 - (ii) the item or substance poses a threat to the safety of the officer or any other person; and

(iii) — immediate action is necessary to address the threat.

(3) An aviation security officer may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to -

- (a) arrest a person under subsection (1);
- (b) search a person under subsection (2);
- (c) seize an item or substance under subsection (2).

(4) To avoid doubt, an aviation security officer may search a person under this section whether or not an aviation security officer has previously searched the person under another section of this Act.

(5) An aviation security officer who undertakes a search under this section must, within 3 working days of the search, give the Director a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by subsection (2)(b).

(6) Any person called upon to do so by an aviation security officer is justified in assisting him or her in good faith to arrest any person.

(7) An aviation security officer shall as soon as may be practicable deliver any person he or she arrests, and any item or substance he or she seizes to a member of the Police.

(8) An aviation security officer may seize an item or substance in the possession of a person that the aviation security officer arrests if the aviation security officer has reasonable grounds to believe that the item or substance is evidence of an offence against an enactment specified in subsection (1).

26. Arrest of persons delivered to Police - (1) A member of the Police shall accept delivery of a person whom an aviation security officer seeks to deliver to him or her under this Act if he or she has reasonable grounds to suspect that person of having done or omitted to do anything if that act or omission is an offence against sections 9(8) of this Act or any enactment specified in section 25(1) of this Act.

(2) A member of the Police who accepts delivery of a person under subsection (1) of this section may forthwith arrest that person.

(3) An aviation security officer who detains any person in accordance with the provisions of section 9(7) of this Act and delivers him or her to a member of the Police, and any person who at his or her request and in good faith assists an aviation security officer in doing so, is justified in so detaining and delivering that person and in using such force as may be reasonably necessary in doing so.

27. Powers of Police - Every sworn member of the Police shall have and may exercise all or any of the powers conferred on an aviation security officer under this Act or regulations or rules made under this Act.

PART 7 **AIRPORT SCREENING AND SEARCHES**

28. Search of passengers and baggage - (1) Any authorised person, any Customs officer or any employee or agent of the carrier authorised by the carrier for the purpose, may, with the consent of the passenger, search a passenger and the passenger's baggage, personal effects, or other articles in the possession of the passenger, or in the possession of another person (being a person accompanying the passenger) for the purpose of detecting any item or substance that could pose a threat

to aviation safety and security, including but not limited to any prohibited item before the passenger boards any aircraft in the Cook Islands pursuant to any contract providing for the carriage of the passenger by air from any place in the Cook Islands to any other place (whether in the Cook Islands or elsewhere).

(2) If the passenger declines to allow him or herself or his or her baggage to be searched, the carrier must refuse to carry -

- (a) the passenger;
- (b) his or her baggage;
- (c) the passenger, where embarkation is refused under the preceding subparagraph, may be directed in writing by an authorised person to leave the airport for a period of up to 24 hours;
- (d) the passenger may be placed under surveillance at the airport by an authorised person.

(3) A carrier shall not be liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part thereof, by reason of the fact that the carrier has refused to carry, or has been directed by the Director or any authorised person, not to carry -

- (a) a passenger who has declined to allow himself or herself or his or her baggage to be screened or searched;
- (b) the baggage of a passenger who has declined to allow himself or herself or his or her baggage to be screened or searched.

(4) With respect to any search made pursuant to subsection (1) -

- (a) by an employee or agent of the carrier authorised by the carrier for the purpose, the passenger must not be required to remove any article of clothing (other than a coat or similar article) for the purpose of being searched;
- (b) by a member of the Police, an aviation security officer, or a Customs officer, the passenger must, if directed to do so -
 - (i) remove, raise, lower, or open any other clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the passenger is wearing to enable the search to be carried out, except where the passenger has not other clothing, or only underclothing, under the outer clothing;
 - (ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories;
 - (iii) allow a member of the Police, an aviation security officer or a Customs officer to carry out a pat-down search.

- (c) by a member of the Police, an aviation security officer, a Customs officer, or an employee or agent of the carrier authorised for the purpose, a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or similar device.

(5) Subject to subsection (6) with respect to a search made under subsection (1), a member of the Police, an aviation security officer, or a Customs officer, may use any aid or device that is reasonably necessary to facilitate the search, include (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical or electrical or electronic device.

(6) Despite subsection (5), with respect to a person searched under subsection (1), a member of the Police, an aviation security officer, a Customs officer, or an agent of the carrier authorised for the purpose may not use an aid or device that produces an unclothed image of the person.

(7) For the purpose of this section, "pat-down search" –

(a) means a search of a clothed person in which the person conducting the search may do all or any of the following

- (i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person;
- (ii) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched;
- (iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely -
 - (A) open his or her mouth;
 - (B) display the palms of his or her hands;
 - (C) display the soles of his or her feet;
 - (D) lift or rub his or her hair; and

(b) includes the authority to search -

- (i) any item or substance carried by, or in the possession of the person; and
- (ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and
- (iii) any head coverings, gloves or footwear (including socks or stockings) removed for the purpose of the search.

29. Proportional screening and search of other persons and things - (1) Any authorised person may, at random and at minimum on a proportional basis determined by risk assessment, screen and search any person who, in the opinion of the Director, has access to or the potential to access any aircraft or any security area, security restricted area or sterile area at any airport or navigation installation or air navigation facility.

(2) For the purpose of this section "access" includes that which is attainable -

- (a) directly by way of personal entry into or proximate approach to an aircraft, security area, security restricted area, navigation installation or facility in subsection (1);
- (b) indirectly by way of the placement, concealment or delivery of any item, thing, matter or substance, into, on, within, or in proximity to an aircraft, security area, security restricted area, navigation installation or facility referred to in subsection (1).

(3) Any authorised person may, at random and at minimum on a proportional basis determined by risk assessment, search any operation or place of work whose personnel have, in the opinion of the Director, access to any aircraft or any security area, security restricted area or sterile area at any airport or navigation installation or air navigation facility.

(4) Any search of a person made pursuant to subsection (1) must be carried out in accordance with the requirements for searches specified in section 28(4)(b) to (7) of this Act.

30. Search of persons declining to allow screening or search - (1) Where -

- (a) Pursuant to subsection (2) of section 28 of this Act a carrier refuses to carry, a person who has declined to allow himself or herself or his or her baggage to be screened or searched; or
- (b) A member of the Police has reasonable grounds to suspect that an offence against this Act has been, is being, or is likely to be, committed, whether by that person or by any other person, -

the member of Police may, without warrant, search that first-mentioned person and his or her baggage and any articles in his or her possession, and may detain him or her for the purposes of that search, and may take possession of any article referred to in paragraph (a), paragraph (b), paragraph (c), or paragraph (d), or paragraph (e) of section 35(1) of this Act found in the course of that search.

(2) Every police officer exercising the power of search conferred by subsection (1) of this section shall identify himself or herself to the person searched, and shall also tell him or her that the search is being made pursuant to that subsection. He or she shall also, if not in uniform and if so required, produce evidence that he or she is a police officer.

31. Screening and search of checked baggage, cargo and mail - (1) Any authorised person may screen or examine any checked baggage, cargo and mail before it is loaded on to any aircraft in the Cook Islands pursuant to a contract providing for the carriage of the cargo by air from a place in the Cook Islands to any other place (whether in the Cook Islands or elsewhere).

(2) With respect to a search made under subsection (1) the authorised person may use any aid or device that is reasonably necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging device, or some other mechanical or electrical or electronic device.

(3) Where any authorised person, upon screening or examination of any checked baggage or cargo, has reasonable grounds to suspect that an offence against this Act or breach of any Rules made under the Civil Aviation Act 2002 in relation to the aircraft on which that checked baggage, cargo or mail was to be carried has been, is being, or is likely to be, committed, whether by a passenger, consignor of cargo or by any other person, the authorised person may, take possession of any article referred to in paragraphs (a), (b), (c), (d), or (e) of section 35(1) of this Act found in the course of that search.

32. Evidence of offences - Nothing found in the course of a screening, search or examination made pursuant to sections 8, 18, 19, 28, 29, 30 or 31 of this Act shall be admissible as evidence in any criminal proceedings against the person who, or whose baggage, has been screened, searched or examined, or, as the case may be, the consignor of any cargo that has been screened, searched or examined, other than proceedings in respect of an offence against this Act or the criminal offence of treason or any offence punishable by imprisonment for life or for a term of 3 years or more, or in respect of an offence against the Arms Ordinance 1954 (relating to the unlawful carriage or possession of firearms, ammunition or explosives), or in respect of an offence against the Narcotics Act 1965.

PART 8

OFFENCES AGAINST THE INTEGRITY OF SECURITY PROCESSES

33. Offence of impersonation or obstruction of authorised persons - (1) Every person commits an offence who, not being an authorised person, -

- (a) by words, conduct, demeanor, or the assumption of the dress, name, designation, or description of an authorised person, holds him or herself out as being an authorised person; or
- (b) wilfully obstructs, or incites or encourages any person to obstruct an authorised person in the execute of his or her duty.

(2) Every person who commits an offence against subsection (1) is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$10,000.

34. Communicating false information affecting safety - (1) Every person commits an offence who by any means provides to another person information relating to the safety of an aircraft, aerodrome, aeronautical product, aviation related service, or any other facility or product used in or connected with aviation, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false.

(2) Every person who commits an offence against subsection (1) of this section is liable, -

- (a) In the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
- (b) In the case of a body corporate, to a fine not exceeding \$100,000.

(3) Where the commission of an offence against subsection (1) of this section causes financial loss to any person and where the Court imposes a fine under subsection (2) of this section in respect of that offence, the Court may order that such part of the fine as it thinks fit, but in any event not more than one half of the fine, be awarded to that person.

PART 9
OFFENCES OF TAKING PROHIBITED ITEMS ON TO AIRCRAFT OR
INTO SECURITY AREAS

35. Taking firearms, explosives, etc., on to aircraft - (1) Everyone commits a criminal offence and is liable on conviction to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorised by either of them to give such permission, takes or attempts to take on board any aircraft

- (a) Any firearm; or
- (b) Any other dangerous or offensive weapon or instrument of any kind whatsoever; or
- (c) Any ammunition; or
- (d) Any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft; or
- (e) Any other prohibited item.

(2) For the purposes of this section, the term "firearm" means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any such gun, rifle, or pistol which for the time being is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any such gun, rifle, or pistol which is for the time being dismantled.

(3) For the purposes of this section, the term "dangerous" or "offensive weapon" means any item or substance capable of being used to endanger the safety of an aircraft or cause bodily injury.

(4) For the purposes of this section the term "prohibited item" has the meaning given to it in section 2 of this Act.

(5) For the purposes of subsection (1) "lawful authority", "reasonable excuse" and "permission" is deemed to have been established in respect of any person who -

- (a) is a person, or a member of a class of persons, duly designated, authorised and approved in writing by the Director to act on board any aircraft as an in-flight security officer; and
- (b) takes any of the items in subsection (1) (a), (b), (c), (d) or (e) on board any aircraft or into any security area for the purposes of his or her duties as an in-flight security officer.

(6) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding five years, who -

- (a) has the intention of causing bodily injury and of doing an act that would constitute a criminal offence under sections 40, 44, 45 or 46; and
- (b) takes on board an aircraft an item or substance that is capable of -
 - (i) causing bodily injury or of endangering the safety of an aircraft or an airport when combined with another item or substance; or
 - (ii) activating another item or substance that is capable of causing bodily injury or endangering the safety of an aircraft or an airport.

36. Taking firearms, explosives, etc., into security areas - (1) Everyone commits a criminal offence and is liable on conviction to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of any installation within or containing a designated security area, security restricted area or sterile area, or of a person duly authorised by either of them to give such permission, takes or attempts to take into any such area -

- (a) Any firearm; or
- (b) Any other dangerous or offensive weapon or instrument of any kind whatsoever; or
- (c) Any ammunition; or
- (d) Any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the security area or persons in or near it; or
- (e) Any other prohibited item.

(2) For the purposes of this section, the term "firearm" means any gun, rifle, or pistol, whether acting by force of explosives or not, and includes any such gun, rifle, or pistol which for the time being is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any such gun, rifle, or pistol which is for the time being dismantled.

(3) For the purposes of this section, the term "dangerous" or "offensive weapon" means any item or substance capable of being used to endanger the safety of an aircraft or cause bodily injury.

(4) For the purposes of this section the term "prohibited item" has the meaning given to it in section 2 of this Act.

(5) For the purposes of subsection (1) "lawful authority", "reasonable excuse" and "permission" is deemed to have been established in respect of any person who -

- (a) is a person, or a member of a class of persons, duly designated, authorised and approved in writing by the Director to act on board any aircraft as an in-flight security officer; and

- (b) takes any of the items in subsection (1) (a), (b), (c), (d) or (e) on board any aircraft or into any security area for the purposes of his or her duties as an in-flight security officer.
- (6) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding five years, who -
- (a) has the intention of causing bodily injury and of doing an act that would constitute a criminal offence under sections 40, 44, 45 or 46; and
- (b) takes into a sterile area or a security restricted area an item or substance that is capable of -
- (i) causing bodily injury or of endangering the safety of an aircraft or an airport when combined with another item or substance; or
- (ii) activating another item or substance that is capable of causing bodily injury or endangering the safety of an aircraft or an airport.

PART 10 ENDANGERMENT OF AIRPORTS

37. Application - For the purposes of this Part "airport" has the meaning given to "aerodrome" in section 2 of the Civil Aviation Act 2002 and further includes all areas comprising, and any defined area adjacent to, any airport in the Cook Islands and at an airport and in an airport have corresponding meanings.

38. Strict liability for acts endangering the public at an airport - (1) A person commits an offence who acts in a manner that endangers any member or members of the public at an airport.

(2) Every person who commits an offence against subsection (1) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

39. Alarming or threatening conduct at an airport - (1) Every person commits an offence who, while in an airport, and in a manner contrary to public order or safety at the airport -

- (a) uses any threatening, offensive or insulting words or gestures; or
- (b) behaves in a threatening, offensive or insulting manner; or
- (c) without justification uses alarming words or behaves in an alarming manner against public order and safety; or
- (d) behaves in a manner that interferes with the performance by aircrew, airline officials or airport workers of their duties; and
- (e) behaves in a manner that interferes with or is likely to interfere with the performance by aviation security officers of their duties.

(2) Every person who commits an offence against subsection (1)(a), (b) (c) or (d) is liable to a fine not exceeding \$2,500.

(3) Every person who commits an offence against subsection (1)(e) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

40. Offences of violent, destructive and disruptive conduct at international airports - (1) A person commits a criminal offence who, whether in or outside the Cook Islands, using any device, substance, or weapon, intentionally does any of the following acts that endangers or is likely to endanger the safety of an international airport -

- (a) At the international airport, commits an act of violence that causes or is likely to cause serious injury or death; or
- (b) Destroys or seriously damages the facilities of the international airport; or
- (c) Destroys or seriously damages an aircraft that is not in service and is located at the international airport; or
- (d) Disrupts the services of the international airport.

(2) Subject to subsection (3), a person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 14 years.

(3) A person who commits an offence against subsection (1)(a), -

- (a) In circumstances where the conduct concerned is the same as conduct described as intentional homicide under the Crimes Act 1969 must on conviction be sentenced to imprisonment for life; and
- (b) In circumstances where the conduct concerned is the same as conduct described as intentional assault resulting in permanent damage or death under the Crimes Act 1969 is liable on conviction to imprisonment for life.

41. Offences of violent, destructive and disruptive conduct at airports not being international airports - (1) A person commits a criminal offence who, whether in or outside the Cook Islands, using any device, substance, or weapon, intentionally does any of the following acts that endangers or is likely to endanger the safety of any airport not being an international airport -

- (a) At the airport, commits an act of violence that causes or is likely to cause serious injury or death; or
- (b) Destroys or seriously damages the facilities of the airport; or
- (c) Destroys or seriously damages an aircraft that is not in service and is located at the airport; or
- (d) Disrupts the services of the airport.

(2) Subject to subsection (3), a person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 7 years.

- (3) A person who commits an offence against subsection (1)(a), -
- (a) In circumstances where the conduct concerned is the same as conduct described as intentional homicide under the Crimes Act 1969 must on conviction be sentenced to imprisonment for life; and
 - (b) In circumstances where the conduct concerned is the same as conduct described as intentional assault resulting in permanent damage or death under the Crimes Act 1969 is liable on conviction to imprisonment for life.

42. Offences against section 40 deemed to be included in extradition treaties - (1) For the purposes of the Extradition Act 2003 and any Order made under that Act, each offence described in section 5 of this Act is deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time being in force between the Cook Islands and any foreign country which is a party to the Montreal Protocol.

(2) When subsection (1) deems an offence to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 2003 in respect of an act or omission which amounts to that offence is liable to be surrendered in accordance with the provisions of that Act, whether the act or omission occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(3) This section does not apply in respect of an act or omission that, had it occurred within the jurisdiction of the Cook Islands, would not at that time have constituted an offence under Cook Islands law.

(4) A certificate given under the hand of the Cook Islands Minister of Foreign Affairs that any foreign country is a party to the Montreal Protocol is sufficient evidence of that fact.

(5) For the purposes of this section, -

“Offence” includes -

- (a) An attempt to commit that offence;
- (b) Aiding, abetting, inciting, counseling, or procuring a person to commit that offence;
- (c) Inciting, counseling, or attempting to procure a person to commit that offence when it is not in fact committed; and
- (d) Being an accessory after the fact to that offence.

“Foreign country” includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Montreal Protocol extends.

43. Application of section 40 - Section 40 does not apply in respect of acts or omissions that occur outside the Cook Islands unless the alleged offender is present in the Cook Islands.

PART 11
HIJACKING AND OTHER OFFENCES RELATING TO AIRCRAFT

Security in the Air

44. Hijacking - Everyone commits the crime of hijacking and is liable on conviction to imprisonment for life, who, while on board an aircraft in flight, whether in or outside the Cook Islands, unlawfully, by force or threat of force or by any form of intimidation, seizes or exercises control, or attempts to seize or exercise control, of that aircraft.

45. Crimes in connection with hijacking - (1) Everyone who, while on board an aircraft in flight outside the Cook Islands, does or omits anything which, if done or omitted by that person in the Cook Islands, would be a criminal offence, commits that offence if the act or omission occurred in connection with the offence of hijacking.

(2) Without limiting the generality of subsection (1) of this section, an act or omission by any person shall be deemed to occur in connection with the offence of hijacking if it was done or omitted with intent -

- (a) To commit or facilitate the commission of the offence of hijacking; or
- (b) To avoid the detection of himself or herself or of any other person in the commission of the offence of hijacking; or
- (c) To avoid the arrest or facilitate the flight of himself or herself or of any other person upon the commission of the offence of hijacking.

46. Other offences relating to aircraft - Everyone commits a criminal offence, and is liable on conviction to imprisonment for a term not exceeding 14 years, who, whether in or outside the Cook Islands, -

- (a) On board an aircraft in flight, commits an act of violence which is likely to endanger the safety of the aircraft; or
- (b) Destroys an aircraft in service; or
- (c) Causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in flight; or
- (d) Places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in flight; or
- (e) Destroys, damages, or interferes with the operation of any air-navigation facility used in international air navigation, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in flight; or

- (f) Endangers the safety of an aircraft in flight by communicating to any other person any information which the person supplying the information knows to be false.

47. Offences deemed to be included in extradition treaties - (1) For the purposes of the Extradition Act 2003 and any Order published in the *Gazette* under that Act, the offence of hijacking, if not already described in the treaty, is deemed to be an offence described in any extradition treaty concluded before 30 September 2008 and for the time being in force between the Cook Islands and any country that is a party to the Hague Convention.

(2) For the purposes of the Extradition Act 2003 and any Order published in the *Gazette* under that Act, each offence in section 35 and 36 of this Act is deemed to be an offence described in any extradition treaty concluded before 30 September 2008 and for the time being in force between the Cook Islands and any country that is a party to the Montreal Convention.

(3) If, under subsection (1) or subsection (2), an offence is deemed to be an offence described in an extradition treaty, a person may be surrendered for that offence in accordance with the provisions of the Extradition Act 2003 even if the act or omission occurred before the date on which the crime was deemed to be an offence described in the extradition treaty.

(4) Subsection (3) does not apply in respect of an act or omission that, had it occurred within the jurisdiction of the Cook Islands, would not at that time have constituted an offence under Cook Islands law.

(5) For the purposes of this section, -

“Country” includes any territory for whose international relations the Government of a country is responsible and to which the extradition treaty and the Hague Convention or, as the case may be, the Montreal Convention, extends;

“Offence” includes -

- (a) Aiding, abetting, inciting, counseling, or procuring any person to commit that offence; and
- (b) Inciting, counseling, or attempting to procure any person to commit that offence when it is not in fact committed; and
- (c) Being an accessory after the fact to that offence.

(6) A certificate given by the Cook Islands Minister of Foreign Affairs that a country is a party to the Hague Convention or the Montreal Convention, as the case may be, is sufficient evidence of that fact.

48. Application of sections 44, 45, and 46 - (1) Nothing in section 44 or section 45 of this Act shall apply if both the place of take-off and the place of actual landing of the aircraft (not being a Cook Islands aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless -

- (a) The alleged offender is a Cook Islands citizen or a person ordinarily resident in the Cook Islands; or
- (b) The act or omission occurred in the Cook Islands; or
- (c) The alleged offender is present in the Cook Islands; or
- (d) The aircraft is leased without crew to a lessee -
 - (i) Whose principal place of business is in the Cook Islands; or
 - (ii) In any other case, who is a Cook Islands citizen or a person ordinarily resident in the Cook Islands.

(2) Nothing in paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (f) of section 46 of this Act shall apply if both the place of take-off and the place of actual or intended landing of the aircraft (not being a Cook Islands aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless -

- (a) The alleged offender is a Cook Islands citizen or a person ordinarily resident in the Cook Islands; or
- (b) The act or omission occurred in the Cook Islands; or
- (c) The alleged offender is present in the Cook Islands; or
- (d) The aircraft is leased without crew to a lessee -
 - (i) Whose principal place of business is in the Cook Islands; or
 - (ii) In any other case, who is a Cook Islands citizen or a person ordinarily resident in the Cook Islands.

(3) Nothing in section 44 or section 45 or paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (f) of section 46 of this Act shall apply to aircraft used in military, customs, or police service unless -

- (a) The alleged offender is a Cook Islands citizen or a person ordinarily resident in the Cook Islands; or
- (b) The act or omission occurred in the Cook Islands.

49. Application of certain provisions of the Crimes Act 1969 - Nothing in section 7 of the Crimes Act 1969 (which relates to jurisdiction in respect of crimes on ships and aircraft outside the Cook Islands) offences shall apply with respect to the crime of hijacking or to any of the crimes described in section 46 of this Act or to any crime referred to in section 45 of this Act committed in connection with the crime of hijacking.

PART 12 UNRULY PASSENGER OFFENCES

50. Application of this Part - (1) This Part applies to any unruly passenger offence committed -

- (a) on an aircraft in the Cook Islands, regardless of the nationality of the aircraft;
- (b) outside the Cook Islands on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is in the Cook Islands.

(2) A person authorised by the Director to exercise a power or function under this Part must carry a warrant of authority issued by the Director that specifies -

- (a) the name of, and the office or offices held by, that person; and
- (b) the powers and functions that the person is authorised to exercise under this Part.

(3) A police officer may exercise all or any of the powers and functions that may be conferred on a person authorised by the Director under this Part.

(4) For the purposes of this Part "person authorised by the Director" includes (but is not limited to) an aviation security officer authorised by the Director.

51. Liability for offences against this Part despite extraterritoriality - Any person who commits an act or omission on an aircraft in flight outside the Cook Islands that would be an offence against this Part if it occurred in the Cook Islands is, subject to this Act, liable as if the act or omission had occurred in the Cook Islands.

52. Liability for offences under the Crimes Act 1969 despite extraterritoriality - (1) Any person who commits an act or omission on an aircraft in flight outside the Cook Islands that would, if it occurred in the Cook Islands be an offence against sections 95 (riotous etc. behaviour in a public place), 96 (fighting in a public place), 99 (profane, indecent or obscene language), 216 (common assault), 321 (willful damage) or 137A (indecent exposure) under the Crimes Act 1969 is liable under that Act as if the omission had occurred in the Cook Islands.

(2) To avoid doubt, any person who commits an act or omission on an aircraft that would be an offence against sections 95, 96, 99 or 137A under the Crimes Act 1969 is liable under that Act as if the reference to a public place in any of those provisions includes an aircraft.

53. Foreign aircraft outside the Cook Islands - (1) Proceedings may be commenced for an unruly passenger offence committed on a foreign aircraft outside the Cook Islands if -

- (a) the Commander of an aircraft -
 - (i) makes a written request to the Director or Deputy Director of Civil Aviation appointed under the Civil Aviation Act 2002; and
 - (ii) provides a written undertaking that he or she (or the operator of the aircraft) has not made or will not make a similar request to the authorities of any other state; and
- (b) the Attorney General consents.

(2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested, charged, remanded, in custody or released on bail before the Attorney General decides whether or not to consent to proceedings.

(3) Notwithstanding subsection 1(b), proceedings for unruly passenger offences committed on a foreign aircraft outside the Cook Islands may be commenced without the Attorney General's consent if the defendant requests a hearing in respect of the alleged offence.

(4) In any proceedings for an offence under this Part, the Commander of an aircraft's written request and undertaking may in the Court's discretion be -

- (a) admissible in evidence; and

- (b) in the absence of proof to the contrary, sufficient evidence of the matters stated therein.

54. Proceedings for offences - (1) Notwithstanding section 12 of the Criminal Procedure Act 1980-81, any information for an unruly passenger offence may be laid at any time within 12 months after the date of the offence.

(2) The fact that a person may be charged or convicted of an unruly passenger offence does not affect the liability of any person under any other enactment.

55. Strict liability for acts endangering safety - (1) A person commits an offence who acts in a manner that endangers an aircraft or any person in an aircraft.

(2) Every person who commits an offence against subsection (1) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000

56. Disruptive conduct towards crew member - (1) Every person commits an offence who, while in an aircraft, -

- (a) uses any threatening, offensive or insulting words towards a crew member; or
- (b) behaves in a threatening, offensive, insulting or disorderly manner towards a crew member; or
- (c) behaves in a manner that interferes with the performance by a crew member of his or her duties;
- (d) intentionally interferes with the performance by a crew member of his or her duties.

(2) Every person who commits an offence against subsection (1)(a) or (b) or (c) is liable to a fine not exceeding \$5,000.

(3) Every person who commits an offence against subsection (1)(d) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

57. Interference with aircraft - (1) Every person commits an offence who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to smoke detectors.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$10,000.

58. Intoxicated persons on aircraft - (1) Every person (except a person under medical care) commits an offence who -

- (a) is intoxicated and boards an aircraft; or
- (b) becomes intoxicated in an aircraft.

(2) Every person who commits an offence against -

- (a) subsection (1)(a) is liable to a fine not exceeding \$5,000; and
- (b) subsection (1)(b) is liable to a fine not exceeding \$3,000.

(3) For the purposes of this section, a person is intoxicated if the Commander of an aircraft (or senior flight attendant authorised by the Commander of an aircraft for this purpose) has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to -

- (a) be incapable of properly conducting himself or herself; or
- (b) present a hazard or potential hazard to the aircraft or to persons on the aircraft; or
- (c) offend against the good order and discipline required on an aircraft.

(4) For the purposes of this section, "person under medical care" means a person who -

- (a) is under the supervision of an attendant; and
- (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

59. Non-compliance with commands given by the Commander of an aircraft - (1) Every person commits an offence who fails to comply with any commands given to the person directly by the Commander of an aircraft, or indirectly by the commander of an aircraft through a crew member, in accordance with his or her duties under section 23 of the Civil Aviation Act 2002 or the rules.

(2) Despite section 30(6) of the Civil Aviation Act 2002, every person who commits an offence against subsection (1) is liable to a fine not exceeding \$5,000.

60. Offensive behaviour or words - (1) Every person commits an offence who, on any aircraft, -

- (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
- (b) uses threatening, offensive, or insulting words.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

61. Portable electronic devices not to be operated - (1) Every person commits an offence who operates a portable electronic device on board an aircraft either in breach of the rules or contrary to any instructions or request by the Commander of an aircraft either directly or indirectly.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

62. Non-compliance with seating and seatbelt instructions - (1) Every person commits an offence who fails to comply with an instruction given by a crew member, passenger information signs, or placards to -

- (a) occupy a seat or berth; and
- (b) fasten and keep fastened about the person any installed safety belt or safety harness.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

63. No smoking - (1) Every person commits an offence who while on any aircraft that is carrying passengers -

- (a) ignites a flame by using a match, lighter or any other means; or
- (b) smokes any cigarette, pipe or other utensil when instructed not to smoke by a crew member, passenger information sign or placard.

(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

(3) In subsection (1), "to smoke" means to smoke, hold, or otherwise have control over an ignited product, weed or plant; and "smoked" and "smoking" have corresponding meanings.

64. Dangerous and obnoxious goods - (1) Every person commits an offence who carries or causes to be carried on to an aircraft any goods prescribed as dangerous goods or which are in the opinion of the Commander of an aircraft or operator of the aircraft, dangerous goods.

(2) Every person commits an offence who carries or causes to be carried on to an aircraft any goods prescribed as obnoxious goods or which in the opinion of the Commander of an aircraft or operator of the aircraft, constitute obnoxious goods being goods that in the opinion of the Commander of an aircraft are likely to cause physical discomfort to crew or passengers or taint by smell, discolouring or otherwise, the aircraft.

(3) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

(4) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$1,000 plus the actual cost of removing any smell, discolouring or other taint.

(5) This section does not apply to dangerous or obnoxious goods carried with the knowledge of and in accordance with the requirements of the Commander of an aircraft or of the operator of the aircraft.

65. Procedure for certain unruly passenger offences - (1) If any offence specified in this Part is alleged to have been committed by any person (in this section, the defendant), the Commander of an aircraft at the time of the alleged offence may, by any available means, notify, or cause to be notified, -

- (a) to the Director; or
- (b) an aviation security officer; or
- (c) a police officer.

(2) If the Director or an aviation security officer or a police officer has reasonable cause to suspect that a person has committed any offence specified in this Part, he or she may require the person to give his or her full name, address, and date of birth.

(3) If the Director or an aviation security officer or a police officer has reasonable grounds to suppose that any details provided under subsection (2) are false or misleading, he or she may require the person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.

(4) If the person, without reasonable excuse, refuses or fails to comply with a request under subsection (2) or subsection (3), and persists in that refusal or failure after being warned by the aviation security officer or police officer that he or she may be arrested for committing an offence by that refusal or failure, a police officer may arrest that person without warrant.

(5) Every person commits an offence and is liable on conviction to a fine not exceeding \$5,000 who, without reasonable excuse, -

- (a) refuses or fails to comply with a request under subsection (2) or subsection (3); or
- (b) gives details that are false or misleading in a material respect to an aviation security officer or police officer in response to such a request.

(6) Evidence produced by the defendant to the Director or an aviation security officer or police officer under subsection (3) must be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.

PART 13

POWERS OF COMMANDER OF AN AIRCRAFT

66. Powers of Commander of an aircraft - (1) If the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that any person on board the aircraft has done or is about to do on board the aircraft -

- (a) Anything which is an offence under the law of the country in which the aircraft is registered (not being a law of a political nature or a law based on racial or religious discrimination); or
- (b) Anything (whether an offence or not) which jeopardises 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, -

the commander of an aircraft may take with respect to that person such reasonable measures, including restraint, as may be necessary -

- (c) To protect the safety of the aircraft or of persons or property on board the aircraft; or
- (d) To maintain good order and discipline on board the aircraft; or
- (e) To enable the commander of an aircraft to disembark or deliver that person in accordance with subsection (4) or subsection (5) of this section.

(2) Any 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 an aircraft, and any member of the crew shall if so required by the commander, assist in restraining any person whom the commander of an aircraft is entitled under subsection (1) of this section to restrain. Any member of the crew and any other person on board the aircraft may, without the commander of an aircraft's authority, take with respect to any person on board the aircraft such reasonable measures, including restraint, as he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(3) Any restraint imposed on any person on board an aircraft under the powers conferred by subsection (1) or subsection (2) of this section shall not be continued after the aircraft ceases to be in flight, unless the commander of an aircraft notifies the appropriate authorities of the country in which the aircraft ceases to be in flight, either before or as soon as reasonably practicable after that time, that a person on board is under restraint and of the reasons for such restraint, but, provided that notification has been given, restraint may be continued -

(a) For any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander of an aircraft is able with the requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with subsection (4) or subsection (5) of this section; or

(b) If the person under restraint agrees to continue his or her journey under restraint on board that aircraft.

(4) If the commander of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether an offence or not) which jeopardises or may jeopardize -

(a) The safety of the aircraft or of persons or property on board the aircraft; or

(b) Good order and discipline on board the aircraft, -

he or she may, if he or she considers it necessary to do so in order to protect the safety of the aircraft, disembark that person in any country in which the aircraft may be.

(5) If the commander of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered, he may deliver that person -

(a) In the Cook Islands, to any police officer; or

(b) In any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a police officer of the Cook Islands Police.

(6) If the commander of an aircraft disembarks any person pursuant to subsection (4) of this section, or enable an in-flight security officer to deliver a person under section (74)(4) in the case of a Cook Islands aircraft, in any country, or, in the case of any other aircraft, in the Cook Islands, he or she shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation (being, in the Cook Islands, a police officer).

(7) If the commander of an aircraft intends to deliver any person in accordance with subsection (5) of this section or intends to enable an in-flight security officer to deliver a person under section (74)(4) in the Cook Islands or, in the case of a Cook Islands aircraft, in any other country which is a party to the Tokyo Convention, he or she shall, before or as soon as practicable after landing, give notification of his or her intention and of the reasons for his or her intention to an appropriate authority in that country (being, in the Cook Islands, a police officer).

(8) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (6) or subsection (7) of this section is liable on summary conviction to a fine not exceeding \$4,000.

(9) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with the provisions of this section is not guilty of an offence and is not liable to any civil proceeding in respect of those measures.

67. Arrest of persons delivered to the Cook Islands Police - (1) Any police officer shall accept delivery of a person whom the commander of an aircraft seeks to deliver to him or her in accordance with subsection (5) of section 66 of this Act if he or she has reasonable grounds to suspect that person of having done or omitted on board that aircraft anything that is a crime against this Act or any other Act.

(2) Where any police officer accepts delivery of a person under subsection (1) of this section, he or she shall forthwith arrest that person.

68. Power to search persons on aircraft - If the commander of an aircraft in flight has reasonable grounds to suspect that a crime against this Act has been, is being, or is likely to be, committed on board or in relation to that aircraft, he or she, or any member of the crew of the aircraft or any other person on board the aircraft authorised by him or her to do so, may search any person or baggage on board the aircraft, and may take possession of any article found which has been used or could be used to effect or facilitate the commission of a crime against this Act.

PART 14 **IN-FLIGHT SECURITY OFFICERS**

69. Director may approve firearms, weapons, ammunition, and other equipment for carriage and use by in-flight security officers - The Director may approve firearms, weapons, ammunition, and other equipment for carriage and use on board an aircraft by an in-flight security officer.

70. Foreign in-flight security officers - (1) Despite sections 35 and 36 of this Act, the Director may, in consultation with the Commissioner of Police and other affected parties that the Director considers appropriate, and in accordance with any rules made under this Act, authorise a foreign in-flight security officer who is, or a class of foreign in-flight security officers who are, accompanied by a member of the Police and is or are carrying an item, being a firearm, weapon, ammunition, or any other equipment, to -

- (a) disembark from an aircraft;
- (b) board an aircraft;
- (c) pass through a -
 - (i) security area;
 - (ii) security restricted area;
 - (iii) sterile area.

(2) To avoid doubt, the authorisation of a foreign in-flight security officer by the -

- (a) Director is not an aviation document;
- (b) State that has issued the air operating certificate (or its equivalent) for the aircraft operator only applies while the aircraft is in flight.

71. Commissioner of Police may authorise member of Police to be in-flight security officers - (1) The Commissioner of Police may authorise any member of the Police to be an in-flight security officer.

(2) When providing authorisation under subsection (1), the Commissioner of Police must have regard to the view of the Director of Civil Aviation.

(3) When forming his or her views, the Director of Civil Aviation must, as he or she considers appropriate and practical, have regard to the view of representative groups in the aviation industry.

72. In-flight security officers may possess, carry, and use firearms, weapons, ammunition, and other equipment on board certain aircraft in certain circumstances - Despite section 35, an in-flight security officer may, on board an aircraft operated by an operator certified under Part 119 of the Civil Aviation Rules, possess, carry, and use a firearm, weapon, ammunition, or other equipment that the Director of Civil Aviation has approved under section 69 if -

- (a) the officer is on duty; and
- (b) the aircraft is in flight.

73. In-flight security officers may take action or measures reasonable necessary to restore or preserve control of aircraft - Without limiting the powers of the commander of an aircraft (or a person authorised by the commander) under section 66, an in-flight security officer may take all measures reasonable necessary to restore control of an aircraft, including, but not limited to, the use of -

- (a) reasonable force; or
- (b) assistance that is reasonably necessary in the circumstances.

74. In-flight security officers may arrest persons in certain circumstances - (1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed or is committing an offence under this Act, the in-flight security officer may arrest the person -

- (a) without a warrant;
- (b) with the use of -
 - (i) reasonable force; or
 - (ii) assistance that is reasonably necessary in the circumstances.

(2) Despite subsection (1), an in-flight security officer may not arrest a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.

(3) If an in-flight security officer arrests a person without the prior approval of the commander of the aircraft, the in-flight security officer must -

- (a) inform the commander of the arrest as soon as practicable; and
- (b) seek the commander's approval to keep the person under arrest.

(4) An in-flight security officer who arrests a person under this section must, as soon as practicable, deliver the person to a -

- (a) member of the Police, if the arrested person is in the Cook Islands; or

- (b) person exercising the functions corresponding to those of a member of the Police, if the arrested person is in a country, other than the Cook Islands, that is a party to the Tokyo Convention.

(5) To avoid doubt, nothing in this section limits the justifications for the use of force under the Crimes Act 1969.

75. In-flight security officers may restrain persons under arrest in certain circumstances - (1) An in-flight security officer may, with the use of reasonable force, or assistance that is reasonable necessary in the circumstances, restrain a person arrested under section 74 until the person is delivered as required under section 74(4).

(2) Despite subsection (1), an in-flight security officer may not restrain a person without the prior approval of the commander of an aircraft unless -

- (a) seeking prior approval is not practicable; or
- (b) the in-flight security officer has reasonable grounds to believe that the person must be restrained immediately to protect the safety of the aircraft or persons or property on the aircraft.

(3) If an in-flight security officer restrains a person without the prior approval of the commander of an aircraft, the in-flight security officer must -

- (a) inform the commander of the restraint as soon as practicable; and
- (b) seek the commander's approval to keep the person under restraint.

76. In-flight security officers may search certain persons and seize items or substances in certain circumstances - (1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed, is committing, or is likely to commit an offence under this Act, the in-flight security officer may, with the use of reasonable force, or assistance that is reasonable necessary in the circumstances -

- (a) search -
 - (i) the person for any item or substance that has been, is being, or may be used to commit an offence under this Act; and
 - (ii) any property on board the aircraft for any item or substance that has been, is being, or may be used to commit an offence under this Act; and
- (b) seize that item or substance.

(2) Despite subsection (1), an in-flight security officer may not search a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable.

(3) If an in-flight security officer searches a person without the prior approval of the commander of an aircraft, the in-flight security officer must inform the commander of the search as soon as practicable.

(4) With respect to a search made under subsection (1), an in-flight security officer, may use any aid or device that is reasonable necessary to facilitate the search, including (but not limited to) a dog, chemical substance, or x-ray or imaging equipment, or some other mechanical, electrical, or electronic device.

77. Circumstances in which a person assisting an in-flight security officer may use reasonable force - A person assisting an in-flight security officer under sections 74, 75, or 76 is justified in using force if -

- (a) the persons acts in good faith; and
- (b) the force is reasonable.

PART 15 MISCELLANEOUS PROVISIONS

Miscellaneous provisions

78. Attorney General's consent required to prosecutions - No proceedings for the trial and punishment of any person charged with an offence against section 40 or section 44 or section 45 or section 46 of this Act shall be instituted in any Court except with the consent of the Attorney General provided that a person charged with any such offence may be arrested, or a warrant for his or her arrest may be issued and executed, and he or she may be remanded in custody or on bail, notwithstanding that the consent of the Public Prosecutor to the institution of a prosecution for the offence has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

79. Aircraft in military, customs, or police service - Nothing in sections 27, 29, 31, 33, 35, 66 or 67 of this Act shall apply to aircraft used in the military, customs, or police service of any country, including the Cook Islands.

80. Joint registration of aircraft - Where an aircraft is subject to joint or international registration, it shall be deemed for the purposes of this Act to be registered in the country which, according to the records of the International Civil Aviation Organisation, is the country of registration.

81. Crimes Act 1969 not affected - Except as expressly provided in this Act, nothing in this Act shall be construed to limit or affect the operation of any provision of the Crimes Act 1969.

82. Director's power to direct the detention of aircraft - (1) The Director shall have the power to direct an Authorised person, an aviation security service organization, an Aviation security officer or Commander of an aircraft to detain, ground or prevent from leaving the place where it is located in the Cook Islands, any aircraft where he or she believes on reasonable grounds that a security breach has occurred, a security risk exists or security measures have not been implemented to his or her satisfaction.

(2) Before making a direction under subsection (1), the Director must, in order to determine whether or not the direction is necessary and appropriate to effectively deal with the issue concerned, consult, as the Director in each case considers appropriate, representative groups in the aviation industry, and any relevant government department.

(3) The Director may rescind a direction made under subsection (1).

(4) A direction made under subsection (1) remains in effect until it is rescinded.

83. Repeals - (1) The Airports Security Act 1986 and Aviation Offences Act 1973 together with amendments are repealed.

(2) All proceedings, applications, notices, permits or other matter of action taken, made, or done under an Act repealed by subsection (1) shall be continued and shall have full force and effect as if taken, made, or done under this Act.

84. Transitional provisions - (1) Unless the context otherwise requires, every reference to the former Airport Security Service in any enactment, document, or agreement (whether in writing or not), in force immediately before the coming into force of this Act, is, on the coming into force of this Act, a reference to the Aviation Security Service.

(2) The assets and liabilities that the former Airport Security Service had immediately before the coming into force of this Act, shall, on the coming into force of this Act, become the assets and liabilities of the Aviation Security Service.

(3) Every person who is an officer (other than Director) or employee of the former Airport Security Service immediately before the coming into force of this Act, shall, on the coming into force of this Act, become an officer or employee of the Aviation Security Service subject to any contract of employment applying to the person concerned immediately before the coming into force of this Act.

(4) This section expires at the end of the 30th day following the day on which this Act comes into force.

This Act is administered by the Ministry of Transport