



REPUBLIC OF NAURU

# MARITIME SECURITY ACT 2019

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No. 31 of 2019

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An Act to make provision for improved Maritime Security and for related purposes.

Certified: 20<sup>th</sup> December 2019

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Enacted by the Parliament of Nauru as follows:

## **PART 1 – PRELIMINARY**

### **1 Short Title**

This Act may be cited as the *Maritime Security Act 2019*.

### **2 Commencement**

This Act commences on 1 February 2020.

### **3 Objectives**

The objectives of this Act are to:

- (a) enhance security on Nauruan ships and in Nauru waters;
- (b) safeguard maritime operations against unlawful acts;
- (c) protect persons, property and the environment from dangers arising from unlawful acts; and
- (d) comply with Nauru's international maritime security obligations, particularly under SOLAS and SUA.

### **4 Application**

- (1) Subject to subsections (2) and (3), this Act applies to:
  - (a) Nauruan ships over 500gt which engage on international voyages and the companies who owns such ships;
  - (b) foreign ships over 100gt in Nauru waters;
  - (c) Nauru ports that serve ships of a type specified in paragraph (a); and
  - (d) other ships and ports prescribed by regulations.
- (2) Subject to subsections (3) and (4), this Act does not apply to:
  - (a) pleasure craft; or
  - (b) warships, naval auxiliaries or other ships owned and operated by the Republic or another state and used on non-commercial government service.
- (3) Section 13 applies to:
  - (a) all Nauru ports;
  - (b) all Nauruan ships; and

- (c) all foreign ships in Nauru waters and the contiguous zone other than warships or naval auxiliaries.

## 5 Interpretation

(1) In this Act:

**'aid to navigation'** means a device, system, service or facility, external to ships, specifically intended to assist ships to determine their position or safe course, or to warn of dangers or obstructions to navigation;

**'AIS'** means a property functioning automatic identification system complying with the requirements of SOLAS regulation V/19;

**'alternative security arrangement'** means an international agreement as described in SOLAS regulation XI-2/11;

**'amendment'** means:

- (a) in relation to a ship security plan, an amendment to that ship security plan ; or
- (b) in relation to a port facility security plan, an amendment to that port facility security plan

**'ammunition'** means any projectile that is designed or has the capability to cause death, serious bodily injury or substantial material damage if propelled or launched from a weapon;

**'appealable decision'** means:

- (a) a decision by the Authority to refuse to approve:
  - (i) a ship security plan or amendment; or
  - (ii) a port facility security plan or amendment;
- (b) a failure by the Authority to refuse or approve:
  - (i) a ship security plan or amendment; or
  - (ii) a port facility security plan or amendment,within a reasonable time;
- (c) a decision by the Authority to vary or cancel an approved plan;
- (d) a decision to cancel a certificate;
- (e) a decision by the Authority refusing to issue a SID; or
- (f) a failure by the Authority to grant or refuse to issue a SID within a reasonable time.

**'approved plan'** means:

- (a) in relation to a ship, a ship security plan, or amendment that has been approved by the Authority; or
- (b) in relation to a port, a port facility security plan or amendment that has been approved by the Authority, -

and includes, where appropriate, a physical or electronic copy of the instrument of approval;

**'authorised person'** means:

- (a) a maritime security guard;
- (b) a customs officer;
- (c) a police officer;
- (d) an immigration officer;
- (e) a quarantine officer;
- (f) a port facility security officer;
- (g) a ship security officer;
- (h) an employee or officer of the Authority;
- (i) an employee or officer of a port facility operator;
- (j) a visitor; or
- (k) any other person prescribed by regulations or required to perform any official duties for the purposes of giving effect to this Act and regulations;

**'Authority'** means the Nauru Maritime and Port Authority established under the *Ports and Navigation Act 2019*;

**'C185'** means the Seafarers' Identity Documents Convention (Revised), done at Geneva on 19 June 2003; and includes all:

- (a) Annexes and Appendices to that Convention;
- (b) amendments to that Convention; and;
- (c) Protocols to that Convention;

**'Code'** means the International Code for the Security of Ships and of Port Facilities, consisting of Part A (**'Part A'**) (the provisions of which are mandatory) and Part B (**'Part B'**) (the provisions of which are recommendatory), as adopted, on 12 December 2002, by resolution 2 of the Conference of Contracting Governments, and as may be amended by the IMO, provided that:

- (a) amendments to Part A are adopted, are brought into force, and take effect in accordance with SOLAS article VIII concerning the amendment procedures applicable under the Annex of SOLAS other than chapter 1 of that Annex; and
- (b) amendments to Part B are adopted by the Maritime Safety Committee of the IMO in accordance with its Rules of Procedure;

**'certificate'** means an International Ship Security Certificate or an Interim International Ship Security Certificate certifying that a ship is compliant with the Code, issued in accordance with section 19, Part A of the Code;

**'company'** means the owner of the ship or any other person who has assumed the responsibility for the operation of the ship from the owner of the ship and who, on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the Code;

**'company security officer'** means the person so designated by the Company for ensuring that a ship security assessment is carried out; that a ship security plan is developed, submitted for approval, and thereafter implemented and maintained and for liaison with port facility security officers and the ship security officer;

**'compliance information'** means information that relates to compliance, or failure to comply, with this Act;

**'contiguous zone'** means the contiguous zone as defined under Section 5(1) of the *Sea Boundaries Act 1997*;

**'contravene'** includes fail to comply;

**'control'** in relation to a prohibited item, means having control (whether alone or jointly) over the management or disposition of the prohibited item (whether or not also having possession of the prohibited item);

**'control measures'** means one or more of:

- (a) inspection of the ship or the ships security records for the purpose of ascertaining compliance with the certification requirements of the Act, if the ship is in Nauru waters;
- (b) directing the ship to, and detaining the ship in, a particular location in Nauru waters for a specified period or until a specified event occurs;
- (c) restriction of operations of the ship in Nauru waters, including movement within a port; and
- (d) denial of entry, or removal of the ship from, a port;

**'control point'** means a point in or adjacent to a Nauru port or port facility at which screening is to take place or is taking place;

**'Court'** means the Supreme Court of Nauru;

**'CSR'** means a continuous synopsis record issued by a flag administration in accordance with SOLAS regulation XI-1/5;

**'customs officer'** has the same meaning as in the *Customs Act 2014*;

**'death'** means the death of a person;

**'declaration of security'** means an agreement between a ship and:

(a) a port facility with which there is a ship-port interface; and

(b) another ship with which there is a ship-ship activity, -

that specifies the security measures each shall implement in specified circumstances;

**'Director'** means the Director of Maritime Services of the Authority;

**'disappearance'** means the disappearance of a person;

**'equivalent security arrangements'** means arrangements allowed under Section 9;

**'explosive or other lethal device'** means:

(a) an explosive or other incendiary device that is designed or has the capability to cause death, serious bodily injury or substantial material damage; or

(b) a device that is designed, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of any liquid or gas, biological agent, toxin or other noxious substance or radiation or radioactive materials;

**'flag administration'** means the authority responsible for registration of ships in a jurisdiction;

**'flag state'** means the state whose flag a ship flies or is entitled to fly;

**'floating production storage and offloading unit'** means a ship that is:

(a) constructed or modified to accept hydrocarbons, directly or indirectly, from a sub-sea well, reservoir or pipeline;

(b) capable of storing or processing the hydrocarbons and delivering them to another ship or pipeline; and

(c) designed to be disconnected from its mooring during bad weather, operational emergencies, or for the purpose of maintenance or survey,

but does not include a facility that is designed to remain permanently moored for the production life of the related hydrocarbon resource;

**'foreign port'** means a port that is not a Nauru port;

**'foreign ship'** means a ship that is not a Nauruan ship;

**'Guidelines' means** the IMO Guidelines on the preservation and collection of evidence following an allegation of a serious crime having taken place on board a ship or following a report of a missing person from a ship, and pastoral and medical care of persons affected, as amended or replaced;

**'Immigration Officer'** has the same meaning as in the *Immigration Act 2014*;

**'IMO'** means the International Maritime Organization established by the IMO Convention;

**'IMO Convention'** means the International Maritime Organization done at Geneva on 6 March 1948;

**'IMO number'** means the ship identification number allocated on behalf of the IMO under the IMO ship identification number scheme;

**'inspect'** includes:

(a) in relation to any physical or electronic document, copying of that document; and

(b) in relation to any other thing:

(i) conducting tests;

(ii) taking samples; and

(iii) taking measurements;

**'Inspector'** has the same meaning as in the *Ports and Navigation Act 2019*;

**'international voyage'** means a voyage from a State to a port outside that State;

**'maritime security guard'** means a person so appointed under Section 11(1);

**'master'** means the person (except a pilot) who has command or charge of a ship and includes officers or crew members to whom the master has delegated any function relevant to the Act;

**'mobile offshore drilling unit'** means a mechanically propelled mobile offshore drilling unit as defined in SOLAS regulation IX/1, not on location;

**'MSIC'** means a Maritime Security Identification Card in a form prescribed by regulations;

**'Nauru port'** has the same meaning as in the *Ports and Navigation Act 2019*;



**'Nauruan ship'** means a ship registered or required to be registered under the:

- (a) *Shipping Registration Act 1968*; or
- (b) *Shipping (Registration of Foreign Vessels ) Act 2018*;

**'Nauru waters'** means:

- (a) the territorial sea, as defined under Section 4 of the *Sea Boundaries Act 1997*, and
- (b) all waters on the landward side of the territorial sea, including the waters of a Nauru port;

**'official report'** means a report required to be made under Section 13;

**'passenger ship'** means a ship that carries more than 12 passengers;

**'pleasure craft'** has the same meaning as in the *Ports and Navigation Act 2019*;

**'police officer'** has the same meaning as in the *Nauru Police Force Act 1972*;

**'port facility'** means:

- (a) every location:
  - (i) in Nauru, as determined by the Director; or
  - (ii) elsewhere, as determined by another state,where a ship-port interface takes place, including anchorages, waiting berths, and approaches from seaward; and
- (b) fixed and floating platforms;

**'port facility operator'** means:

- (a) the Authority; or
- (b) where the Authority is not responsible for the overall management of the port facility:
  - (i) the manager of the port facility or
  - (ii) any other person who is, for the time being, responsible for the management of the port facility;

**'port facility security assessment'** means an assessment in accordance with section 15, Part A of the Code;

**'port facility security officer'** means the person so designated by a port facility operator as responsible for the development, implementation, revision and maintenance of the port facility security plan and for liaison with ship security officers and company security officers;

**'port facility security plan'** means a plan developed to ensure the application of measures designed to protect the port facility and ships, persons, cargo, cargo transport units and ships stores within the port facility from the risks of a security incident;

**'port security area'** means an area so declared under Section 26(1);

**'possession'** in relation to a thing, means receiving or obtaining custody of the thing (whether alone or jointly);

**'port state'** means the state in which, or in whose waters, a port is located;

**'prohibited item'** means:

- (a) a weapon;
- (b) an explosive or other lethal device;
- (c) ammunition; or
- (d) any other item prescribed by regulations;

**'quarantine officer'** has the same meaning as in the *Agricultural Quarantine Act 1999*;

**'record'** means a record or document required to be made under this Act;

**'recognised security organisation'** means an organisation so prescribed by regulations;

**'reportable crime'** means an actual or suspected crime on a ship:

- (a) being an offence under Division 10.3 of the *Crimes Act 2016*; or
- (b) being an offence under *Counter Terrorism and Transnational Organised Crime Act 2004*;
- (c) being a cognisable offence within the meaning of Section 10(1) of the *Criminal Procedure Act 1972*; or
- (d) involving a serious incident;

**'screen'** means a process of inspection or search, including by the use of:

- (a) an electronic, mechanical or other device; or
- (b) any animal;

**'seafarer'** means any person who is employed or is engaged or works in any capacity on board a ship, other than warships, ordinarily engaged in maritime navigation;

**'security incident'** means any suspicious act or circumstance threatening the security of a:

- (a) ship;
- (b) port facility;
- (c) ship-port interface; or
- (d) ship-ship activity, -

but does not include the lawful exercise of any right to demonstrate, protest or strike;

**'security level'** means any of security level 1, security level 2 or security level 3 and set:

- (a) in the case of a Nauru port facility or Nauruan ship, under Section 7(1);
- (b) in the case of foreign ships, by the competent authority of the flag state;  
or
- (c) in the case of foreign ports, by the competent authority of the port state;

**'security level 1'** means the level for which minimum appropriate protective security measures shall be maintained at all times;

**'security level 2'** means the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a security incident;

**'security level 3'** means the level for which further specific protective security measures shall be maintained for a limited period of time when a security incident is probable or imminent, although it may not be possible to identify the specific target;

**'serious incident'** means:

- (a) death;
- (b) disappearance;
- (c) serious injury;
- (d) unlawful sexual intercourse; or
- (e) any other matter prescribed by regulations;

**'serious injury'** means serious injury to bodily, mental or physical health;

**'serious security incident'** means a security incident of a serious nature involving, for example:

- (a) death, disappearance or serious injury or imminent risk of death or serious injury;
- (b) serious property damage or risk of serious property damage;
- (c) unauthorised access to restricted areas within a ship or port security areas for suspected threat-related reasons;
- (d) unauthorised carriage or discovery of stowaways, weapons, explosive or other lethal devices;
- (e) receipt of threats concerning explosive or other lethal devices;
- (f) attempted or successful boarding of ships; or
- (g) damage to ships or port facilities caused by explosive or other lethal devices, sabotage or arson;

**'sexual intercourse'** has the same meaning as provided under the *Crimes Act 2016*;

**'ship'** means:

- (a) any type of vessel or other watercraft;
- (b) mobile or offshore drilling units;
- (c) floating production storage and offloading units; and
- (d) high speed craft as defined in SOLAS regulation X/1.2;

**'ship-port interface'** means the interactions that occur when a ship is directly and immediately affected by actions involving the movement of persons, goods or the provision of port services to or from the ship;

**'ship security assessments'** means an assessment in accordance with section 8, Part A of the Code;

**'ship security officer'** means the master or another person on board the ship, accountable to the master, designated by the company as responsible for the security of the ship, including implementation and maintenance of the ship security plan and for liaison with the company security officer and port facility security officers;

**'ship security plan'** means a plan developed to ensure the application of measures on board the ship designed to protect persons on board, cargo, cargo transport units, ship's stores or the ship from the risks of a security incident;

**'ship-ship activity'** means any activity not related to a port that involves the transfer of goods or persons from one ship to another;

**'SID'** means a Seafarers Identity Document issued in accordance with C185 and in the form set out in Annex I;

**'SOLAS'** means the International Convention for the Safety of Life at Sea, done at London on 1 November 1974; and includes:

- (a) the Annex and Appendix to that Convention;
- (b) all amendments of that Convention; and
- (a) all protocols to that Convention;

**'SSAS'** means a properly functioning ship security alert system:

- (a) capable of being activated from the bridge and from at least one other location on the ship selected as to prevent inadvertent activation;
- (b) conforms to any performance standards prescribed by IMO and by regulations;
- (c) when activated, initiates a ship-to-shore alert (**'alert'**) to:
  - (i) the company; or
  - (ii) the Authority,identifying the ship, its location and indicating that the security of the ships has been compromised or is under threat;
- (d) that, when activated, does not send the alert to any other ship;
- (e) that, when activated, does not raise any alarm on board the ship; and
- (f) continues the alert until deactivated or reset;

**'SUA'** means the *Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation*, done at Rome on 10 March 1988; and includes:

- (a) the Annex and Appendix to that Convention;
- (b) all amendments to that convention; and
- (c) all protocols to that Convention;

**'threat'** means a threat to maritime security including:

- (a) piracy and armed robbery against ships;
- (b) terrorist acts against shipping, offshore installations and other maritime interests;
- (c) illicit trafficking in weapons;
- (d) illicit trafficking in narcotic drugs and psychotropic substances;

- (e) smuggling and trafficking of persons by sea;
- (f) illegal, unreported and unregulated fishing; and
- (g) international and unlawful damage to the marine environment;

**'unauthorised person'** means a person who is not an authorised person;

**'visitor'** means a person to whom a visitor pass has been issued under Section 15(1)(d);

**'verification'** means verification of ships in accordance with regulation 19.1, SOLAS;

**'weapon'** means a firearm, explosive or other potentially lethal device or item including any firearm, explosive, device or item that:

- (a) is dismantled; or
- (b) is not capable of:
  - (i) discharging any shot, bullet, missile or other projectile;
  - (ii) detonation, ignition or other initiation; or
  - (iii) the release or dissemination of any liquid or gas, biological agent, toxin or other noxious substance or radiation or radioactive material, -
 but that by its completion, replacement of any part, correction or repair, would be so capable.

(2) In this Act, unless the context otherwise requires, terms not defined in this Act shall have the same meaning as in SOLAS chapters I and XI-2.

## **PART 2 – ADMINISTRATION AND GENERAL PROVISIONS**

### **6 General duties and powers**

- (1) The Director shall:
  - (a) ensure that the company of a Nauruan ship complies with Section 17;
  - (b) ensure that a port facility operator complies with Section 23;
  - (c) test the efficiency of port facility security plans for Nauru port and ship security plans for Nauruan ships and, if necessary:
    - (i) require an amendment to be made and submitted for approval; or
    - (ii) where the amendment is not reasonably practicable, vary or cancel such port facility security plan or ship security plan;
  - (d) advise the Minister in relation to the making of regulations;

- (e) ensure that the activities of all port facility operators are consistent with Nauru's obligations under SOLAS and SUA;
  - (f) supervise and periodically review any alternative security arrangements affecting a Nauruan ship or a Nauru port facility;
  - (g) provide and advertise points of contact through which ships can request advice or assistance and report security incidents;
  - (h) communicate with other State parties to SOLAS on any information that comes to its attention that may affect their security;
  - (i) provide points of contact for communication with IMO and communicate such information to IMO from time to time as may be required by SOLAS regulations XI-2/12 and 13; and
  - (j) provide points of contact for requests under SUA article 8*bis* and notify IMO of such points of contact pursuant to SUA article 8*bis* (15).
- (2) The Director has the power to do all things reasonably necessary or convenient to be done for or in connection with or as incidental to, the attainment of the objects of this Act.
- (3) The Authority shall ensure that the Director performs the duties under subsection (1).

## **7 Security Levels**

- (1) The Director shall, after consultation with the Secretary of Transport and the Minister and consideration of available threat information, set security levels for:
- (a) Nauru port; and
  - (b) Nauruan ships.
- (2) Security levels shall be set to take into account the:
- (a) degree to which available threat information is credible;
  - (b) degree to which available threat information is corroborated;
  - (c) degree to which available threat information is specific or imminent; and
  - (d) potential consequences of a security incident arising from available threat information.
- (3) The Director shall periodically review and, where indicated by available threat information, re-set a security level in accordance with subsection (1).
- (4) The Director shall disseminate information related to the security level to every ship and port as may be affected by the security level.

- (5) Where security level 3 is set, the Director shall as soon as practicable, issue appropriate instructions and provide threat information to the ships, ports and States that may be affected.

## **8 Declarations of Security**

- (1) The Director may require a declaration of security, having regard to the risk associated with a:
  - (a) ship-port interface; or
  - (b) ship-ship activity.
- (2) A declaration of security in respect of a Nauru port shall be published in the Gazette.
- (3) A declaration of security shall be completed:
  - (a) on behalf of a ship, by the master or the ship security officer; and
  - (b) on behalf of a Nauru port facility, by the port facility security officer.
- (4) A declaration of security involving a Nauru port shall be retained by the port facility operator for no less than 7 years.
- (5) A request for a declaration of security or variation of a declaration of security may be made by a:
  - (a) port facility operator;
  - (b) port facility security officer;
  - (c) Inspector; or
  - (d) ship security officer.
- (6) A request for a declaration of security may be made where:
  - (a) a ship is operating at a higher security level than the port or other ship with which it is interfacing;
  - (b) there is an agreement on a declaration of security between the Republic and another State covering certain international voyages or specific ships on such voyages;
  - (c) there has been a threat or a security incident involving a ship or port;
  - (d) a ship is at a port which is not required to have and implement a port facility security plan;
  - (e) a ship is conducting a ship-ship activity with another ship which is not required to have and implement a ship security plan; or



- (f) it is otherwise considered necessary to mitigate any risk to property, persons or the environment.

## **9 Equivalent Security Arrangements**

- (1) The Director may allow a Nauruan ship, group of Nauruan ships or Nauruan port facility to implement security measures equivalent to those prescribed in this Act and regulations, provided that such measures are as effective as those prescribed in Part A of the Code.
- (2) Where equivalent security measures are allowed under subsection (1), the Director shall communicate the particulars of those measures to the IMO.

## **10 Verification and Certification**

- (1) All Nauruan ships shall be subject to verification by the Director.
- (2) For the purpose of this Section, verification may be delegated to:
  - (a) a recognised security organisation provided, subject to section 19.1.3, Part A; or
  - (b) a State party to the Code.
- (3) The security systems and equipment of a Nauruan ship shall, after every verification, be maintained to conform to:
  - (a) regulation XI 2/4.2 and XI-2/6, SOLAS;
  - (b) the ship security plan; and
  - (c) this Act and regulations.
- (4) The issue of certificates shall be in accordance with Section 19, Part A of the Code and the regulations.
- (5) An application for a certificate shall be made to the Authority in the prescribed form.
- (6) A certificate may be issued by:
  - (a) the Authority;
  - (b) a recognised security organisation; or
  - (c) such other State as has verified the ship under subsection (2)(b).
- (7) A certificate:
  - (a) shall specify the period of its validity, which shall not exceed 5 years;
  - (b) shall be in the form prescribed in Appendix 1 or 2 as the case may be to Part A of the Code;

- (c) subject to section 19.3 Part A of the Code, may be extended; and
- (d) subject to regulations, may be cancelled.

**11 Maritime security guards**

- (1) The Authority may, by notice in the Gazette, appoint maritime security guards to maintain security in Nauru ports.
- (2) All maritime security guards may be appointed on different terms and conditions.
- (3) All maritime security guards are subject to the control and direction of port facility security officers.
- (4) A maritime security guard may :
  - (a) control the embarkation or disembarkation of people, baggage and cargo;
  - (b) supervise the movement within or entry of persons to, a Nauru port;
  - (c) supervise cargo and ship stores;
  - (d) monitor closed-circuit television;
  - (e) screen any person in a port security area;
  - (f) require any person in a port to produce evidence of their identity;
  - (g) direct any unauthorised person to leave a port or aid to navigation;
  - (h) direct the driver of a vehicle in a port to stop the vehicle and remain stopped for as long as is reasonably necessary to screen the vehicle or a person or item in the vehicle;
  - (i) remove any thing from a port or aid to navigation; and
  - (j) do any other act as may be prescribed by regulations.
- (5) A maritime security guard may exercise the powers under subsection (4) in order to:
  - (a) ascertain the identity of any person;
  - (b) determine whether a person is complying with this Act or regulations;
  - (c) investigate a possible contravention of this Act or any other written law;
  - (d) identify or remove a person or thing reasonably believed to pose a risk to security; or
  - (e) identify, resolve or neutralise any threat.

- (6) A maritime security guard may be accompanied by a visitor and such visitor may provide any advice or assistance as may be requested.
- (7) Where there is reasonable ground to believe that a person has or is likely to commit an offence under this Act or the *Counter Terrorism and Transnational Organised Crime Act 2004*, such person may be detained by a maritime security guard in or in the vicinity of a port or an aid to navigation.
- (8) A maritime security guard may:
  - (a) screen any person detained under subsection (7) and any item in such detained person's possession; and
  - (b) seize an item in the possession of a person so detained if there are reasonable grounds to believe that the item:
    - (i) cannot lawfully be carried by the person under this Act or any other written law;
    - (ii) is evidence of the commission of any offence; or
    - (iii) poses an imminent risk to safety.
- (9) Where a police officer has taken command of a situation at a Nauru port or on a ship at a Nauru port, the powers of a maritime security guard in relation to that port or ship are subject to the direction of the most senior police officer present.
- (10) A person detained by a maritime security guard shall be handed over to a police officer as soon as practicable.
- (11) A police officer who accepts delivery of a person from a maritime security guard may arrest the person.
- (12) A maritime security guard shall not subject a person to greater indignity than is reasonable.
- (13) Where an item is seized by a maritime security guard, the maritime security guard shall:
  - (a) make and keep a record of the item;
  - (b) make available to the person from whom the item was seized a copy of that record;
  - (c) where there are reasonable grounds to believe that the item poses an imminent risk to safety:
    - (i) immediately destroy or otherwise dispose of the item; or
    - (ii) deliver the item to a police officer.

- (d) where there are reasonable grounds to believe that the item may not be lawfully possessed by the person from who it was seized, deliver the item to the police officer; and
- (e) in any other case, deliver the item to the Authority.

## **12 Recognised Security Organisations**

- (1) The Director may, delegate to a recognised security organisation any powers and duties under this Act except:
  - (a) setting the security level under Section 7(1);
  - (b) approving port facility security plans and amendments under Section 25;
  - (c) exercising control measures;
  - (d) this power of delegation; and
  - (e) establishing the requirements for a declaration of security.
- (2) Nothing in subsection (1) prevents the Director from taking advice on any subject from a recognised security organisation or any other person.
- (3) The ship security plan or amendment shall not be delegated to a recognised security organisation that prepared or submitted for approval that ship security plan or amendment.
- (4) A recognised security organisation may, in respect of a Nauruan ship:
  - (a) carry out a security assessment under Section 21(1)(a);
  - (b) prepare and seek approval for, a ship security plan under Section 21(2);
  - (c) undertake a review of, and seek approval for, an amended ship security plan under Section 21(4), provided that the recognised security organisation has not prepared or submitted for approval that ship security plan or amendment.
- (5) A recognised security organisation may, in respect of a Nauru port:
  - (a) carry out a security assessment under Section 25(1)(a);
  - (b) prepare, and seek approval for, a port facility security plan under Section 25(2);
  - (c) undertake a review of and seek approval for an amendment of a port facility security plan under Section 25(4), provided that the recognised security organisation has not prepared or submitted for approval that port facility security plan or amendment.
- (6) The Director shall communicate to the IMO:
  - (a) the names;

- (b) contact details; and
  - (c) details of the specific responsibility and conditions of authority delegated to, -
- every recognised security organisation from time to time.

### **13 Incident Reporting**

- (1) An official report in relation to an incident shall be in writing and:
  - (a) in situations of an emergency, in such other forms as is reasonable in all the circumstances; and
  - (b) unless otherwise specified, made as soon as practicable after a person obliged to make an official report by this Section becomes aware of the matters giving rise to such obligation.
- (2) An official report under subsection (1) is deemed not to have been made where:
  - (a) regulations prescribe a way in which an official report shall be made; and
  - (b) it does not substantially comply with the regulations under paragraph (a).
- (3) An official report shall be made of every:
  - (a) reportable crime;
  - (b) security incident on a Nauruan ship;
  - (c) serious security incident on a foreign ship:
    - (i) in Nauru waters; and
    - (ii) in the contiguous zone, on a voyage to or from a Nauru port;
  - (d) occasion on which a ship is operating at a security level higher than a Nauru port to which it intends to enter; and
  - (e) threat brought to the attention of a master of a ship in Nauruan waters or the contiguous zone.
- (4) An official report of a reportable crime on a ship shall be made by:
  - (a) the master; or
  - (b) if the master is implicated in the crime, the chief officer; and
  - (c) the designated person ashore assigned to the ship pursuant to Section 4 of the *IMO International Safety Management Code*.
- (5) An official report of a reportable crime on a Nauruan ship shall be made to:

- (a) a police officer;
  - (b) the company; and
  - (c) the company security officer.
- (6) An official report of a reportable crime on a foreign ship shall be made to:
- (a) the Authority; and
  - (b) the flag state.
- (7) An official report of every security incident or threat shall be made by the master or the ship security officer to:
- (a) the Director;
  - (b) the Company; and
  - (c) any other ship that may be affected.
- (8) An official report of a security incident or threat involving a Nauru port shall be made by the port facility security officer to the Director.
- (9) An official report shall be made when a ship is operating at a security level higher than a Nauru port to which it intends to enter, by the port facility security officer and to the Director.
- (10) For the avoidance of doubt, this Section does not affect:
- (a) any obligation to report under any ship security plan or port facility security plan; and
  - (b) the *Sea Boundaries Act 1997*.

**14 Information Gathering**

- (1) The Director may require the providing of compliance information in writing by:
- (a) the company;
  - (b) the port facility operator;
  - (c) a person who provides services to a company or port facility operator; or
  - (d) any other person prescribed by regulations.
- (2) The requirement under subsection (1) shall state:
- (a) the form and manner; and
  - (b) a period not less than 14 days within which, -

the compliance information is to be provided.

- (3) A person is not excused from compliance with a requirement under this Section on the basis that the information so provided might incriminate the person or expose him or her to a penalty.
- (4) Any information provided in compliance with a requirement under this Section is not admissible in a criminal proceeding other than a proceeding under this Act or the *Counter Terrorism and Transnational Organised Crime Act 2004*.

## **15 Identity Documents**

- (1) The Director:
  - (a) shall issue MSIC to:
    - (i) maritime security guards;
    - (ii) port facility security officers; and
    - (iii) any other persons as may be prescribed by regulations;
  - (b) may issue MSIC to:
    - (i) police officers having regular duties at a Nauru port;
    - (ii) customs officers having regular duties at a Nauru port;
    - (iii) immigration officers having regular duties at a Nauru port; and
    - (iv) quarantine officers having regular duties at a Nauru port; and
  - (c) shall issue SID to qualified seafarers being:
    - (i) citizens of the Republic; or
    - (ii) persons who are ordinarily residents of the Republic.
  - (d) may issue visitor passes:
    - (i) to persons having a legitimate reason to visit a Nauru port;
    - (ii) to persons employed at a Nauru port;
    - (iii) in respect of vehicles having a legitimate reason to enter a Nauru port; or
    - (iv) to or in respect of any other persons or things as may be prescribed by regulations.
- (2) An authorised officer who does not hold MSIC shall clearly display his or her official identity document and visitor pass when performing any duties required under this Act:

- (3) An authorised person who fails to provide his or her documentary evidence of his or her identity shall not enter or remain at a Nauru port.
- (4) A passenger of a ship may use his or her boarding pass or ticket to confirm his or her identity.
- (5) A holder of a MSIC and visitor pass shall clearly display his or her MSIC and visitor pass when:
  - (a) in a Nauru port;
  - (b) in or at an aid to navigation; or
  - (c) on a ship in Nauru waters.
- (6) The Cabinet may make regulations to provide for the issue of MSIC and visitor passes and may prescribe fees for their issue and replacement.

**16 Offences under Part 2**

- (1) A person who, not being a maritime security guard shall not, by words, conduct, demeanour or dress, pretend to be a maritime security guard.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding 2 months or to both.
- (3) No person shall obstruct or hinder an authorised person in the exercise of his or her powers under this Act.
- (4) A person who contravenes subsection (3) commits an offence and upon conviction is liable to a fine not exceeding \$20,000 or to a term of imprisonment not exceeding \$20,000 or to both.
- (5) No person shall unreasonably refuse to comply with a requirement or direction of a maritime security guard under Section 11.
- (6) Any person who fails or refuses to comply with a requirement or direction of a maritime security guard under Section 11 without a reasonable excuse commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 1 month or to both.
- (7) A person who fails or refuses to make an official report or who fails or refuses to make an official report within the required time under Section 13, commits an offence and upon conviction is liable to a fine not exceeding \$10,000 or to a term of imprisonment not exceeding 1 month or to both.
- (8) A person who fails or refuses to comply with a requirement under Section 14 within the specified time without a reasonable excuse commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment exceeding 1 month or to both.
- (9) The offences under this Section are offences of strict liability.



## PART 3- SHIP SECURITY

### 17 Obligations of Companies

- (1) The company of a Nauruan ship shall appoint one or more company security officers.
- (2) A company security officer may be appointed in respect of one or more of the company's ships.
- (3) The company of a Nauruan ship shall designate, in writing, the master or another crew member of the ship by name or position as the ship security officer.
- (4) The company of a Nauruan ship shall ensure that:
  - (a) masters;
  - (b) company security officers;
  - (c) ship security officers; and
  - (d) other shipboard or shore-based personnel having security responsibilities, fulfil their duties and responsibilities and are provided with such training, information and support necessary to fulfil their duties and responsibilities, under Part A of the Code and this Act.
- (5) The information provided under subsection (4) shall:
  - (a) include:
    - (i) the parties responsible for appointing ship board personnel;
    - (ii) the parties responsible for deciding the employment of the ship including, time or bareboat charterer(s) or any other entity acting in such capacity;
    - (iii) where the ship is employed under a charter party, the contact details of those parties includes time or voyage charterers; and
  - (b) be updated as soon as practicable after such changes occur.
- (6) The company of a Nauruan ship shall ensure that the ship security officer:
  - (a) is provided and has successfully completed, any training set out in the ship security plan and such other requirements as may be prescribed by regulations;
  - (b) is a suitable person to access and deal with security information; and
  - (c) has the necessary authority from the company to act on the security instructions of port states.

- (7) The company of a Nauruan ship shall not constrain the master from taking or executing any decision which, in the professional judgement of the master, is necessary to maintain the safety and security of the ship.
- (8) A company shall:
- (a) in the case of a Nauruan ship, comply with any requirements prescribed by regulations for the security level set in respect of that ship or ships of that class; or
  - (b) in the case of a foreign ship, comply with any requirements as to ship security prescribed by the flag state:
    - (i) before the ship enters a Nauru port; and
    - (ii) while in a Nauru port;
- (9) The company of a Nauruan ship shall ensure that before a master takes responsibility of the ship, that ship:
- (a) has on board an approved plan that:
    - (i) provides for security level; and
    - (ii) is protected from unauthorised access or disclosure;
  - (b) has on board an ISSC;
  - (c) has on board a SSAS;
  - (d) has on board an AIS;
  - (e) has on board a CSR;
  - (f) is marked with an IMO number in accordance with regulation XI-1/3, SOLAS; and
  - (g) complies with any other requirements as may be prescribed by regulations.
- (10) The company of a Nauruan ship shall document, review, accept and retain for no less than 7 years, records relating to each ship security assessment.

## **18 Obligations of company security officers**

A company security officer shall:

- (a) ensure that a ship security assessment is carried out for each ship and periodically reviewed;
- (b) fulfil the duties and responsibilities set out in section 11.2, Part A of the Code;
- (c) co-ordinate implementation of ship security plans with ship security officers; and

- (d) ensure the effective coordination and implementation of ship security plans by co-ordinating and participating in drills and exercises at appropriate intervals, taking into account the guidance set out in Part B of the Code.

**19 Obligations of Ship Security Officers**

A security officer of a Nauruan ship shall:

- (a) fulfil the duties and responsibilities set out in section 12.2, Part A of the Code; and
- (b) ensure that records of activities addressed in the ship security plan as set out in section 10.1, Part A of the Code are held on board for no less than 7 years.

**20 Obligations of masters**

- (1) A master shall comply with any requirements as may be prescribed by regulations for the security level under Section 7(1) in respect of that ship or ships of that class:
  - (a) before the ship enters a Nauru port; and
  - (b) while in a Nauru port.
- (2) A master of a ship:
  - (a) within Nauru waters; and
  - (b) intending to enter a Nauru port, -shall provide documents and records required under Sections 28 and 29.
- (3) Where, in the professional judgement of a master, there is a conflict between any requirements under this Part and the safety of the ship, the master shall:
  - (a) do everything reasonably necessary to ensure the safety of the ship;
  - (b) implement temporary security measures commensurate with the ship's security level;
  - (c) inform the flag administration as soon as practicable;
  - (d) inform the port facility security officer as soon as practicable; and
  - (e) in the case of a Nauruan ship entering or intending to enter a foreign port, inform the competent authorities of the port state.
- (4) The master of a Nauruan ship shall ensure that the ship complies with the requirements under Section 17(9) when the master takes responsibility for the ship.

- (5) A master shall ensure that AIS is in operation at all times while in Nauru waters except where applicable international agreements, rules or standards provide for the protection of navigation information.
- (6) The master of a:
  - (a) Nauruan ship; or
  - (b) foreign ship in Nauru waters on a voyage to or from a Nauru port, -  
on which a reportable crime has been committed or is suspected of being committed, shall act to preserve evidence in accordance with the Guidelines.

## **21 Ship Security Plans**

- (1) The company of a Nauruan ship shall:
  - (a) carry out a ship security assessment of that ship; and
  - (b) periodically review and, if reasonably necessary, update such assessment, taking into account:
    - (i) changing threats; and
    - (ii) changes to the ship.
- (2) The company of a Nauruan ship shall formulate a ship security plan based on each ship security assessment and submit that plan to the Director for approval along with the ship security assessment on which it is based.
- (3) A ship security plan shall:
  - (a) contain a clear statement to the effect that the master has the overriding authority and the responsibility to make decisions with respect to the safety and security of the ship and to request the assistance of the company or of any State as may be necessary;
  - (b) make provision for all security levels;
  - (c) address the matters set out in SOLAS regulation XI-2/9.4 having regard to the guidance set out in Part B of the Code.
- (4) The company of a Nauruan ship shall as soon as practicable, formulate an amendment and provide such amendment to the Authority for approval along with the updated ship security assessment on which it is based where:
  - (a) a ship security assessment is updated; and
  - (b) that update necessitates an amendment.
- (5) The Director shall approve a ship security plan or amendment where such plan:
  - (a) complies with the requirements of this Act;

- (b) complies with any applicable regulations; and
  - (c) in the case of an amendment, no less effective than the approved plan.
- (6) The Director may vary or cancel an approved plan on such terms or conditions as prescribed by regulations.
- (7) The company and master of a Nauruan ship shall ensure that an approved plan is:
- (a) implemented and maintained;
  - (b) tested;
  - (c) held on board the ship; and
  - (d) protected from unauthorised access or disclosure.

**22 Offences under Part 3**

- (1) No person shall possess or control on board a ship a prohibited item unless authorised under regulations or with the prior written approval of the ship security officer.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$100,000.00 or to a term of imprisonment not exceeding 7 years or to both.
- (3) A person who is authorised or permitted to have possession and control of any prohibited item on board a ship shall comply with the conditions of such authorisation or permission granted by regulations or the ship security officer.
- (4) A person who contravenes subsection (3) commits an offence and upon conviction is liable to a fine not exceeding \$25,000.00 or to a term of imprisonment not exceeding 24 months or to both.
- (5) No person shall disclose or allow access to a ship security plan without a written authorisation to do so by the Director.
- (6) A person who contravenes subsection (5) commits an offence and upon conviction is liable to a fine not exceeding \$25,000.00 or to a term of imprisonment not exceeding 24 months or to both.
- (7) The offences under this Section are offences of strict liability.

**PART 4 - PORT SECURITY**

**23 Obligations and powers of port facility operators**

- (1) A port facility operator shall:
- (a) operate in accordance with the port facility security plan;

- (b) operate in conformity with the security level set for that port facility in accordance with section 14, Part A and the guidance set out in Part B of the Code;
  - (c) apply security measures and procedures in a manner that minimises interference with, or delay to, ships, passengers, crew, visitors, goods, and services;
  - (d) appoint a port facility security officer for one for more port facilities; and
  - (e) ensure that:
    - (i) port facility security officers;
    - (ii) maritime security guards; and
    - (iii) other port facility personnel having specific security duties, -
 

shall have knowledge and are provided with training, information and support necessary to fulfil their duties and responsibilities under and otherwise comply with, Part A of the Code.
- (2) A port facility operator shall have such powers in relation to security as may be prescribed by regulations.

**24 Obligations of port facility security officers**

- (1) A port facility security officer shall:
- (a) ensure that a port facility security assessment is carried out and periodically reviewed;
  - (b) fulfil the duties and responsibilities set out in section 17.2, Part A of the Code;
  - (c) co-ordinate implementation of ship security plans with other port facility security officers, ship security officers and maritime security guards;
  - (d) ensure the effective coordination and implementation of ship security plans co-ordinating and participating in drills and exercises at appropriate intervals, taking into account the guidance set out in Part B of the Code;
  - (e) liaise and co-ordinate with Inspectors; and
  - (f) report all security incidents as required under Section 14 and the port facility security plan.
- (2) Where a port facility security officer is duly informed that a ship encounters difficulty:
- (a) complying with the requirements of Part A of the Code;
  - (b) implementing its ship security plan; or

(c) in the case of security level 3, following any security instructions given by the Director, -

the port facility security officer and the ship security officer shall liaise and co-ordinate appropriate actions.

**25 Port facility security plans**

- (1) A port facility operator shall:
  - (a) carry out a port facility security assessment for a Nauru port; and
  - (b) periodically review and, where reasonably necessary, update such assessment, taking into account:
    - (i) changing threats; and
    - (ii) changes to ports.
- (2) A port facility operator shall formulate a port facility security plan based on each port facility security assessment adequate for the ship-port interface and submit that plan to the Director for approval.
- (3) A port facility security plan shall:
  - (a) make provision for all security levels;
  - (b) address the matters set out in section 16.3, Part A having regard to the guidance set out in Part B of the Code.
- (4) The port facility security officer shall, as soon as practicable, formulate an amendment and submit such amendment to the Director for approval where:
  - (a) a port facility security assessment is updated; and
  - (b) that update necessitates an amendment.
- (5) The Director shall approve a port facility security plan or amendment where such plan or amendment is:
  - (a) consistent with the purposes and requirements of this Act;
  - (b) consistent with any applicable regulations; and
  - (c) in the case of an amendment, no less effective than the extant port facility security plan.
- (6) The Director may vary or cancel an approved plan in circumstances prescribed by regulations.
- (7) The port facility security officer shall ensure that an approved plan is:
  - (a) implemented and maintained;

- (b) tested;
- (c) kept at the port to which it relates; and
- (d) protected from unauthorised access or disclosure.

**26 Port Security Areas**

- (1) The Director may, declare the following to be a port security area:
  - (a) any area:
    - (i) in a Nauru port;
    - (ii) in or around an aid to navigation;
    - (iii) outside a Nauru port not being private property; or
    - (iv) in Nauru waters;
  - (b) any area around a ship:
    - (i) berthed in a Nauru port or at an anchorage;
    - (ii) moored at a buoy in a Nauru port; or
    - (iii) in the approaches to a Nauru port.
- (2) A port security area shall have proper signage and secured as may be prescribed by regulations.
- (3) When a port security area is declared under subsection (1), the Director shall notify in writing the following persons affected by such declaration:
  - (a) master;
  - (b) port facility security officer;
  - (c) port facility operator; and
  - (d) Harbourmaster.
- (4) A declaration made under subsection (1) shall be published in the Gazette.
- (5) No unauthorised person may enter or remain in a port security area.
- (6) A passenger or crew member of a ship embarking or disembarking directly through gangways or thoroughfares in a port approved for that purpose by the port facility operator is deemed to be an authorised person to pass through any port security area forming part of those gangways or thoroughfares.
- (7) A maritime security guard may require that a person in a port security area:



- (a) provide his or her name and address;
  - (b) state the purpose of his or her presence in the port security area;
  - (c) produce evidence of his or her identity; and
  - (d) produce evidence of his or her authority to enter the port security area.
- (8) A maritime security guard may at any time while on duty:
- (a) enter a port security area; and
  - (b) enter and search any building, vehicle or place in a port, including a port security area.
- (9) Where a maritime security guard is satisfied that a person in a port security area is an unauthorised person, the maritime security guard may require the unauthorised person to leave the port security area.
- (10) Where an unauthorised person fails or refuses to leave a port security area after being required to do so, the maritime security guard and or any person called upon to assist such maritime security guard may:
- (a) remove such unauthorised person; or
  - (b) detain such unauthorised person.
- (11) For the purpose of subsection (10), a maritime security guard and any person called upon to assist such maritime guard may use any force as is reasonably necessary to remove or detain an unauthorised person.

**27**

**Screening**

- (1) A port facility security officer shall, in consultation with the Chief Executive Officer of the Authority and the Director, establish control points to screen any:
- (a) person boarding a ship;
  - (b) thing to be carried by a ship;
  - (c) thing in a port security area;
  - (d) person (including their personal effects) or vehicle entering or within a port security area; and
  - (e) other place or thing as may be prescribed by regulations.
- (2) The Cabinet may make regulations prescribing the screening methods and procedures.
- (3) Any screening under this Section shall be conducted by:
- (a) a maritime security guard; and

- (b) such other persons as may be prescribed by regulations.
- (4) A person authorised under subsection (3) may restrain or detain such person that the authorised person has reasonable cause to believe:
- (a) is contravening or has contravened the *Counter Terrorism and Transnational Organised Crime Act 2004*; and
  - (b) is necessary to prevent such person from passing through the control point.
- (5) For the purpose of subsection (4), reasonable force may be used.
- (6) A person detained under subsection (4) shall be handed over to a police officer as soon as practicable.
- (7) A person authorised under subsection (3) may seize an item detected during screening if such authorised person has reasonable cause to believe that the item:
- (a) cannot be lawfully carried or possessed by the person under this Act or any other written law;
  - (b) is evidence of the commission of an offence against this Act or any other written law; or
  - (c) poses an imminent risk to safety.
- (8) Where an item is seized under subsection (7), the person seizing the item shall:
- (a) make and keep a record of the item;
  - (b) make available to the person from whom the item was seized a copy of that record;
  - (c) where it is believed that the item poses an imminent risk to safety:
    - (i) immediately destroy or otherwise dispose of the item; or
    - (ii) deliver the item to a police officer.
  - (d) where it is believed that the item cannot be lawfully carried or possessed by the person from whom it was seized, deliver the item to a police officer; and
  - (e) in all other cases, deliver the item to the Director.
- (9) A person who refuses to be screened under this Section shall not pass or be allowed to pass through the control point.

**Notification of Entry into Ports**

- (1) A ship intending to enter a Nauru port shall notify the port facility operator and provide:
  - (a) the ship's certificate and the name of the issuing authority;
  - (b) the security level at which the ship is operating;
  - (c) the security level at which the ship operated in any previous port where it conducted a ship-port interface during the period of its last 10 calls at port;
  - (d) any special or additional security measures taken by the ship in any previous port where it conducted a ship-port interface during the period of its last 10 calls at port;
  - (e) ship security procedures which were not maintained during any ship-ship activity during the period of its last 10 calls at port; and
  - (f) of any other matters as may be prescribed by regulations.
- (2) A notification under this Section shall be made:
  - (a) before the ship enters Nauru waters; or
  - (b) where that is not possible, as soon as practicable after the ship has entered Nauru waters; and
  - (c) in such form as the Director may require.
- (3) The Director, an Inspector, a port facility operator or a port facility security officer may require evidence to be provided to confirm any of the matters under subsection (1).
- (4) A port facility security officer may require that a ship intending to enter a Nauru port provide the following information:
  - (a) information contained in the CSR;
  - (b) the location of the ship when the notification under this subsection or subsection (1) is given;
  - (c) the expected time of arrival in port;
  - (d) a crew or passenger list;
  - (e) a general description of cargo aboard the ship;
  - (f) matters related to documents or information required to be carried under this Act or SOLAS regulation XI-2/5; and
  - (g) other information prescribed by regulations.

- (5) This Section shall cease to apply where the master withdraws an intention to enter a Nauru port.
- (6) A master or company may decline to comply with the requirements of subsection (1), (2), (3) or (4), in which case:
  - (a) the port facility operator shall notify the Director; and
  - (b) the Director may deny the ship entry to the port or a port facility.

## 29

### Control of Ships

- (1) A ship intending to enter a Nauru port is subject to inspection by an Inspector.
- (2) A ship intending to enter a Nauru port shall:
  - (a) have a valid certificate on board and produce it to an Inspector when required to do so;
  - (b) have provided the information set out in Section 28(1);
  - (c) allow an Inspector to board the ship and exercise the powers described in subsection (3);
  - (d) provide an Inspector with any security records kept on board the ship when required to do so, provided that a ship security plan may only be inspected:
    - (i) with the consent of the master or the flag administration; or
    - (ii) if there are clear grounds to believe that the ship is not operating in compliance with Part A and the only means to verify or rectify such non-compliance is to inspect the ship security plan; and
    - (iii) to the extent of the part of the ship security plan as it relates to the suspected non-compliance;
  - (e) comply with the security level set for the port or such higher security level as the flag state has set for that ship; and
  - (f) comply with control measures.
- (3) An Inspector may:
  - (a) board and inspect a ship in Nauru waters including a restricted access area on a ship, provided that:
    - (i) unless accompanied by a police officer, the power conferred by this paragraph shall be limited to peaceful and non-forcible entry;
    - (ii) entry to crew quarters or passenger cabins is not permitted without the consent of the occupier or a search warrant;

- (b) enter any place in a Nauru port;
  - (c) inspect equipment on a ship in Nauru waters or at a Nauru port;
  - (d) make any still or moving image or recording of a ship in Nauru waters or Nauru port or equipment on a ship or at a Nauru port;
  - (e) observe and record operating procedures on a ship in Nauru waters or at a Nauru port and discuss such procedures with any person;
  - (f) inspect any document or record relating to the security of a ship in Nauru waters or at a Nauru port;
  - (g) inspect any documents relating to a passenger or an item of cargo on a ship in Nauru waters or at a Nauru port;
  - (h) operate any equipment on a ship or at a port for the purpose of gaining access to a document or record relating to a ship in Nauru waters or at a Nauru port.
- (4) Where a ship has been required to provide evidence under Section 28(3) and:
- (a) a certificate has not been produced in accordance with subsection (1)(a) without reasonable excuse; or
  - (b) an Inspector has clear grounds to believe that the ship is not operating in compliance with Part A, -
- the Inspector shall first attempt to establish communication with the ship in order to rectify such non-compliance.
- (5) Where communication under subsection (4) does not result in rectification of the non-compliance, the Inspector may take one or more of the following steps:
- (a) require the rectification of the non-compliance;
  - (b) impose control measures, provided that:
    - (i) the master is first informed of the specific control measures intended to be imposed and provided the opportunity to withdraw the intention to enter the port;
    - (ii) the control measures shall be proportionate and reasonable and of the minimum severity and duration necessary to rectify the non-compliance;
    - (iii) the control measures shall only be imposed until the non-compliance has been rectified to the satisfaction of the Inspector;
    - (iv) all possible efforts shall be made to avoid a ship being unduly detained or delayed;

- (v) denial of entry into port and removal of the ship from port shall only be imposed where there are clear grounds to believe that the ship poses an immediate threat to the security or safety of persons, ships or property and there are no other appropriate means for removing that threat; and
  - (vi) a person shall be allowed to leave the ship or access to the ship shall be allowed for emergency, humanitarian or security purposes; or
- (c) impose additional or lesser administrative or corrective measures.
- (6) A ship may be denied entry pursuant to subsection (5)(b) despite any other written law.
- (7) Where a ship is removed from a port facility under subsection (5)(b), the port facility operator shall cease providing services to that ship if so directed by the Authority.
- (8) Where a ship is detained under subsection (5)(b):
- (a) the company of the ship is liable to pay to the Authority the costs of and incidental to:
    - (i) such detention;
    - (ii) any inspection under subsection (5)(b); and
    - (iii) any costs incurred by the port facility operator as a result of the detention;
  - (b) such costs are without prejudice to any other remedy and are recoverable as a debt due to the Authority;
  - (c) the Authority may permit the ship to sail to another port provided that any conditions agreed between the Authority, the master and the port state are met; and
  - (d) the Authority is liable to pay the company of that ship compensation for any loss resulting from unduly detaining or delaying the ship.
- (9) Subsections (1), (2) and (3) shall cease to apply if the master withdraws the ship's intention to enter a Nauru port.
- (10) In the event that control measures are imposed, the Authority shall inform:
- (a) the flag administration; and
  - (b) the recognised security organisation which issued the certificate.

**Offences under Part 4**

- (1) No person shall possess or control a prohibited item in a port security area unless he or she is authorised under regulations or has the written approval of a port facility security officer.
- (2) A person who contravenes subsection (1) commits an offence and upon conviction is liable to a fine not exceeding \$100,000.00 or to a term of imprisonment not exceeding 7 years or to both.
- (3) No person shall, when passing through or attempting to pass through a screening point, possess or control a prohibited item unless he or she is authorised under regulations or with the written approval of a port facility security officer.
- (4) A person who contravenes subsection (3) commits an offence and upon conviction is liable to a fine not exceeding \$100,000.00 or to a term of imprisonment not exceeding 7 years or to both.
- (5) A person who is authorised or permitted to have possession or control of any prohibited item in a port security area or when passing through a screening point shall comply with the conditions of such authorisation or permission of the port facility security officer.
- (6) Where a person so authorised or permitted fails to comply with the conditions of an authorisation or permission, he or she commits an offence and upon conviction is liable to a fine not exceeding \$25,000.00 or to a term of imprisonment not exceeding 24 months or to both.
- (7) A person who, having obtained the written permission of the port facility security officer to have possession or control in a port security area of a prohibited item, shall produce such permission upon the request of a maritime security guard.
- (8) A person who contravenes subsection (7) commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 12 months or to both.
- (9) A person who:
  - (a) contravenes Section 26(5); or
  - (b) fails to comply with a requirement imposed under Section 26(7), (9) or (10), -commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 12 months and to both.
- (10) No unauthorised person shall access or remain in a port security area.
- (11) An unauthorised person who contravenes subsection (10) commits an offence and upon conviction is liable to a fine not exceeding \$10,000.00 or to a term of imprisonment not exceeding 12 months or to both.

- (12) No person shall disclose or allow access to a port facility security plan for a Nauru port unless he or she is duly authorised to do so.
- (13) A person who contravenes subsection (13) commits an offence and upon conviction is liable to a fine not exceeding \$25,000.00 or to a term of imprisonment not exceeding 24 months or to both.
- (14) For the purpose of Section 28, no master shall make a statement or provide a document, whether orally or in writing, that is false or misleading in a material particular.
- (15) A master who contravenes subsection (14) commits an offence and upon conviction is liable to a fine not exceeding \$25,000.00 or to a term of imprisonment not exceeding 24 months or to both.
- (16) The offences in this Section are offences of strict liability.

## **PART 6- MISCELLANEOUS PROVISIONS**

### **31 Appeal**

- (1) A person aggrieved by an appealable decision may appeal to the Court.
- (2) An appeal under subsection (1) shall be instituted within 21 days from when the decision was made.
- (3) The Court may make any order as to the costs of an appeal as it deems necessary.
- (4) An appealable decision continues in force and is effective for all purposes until determination of the appeal.

### **32 Records**

- (1) Every record shall be kept in English and, where applicable, in the working language of the relevant ship.
- (2) Unless otherwise stated, every record may be kept in electronic format, provided that such records are reasonably protected from:
- (a) inadvertent or unauthorised deletion, destruction or amendment; and
  - (b) unauthorised access or disclosure.

### **33 Prosecution and proof**

- (1) Where a body corporate contravenes this Act and such body corporate has been found guilty of such offence, the Court may impose a fine of an amount equal to 5 times the fine for an individual.
- (2) Where a body corporate commits an offence against this Act, each executive officer of the body corporate:



- (a) commits an offence; and
  - (b) is liable to the penalty applicable to an individual who commits the principal offence.
- (3) It is a defence to a charge for an offence that the executive officer:
- (a) did not know and could not reasonably have been expected to know, the offence would be or was being committed; or
  - (b) exercised due diligence to prevent the commission of the offence.
- (4) An executive officer of a body corporate may be convicted of an offence despite the body corporate not being charged with or convicted of an offence.
- (5) In any proceedings for an offence against this Act, unless the contrary is proved, the following provisions apply:
- (a) a copy of any document certified by the Director to be a true copy of the document is evidence of the document and its contents; and
  - (b) a certificate signed by the Director is evidence of the matter certified stating that, on a specified date a:
    - (i) Nauruan ship was or was not the holder of a valid certificate;
    - (ii) ship security plan or amendment for a Nauruan ship was or was not approved;
    - (iii) port facility security plan or amendment for a Nauru port was or was not approved;
    - (iv) person was or was not the holder of an MSIC;
    - (v) person was or was not the holder of a SID; or
    - (vi) person was or was not the holder of a visitor pass.
- (6) In any prosecution of an offence under this Act, the averment of the prosecutor is prima facie evidence of the matters averred although:
- (a) evidence in support or rebuttal of the matter averred is given by a witness or otherwise; or
  - (b) the matter averred is a mixed question of law and fact, but in that case the averment shall be prima facie evidence of the fact only.
- (7) Any evidence given by a witness in support or rebuttal of a matter averred shall be considered on its merits and its weight is not affected by the averment.
- (8) A person other than an officer or employee of the Authority or a maritime security guard who contravenes a provision of this Act or regulations for

which no other offence is provided commits an offence and upon conviction is liable to imprisonment to a fine not exceeding \$15,000.00.

- (9) A maritime security guard may issue an infringement notice on a person that is reasonably believed to have committed an offence under this Act in the preceding 7 days.
- (10) An infringement notice shall:
- (a) be in the prescribed form;
  - (b) contain a description of the alleged offence;
  - (c) specify a prescribed penalty to be paid by the offender; and
  - (d) be served on the alleged offender or, where the alleged offender is a crew member or owner, on the master of the ship to which the alleged offence relates.
- (11) An infringement notice may be withdrawn or amended at any time before or after the penalty is paid, provided that a penalty paid before withdrawal is to be refunded.
- (12) The bringing of proceedings for the same offence against the alleged offender is prohibited to the same extent as if the alleged offender had been convicted by a court of the alleged offence where:
- (a) the modified penalty is paid by the due date; and
  - (b) the infringement notice has not been withdrawn.
- (13) The payment of a penalty shall not be regarded as an admission for the purposes of any civil or criminal proceedings.

## **34 Injunctions**

- (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that will contravene this Act or regulations, the Court may, on the application of the Authority, grant an injunction.
- (2) For the purpose of this Section, the Authority shall not be required, as a condition, to give:
- (a) an undertaking as to damages; or
  - (b) security for any costs.
- (3) The Court may, where it deems necessary, grant an injunction under this Section by consent whether or not the Court is satisfied that the person has engaged, is engaging or is proposing to engage in any conduct in contravention of this Act.

**35 Protection from liability**

Other than as specifically provided by this Act, the Chief Executive Officer, Director, port facility security officers, maritime security officers or any other officer of the Authority is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or function under this Act.

**36 Regulations**

- (1) The Cabinet may make regulations prescribing all matters necessary or convenient to give effect to this Act.
- (2) Without limiting the generality of subsection (1), any regulations made under subsection (1) may:
  - (a) give effect to an incidental convention to which the Republic is a party;
  - (b) prescribe forms and fees; and
  - (c) prescribe offences.

**37 Consequential amendments**

The Schedule to this Act amends the Acts mentioned in it.

**38 Savings**

- (1) This Act does not affect an immunity or privilege that is conferred under the:
  - (a) *Consular Privileges and Immunities Act 1976*;
  - (b) *Diplomatic Privileges and Immunities Act 1976*;
  - (c) *Special Missions Privileges and Immunities Act 1976*;
  - (d) *Facilitation of Australian Assistance Act 2004*, -or any other written law.
- (2) Nothing in this Act limits the right of the Republic to take additional measures for national defence or security.
- (3) Nothing in this Act limits the application of the laws of the Republic to a ship in a Nauru port.
- (4) Nothing in this Act limits the rights which may be exercised at international law by the Republic on the high seas.
- (5) Nothing in Parts 2, 3 or 4 affects the operation of alternative security arrangements, provided that no Nauruan ship may conduct any ship-ship activity with another ship not covered by the alternative security arrangement.

- (6) Nothing under Section 15(1)(b) affects any obligations of the Republic under international arrangements in relation to refugees or stateless persons.

## SCHEDULE

### AMENDMENTS

#### 1. Counter Terrorism and Transitional Organised Crime Act 2004

1. In Section 2(1):

- (a) insert in alphabetical order

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

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

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

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

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

- (b) omit in the definition of *‘fixed platform’* the word ‘permanently’.

2. In Division 7, omit from the title **‘Maritime Safety’** and substitute **‘SUA Convention and Protocol’**

3. In Section 50(1)(a),

- (a) omit:

*‘seize, or exercise control over, a ship or fixed platform by force or threat of force or other form of intimidation; or’*

- (b) substitute:

*‘seize or exercise control over:*

- (i) *a ship;*
- (ii) *a person on board a ship;*
- (iii) *any cargo on board a ship;*
- (iv) *a fixed platform;*
- (v) *a person on a fixed platform;*
- (vi) *an aid to navigation; or*
- (vii) *a person operating an aid to navigation,*

*by force or threat of force, any form of intimidation or by deception: or’*

4. In Section 50(1) (b), insert after the word *'navigation'* the words *'or operation'*
5. In Section 50(1)(c), omit the words *'ship or fixed platform'* and substitute *'ship or its cargo or fixed platform or aid to navigation'*
6. In Section 50(1)(d), insert before the word *'cause'* the words *'remove or'*
7. In Section 50(1)(d), insert after the word *'platform'* where it first appears the words *'or an aid to navigation'*
8. In Section 50(1)(d), omit wherever it appears the word *'the'* and substitute with *'a'*
9. In Section 50(1)(e), omit the words *'place, or cause to be placed, on a ship or fixed platform a device or substance, likely:'* and substitute *'deliver, place, discharge or detonate, on or nearby a ship, fixed platform or aid to navigation any:'*

- (i) *explosive or other lethal device; or*
- (ii) *weapon*
- (iii) *noxious liquid, gas or other substance,*

*likely to bring about any of the outcomes described in paragraphs (c) or (d); or*

10. Omit Section 50(1) (e) (i)
11. Omit Section 50(1) (e)(ii)
12. In Section 50(1) (f), omit and substitute as follows:

*'(e) engage in any conduct that is likely to or does:*

- (i) *interfere with any navigational, life support, emergency response or other safety equipment on board a ship or fixed platform;*
- (ii) *endanger the safe operation or navigation of a ship,*
- (iii) *result in the unlawful detention of a person or ship;*
- (iv) *endanger or cause substantial damage to property or the environment; or'*

13. In Section 50(1)(g), insert after the word *'safe'*, the words *'operation or'*
14. In Section 50(1), insert after the word *'life'*, the words *'and \$50,000.00'*
15. In Section 50(2):

- (a) omit the figure *'(2)'* and substitute (1);
- (b) insert after the word *'life'*, the words *'and \$50,000.00'*

16. Insert new subsections 50(3), (4) and (5):

*'(3) A person shall not, with the intention of intimidating a population, or to compel a government or an international organisation to do or refrain from doing any act:*

- (a) *use against, or on or from, a ship, fixed platform or aid to navigation, any explosive or other lethal device or weapon; or*
- (b) *discharge any noxious liquid, gas or other substance; or*
- (c) *use a ship in a manner that causes death, serious injury or damage; or*

*(d) threaten to commit an offence mentioned in paragraph (a), (b) or (c).*

*Maximum penalty: Imprisonment for life and \$50,000.00*

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

*Maximum penalty: Imprisonment for life and \$50,000.00*

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

17. In Section 51(1):

(a) omit the words *'ship registered in Nauru'* and substitute *'Nauruan ship'*;

(b) omit *'46 against, or on board, any ship'* and substitute *'50'*

18. In Section 51(1) (b) , omit the word *'State'* and substitute *'country; or'*

19. Insert new Section 51(1) (c):

*'(c) deliver the person to a police officer.'*

20. In Section 51(2), omit the words *'The master of the ship shall:'* and substitute:

*The master of a Nauruan ship who intends to deliver a person under subsection (1) shall, as soon as reasonably practicable and if possible before entering the territorial sea of the other Convention country:*

21. In Section 51(2) (a) , omit the words *'State before delivering the person'* and substitute *'country of his intention to deliver the person'*

22. In Section 51(2), omit the word *'life'* and substitute *'5 years and \$25,000.00'*

23. Omit 51(3)

24. In Section 71(a)(ii), omit the words *'ship or aircraft registered in Nauru'* and substitute *'Nauruan ship or Nauruan aircraft, wherever located'*

25. In Section 71(a)(iii), omit the word *'and'* and substitute *'or'*

26. Insert new Section 71(1)(a) (iv):

*'(iv) is committed on or against a fixed platform licensed by or operating within Nauru; and'*

27. In Section 71(b)(i), insert after the words *'in Nauru'*, the words *'or a stateless person'*

28. In Section 71(b)(iv), insert before the word *'originates'*, the words *'is committed by a person during a journey that'*

29. In Section 76, insert new subsection (4):

(4) *Where:*

(a) *a company is found guilty of an offence under this Act; and*

(b) *the only penalty stated for the offence is a term of imprisonment, -*

*the Court may impose a fine that it considers appropriate reflecting the grave nature of the offences for which this Act provides.'*

## **2. Crimes Act 2016**

1. In Section 217(2), insert after the word '*depredation*', '*Committed for private ends by the Crew or passengers of a private ship or aircraft, and directed*'
2. In Section 217(2)(a), omit and substitute: '*if the act is done on the high seas or in the coastal sea of Nauru- against another ship or aircraft, or against persons on board such ship or aircraft; or*'
3. In Section 217(2)(b), omit and substitute '*if the act is done in a place, other than the high seas, beyond the territorial jurisdiction of any State- against a ship, aircraft, persons or property.*'
4. Omit Section 217(2)(c).