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# Cook Islands Sessional Legislation

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## Crimes Act 1969

COOK ISLANDS

CRIMES ACT 1969

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**1969, No. 20**

An Act to provide a Criminal Code relating to offences, defences, and procedures

*(27 January 1970)*

**BE IT ENACTED** by the Legislative Assembly of the Cook Islands in Session assembled, and by the authority of the same, as follows:

**1. Short Title and division into Parts** - (1) This Act may be cited as the Crimes Act 1969.

(2) This Act is divided into Parts, as follows:

- Part I - Jurisdiction (Sections 4 to 11)
- Part II - [Repealed]

- Part III - Matters of Justification or Excuse (Sections 23 to 67)
- Part IV - Parties to the Commission of offences (Sections 68 to 74)
- Part V - Crimes against Public Order (Sections 75 to 109)
- Part VI - Crimes affecting the administration of Law and Justice, (Sections 110 to 133)
- Part VII - Crimes against Religion, Morality, and Public Welfare (Sections 134 to 170)
- Part VIII - Crimes against the Person (Sections 171 to 232)
- Part IX - Crimes against Reputation (Sections 233 to 238)
- Part X - Crimes against rights of Property (Sections 239 to 328)
- Part XI - Threatening, Conspiring and Attempting to commit Offences (Sections 329 to 355)
- Part XII - [Repealed] (Sections 336 to 411)
- Part XIII - Miscellaneous Provisions (Sections 412 to 420)

**2. Interpretation-** (1) In this Act, unless the context otherwise requires,-

"Aerodrome" has the same meaning as in the Civil Aviation Act 1964 of the New Zealand Parliament;

"Aircraft" has the same meaning as in Civil Aviation Act 1964 of the New Zealand Parliament; and includes any aircraft for the time being used as an aircraft of any of the armed forces of any country other than New Zealand;

"assault" means the act of intentionally applying or attempting to apply force to the person of another, directly or indirectly, or threatening by any act or gesture to apply such force to the person of another, if the person making the threat has or causes the other to believe on reasonable grounds that he has present ability to effect his purpose; and "to assault" has a corresponding meaning;

"Cook Islander" means a person belonging to the part of the Polynesian race indigenous to the Cook Island; and includes any person descended from a Cook Islander;

"Cook Islands" includes the territorial waters of the Cook Islands;

"Cook Islands aircraft" means any aircraft ordinarily operating in the Cook Islands and required to be registered in New Zealand under the Civil Aviation Act 1964 of the New Zealand Parliament;

"Cook Islands ship" means any ship ordinarily operating in the Cook Islands;

"Commonwealth country" means a country that is a member of the Commonwealth of Nations; and includes every territory for whose international relations the Government of any such country is responsible;

"Commonwealth ship" means a ship registered or required to be registered in any Commonwealth country, or recognised by the law of any Commonwealth country as a ship belonging to that country; and includes any ship for the time being used as a ship of any of the armed forces of any country in the Commonwealth;

"Crime involving dishonesty" means any crime described in Part X of this Act, except the crimes described in 316 to 328 (which relate to criminal damage);

"Criminally responsible" means liable to punishment for an offence;

"Day", or "daytime", means the interval between six o'clock in the morning of any day and nine o'clock at night of the same day;

"Foreign ship" means a ship that is not a Commonwealth ship;

"To injure" means to cause actual bodily harm;

"Indecent document" means any book, newspaper, picture, photograph, print, or writing, and any paper or other thing of any description whatsoever, which has printed or impressed upon it, or otherwise attached thereto, or appearing, shown, or exhibited in any manner whatsoever thereon, any indecent word, statement or significant sign, or any indecent picture, illustration, or representation;

"Is liable" means is liable on conviction;

"Justice" means Justice of the Peace;

"Justified", in relation to any person, means not guilty of an offence and not liable to any civil proceeding;

"Maori language" means the language indigenous to the Cook Islands;

"Medical officer" means a medical officer employed in the Public Service;

"New Zealand forces" means the New Zealand Naval Forces, the New Zealand Army, and the Royal New Zealand Air Force;

"Night", or "night-time" means the interval between nine o'clock at night and six o'clock in the following morning;

"Offence" means any act or omission for which any one can be punished under this Act or under any other enactment;

"Person", "owner", and other words and expressions of the like kind include the Crown and any public body or Island Council, and any board, society, or company, and any other body of persons, whether incorporated or not;

"Property" includes real and personal property, and any estate or interest in any real or personal property, and any debt, and any thing in action, and any other right or interest;

"Protected from criminal responsibility" means not liable to any proceeding except a civil proceeding;

"Public money" means money, or securities of any kind for the payment of money, received for or on account of, or payable to, or deposited with, the Government of the Cook Islands or any Department or agency of the said Government, or any Island Council;

"Public place" means any road, any place or public resort open to or used by the public as of right, any wharf or jetty, any vessel at a wharf or jetty or within one mile of the

shore, any church or other building where Divine service is being publicly held, any hall or room in which any public entertainment is being held, and any market place;

"Registrar" means any Registrar of the Court; and includes any Deputy Registrar;

"Ship" means every description of vessel used in navigation, however propelled; and includes any barge, lighter, dinghy, raft, or like vessel; and also includes any ship belonging to or used as a ship of the armed forces of any country;

"Superintendent" means the Superintendent of a prison;

"Territorial waters", in relation to any country, means such part of the sea adjacent to the coast of that country and is within the territorial sovereignty of that country;

"Valuable security" includes every document forming the title or evidence of the title to any property of any kind whatever; and also includes any negotiable instrument, bill of exchange, cheque, or promissory notes.

(2) When it is provided in this Act that any one is liable to any punishment for doing or omitting any act, every person doing or omitting that act is, subject to the provisions of this Act, guilty of a crime. *[Amended Act 1977/14; Act 1981/17; Act 1989/33]*

**3. Meaning of "ordinarily resident in the Cook Islands"** - For the purpose of this Act, a person shall be deemed to be ordinarily resident in the Cook Islands if-

(a) His home is in the Cook Islands; or

(b) He is residing in the Cook Islands with the intention of residing therein indefinitely; or

(c) Having resided in the Cook Islands with the intention of establishing his home therein, or with the intention of residing in the Cook Islands indefinitely, he is outside the Cook Islands but has an intention to reside in the Cook Islands indefinitely.

## PART I JURISDICTION

**4. Application of Act** - (1) This Act applies to all offences for which the offender may be proceeded against and tried in the Cook Islands.

(2) This Act applies to all acts done or omitted in the Cook Islands.

**5. Persons not to be tried in respect of things done outside the Cook Islands** - Subject to the provisions of section 6 of this Act, no act done or omitted outside the Cook Islands is an offence, unless it is an offence by virtue of any provision of this Act or of any other enactment.

**6. Place of commission of offence** - For the purpose of jurisdiction, where any act or omission forming part of any offence, or any event necessary to the completion of any offence, occurs in the Cook Islands, the offence shall be deemed to be committed in the Cook Islands, whether the person charged with the offence was in the Cook Islands or not at the time of the act, omission, or event.

**7. Jurisdiction in respect of crimes on ships or aircraft beyond the Cook Islands** - (1) This section applies to any act done or omitted beyond the Cook Islands by any person -

- (a) On board any Commonwealth ship; or
- (b) On board any Cook Islands aircraft; or
- (c) On board any ship or aircraft, if that person arrives in the Cook Islands on that ship or aircraft in the course or at the end of a journey during which the act was done or omitted; or
- (d) Being a British subject, on board any foreign ship (not being a ship to which he belongs) on the high seas, or on board any such ship within the territorial waters of any Commonwealth country; or
- (e) Being a person ordinarily resident in the Cook Islands, on board any aircraft:

Provided that paragraph (c) of this subsection shall not apply where the act was done or omitted by a person, not being a British subject, on any ship or aircraft for the time being used as a ship or aircraft of any of the armed forces of a country that is not a Commonwealth country.

(2) Where any person does or omits any act to which this section applies, and that act or omission would, if it occurred within the Cook Islands, be a crime under this Act or under any other enactment (whether that enactment was passed before or after the commencement of this Act), the, subject to the provisions of this Act and of that other enactment, he shall be liable on conviction as if the act or omission had occurred in the Cook Islands:

Provided that where any proceedings are taken by virtue of the jurisdiction conferred by this section it shall be a defence to prove that the act or omission would not have been an offence under the law of the country of which the person charged was a national or citizen at the time of the act or omission, if it had occurred in that country.

(3) Where at any place beyond the Cook Islands any person who belongs, or within three months previously has belonged, to any Commonwealth ship does or omits any act, whether on shore or afloat, not being an act or omission to which subsection (1), of this section applies, and that act or omission would, if it occurred within the Cook Islands, be a crime, then this section shall apply in respect of that act or omission in the same manner in all respects as it had occurred on board a Commonwealth ship.

(4) The provisions of this sections shall have the same operation in relation to the Republic of Ireland and to the citizens thereof, and to ships registered therein or belonging thereto, and to persons who belong or have belonged to those ships, and to all other persons on board those ships, as if the Republic of Ireland were a Commonwealth country and as if the citizens thereof were British subjects.

(5) This section shall be read subject to the provisions of section 412 of this Act.

(6) In this section, the expression "British subject" includes a British protected person within the meaning of the British Nationality and Citizenship Act 1948 of the New Zealand Parliament.

(7) Nothing in this section shall apply with respect to any crime against the Shipping Ordinance 1963.

**8. Common law offences** - No person shall be proceeded against for any criminal offence at common law.

**9. Offence under more than one enactment** - (1) Where an actor omission constitutes an offence under this Act and under any other Act, the offender may be prosecuted and punished either under this Act or under that other Act.

(2) Where an act or omission constitutes an offence under two or more Acts other than this Act, the offender may be prosecuted and punished under any one of those Acts.

(3) Where an act or omission constitutes an offence under two or more provisions of this Act or of any other Act, the offender may be prosecuted and punished under any one of those provisions.

(4) No one shall be liable on conviction to be punished twice in respect of the same offence.

**10. Construction of other Acts** - (1) Every Act shall be read and construed as if any offence therein mentioned for which the offender may be prosecuted by information (however the offence may be therein described or referred to) were described or referred to as a crime; and all provisions of this Act relating to crimes generally shall apply to every such offence.

(2) Every commission, Proclamation, warrant, or other document relating to criminal procedure in which offences that are crimes as defined by this Act are described or referred to by any names whatever shall be read and construed as if those offences were therein described and referred to as crimes.

**11. Summary Jurisdiction** - Nothing in this Act shall be construed to limit or affect in any way any provision made by any other Act for the trial and punishment of offences in a summary way.

## **PART II PUNISHMENTS**

*12.-22. [Repealed]*

*[Repealed Act 1980-81/28]*

## **PART III MATTERS OF JUSTIFICATION OR EXCUSE**

**23. General rule as to Justifications** - (1) All rules and principles of the common law which render any circumstances a justification or excuse for any act or omission, or a defence to any charge, shall remain in force and apply in respect of a charge of any offence, whether under this Act or under any other enactment, except so far as they are altered by or are inconsistent with this Act or any other enactment.

(2) The matters provided for in this Part of this Act are hereby declared to be justifications or



excuses in the case of all charges to which they are applicable.

### **Infancy**

**24. Children under ten** - (1) No person shall be convicted of an offence by reason of any act done or omitted by him when under the age of ten years.

(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

**25. Children between ten and fourteen** - (1) No person shall be convicted of an offence by reason of any act done or omitted by him when of the age of ten but under the age of fourteen years, unless he knew either that the act or omission was wrong or that it was contrary to law.

(2) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

### **Insanity**

**26. Insanity** - (1) Every one shall be presumed to be sane at the time of doing or omitting any act until the contrary is proved.

(2) No person shall be convicted of an offence by reason of an act done or omitted by him when labouring under natural imbecility or disease of the mind to such an extent as to render him incapable-

(a) Of understanding the nature and quality of the act or omission; or

(b) Of knowing that the act or omission was morally wrong, having regard to the commonly accepted standards of right and wrong.

(3) Insanity before or after the time when he did or omitted the act, and insane delusions, though only partial, may be evidence that the offender was, at the time when he did or omitted the act, in such a condition of mind as to render him irresponsible for the act or omission.

(4) The fact that by virtue of this section any person has not been or is not liable to be convicted of an offence shall not affect the question whether any other person who is alleged to be a party to that offence is guilty of that offence.

### **Compulsion**

**27. Compulsion** - (1) Subject to the provisions of this section, a person who commits an offence under compulsion by threats of immediate death or grievous bodily harm from a person who in present when the offence in committed that protected from criminal responsibility if he believes at the threats will be carried out and if he is not a party to any association or conspiracy whereby he is subject to compulsion.

(2) Nothing in subsection (1) of this section shall apply where the offence committed is aiding or abetting rapes or is an offence specified in any of the following provisions of this Act, namely:

- (a) Section 75 (treason) or section 80 (communicating secrets);
- (b) Section 81 (sabotage);
- (c) Section 103 (piracy);
- (d) Section 104 (piratical acts);
- (e) Sections 187 and 188 (murder);
- (f) Section 193 (attempt to murder);
- (g) Section 208 (wounding with intent);
- (h) Subsection (1) of section 209 (injuring with intent to cause grievous bodily harm);
- (i) Section 230 (abduction);
- (j) Section 231 (kidnapping);
- (k) Section 256 (robbery);
- (l) Section 317 (arson).

(3) Where a married woman commits an offence, the fact that her husband was present at the commission of it shall not of itself raise the presumption of compulsion.

### **Ignorance of law**

**28. Ignorance of law** - The fact that an offender is ignorant of the law is not an excuse for any offence committed by him.

### **Sentence or Process**

**29. Execution of sentence, process, or warrant** - (1) Every ministerial officer of any Court authorised execute a lawful sentence, and every Superintendent of any prison and every person lawfully assisting any such ministerial officer or Superintendent, is justified in executing the sentence.

(2) Every ministerial officer of any Court duly authorised to execute any lawful process of the Court, whether of a civil or a criminal nature, and every person lawfully assisting him, is justified in executing it and every Superintendent required under the process to receive and detain any person is justified in receiving and detaining him.

(3) Every one duly authorised to execute a lawful warrant issued by any Court or Justice or other

person having jurisdiction to issue the warrant, and every person lawfully assisting him, is justified in executing the warrant; and every Superintendent required under the warrant to receive and detain any person is justified in receiving and detaining him.

**30. Execution of erroneous sentence or process** - If a sentence is passed or a process is issued by a Court having jurisdiction under any circumstances to pass such a sentence or issue such a process, or if a warrant is issued by a Court or person having jurisdiction under any circumstances to issue such a warrant, the sentence passed or process or warrant issued shall be sufficient to justify the execution of it by every officer, Superintendent, or other person authorised to execute it, and by every person lawfully assisting him, notwithstanding that-

- (a) The Court passing the sentence or issuing the process had no authority to pass that sentence or issue that process in the particular case; or
- (b) The Court or other person issuing the warrant had no jurisdiction to issue it, or exceed its or his jurisdiction in issuing it, in the particular case.

**31. Sentence or process without Jurisdiction** - (1) Every officer, superintendent, or person executing any sentence, process, or warrant, and every person lawfully assisting him, shall be protected from criminal responsibility if-

- (a) He acts in good faith under the belief that the sentence or process was that of a Court having jurisdiction, or, as the case may be, that the warrant was that of a Court, Justice, or other person having authority to issue warrants; and
- (b) It is proved that the person passing the sentence or issuing the process acted as such a Court under colour of having some appointment or commission lawfully authorising him to act as such a Court, or, as the case may require, that the person issuing the warrant acted as a Justice or other person having authority to do so.

(2) This section shall apply notwithstanding that, in fact,-

- (a) Any such appointment or commission an aforesaid did not exist or had expired; or
- (b) The Court or the person passing the sentence or issuing the process was not the Court or the person authorised by the appointment or commission to act; or
- (c) The person issuing the warrant was not duly authorised to issue it.

**32. Irregular warrant or process** - (1) Every one acting under a warrant or process that is bad in law on account of some defect in substance or in form, apparent on the face of it, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the warrant or process were good in law if in good faith and without culpable ignorance or negligence he believed that the warrant or process was good in law; and ignorance of the law shall in this case be an excuse.

(2) It is a question of law whether the facts of which there is evidence do or do not constitute culpable ignorance or negligence in his so believing the warrant or process to be good in law.

## Arrest

**33. Arresting the wrong person** - (1) Every one duly authorised to execute a warrant to arrest who thereupon arrests a person, believing in good faith and on reasonable and probable grounds that he is the person named in the warrant, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

(2) Every one called on to assist the person making such arrest, and believing that the person in whose arrest he is called on to assist is the person for whose arrest the warrant is issued, and every Superintendent who is required to receive and detain the person arrested, shall be protected from criminal responsibility to the same extent and subject to the same provisions as if the person arrested had been the person named in the warrant.

**34. Arrest by constable pursuant to statutory powers** - Every constable is justified in arresting any person without warrant in accordance with the provisions of section 338 of this Act or in accordance with any other enactment conferring on him a power so to arrest.

**35. Arrest by constable of person believed to have committed offence** - where under any enactment any constable has power to arrest without warrant any person who has committed an offence, the constable is justified in arresting without warrant any person whom he believes, on reasonable and probable grounds, to have committed that offence, whether or not the offence has in fact been committed, and whether or not the arrested person committed it.

**36. Arrest by other officers or persons pursuant to statutory powers** - Every officer or other person, not being a constable, who is authorised by any enactment to arrest any person without warrant is justified in so arresting any person in accordance with the provisions of that enactment.

**37. Persons assisting constable or officer in arrest** - (1) Every one called upon by a constable to assist him in the arrest of any person believed or suspected to have committed any offence is justified in assisting unless he knows that there is no reasonable ground for the belief or suspicion.

(2) Where by any enactment it is provided that any officer or person, not being a constable, may call upon any other person to assist him in arresting without warrant any one who has committed or is found committing any offence every person so called upon is justified in assisting unless he knows that there is no reasonable ground for believing that the person to be arrested has committed the offence.

**38. Arrest of persons found committing certain crimes** - Every one is justified in arresting without warrant-

(a) Any person whom he finds committing any offence against this Act that is punishable by death or for which the maximum punishment is not less than three years' imprisonment;

(b) Any person whom he finds by night committing any offence against this Act.

**39. Arrest of person believed to be committing crime by night** - Every one is protected from criminal responsibility for arresting without warrant any person whom he finds by night in circumstances affording reasonable and probable grounds for believing that that person is committing

an offence against this Act.

**40. Arrest after commission of certain crimes** - Where any offence against this Act has been committed, every one who believes, on reasonable and probable grounds, that any person has committed that offence is protected from criminal responsibility for arresting that person without warrant, whether or not that person committed the offence.

**41. Arrest during flight** - (1) Every one is protected from criminal responsibility for arresting without warrant any person whom he believes, on reasonable and probable grounds, to have committed an offence against this Act, and to be escaping from and to be freshly pursued by any one whom he believes, on reasonable and probable grounds, to have lawful authority to arrest that person for the offence.

(2) This section shall apply whether or not the offence has in fact been committed, and whether or not the arrested person committed it.

### Use of Force

**42. Force used in executing process or in arrest** - Where any person is justified, or protected from criminal responsibility, in executing or assisting to execute any sentence, warrant, or process, or in making or assisting to make any arrest, that justification or protection shall extend and apply to the use by him of such force as may be necessary to overcome any force used in resisting such execution or arrest, unless the sentence, warrant, or process can be executed or the arrest made by reasonable means in a less violent manner:

Provided that, except in the case of a constable or person called upon by a constable to assist him, this section shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

**43. Preventing escape or rescue** - (1) Where any person is lawfully authorised to arrest or to assist in arresting any other person, or is justified in or protected from criminal responsibility for arresting or assisting to arrest any other person, that authority, justification or protection, as the case may be, shall extend and apply to the use of such force as may be necessary -

(a) To prevent the escape of that other person if he takes to flight in order to avoid arrest; or

(b) To prevent the escape or rescue of that other person after his arrest -

unless in any such case the escape or rescue can be prevented by reasonable means in a less violent manner:

Provided that, except in the case of a constable or a person called upon by a constable to assist him, this subsection shall not apply where the force used is intended or likely to cause death or grievous bodily harm.

(2) Where any inmate of a prison is attempting to escape from lawful custody, or is fleeing after having escaped therefrom, every constable, and every person called upon by a constable to assist him, is justified in using such force as may be necessary to prevent the escape of or to recapture the

inmate, unless in any such case the escape can be prevented or the recapture effected by reasonable means in a less violent manner.

**44. Prevention of suicide or certain offences** - Everyone is justified in using much force as may be reasonably necessary in order to prevent the commission of suicides or the commission of an offence which would be likely to cause immediate and serious injury to the person or, property of any one, or in order to prevent any act being do which he believes, on reasonable grounds, would, if committed, amount to suicide or to any such offence.

### **Breach of the Peace**

**45. Preventing breach of the peace** - (1) Every one who witnesses reach of the peace is justified in interfering to prevent its continuance or renewal, and may detain any person committing it, in order to give him into the custody of a constable:

Provided that the person interfering shall use no more force than is reasonably necessary for preventing the continuance or renewal of the breach of the peace, or than is reasonably proportionate to the danger to be apprehended from its continuance or renewal.

(2) Every constable who witnesses a breach of the peace, and every person lawfully assisting him, is justified in arresting any one whom he finds committing it.

(3) Every constable is justified in receiving into custody any person given into his charge, as having been a party to a breach of the peace, by one who has witnessed it or whom the constable believes on reasonable and probable grounds to have witnessed it.

**46. Suppression of riot** - Every one is justified in using such force as is necessary to suppress a riot, if this force used is not disproportionate to the danger to be apprehended from the continuance of the riot.

**47. Suppression of riot by Police** - The senior member of the Police for the time being acting at the place of any riot is justified in using and ordering to be used, and every constable is justified in using, such force an he believes, in good faith and on reasonable and probable grounds, to be necessary to suppress the riot, not being disproportionate to the danger which he believes, on reasonable and probable grounds, is to be apprehended from the continuance of the riot.

**48. Suppression of riot by persons acting under lawful orders** - (1) Every one acting in good faith in obedience to orders for the suppression of any riot given by the senior member of the Police for the time being acting at the place of the riot is justified in obeying the orders so given, unless those orders are manifestly unlawful; and is protected from criminal responsibility for using such force as he believes, on reasonable and probable grounds, to be necessary for carrying those orders into effect.

(2) It is a question of law whether any particular order is manifestly unlawful or not.

**49. Suppression of riot by persons without orders** - Every one who believes, in good faith and on reasonable and probable grounds, that serious mischief will arise from a riot before there is time to procure the intervention of the Police, is justified in using such force as he believes, in good faith and on reasonable and probable grounds, to be necessary to suppress the riot, not being disproportionate to the danger which he believes, on reasonable grounds, is to be apprehended from the continuance of the riot.

## Defence Against Assault

**50. Self-defence against unprovoked assault** - (1) Everyone unlawfully assaulted, not having provoked the assault, is justified in repelling force by force, if the force he uses-

- (a) Is not meant to cause death or grievous bodily harm; and
- (b) Is no more than is necessary for the purpose of self-defence.

(2) Everyone unlawfully assaulted, not having provoked the assault, is justified in repelling force by force although in so doing he causes death or grievous bodily harm, if-

- (a) He causes it under reasonable apprehension of death or grievous bodily harm from the violence with which the assault was originally made or with which the assailant pursues his purpose; and
- (b) He believes, on reasonable grounds, that he cannot otherwise preserve himself from death or grievous bodily harm.

*[Repealed Act 1981/17. Status uncertain - Act 1989/33]*

**51. Self-defence against provoked assault** - Everyone who has assaulted another without justification, or has provoked an assault from that other, may nevertheless justify force used after the assault if-

- (a) He used the force under reasonable apprehension of death or grievous bodily harm from the violence of the party first assaulted or provoked and in the belief, on reasonable grounds, that it was necessary for his own reservation from death or grievous bodily harm; and
- (b) He did not begin the assault with intent to kill or do grievous bodily harm and did not endeavour, at any time before the necessity for preserving himself arose, to kill or do grievous bodily harm; and
- (c) Before the force was used, he declined further conflict and quitted or retreated from it as far as was practicable.

*[Repealed Act 1981/17. Status uncertain - Act 1989/33]*

**52. Provocation defined** - Provocation within the meaning of section 50 and 51 of this Act may be by blows, words or gestures.

*[Repealed Act 1981/17. Status uncertain - Act 1989/33]*

**53. Defence of person under protection** - Every one is justified in using force, in defence of the person of one under his protection, against an assault, if he uses no more force than is necessary to prevent the assault or the repetition of it:

Provided that this section shall not justify the wilful infliction of any hurt or mischief disproportionate to the assault that it was intended to prevent.

*[Repealed Act 1981/17. Status uncertain - Act 1989/33]*

### **Defence of Property**

**54. Defence of movable property against trespasser-** (1) Every one in peaceable possession of any movable thing, and every one lawfully assisting him, is justified in using reasonable force to resist the taking of the thing by trespasser or to retake it from any trespasser either case he does not strike or do bodily harm to the trespasser.

(2) If, after any one having peaceable possession of any movable thing has laid hands upon it, the trespasser persists in attempting to keep it, or to take it from the possessor or from any one lawfully assisting him, the trespasser shall be deemed to commit an assault without justification or provocation.

*[Amended Act 1981/17; Act 1989/33]*

**55. Defence of movable property with claim of right-**(1) Every one in peaceable possession of any movable thing under a claim of right, and every one acting under his authority, is protected from criminal responsibility for defending his possession by the use of reasonable force, even against a person entitled by law to possession, if does not strike or do bodily harm to the other person.

(2) If the person entitled by law to possession thereupon attempts to take the thing from or otherwise assaults the possessor, or any one acting under his authority, the assault shall be deemed to be without at justification or provocation.

*[Amended Act 1981/17; Act 1989/33]*

**56. Defence of movable Property without claim of right -** (1) Every one in peaceable possession of any movable thing, but neither claiming right thereto nor acting under the authority of a person claiming right thereto, is neither justified in nor protected from criminal responsibility for defending his possession and the person entitled by law to possession.

(2) If the person entitled by law to possession attempts to retake the thing, and the possessor resists, and the person so entitled thereupon assaults the possessor, he assault shall be deemed to have been provoked, although the possessor may not have assaulted the person so entitled to possession.

*[Amended Act 1981/17; Act 1989/57.]*

**57. Defence of dwellinghouse -** Every one in peaceable possession of a dwellinghouse, and every one lawfully assisting him or acting by his authority, is justified in using such force as is necessary to prevent the forcible breaking and entering of the dwellinghouse by any person if he believes, on reasonable and probable grounds, that there is no lawful justification for the breaking and entering.

**58. Defence of land or building-** (1) Every one in peaceable possession of any land or building, and every one lawfully assisting him or acting by his authority, is justified in using reasonable force to prevent any person from trespassing on the land or building or to remove him therefrom, if he does not strike or do bodily harm to that person.

(2) If the last-mentioned person resists the attempt to prevent his entry or to remove him, he shall be deemed to commit an assault without justification.



*[Amended Act 1981/17; Act 1989/33]*

## **Peaceable Entry**

**59. Assertion of right to land or building** - (1) Every one is justified in peaceably entering in the daytime on any land or building to the possession of which he, or some person under whose authority he acts, is lawfully entitled, for the purpose of taking possession thereof.

(2) If any person, not having peaceable possession of any land or building with a claim of right, and not acting under the authority of a person having such possession, assaults any one peaceably entering as aforesaid, for the purpose of making him desist from entry, the assault shall be deemed to be without justification or provocation.

(3) If any person having peaceable possession of any land or building with a claim of right, or any person acting by his authority, assaults any one entering as aforesaid, for purpose of making him desist from entry, the assault shall be deemed to be provoked by the person entering.

*[Amended Act 1981/17; Act 1989/33]*

**60. Exercise of right of way, etc.** - Every one lawfully entitled to enter on any land for the exercise of any right at way or other easement or profit is justified in peaceably entering on the land for the purpose of exercising that right of way, easement, or profit:

Provided that if any one so entering has notice that his right; to use that way or easement, or to take that profit, is disputed by the person in possession of the land, as assault committed by that person, or by any person acting under his authority, for the purpose of making the person entering desist from entry, shall be deemed to be provoked by the person entering.

## **Powers of Discipline**

**61. Domestic discipline** - (1) Every parent or person in the place of a parent, and every schoolmaster, is justified in using force by way of correction towards any child or pupil under his care, if the force used is reasonable in the circumstances.

(2) The reasonableness of the force used is a question of fact.

**62. Discipline on ship or aircraft** - (1) The master or officer in command of a ship on a voyage or the pilot in command of an aircraft on a flight is justified in using and ordering the use of force for the purpose maintaining good order and discipline on board his ship or aircraft if he believes on reasonable grounds that the use of force is necessary, and if the force used is reasonable in the circumstances.

(2) Every one acting in good faith is justified in using force in obedience to any order given by the motor or officer or pilot in command for the purpose aforesaid, if the force used is reasonable in the circumstances.

(3) The reasonableness of the grounds on which the use of force was believed to be necessary, and the reasonableness of the force used, are questions of fact.

## **Surgical Operations**

**63. Surgical operations** - Every one is protected from criminal responsibility for performing with reasonable care and skill any surgical operation upon any part for his benefits, if the performance of the operation was reasonable, having regard to the patient's state at the time and to all the circumstances of the case.

### General Provisions

**64. Excess of force** - Every one authorised by law to use force is criminally responsible for any excess, according to the nature and quality of the act that constitutes the excess.

**65. Consent to death** - No one has a right to consent to the infliction of death upon himself; and, if any person is killed, the fact that he gave any such consent shall not affect the criminal responsibility of any person who is a party to the killing.

**66. Obedience to as factio law** - Every one is protected from criminal responsibility for any act done in obedience to the laws for the time being made and enforced by those in possession de facto of the sovereign power in and over the place where the act is done.

**67. Other enactments not affected** - Nothing in this Act shall take away or diminish any authority given by any other enactment to arrest, detain, or put any restraint on any person

### PART IV PARTIES TO THE COMMISSION OF OFFENCES

**68. Parties to offences** - (1) Every one is a party to and guilty of an offence who-

- (a) Actually commits the offence; or
- (b) Does or omits an act for the purpose of aiding any person to commit the offences; or
- (c) Abets any person in the commission of the offence; or
- (d) Incites, counsels, or procures any person to commit the offence.

(2) Where two or more persons form a common intention to prosecute any unlawful purposes and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of the common purpose if the commission of that offence was known to be a probable consequence of the prosecution of the common purpose.

**69. Husband and wife conspiring** - A man shall be capable of conspiring with his wife, or with his wife and any other person; and a woman shall be capable of conspiring with her husband, or with her husband and any other person.

**70. Party to murder outside the Cook Islands** - (1) Except as hereinafter provided, every one is liable to imprisonment for a term not exceeding fourteen years who, in the Cook Islands, incites, counsels, or procures the doing or omission of an act outside the Cook Islands which, if done or omitted in the Cook Islands would be murder.

(2) Every one is liable to imprisonment for a term not exceeding ten years who, in the Cook Islands, incites, counsels, or attempts to procure the doing or omission of an act outside the Cook Islands which, if done or omitted in the Cook Islands, would be murder, when no such act is in fact done or omitted.

**71. Party to any other crime outside the Cook Islands** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who, in the Cook Islands aids, incites, counsels, or procures the doing or omission outside the Cook Islands, by any person not owing allegiance to Her Majesty the Queen in right of New Zealand, of any act which, if done or omitted outside the Cook Islands by a person owing such allegiance, would be any of the crimes of treason, inciting to mutiny, or communicating secrets, as specified in sections 75, 79, and 80 of this Act.

(2) Every one is liable to imprisonment for a term not exceeding ten years who, in the Cook Islands, incites, counsels, or attempts to procure the doing or omission outside the Cook Islands of any act which, if done or omitted in the Cook Islands, would be any such crime as aforesaid, when that act is not in fact done or omitted.

(3) Every one who, in the Cook Islands, aids, incites, counsels, or procures the doing or omission outside the Cook Islands of any act (not being an act to which the foregoing provisions of this section apply) which, if done or omitted in the Cook Islands, would be a crime other than murder, is liable to imprisonment for a term not exceeding that proscribed for the crime, or seven years, whichever is the less:

Provided that it shall be a defence to a charge under this subsection to prove that the doing or omission of the act to which the charge relates was not an offence under the law of the place where it was, or was to be done or omitted.

(4) Except as otherwise provided in this Act, no one be convicted of inciting, counselling, or attempting to procure in the Cook Island the doing or omission of an act outside Cook Islands when that act is not in fact done or omitted.

**72. Offence committed other than offence intended** - (1) Every one who incites, counsels, or procures another to be a party to an offence of which that other is afterwards guilty is a party to that offence, although it may be committed in a way different from what which was incited, counselled, or suggested.

(2) Every one who incites, counsels, or procures another to be a party to an offence is a party to every offence which that other commits in consequence of such inciting, counselling, or procuring, and which the first-mentioned person knew to be likely to be committed in consequence thereof.

**73. Accessory after the fact** - (1) An accessory after the fact to an offence is one who, knowing any person to have been a party to the offence, receives, comforts, or assists that person or tampers with or actively suppresses any evidence against him, in order to enable him to escape arrest or to avoid arrest or conviction.

(2) No married person whose spouse has been a party to an offence shall become an accessory after the fact to that offence by doing any act to which this section applies in order to enable the spouse, or the spouse and any other person who has been a party to the offence, to escape after arrest or to avoid arrest or conviction.

**74. Attempts** - (1) Every one who, having an intent to commit an offence, does or omits an act for the purpose of accomplishing his object, is guilty of an attempt to commit the offence intended, whether in the circumstances it was possible to commit the offence or not.

(2) The question whether an act done or omitted with intent to commit an offence is or is not only preparation for the commission of that offence, and too remote to constitute an attempt to commit it, is a question of law.

(3) An act done or omitted with intent to commit an offence may constitute an attempt if it is immediately or proximately connected with the intended offence, whether or not there was any act unequivocally showing the intent to commit that offence.

## **PART V CRIMES AGAINST PUBLIC ORDER**

### **Treason and Other Crimes Against the Queen and the State**

**75. Treason** - Every one owing allegiance to Her Majesty the Queen in right of New Zealand commits treason who, within or outside the Cook Islands-

(a) Kills or wounds or does grievous bodily harm to Her Majesty the Queen, or imprisons or restrains her; or

(b) Levies war against the Cook Islands; or

(c) Assists an enemy at war with the Cook Islands or New Zealand, or say armed forces against which New Zealand forces are engaged in hostilities, whether or not a state of war exists between the Cook Islands or New Zealand and any other country; or

(d) Incites or assists any person with force to invade the Cook Islands or New Zealand; or

(e) Uses force for the purpose of overthrowing the Government of the Cook Islands; or

(f) Conspires with any person to do anything mentioned in this section.

**76. Punishment for treason or attempted treason** - (1) Except otherwise provided in this Act every one who commits treason within the meaning of any of the provisions of paragraphs (a) to (e) of section 75 of this Act shall upon conviction be sentenced to death.

(2) Every one is liable to imprisonment for a term not exceeding fourteen years who commits treason within the meaning of paragraph (f) of the said section 75.

(3) Every one is liable to imprisonment for a term not exceeding fourteen years who, owing allegiance to Her Majesty the Queen in right of New Zealand, attempts to commit treason within or outside the Cook Islands.

**77. Evidence of treason** - (1) No one shall be convicted of treason on the evidence of one witness only, unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused.

(2) Nothing in subsection (1) of this section shall apply to treason within the meaning of paragraph (a) of section 75 of this Act.

**78. Punishment for being party to treason** - Every one is liable to imprisonment for a term not exceeding Seven years who-

- (a) Becomes an accessory after the fact to treason; or
- (b) Knowing that a person is about to commit treason, fails without reasonable excuse to inform a constable as soon as possible or to use other reasonable efforts to prevent its commission.

**79. Inciting to mutiny** - Every one owing allegiance to Her Majesty the Queen in right of New Zealand is liable to imprisonment for a term not exceeding ten years who, within or outside the Cook Islands, for any traitorous or Mutinous purpose,-

- (a) Endeavours at any time to seduce any person serving in the New Zealand forces from his duty; or
- (b) During any war or state of hostilities in which New Zealand forces are engaged, endeavours to seduce any person serving in any allied armed force, whether a Commonwealth force or not, from his duty.

**80. Communicating secrets** - Every one owing allegiance to Her Majesty the queen in right of New Zealand is liable to imprisonment for a term not exceeding fourteen years who, within or outside the Cook Islands,-

- (a) With intent to prejudice the safety, security or defence of the Cook Islands, communicate, or makes available to any person any military or scientific information, or any sketch, photograph, map, plan, model, design, pattern, specimen, article, note, or document of a military or scientific character, the communication or making available of which is likely to prejudice the safety, security, or defence of the Cook Islands; or
- (b) Conspires with any person to do anything mentioned in paragraph (a) of this section.

**81. Sabotage** - (1) Every one is liable to imprisonment for a term not exceeding ten years who, with intent to prejudice the safety, security, or defence of the Cook Islands, or the safety or security of the armed forces of any other country, lawfully present in the Cook Islands,-

- (a) Impairs the efficiency or impedes the working of any ship, vehicle, aircraft, arms, munitions, equipment, machinery, apparatus, or atomic or nuclear plant; or
- (b) Damages or destroys any property which it is necessary to keep intact for the safety or health of the public.

(2) No person shall be convicted of an offence against this section by reason only of the fact that he takes part in any strike or lockout.

## Seditious Offences

**82. Oath to commit offence** - (1) Every one is liable to imprisonment for a term not exceeding five years who-

- (a) Administers or is present at and consenting to the administration of any oath or engagement purporting to bind the person taking the same to commit any offence; or
- (b) Attempts to induce or compel any person to take any such oath or engagement; or
- (c) Takes any such oath or engagement.

(2) No one who has been acquitted or convicted of any offence against this section is liable to be afterwards tried for treason, or for being accessory after the fact to treason, in respect of the same matter.

**83. Seditious offences defined** - (1) A seditious intention is an intention-

- (a) To bring into hatred or contempt, or to excite disaffection against, Her Majesty the Queen in the right of New Zealand or the Government of the Cook Islands, or the administration of justice; or
- (b) To incite the public or any persons or any class of persons to attempt to procure otherwise than by lawful means the alteration of any matter affecting the Constitution, laws, or Government of the Cook Islands; or
- (c) To incite, procure, or encourage violence, lawlessness, or disorder; or
- (d) To incite, procure, or encourage the commission of any offence that is prejudicial to the public safety or to the maintenance of public order; or
- (e) To excite such hostility or ill will between different classes of persons as may endanger the public safety.

(2) Without limiting any other legal justification, excuse, or defence available to any person charged with any offence, it is hereby declared that no one shall be deemed to have a seditious intention only because he intends in good faith-

- (a) To show that Her Majesty the Queen in right of New Zealand has been misled or mistaken in her measures; or
- (b) To point out errors or defects in the Government or Constitution of the Cook Islands, or in the administration of justice; or to incite the public or any persons to attempt to procure by lawful mean the alteration of any matter affecting the Constitution, laws, or Government of the Cook Islands; or
- (c) To point out, with a view to their removal, matters producing or having a tendency to produce feelings of hostility or ill will between different classes of person.

(3) A seditious conspiracy is an agreement between two or more persons to carry into execution any seditious intention.

(4) For the purposes of sections 85 to 87 of this Acts,-

"To publish" means to communicate to the public or to any person or persons, whether in writing, or orally, or by any representation, or by any means of reproduction whatsoever;

"Statement" includes words, writing, pictures, or any significant expression or reproduction, by any means whatsoever, of any statement.

**84. Seditious conspiracy** - Every one is liable to imprisonment for a term not exceeding two years who is a party to any seditious conspiracy.

**85. Seditious statements** - Every one is liable to imprisonment for a term not a exceeding two years who makes or publishes, or causes or permits to be made or published, any statement that expresses any seditious intention.

**86. Publication of seditious documents** - (1) Every one to liable to imprisonment for a term not exceeding two years who, with a seditious intention,-

- (a) Prints, publishes, or sells; or
- (b) Distributes or delivers to the public or to any person or persons; or
- (c) Causes or permits to be printed, published, or solid, or to be distributed or delivered as aforesaid; or
- (d) Has in his possession for sale, or for distribution or delivery as aforesaid; or
- (e) Brings, or causes to be brought or sent into the Cook Islands,-

any document, statement, advertisement, or other matter that expresses any seditious intention.

(2) Any constable may seize any document, statement, or advertisement, or any other written or printed matter, in respect of which an offence under this section is committed or is reasonably suspected by him to have been committed.

**87. Use of apparatus for making seditious documents statements** - Every one is liable to imprisonment for a term not exceeding two years, who, having in his possession or under his control any printing press, or any mechanical, photographic, or electrical apparatus, or any other apparatus whatsoever -

- (a) Uses it; or
- (b) Causes or permits it to be used-

for printing, making, or publishing, or for facilitating the printing, making, or publishing of, any document, statement, advertisement, or other matter that expresses or will express any seditious intention.

### **Unlawful Assemblies, Riots, and Breaches of the Peace**

**88. Unlawful assembly** - (1) An unlawful assembly is an assembly of three or more persons who, with intent to carry out any common purpose, assemble in such a manner, or so conduct themselves when assembled, as to cause persons in the neighbourhood of the assembly to fear, on reasonable grounds, that the person so assembled-

(a) Will disturb the peace tumultuously; or

(b) Will, by that assembly, needlessly and without reasonable cause provoke other persons to disturb the peace tumultuously.

(2) Persons lawfully assembled may become an unlawful assembly if, with a common purpose, they conduct themselves in such a manner that their assembling would have been unlawful if they had assembled in that manner for that purpose.

(3) An assembly of three or more persons for the purpose of protecting the house of any one of their number against persons threatening to break and enter that house in order to commit a crime therein is not unlawful.

(4) Every member of an unlawful assembly is liable to imprisonment for a term not exceeding one year.

**89. Riot** - (1) A riot is an unlawful assembly that has begun to disturb the peace tumultuously.

(2) Every rioter is liable to imprisonment for a term not exceeding two years.

**90. Reading the Riot Act** - (1) Where twelve or more persons are unlawfully, riotously, and tumultuously assembled together in any place to the disturbance of the public peace, any Judge of Justice may, at the request of the senior member of the Police for the time being acting in that place, go to the place where the assembly is, and, among the rioters or as near to them as he can safely come, with a loud voice command silence, and then, openly and with a loud voice, make or cause to be made a proclamation in the following words, or to a like effect:

"Her Majesty the Queen commands all of you to disperse immediately and to go quietly to your homes or to your lawful business, upon pain of being charged with an offence punishable by imprisonment for five years."

**"GOD SAVE THE QUEEN"**

(2) All persons are liable to imprisonment for a term not exceeding five years who-

(a) Wilfully and with force oppose, hinder, or hurt any person who begins or is about to make or is making the said proclamation, so that it is not made; or



(b) Continue together to the number of twelve or more for one hour after the proclamation is made, or, if they know that its making was hindered as aforesaid, for one hour after such hindrance.

(3) No person shall be prosecuted for any offence against this section unless the prosecution is commenced within twelve months from the time when the offence was committed.

**91. Failure of rioters to disperse** - (1) If on the expiry of the period of one hour referred to in subsection (2) of section 90 of this Act twelve or more persons remain assembled, it is the duty of every constable, and of every one required by him to, assist, to arrest the persons so assembled.

(2) If by reason of the resistance of the persons so assembled one of them is killed or hurt in the arrest or attempted arrest of them, or in the endeavour to disperse them, every person ordering their arrest or dispersal, and every person carrying out any such order, shall be justified in having so acted.

(3) Nothing in this section shall limit or affect in any way any duties or powers imposed or given by this Act in respect of the suppression of riots before or after the making of the said proclamation.

**92. Riotous destruction of buildings, etc.** - All persons are liable to imprisonment for a term not exceeding seven years who, being riotously and tumultuously assembled together to the disturbance of the public peace, unlawfully and with force demolish or pull down or damage or begin to demolish or pull down or damage-

(a) Any building whatever;

(b) Any machinery whatever, whether fixed or movable;

(c) Any structure, erection, bridge, vehicle, apparatus, or equipment used in any undertaking carried on by the Crown or any public body or local authority, or used in the farming of land or in the carrying on of any trade, manufacture, or business.

**93. Forcible entry and detainer** - (1) Every one commits forcible entry when, by force or in a manner that causes or is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, he enters on land that is in the actual and peaceable possession of another for the purpose of taking possession, whether or not he is entitled to enter.

(2) Every one commits forcible detainer when, being in actual possession of land without colour of right, he detains it, in a manner that causes or is likely to cause a breach of the peace or reasonable apprehension of a breach of the peace, against another who is entitled by law to possession of the land,

(3) Whether there was actual possession, or colour of right is a question of fact.

(4) Every one who commits forcible entry or forcible detainer is liable to imprisonment for a term not exceeding one year.

**94. Carrying offensive weapon in public place without lawful excuse** - (1) Every one commits an offence and is liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred dollars who, without lawful authority or reasonable excuse, the proof of which shall be

on him, has with him in any public place any offensive weapon.

(2) Where any person is convicted of an offence against this section the Court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

(3) Any constable who has reasonable cause to believe that any person is committing an offence against this section may arrest that person without warrant, if the constable-

(a) Is not satisfied as to that person's identity or place of residence; or

(b) Has reasonable cause to believe that it is necessary to arrest him in order to prevent the commission by him of any other offence in the course of committing which an offensive weapon might be used.

(4) For the purposes of this section, the expression "offensive weapon" means any article made or altered for use for causing bodily injury, or intended by the person having it with him for such use; but does not include any tool of trade in the possession of any person in the course of his employment or while he is going to or returning from his work.

**95.- Riotous etc., behaviour in public place** - Every one commits an offence and is liable to a fine not exceeding one hundred dollars who in or within view of any public place, or within the hearing of any person therein, behaves in a riotous, offensive, threatening, insulting, or disorderly manner, or uses any threatening, abusive, or insulting words.

**96. Fighting in public place** - Every one commits an offence, and is liable to imprisonment for a term not exceeding three months or to a fine not exceeding one hundred dollars, who fights in any public place.

**97. Throwing or leaving bottles or glass in public place** - (1) Every one commits an offence and is liable to a fine not exceeding fifty dollars who throws or leaves any bottle, or any glass, or any article made of or containing glass, upon or in any public place, or, having broken any bottle or any glass or any such article as aforesaid, leaves the broken glass upon or in any public place.

(2) For the purposes of this section, the expression 'public place' means any public place within the meaning of section 2 of this Act, and also includes any public reserve, any place or waters frequented by bathers, any foreshore, and any other place of public recreation or resort.

**98. Obstructing public place** - Every one commits an offence and is liable to a fine not exceeding twenty dollars who without lawful justification obstructs any public or creates any source of danger therein, or otherwise commits any public nuisance therein.

**99. Profane, indecent, or obscene language** - Everyone commits an offence and is liable to imprisonment for a term not exceeding six months or a fine not exceeding fifty dollars who uses any profane, indecent, or obscene language in any public place or within the hearing of any person in a public place.

**100. Disturbing public worship** - Every one commits an offence and is liable to a fine not exceeding twenty dollars who wilfully and without lawful justification or excuse disturbs or interferes with the orderly conduct of any religious service or any meeting lawfully assembled for religious purposes, wherever that service or meetings, is held, or in any way disturbs or molests any preacher,

teacher, or person lawfully officiating at any such service meeting or any persons there assembled.

**101. Drunkenness** - Everyone commits an offence and is liable to imprisonment for a term one commits an offence and is liable to imprisonment for a term not exceeding one month to a fine not exceeding twenty dollars who is found in any public place.

**102. Wilful trespass after warning to leave** - Everyone commits an offence and is liable to imprisonment for not exceeding three months or a fine not exceeding one hundred dollars who wilfully trespasses in any place, and neglects or refuses to leave that place after being warned to do so by the owner or any person in lawful occupation of the place, or any person acting under the express or implied authority of implied authority the owner or person in lawful occupation.

### **Piracy**

**103. Piracy** - (1) Every one who does any act amounting to piracy by the law of nations, whether that act is done within or outside the Cook Islands,-

(a) Shall upon conviction thereof be sentenced to imprisonment for life if, in committing piracy, he murders, attempts to murder, or does any act likely to endanger the life of any person:

(b) Is liable to imprisonment for a term not exceeding fourteen years in any other case.

(2) Any act that by the law of nations would amount to piracy if it had been done on the high seas on board or in relation to a ship shall be piracy for the purposes of this section if it is done on board or in relation to an aircraft, whether the aircraft is on or above the sea or is on or above the land.

**104. Piratical acts** - (1) Every one commits a piratical act who-

(a) Within the Cook Islands, or, being a person ordinarily resident in the Cook Islands outside the Cook Islands, under pretence of any commission from any State other than the Cook Islands (whether or not that State is at war with the Cook Islands) or under pretence of authority from any person whatever, commits an act of hostility or robbery;

(b) Within or outside the Cook Islands, enters into any Cook Islands ship and throws overboard or destroys any goods on board the ship;

(c) Within or outside the Cook Islands, on board any Cook Islands ship-

(i) Turns enemy or rebel and piratically runs away with the ship or any boat, weapons, ammunition, or goods; or

(ii) Voluntarily yields up the ship or any boat, weapons, ammunition, or goods to any pirate; or

(iii) Counsels or procures any person to yield up or run away with any ship, goods, or merchandise, or to turn pirate or go over to pirates; or

(iv) Assaults the master or commander of any ship in order to

prevent him from fighting in defence of his ship and goods; or

(v) Imprisons or restrains the master or commander of any ship; or

(vi) Makes or endeavours to make a revolt in a ship.

(2) Subsection (1) of this section shall extend and apply to aircraft as it applies to ships; and for the purpose of this subsection any reference in subsection (1) of this section to the master or commander of any ship shall be read as a reference to the pilot in command of an aircraft.

**105. Punishment of piratical acts** - Every one who commits any piratical act-

(a) Shall upon conviction thereof be sentenced to imprisonment for life if, in committing that act, he murders, attempts to murder, or does any act likely to endanger the life of any person:

(b) Is liable to imprisonment for a term not exceeding fourteen years in any other case.

**106. Attempt to commit piracy** - Every one is liable to within or outside the Cook Islands, attempts to do any act amounting to piracy by the law of nations.

**107. Conspiring to commit piracy** - Every one is liable to imprisonment for a term not exceeding ten years who, within or outside the Cook Islands, conspires with any other person to do any act amounting to piracy by the law of nations.

**108. Accessory after the fact to piracy** - Every one is liable to imprisonment for a term not exceeding seven years who, within or outside the Cook Islands, is accessory after the fact to any act amounting to piracy by the law of nations.

### **Dealing in Persons**

**109. Dealing in persons** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who, within or outside the Cook Islands,-

(a) Sells, purchases, transfers, barter, lets, hires, or in any way whatsoever deals with any person as a slave; or

(b) Employs or uses any person as a slave, or permits any person to be so employed or used; or

(c) Detains, confines, imprisons, carries away, removes, receives, transports, imports, or brings into any place whatsoever any person as a slave or to be dealt with as a slave; or

(d) Induces any person to sell, let, or give himself, or any other person dependent on him or in his charge, as a slave; or

(e) Builds, fits out, sells, purchases, transfers, lets, hires, uses, mans, navigates, or serves on board any ship or aircraft for any of the aforesaid purposes; or

- (f) Induces any person to place himself or any other person in debt-bondage or serfdom;  
or
- (g) For gain or reward gives in marriage or transfers any woman to another person without her consent; or
- (h) Is a party to the inheritance by any person of a woman on the death of her husband;  
or
- (i) Being a parent or guardian of any child under the age of eighteen years, delivers that child to another person with intent that the child or his labour shall be exploited; or
- (j) Agrees or offers to do any of the acts mentioned in this subsection.

(2) For the purposes of this section -

"Debt-bondage" means the status or condition arising from a pledge by a debtor of his personal services, or of the personal services of any person under his control, as security for a debt, if the value of those services, as reasonably assessed, is not applied towards the liquidation of the debt or if the length and nature of those services are not limited and defined;

"Serfdom" means the status or condition of a tenant who is by any laws custom, or agreement bound to live and labour on land belonging to another person and to render some determinate service to that other person, whether for reward or not, and who is not free to change that status or condition.

## PART VI CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE

### Bribery and Corruption

**110. Interpretation** - In this Part of this Act, unless the context otherwise requires,-

"Bribe" means any money, valuable consideration, office, or employment, or any benefit, whether direct or indirect;

"Judicial officer" means a Judge or Commissioner of any Court, Coroner, or Justice, or any other person holding any judicial office, or any person who is a member of any tribunal authorised by law to take evidence on oath;

"Law enforcement officer" means any constable or any person employed in the detection or prosecution or punishment of offenders;

"Official" means any person in the service of Her Majesty in right of New Zealand in the Cook Islands (whether that service is honorary or not, and whether it is within or outside the Cook Islands), or any member or employee of any Island Council.

**111. Judicial corruption** - (1) Every judicial officer is liable to imprisonment for a term not

exceeding fourteen years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, by him in his judicial capacity.

(2) Every judicial officer, and every Registrar or Deputy Registrar of any Court, is liable to imprisonment for a term not exceeding seven years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity not being an act or omission to which subsection (1) of this section applies.

**112. Bribery of Judicial officer, etc.** - (1) Every one is liable to imprisonment for a term not exceeding seven years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer in respect of any act or omission by him in his judicial capacity.

(2) Every one is liable to imprisonment for a term not exceeding five years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any judicial officer or any Registrar or Deputy Registrar of any Court in respect of any act or omission by him in his official capacity, not being an act or omission to which subsection (1) of this section applies.

**113. Corruption and bribery of Minister of the Crown** - Every Minister of the Crown or member of the Executive Council is liable to imprisonment for a term not exceeding fourteen years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his capacity as a Minister or member of the Executive Council.

(2) Every one is liable to imprisonment for a term not exceeding seven years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any Minister of the Crown or member of the Executive Council in respect of any act or omission by him in his capacity as a Minister or member of the Executive Council.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge of the High Court. Notice of the intention to apply for such leave shall be given to the person whom it is intended to prosecute, and he shall have an opportunity of being heard against the application.

**114. Corruption and bribery of member of Legislative Assembly** - (1) Every member of the Legislative Assembly is liable to imprisonment for a term not exceeding seven years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his capacity as a member of the Legislative Assembly.

(2) Every one is liable to imprisonment for a term not exceeding three years who corruptly gives or offers, or agrees to give any bribe to any person with intent to influence any member of the Legislative Assembly in respect of any act or omission by him in his capacity as a member of the Legislative Assembly.

(3) No one shall be prosecuted for an offence against this section without the leave of a Judge of the High Court. Notice of the intention to apply for such leave shall be given to the person whom it is intended to prosecute, and he shall have an opportunity of being heard against the application.

**115. Corruption and bribery of law enforcement officer** - (1) Every law enforcement officer is

liable to imprisonment for a term not exceeding seven years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding three years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any law enforcement officer in respect of any act or omission by him in his official capacity.

**116. Corruption and bribery of official** - (1) Every official is liable to imprisonment for a term not exceeding seven years who, whether within the Cook Islands or elsewhere, corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, any bribe for himself or any other person in respect of any act done or omitted, or to be done or omitted, by him in his official capacity.

(2) Every one is liable to imprisonment for a term not exceeding three years who corruptly gives or offers or agrees to give any bribe to any person with intent to influence any official in respect of any act or omission by him in his official capacity.

**117. Restrictions on prosecution** - No one shall be prosecuted for an offence against any of the provisions of sections 111, 112, 115 and 116 of this Act without the leave of the Attorney-General or if no such appointment has been made, then the Minister of Justice, who before giving leave may make such inquiries as he thinks fit.

*[Amended Act 1980/16]*

### **Contravention of Statute**

**118. Contravention of Statute** - Every one is liable to imprisonment for a term not exceeding one year who, without lawful excuse contravenes any enactment by wilfully doing any act which it forbids, or by wilfully omitting to do any act which it requires to be done, unless-

(a) Some penalty or punishment is expressly provided by law in respect of such contravention as aforesaid; or

(b) In the case of any such contravention in respect of which no penalty or punishment is so provided, the act forbidden or required to be done is solely of an administrative or a ministerial or procedural nature, or it is otherwise inconsistent with the intent and object of the enactment, or with its context, that the contravention should be regarded as an offence.

### **Misleading Justice**

**119. Perjury defined** - (1) Perjury is an assertion as to a matter of fact, opinion, belief, or knowledge made by a witness in a judicial proceeding as part of his evidence on oath, whether the evidence is given in open Court or by affidavit or otherwise, that assertion being known to the witness to be false and being intended by him to mislead the tribunal holding the proceeding.

(2) In this section the term "oath" includes an affirmation, and also includes a declaration made under section 653 of the Cook Islands Act 1915.

(3) Every person is a witness within the meaning of this section who actually gives evidence, whether he is competent to be a witness or not, and whether his evidence is admissible or not.

(4) Every proceeding is judicial within the meaning of this section if it is held before any of the following tribunals, namely:

- (a) Any Court of justice;
- (b) The Legislative Assembly or any Committee of that Assembly;
- (c) Any arbitrator or umpire, or any person or, body of persons authorised by law to make an inquiry and take evidence therein upon oath;
- (d) Any legal tribunal by which any legal right or liability can be established;
- (e) Any person acting as a Court or tribunal having power to hold a judicial proceeding.

(5) Every such proceeding is judicial within the meaning of this section whether the tribunal was duly constituted or appointed or not, and whether the proceeding was duly instituted or not, and whether the proceeding was invalid or not.

**120. Punishment of perjury** - (1) Except as provided in subsection (2) of this section, every one is liable to imprisonment for a term-not exceeding seven years who Commit perjury.

(2) If perjury is committed in order to procure the conviction of a person for any crime punishable by death, or for any offence for which the maximum punishment is not less than three years imprisonment, the punishment may be imprisonment for a term not exceeding fourteen years.

**121. False oaths** - Every one is liable to imprisonment for a term not exceeding five years, who being required or authorised by law to make any statement on oath or affirmation, thereupon makes a statement that would amount to perjury if made in a judicial proceeding.

**122. False statements or declarations** - Every one is liable to imprisonment for a term not exceeding three years who, on any occasion on which he is required or permitted by law to make any statement or declaration before any officer or person authorised by law to take or receive it, or before any notary public to be certified by him as such notary, makes a statement or declaration that would amount to perjury if made on oath in a judicial proceeding.

**123. Evidence of perjury, false oath, or false statement** - No one shall be convicted of perjury, or of any offence against section 121 or section 122 of this Act, on the evidence of one witness only, unless the evidence of that witness is corroborated in some material particular by evidence implicating the accused.

**124. Fabricating evidence** - Every one is liable to imprisonment for a term not exceeding seven years who, with intent to mislead any tribunal holding any judicial proceeding to which section 119 of this Act applies, fabricates evidence by any means other than perjury.

**125. Use of purported affidavit or declaration** - Every one is liable to imprisonment for a term not exceeding three years who-

- (a) Signs a writing that purports to be an affidavit sworn before him or a statutory declaration taken by him, when the writing was not so sworn or taken, or when he



knows that he has no authority to administer that oath or take that declaration; or

(b) Uses or offers for use any writing purporting to be an affidavit or statutory declaration that he knows was not sworn or made, as the case may be, by the deponent or before a person authorised to administer that oath or take that declaration.

**126. Conspiring to bring false accusation** - Every one who conspires to prosecute any person for any alleged offence, knowing that person to be innocent thereof, is liable-

(a) To imprisonment for a term not exceeding fourteen years if that person might, on conviction of the alleged offence, be sentenced to death, or to imprisonment for a term of three years or more;

(b) To imprisonment for a term not exceeding seven years if that person might, on conviction of the alleged offence, be sentenced to imprisonment for a term less than three years.

**127. Conspiring to defeat justice** - Every one is liable to imprisonment for a term not exceeding seven years who conspires to obstruct, prevent, pervert, or defeat the course of justice.

**128 Corrupting juries and witnesses** - Every one is liable to imprisonment for a term not exceeding seven years who-

(a) Dissuades or attempts to dissuade any person, by threats, bribes, or other corrupt means, from giving evidence in any cause or matter, civil or criminal; or

(b) Influences or attempts to influence, by threats or bribes or other corrupt means, any jurymen or assessors in his conduct as such, jurymen or assessors whether the jurymen has been sworn as a jurymen or assessor as the case may be, or not; or

(c) Accepts any bribe or other corrupt consideration to abstain from giving evidence, or on account of his conduct as a jurymen or assessor; or

(d) Wilfully attempts in any other way to obstruct, prevent, pervert, or defeat the course of justice.

### **Escapes and Rescues**

**129. Assisting escape of prisoners of war or internees** - Every one is liable to imprisonment for a term not exceeding seven years who knowingly and wilfully -

(a) Assists any prisoner of war detained in the Cook Islands, or any person interned in the Cook Islands, to escape from any place in which he is for the time being detained; or

(b) Assists any such prisoner or person as aforesaid, suffered to be at large on his parole in the Cook Islands, to escape from the place where he is at large on his parole.

**130. Breaking prison** - Every one is liable to imprisonment for a term not exceeding seven years who by force or violence breaks any prison, with intent to set at liberty himself or any other person therein.

**131. Escape from lawful custody** - (1) Every one is liable to imprisonment for a term not exceeding five years who-

- (a) Having been convicted of an offence, escapes from any lawful custody in which he may be under the conviction; or
- (b) Whether convicted or not, escapes from any prison in which he is lawfully detained; or
- (c) Being in lawful custody otherwise than aforesaid, escapes from such custody.

(2) For the purposes of this section, custody under an illegal warrant or other irregular process shall be deemed to be lawful.

**132. Assisting escape from lawful custody** - (1) Every one is liable to imprisonment for a term not exceeding seven years who-

- (a) Rescues any person from lawful custody, whether in a prison or not; or
- (b) Assists any person in escaping or attempting to escape from lawful custody, whether in prison or not; or
- (c) With intent to facilitate person lawfully detained in a prison, conveys or causes to be conveyed into any prison anything whatever.

(2) Every one is liable to imprisonment for a term not exceeding seven years who-

- (a) Being a constable who has any person in his lawful custody, voluntarily and intentionally permits that person to escape from such custody;
- (b) Being an officer of a prison in which any person is lawfully detained, voluntarily and intentionally permits that person to escape from the prison.

(3) Every one is liable to imprisonment for a term not exceeding one year who, by failing to perform any legal duty, permits any person in his lawful custody to escape.

(4) For the purposes of this section, custody under an irregular warrant or other irregular process shall be deemed to be lawful.

**133. Assisting escape of mentally defective person under detention for offence** - Every one is liable to imprisonment for a term not exceeding five years who-

- (a) Rescues any person lawfully ordered to be removed or transferred, as a person detained under Part XXI of the Cook Islands Act 1915, to or from any prison or other place, during the time of such removal or transfer; or

(b) Being a constable or an officer of a prison, who has in his custody any person lawfully detained under the said Part XXI voluntarily and intentionally permits that person to escape from custody, whether during the time of any such removal or transfer or otherwise.

## PART VII CRIMES AGAINST RELIGION, MORALITY, AND PUBLIC WELFARE

### Crime Against Religion

**134. Blasphemous libel** - (1) Every one is liable to imprisonment for a term not exceeding one year who publishes any blasphemous libel.

(2) Whether any particular published matter is or is not a blasphemous libel is a question of fact.

(3) It is not an offence against this section to express in good faith and in decent language, or to attempt to establish by arguments used in good faith and conveyed in decent language, any opinion whatever on any religious subject.

(4) No one shall be prosecuted for an offence against this section without the leave of the Minister of Justice, who before giving leave may make such inquiries as he thinks fit.

### Crimes Against Morality and Decency

**135. Distribution or exhibition of indecent matter** - (1) Every one is liable to imprisonment for a term not exceeding two years who, without lawful justification or excuse,-

(a) Sells, exposes for sale, or otherwise distributes to the public any indecent model or object; or

(b) Exhibits or presents in or within view of any place to which the public have or are Permitted to have access any indecent object or indecent show or performance; or

(c) Exhibits or presents in the presence of any person in consideration or expectation of any payment or otherwise for gain, any indecent show or performance.

(2) It is a defence to a charge under this section to prove that the public good was served by the acts alleged to have been done.

(3) It is a question of law whether the sale, exposure for sale, distribution, exhibition, or presentation might in the circumstances serve the public good, and whether there is evidence of excess beyond what the public good requires; but it is a question of fact whether or not the acts complained of did so serve the public good and whether or not there was such excess.

(4) It is no defence that the person charged did not know that the model, object, show, or performance to which the charge relates was indecent, unless that person also satisfies the Court-

(a) That he had no reasonable opportunity of knowing it; and

(b) That in the circumstances his ignorance was excusable.

(5) No one shall be prosecuted for an offence against this section without the leave of the Minister of Justice, who before giving leave may make such inquiries as he thinks fit.

**136. Indecent act in public place** - (1) Every one is liable to imprisonment for a term not exceeding two years who wilfully does say indecent act in any place to which the public have or are permitted to have access, or within view of any such place.

(2) It is a defence to a charge under this section if the person charged proves that he had reasonable grounds for believing that he would not be observed.

(3) For the purposes of this section, the term "place" includes any ship, air-craft, or vehicle used for the carriage of passengers for hire or reward.

**137. Indecent act with intent to insult or offend** - Every one is liable to imprisonment for a term not exceeding two years who with intent to insult or offend any person does any indecent act in any place.

**137A. Exposure of person or grossly indecent acts** - Every person is liable for imprisonment for any term not exceeding one who wilfully and obscenely his person in any public or within the view thereof, or wilfully does any grossly indecent act in any such place or within the view thereof, whether alone or with any other person, or does any indecent act in any place intending thereby to insult or offend any person.

*[Added Act 1970/16]*

**138. Indecent documents** - (1) Every person commits an offence who-

(a) Sells, or delivers by way of hire, or offers for sale or hire, or has in his possession for sale or hire, an indecent document; or

(b) Prints or causes to be printed or manufactures or causes to be manufactured an indecent document; or

(c) Causes to be inserted in a newspaper any matter or thing whereby that newspaper becomes an indecent document; or

(d) Sends or causes to be sent, or attempts to send, through the post an indecent document; or

(e) Exhibits or causes to be exhibited an indecent document that includes any indecent matter to any person in consideration or expectation of any payment, or otherwise for gain, and whether such payment is made by way of gratuity or otherwise howsoever; or

(f) Publicly exhibits or causes to be publicly exhibited an indecent document in a public place, or so that the same is in view of persons in a public place; or

(g) Delivers or offers, or causes to be delivered or offered, an indecent document to any person in a public place; or

(h) Delivers or leaves, or causes to be delivered or left, on premises in the occupation of any other person an indecent document, knowing or having reasonable means of knowing that such document is indecent, or

(i) Writes, draws, affixes, impresses, or exhibits, or causes to be written, drawn, affixed, impressed or exhibited, any indecent statement, word, picture, drawing, or sign in or upon a public place; or

(k) Delivers to any person an indecent document with intent that it should be so dealt with by that or any other person in such a manner as to constitute an offence against this section.

(2) Every person who commits an offence against subsection (1) of this section is liable to a fine not exceeding one hundred dollars.

(3) Every person commits an offence who wilfully does any act mentioned in subsection (1) of this section.

(4) Every person who commits an offence against subsection (3) of this section is liable-

(a) In the case of an individual, to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding three months;

(b) In the case of a body corporate to a fine not exceeding six hundred dollars.

(5) Every person charged with an offence against subsection (3) of this section may be convicted of an offence against subsection (1) of this section.

**139. Considerations determining whether or not the document is indecent** - (1) In determining whether any document or other matter is indecent the Court shall take into consideration-

(a) The nature of the document or matter;

(b) The nature and circumstances of the act done by the accused with respect thereto, and the purpose for which the act was done;

(c) The literary or artistic merit or medical, legal, political, or scientific character or importance of the document or matter;

(d) The persons, classes of persons, or age group to or amongst whom the document or matter was or was intended or likely to be published, distributed, sold, exhibited, given, sent, or delivered: and the tendency of the matter or thing to deprave or corrupt any such persons, class of persons, or age group (notwithstanding that persons in other classes or age group may not be similarly affected thereby).

(2) No document or matter shall be held to be indecent unless, having regard to the aforesaid and all other relevant considerations, the Court is of opinion that the act of the accused was of an immoral or mischievous tendency.

## Sexual Crimes

**140. Sexual intercourse defined** - For the purposes of this Part of this Act, sexual intercourse is complete upon penetration; and there shall be no presumption of law that any person is by reason of his age incapable of such intercourse.

**141. Rape** - (1) Rape is the act of a male person having sexual intercourse with a woman or girl-

- (a) Without her consent; or
- (b) With consent extorted by fear of bodily harm or by threats; or
- (c) With consent extorted by fear, on reasonable grounds, that the refusal of consent would result in the death of or grievous bodily injury to a third person; or
- (d) With consent obtained by personating her husband; or
- (e) With consent obtained by false and fraudulent representation as to the nature and quality of the act.

(2) Every one who commits rape is liable to imprisonment for a term not exceeding fourteen years.

(3) Notwithstanding anything in subsection (1) of this section, no man shall be convicted of rape in respect of his intercourse with his wife, unless at the time of the intercourse-

- (a) There was in force in respect of the marriage a decree nisi of divorce or nullity, and the parties had not, since the making of the decree, resumed cohabitation as man and wife with the free consent of the wife; or
- (b) There was in force in respect of the marriage a decree or judicial separation or a separation order.

**142. Attempt to commit rape** - Every one who attempts to commit rape or assaults any person with intent to commit rape is liable to imprisonment for a term not exceeding ten years.

**143. Incest** - (1) Incest is sexual intercourse between-

- (a) Parent and child; or
- (b) Brother and sister, whether of the whole blood or of the half blood, and whether the relationship is traced through lawful wedlock or not; or
- (c) Grandparent and grandchild where the person charged knows of the relationship between the parties.

(2) Every one of or over the age of sixteen years who commits incest is liable to imprisonment for a term not exceeding ten years.

(3) In this section the term "child" includes an illegitimate child; and "grandchild" has a corresponding meaning.

**144. Sexual intercourse with girl under care or protection** - (1) Every one is liable to imprisonment for a term not exceeding seven years who has or attempts to have sexual intercourse with any girl, not being his wife, who is under the age of twenty-one years and who -

(a) Being his step-daughter, foster daughter or ward, is at the time of the intercourse living with him as a member of his family; or

(b) not being his step-daughter foster daughter or ward, and not being a person living with him as his life is at the time of the intercourse or attempted intercourse living with him-as a member of his family and is under his care or protection.

(2) It is no defence to a charge under this section that the girl consented.

**145. Sexual intercourse with girl under twelve** - (1) Every one who has sexual intercourse with any girl under the age of twelve years is liable to imprisonment for a term not exceeding fourteen years.

(2) Every one who attempts to have sexual intercourse with any girl under the age of twelve years is liable to imprisonment for a term not exceeding ten years.

(3) It is no defence to a charge under this section that the girl consented, or that the person charged believed that she was of or over the age of twelve years.

(4) The girl shall not be charged as a party to an offence committed upon or with her against this section

**146. Indecency with girl under twelve** - (1) Every one is liable to imprisonment for a term not exceeding ten years who-

(a) indecently assaults any girl under the age of twelve years; or

(b) Being a male, does any indecent act with or upon any girl under the age of twelve years; or

(c) Being a male, induces or permits any girl under the age of twelve years to do any indecent act with or upon him.

(2) It is no defence to a charge under this section the girl consented, or that the person charged believed that she was of or over the age of twelve years.

(3) The girl shall not be charged as a party to an offence committed upon or to her against this section.

**147. Sexual intercourse or indecency with girl between twelve and sixteen** - (1) Every one is liable to imprisonment for a term not exceeding seven years who has or attempts to have sexual intercourse with any girl of or over the age of twelve years and under the age of sixteen year being

his wife.

(2) Every one is liable to imprisonment for a term not exceeding seven years who-

- (a) Indecently assaults any such girl; or
- (b) Being a male, does any indecent act with or upon any such girl; or
- (c) Being a male, induces or permits any such girl to do any indecent act to or upon him.

(3) It is a defence to a charge under this section if the person charged proves that the girl consented and that he is younger than the girl.

Provided that proof of the said facts shall not be a defence if it is proved that such consent obtained by a false and fraudulent representation as to the nature and quality of the act.

(4) It is a defence to a charge under this section if the person charged proves that the girl consented, that he was under the age of twenty-one years at the time of the commission of the act, and that he had reasonable cause to believe, and did believe, that the girl was of or over the age of sixteen years:

Provided that proof of the said facts shall not be a defence if it is proved that the consent was obtained by a false and fraudulent representation as to the nature and quality of the act.

(5) Except as provided in this section; it is no defence to a charge under this section that the girl consented, or that the person charged believed that the girl was of or over the age of sixteen years.

(6) The girl shall not be charged as a party to an offence committed upon or with her against this section.

(7) No one shall be prosecuted for any offence against this section, except under paragraph (a) of subsection (2) thereof, unless the prosecution is commenced within twelve months from the time when the offence was committed.

**148 Indecent assault on woman or girl** - Every one is liable to imprisonment for a term not exceeding seven years who-

- (a) Indecently assaults any woman or girl of or over the age of sixteen years; or
- (b) Does anything to any woman or girl of or over the age of sixteen years, with her consent, which but for such consent would have been an indecent assault, such consent being obtained by a false and fraudulent representation as to the nature and quality of the act.

**149. Conspiracy to induce sexual intercourse** - Every one is liable to imprisonment for a term not exceeding five years who conspires with any other person by a false representation or by other fraudulent means to induce any woman or girl to have sexual intercourse with any male who is not her husband.



**150. Inducing sexual intercourse under pretence of marriage** - Every one is liable to imprisonment for a term not exceeding seven years who induces any woman or girl to have sexual intercourse with him by a wilfully false representation that they are married.

**151. Sexual intercourse with idiot or imbecile woman or girl** - Every one is liable to imprisonment for a term not exceeding seven years who has or attempts to have sexual intercourse with any woman or girl who is an idiot or an imbecile, if he knows or has good reason to believe that she is an idiot or an imbecile.

**152. Indecent act between woman and girl** - (1) Every woman of or over the age of twenty-one years is liable to imprisonment for a term not exceeding seven years who-

- (a) Does any indecent act with or upon any girl under the age of fifteen years; or
- (b) Induces or permits any girl under the age of fifteen years to do say indecent act with or upon her.

(2) The girl shall not be charged as a party to an offence committed with or upon her against this section.

(3) It is no defence to a charge under this section that the girl consented.

**153. Indecency between man and boy** - (1) Every one is liable to imprisonment for a term not exceeding ten years who, being a male-

- (a) Indecently assaults any boy under the age of fifteen years; or
- (b) Does any indecent act with or upon any boy under the age of fifteen years; or
- (c) Induces or permits any boy under the age of fifteen years to do any indecent act with or upon him.

(2) No person under the age of twenty-one years shall be charged with committing or being a party to an offence against this section.

(3) It is no defence to a charge under this section that the boy consented.

**154. Indecency between males** - (1) Every one is liable to imprisonment for a term not exceeding five years who, bring a male,-

- (a) Indecently assaults any other male; or
- (b) Does any indecent act with or upon any other male; or
- (c) Induces or permits any other male to do any indecent act with or upon him.

(2) No boy under the age of fifteen years shall be charged with committing or being a party to an offence against paragraph (b) or paragraph (c) of subsection (1) of this section, unless the other male was under the age of twenty-one years.

(3) It is not defence to a charge under this section that the other party consented.

**155. Sodomy** - (1) Every one who commits sodomy is liable-

(a) Where the act of sodomy is committed on a female, to imprisonment for a term not exceeding fourteen years;

(b) Where the act of sodomy is committed on a male, and at the time of the act that male is under the age of fifteen years and the offender is of over the age of twenty-one years, to imprisonment for a term not exceeding fourteen years;

(c) In any other case, to imprisonment for a term not exceeding seven years.

(2) This offence is complete upon penetration.

(3) Where sodomy is committed on any person under the age of fifteen years he shall not be charged with being a party to that offence, but he may be charged with being a party to an offence against section 154 of this Act in any case to which that section is applicable.

(4) It is no defence to a charge under this section that the other party consented.

**156. Bestiality** - (1) Every one is liable to imprisonment for a term not exceeding seven years who commits bestiality.

(2) This offence is complete upon penetration.

**157. Indecency with animal** - Every one is liable to imprisonment for a term not exceeding three years who commits any act of indecency with an animal.

### **Crimes Against Public Welfare**

**158. Criminal nuisance** - (1) Every one commits criminal nuisance who does any unlawful act or omits to discharge any legal duty, such act or omission being one which he knew would endanger the lives, safety, or health of the public, or the life, safety, or health of any individual.

(2) Every one who commits criminal nuisance is liable to imprisonment for a term not exceeding one year.

**159. Keeping Place of resort for homosexual acts** - Every one is liable to imprisonment for a term not exceeding ten years who-

(a) Keeps or manages, or acts or assists in the management of, any premises used as a place of resort for the commission of indecent acts between males; or

(b) Being the tenant, lessee, or occupier of any premises, knowingly permits the premises or any part thereof to be used as a place of resort for the commission of indecent acts between males; or

(c) Being the lessor or landlord of any premises, or the agent of the lessor or landlord,

lets the premises or any part thereof with the knowledge that the premises are to be used as a place of resort for the commission of indecent acts between males, or that some part thereof is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a place of resort for the commission of such acts as aforesaid.

**160. Brothel-keeping** - (1) Every one is liable to imprisonment for a term not exceeding five years who -

- (a) Keeps or manages, or acts or assists in the management of, any brothel;
- (b) Being the tenant, leases, or occupier of any premises, knowingly permits the premises or any part thereof to be used as a brothel; or
- (c) Being the lessor or landlord of any premises, or the agent of the lessor or landlord, lets the premises or any part thereof with the knowledge that the premises are to be used as a brothel, or that some part thereof is to be so used, or is wilfully a party to the continued use of the premises or any part thereof as a brothel.

(2) In this section, the term "brothel" means any house, room, set of rooms, or place of any kind whatever used for the purposes of prostitution, whether by one woman or more.

**161. Living on earnings of prostitution** - Every one is liable to imprisonment for a term not exceeding five years who knowingly -

- (a) Lives wholly or in part on the earnings of the prostitution of another person; or
- (b) Solicits or receives any payment, reward, or valuable consideration for soliciting, for any prostitute.

**162. Procuring sexual intercourse** - Every one is liable to imprisonment for a term not exceeding five years who, for gain or reward, procures or agrees or offers to procure any woman or girl to have sexual intercourse with any male who is not her husband.

**163. Prostitution** - Any common prostitute who loiters and importunes passengers or other persons in any public place for the purpose of prostitution commits an offence and is liable to imprisonment for a term not exceeding one month or to a fine not exceeding twenty dollars.

**164. Misconduct in respect of human remains** - Everyone is liable to imprisonment for a term not exceeding two years who -

- (a) Neglects to perform any duty imposed on him by law or undertaken by him with reference to the burial or cremation of any dead human body or human remains; or
- (b) Improperly or indecently interferes with or offers any indignity to any dead human body or human remains, whether buried or not;
- (c) To imprisonment for a term not exceeding one year if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen exceeds in value the

sum of ten dollars.

**165. Witchcraft** - Everyone commits an offence and is liable to imprisonment for a term not exceeding six months who pretends to exercise or use any kind of witchcraft, sorcery, enchantment or conjuration, or undertakes to tell fortunes.

### **Public Health**

**166. Laying Poison** - Everyone commit an offence, and is liable to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$1,000 or to both, who, without lawful justification, the proof of which shall lie on the defendant, places any poison in any public place or any other place accessible to the public (whether fenced or not).

*[Amended Act 1986/9]*

**167 Polluting water** - Everyone commits an offence and is liable to imprisonment for a term not exceeding six months or to a fine not exceeding one hundred dollar. who throws any offensive matter into or otherwise pollutes any river, watercourse, well, cistern, or other place whence the supply of water for the use of the inhabitants is obtained.

**168. Sale of unwholesome provisions** - Everyone commits an offence and is liable to imprisonment for a term not exceeding one month or to a fine not exceeding forty dollars who sells, or exposes for sale, or has in his possession with intent to sell, any food or drink which he knows or might by the exercise of reasonable care have known to be unwholesome.

**169. Insanitary premises** - Everyone commits an offence and is liable to a fine not exceeding twenty dollars who permits any premises in his occupation or belonging to him to be in an insanitary or offensive condition to the danger or annoyance of the public or of his neighbours

### **Cruelty to Animals**

**170 Cruelty to Animals** - (1) Every one commits an offence an is liable to imprisonment for a term not exceeding one month or to a fine not exceeding twenty dollars who cruelly treats, overdrives, overloads, abuses, tortures, or otherwise ill-treats any animals, or who being the owner or having the charge of any animal, omits to supply it with proper and sufficient food, water, or shelter.

(2) In this section the term "animal" means any beast or bird of any species whatever.

## **PART VIII CRIMES AGAINST THE PERSON**

### **Duties Tending to the Preservation of Life**

**171. Duty to Provide the necessaries of life** - (1) Everyone who has charge of any other person unable, by reason of detention, age, sickness, insanity, or any other cause, to withdraw himself from such charge, and unable to provide himself with the necessaries of life, is (whether such charge is undertaken by him under any contract or is imposed upon him by law or by reason of his unlawful act or otherwise howsoever) under a legal duty to supply that person with the necessaries of life, and

is criminally responsible for omitting without lawful excuse to perform such duty if the death of that person is caused, or if his life is endangered or his health permanently injured by such omission.

(2) Everyone is liable to imprisonment for a term not exceeding seven years who, without lawful excuse, neglects the duty specified in this section so that the life of the person under his charge is endangered or his health permanently injured by such neglect.

**172. Duty of parent or guardian to provide necessaries** - (1) Everyone who as a parent or person in place of a parent is under a legal duty to provide necessaries for any child under the age of sixteen years, being a child in his actual custody, is criminally responsible for omitting without lawful excuse to do so, whether the child is helpless or not, if the death of the child is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding seven years who, without lawful excuse, neglects the duty specified in this section so that the life of the child is endangered or his health permanently injured by such neglect.

**173. Duty of employers to provide necessaries** - (1) Everyone who as employer has contracted to provide necessary food, clothing, or lodging for any servant or apprentice under the age of sixteen years is under a legal duty to provide the same, and is criminally responsible for omitting without lawful excuse to perform such duty if the death of that servant or apprentice is caused, or if his life is endangered or his health permanently injured, by such omission.

(2) Every one is liable to imprisonment for a term not exceeding five years who, without lawful excuse, neglects the duty specified in this section so that the life of the servant or apprentice is endangered or his health permanently injured by such neglect.

**174. Abandoning child under six** - Everyone is liable to imprisonment for a term not exceeding seven years who unlawfully abandons or exposes any child under the age of six years.

**175. Duty of persons doing dangerous acts** - Everyone who undertakes (except in case of necessity) to administer surgical or medical treatment, or to do any other lawful act the doing of which is or may be dangerous to life, is under a legal duty to have and to use reasonable knowledge, skill, and care in doing any such act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

**176. Duty of Persons in charge of dangerous things** - Everyone who has in his charge or under his control anything whatever, whether animate or inanimate, or who- erects, makes, operates, or maintains anything whatever, which, in the absence of precaution or care, may endanger human life is under a legal duty to take reasonable precautions against and to use reasonable care to avoid such danger, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

**177 Duty to avoid omissions dangerous to life** - Everyone who undertakes to do any act the omission to do which is or may be dangerous to life is under a legal duty to do that act, and is criminally responsible for the consequences of omitting without lawful excuse to discharge that duty.

## Homicide

**178. Homicide defined** - Homicide is the killing of a human being by another, directly or indirectly,

by any means whatsoever.

**179. Killing of a child** - (1) A child becomes a human being within the meaning of this Act when it has completely proceeded in a living state from the body of its mother, whether it has breathed or not, whether it has an independent circulation or not, and whether the navel string is severed or not.

(2) The killing of such child is homicide if it dies in consequence of injuries received before, during, or after birth.

**180. Culpable homicide** - (1) Homicide may be either culpable or not culpable.

(2) Homicide is culpable when it consists in the killing of any person-

(a) By an unlawful act; or

(b) By an omission without lawful excuse to perform or observe any legal duty; or

(c) By both combined; or

(d) By causing that person by threats or fear of violence, or by deception, to do an act which causes his death; or

(e) By wilfully frightening a child under the age of sixteen years or a sick person.

(3) Except as provided in section 198 of this Act, culpable homicide is either murder or manslaughter.

(4) Homicide that is not culpable is not an offence.

**181. Procuring death by false evidence** - Procuring by false evidence the conviction and death of any person by the sentence of the law is not homicide.

**182. Death must be within a year and a day** - (1) No one is criminally responsible for the killing of another unless the death takes place within a year and a day after the cause of death.

(2) The period of a year and a day shall be reckoned inclusive of the day on which the last unlawful act contributing to the cause of death took place.

(3) Where the cause of death is an omission to fulfil a legal duty, the period shall be reckoned inclusive of the day on which such omission ceased.

(4) Where death is in part caused by an unlawful act and in part by an omission, the period shall be reckoned inclusive of the day on which the last unlawful act took place or the omission ceased, whichever happened last.

**183. Killing by influence on the mind** - No one is criminally responsible for the killing of another by any influence on the mind alone, except by wilfully frightening a child under the age of sixteen years or a sick person, nor for the killing of another by any disorder or disease arising from such influence, except by wilfully frightening any such child as aforesaid or a sick person.

**184. Acceleration of death** - Every one who by any act or omission causes the death of another person kills that person, although the effect of the bodily injury caused to that person was merely to hasten his death while labouring under some disorder or disease arising from some other cause.

**185 Causing death that might have been prevented** - Every one who by any act or omission causes the death of another person kills that person, although death from that cause might have been prevented by resorting to proper means.

**186. Causing injury the treatment of which causes death** - Every one who causes to another person any bodily injury, in itself of a dangerous nature, from which death results, kills that person, although the immediate cause of death be treatment, proper or improper, applied in good faith.

### **Murder, Manslaughter etc.**

**187. Murder defined** - Culpable homicide is murder in each of the following cases:

- (a) If the offender means to cause the death of the person killed;
- (b) If the offender means to cause to the person killed any bodily injury that is known to the offender to be likely to cause death, and is reckless whether death ensues or not;
- (c) If the offender means to cause death, or, being so reckless as aforesaid, means to cause such bodily injury as aforesaid to one person, and by accident or mistake kills another person, though he does not mean to hurt the person killed;
- (d) If the offender for any unlawful object does an act that he knows to be likely to cause death, and thereby kills any person, though he may have desired that his object should be effected without hurting any one.

**188. Further definition of murder** - (1) Culpable homicide is also murder -in each of the following cases, whether the offender means or does not mean death to ensue, or knows or does not know that death is likely to ensue:

- (a) If he means to cause grievous bodily injury for the purpose of facilitating the commission of any of the offences mentioned in subsection (2) of this section, or facilitating the flight or avoiding the detection of the offender upon the commission or attempted commission thereof, or for the purpose of resisting lawful apprehension in respect of any offence whatsoever, and death ensues from such injury;
- (b) If he administers any stupefying or overpowering thing for any of the purposes aforesaid, and death ensues from the effects thereof;
- (c) If he by any means wilfully stops the breath of any person for any of the purposes aforesaid, and death ensues from such stopping of breath.

(2) The offences referred to in subsection (1) of this section are those specified in the following provisions of this Act, namely:

- (a) Section, 75 (treason) or section 80 (communicating secrets);

- (b) Section 81 (sabotage);
- (c) Section 103 (piracy);
- (d) Section 104 (piratical acts);
- (e) Sections 129 to 132 (escape or rescue from prison or lawful custody or detention);
- (f) Section 140 (rape);
- (g) Section 187 (murder);
- (h) Section 230 (abduction);
- (i) Section 231 (kidnapping);
- (j) Section 256 (robbery);
- (k) Section 263 (burglary);
- (l) Section 317 (arson).

**189. Provocation** - (1) Culpable homicide that would otherwise be murder may be reduced to manslaughter if the person who caused the death did so under provocation.

(2) Anything done or said may be provocation if,-

- (a) In the circumstances of the case it was sufficient to deprive a person having the power of self-control of an ordinary person, but otherwise having the characteristics of the offender, of the power of self-control; and
- (b) It did in fact deprive the offender of the power of self-control and thereby induced him to commit the act of homicide.

(3) Whether there is any evidence of provocation is a question of law.

(4) Whether, if there is evidence of provocation, the provocation was sufficient as aforesaid, and whether it did in fact deprive the offender of the power of self-control and thereby induced him to commit the act of homicide, are questions of fact.

(5) No one shall be held to give provocation to another by lawfully exercising any power conferred by law, or by doing anything which the offender incited him to do in order to provide the offender with an excuse for killing or doing bodily harm to any person.

(6) This section shall apply in any case where the provocation was given by the person killed, and also in any case where the offender, under provocation given by one person by accident or mistake killed another person.

(7) The fact that by virtue of this section one party to a homicide has not been or is not liable to be convicted of murder shall not affect the question whether the homicide amounted to murder in the



case of any other party to it.

**190. Illegal arrest may be evidence of provocation** - An illegal rest shall not necessarily reduce the offence from murder to man laughter; but if the illegality was known to the offender it may be evidence of provocation.

**191 Manslaughter** - Except as provided in section 198 of this Act, culpable homicide not amounting to murder is man laughter.

**192. Punishment of murder** - Every one who commits warder shall upon conviction thereof be sentenced to imprisonment for life.

**193. Attempt to murder** - Every one who attempts to commit murder is liable to imprisonment for a term not exceeding fourteen years.

**194. Counselling or attempting to procure murder** - Every one is liable to imprisonment for a term not exceeding ten years who incites, counsels I or attempts to procure say person to murder any other person in the Cook Islands, when that murder is not in fact committed.

**195. Conspiracy to murder** - (1) Every one is liable to imprisonment for a term not exceeding ten years who conspires or agrees with any person to murder any other person, whether the murder is to take place in the Cook Islands or elsewhere.

(2) For the purposes of this section, the expression "to murder" includes to cause the death of another person out of the Cook Islands in circumstances that would amount to murder if the act were committed in the Cook Islands.

**196. Accessory after the fact to murder** - Every one in liable to imprisonment for a term not exceeding seven years who is an accessory after the fact to murder.

**197. Punishment of manslaughter** - Every one who commits manslaughter is liable to imprisonment for life.

**198. Infanticide** - (1) Where a woman causes the death of any child of hers under the age of ten years in a manner that amounts to culpable homicide, and where at the time of the offence the balance of her mind was disturbed, by reason of her not having fully recovered from the effect of giving birth to that or any other child, or by reason of the effect of lactation, or by reason of any disorder consequent upon childbirth or lactation, to such an extent that she should not be held fully responsible, she is guilty of infanticide, and not of murder or manslaughter, and is liable to imprisonment for a term not exceeding three years.

(2) Where upon the trial of a woman for the murder or manslaughter of any child of hers under the age of ten years there is evidence that would support a verdict of infanticide, the jury or the Court as the case may be may return such a verdict instead of a verdict of murder or manslaughter, and the accused shall be liable accordingly. Subsection (2) of section 354 of this Act shall be read subject to the provisions or this subsection, but nothing in this subsection shall affect the power of the jury or the Court as the case may be under that section to return a verdict of manslaughter.

(3) Where upon the trial of a woman for infanticide, or for the murder or manslaughter of any child of hers under the age of ten years, the jury are, or, as the case may be, the Court is, of opinion that at the time of the alleged offence the balance of her mind was disturbed, by reason of her not having

fully recovered from the effect of giving birth to that or any other child, or by reason of the effect of lactation, or by reason of any disorder consequent upon childbirth or lactation, to such an extent that she was insane, the jury or the Court as the case may be shall return a special verdict of acquittal on account of insanity caused by childbirth.

(4) Where the jury or the Court as the case may be return a special verdict under subsection (3) of this section, the Judge shall order that the woman be examined by two medical officers, and, the following provisions shall apply:

(a) If each of the medical officers certifies that the woman is no longer insane and that she is in no need of care and treatment in any institution, the Judge shall order that the woman be discharged from custody forthwith;

(b) If each of the medical officers certifies that the woman is no longer insane and that she is in no need of care and treatment in any institution, the Judge shall order that the woman be discharged from custody forthwith;

(c) Unless each of the medical officers certifies as aforesaid, the Judge shall make an order for medical custody pursuant to section 576 of the Cook Islands Act 1915, and at the same time he shall issue a warrant for removal to New Zealand pursuant to section 582 of that said Act, and thereupon the provisions of sections 584 to 587 (both inclusive) of that said Act shall apply.

(7) Nothing in this section shall affect the power of the jury or the Court as the case may be, upon the trial of any woman for infanticide or for murder or manslaughter, to return a verdict, otherwise than under this section, of acquittal on account of insanity; and where any such verdict is returned the provisions of sections 591 to 593 (both inclusive) of the Cook Islands Act 1915 shall apply accordingly.

(8) The fact that by virtue of this section any woman has not been or is not liable to be convicted of murder or manslaughter, whether or not she has been or is liable to be convicted of infanticide, shall not affect the question whether the homicide amounted to murder or manslaughter in the case of any other party to it.

**199. Aiding and abetting suicide** - Every one is liable to imprisonment for a term not exceeding fourteen years who-

(a) Incites, counsels, or procures any person to commit suicide, if that person commits or attempts to commit suicide in consequence thereof; or

(b) Aids or abets any person in the commission of suicide.

**200. Suicide pact** - (1) Every one who in pursuance of a suicide pact kills any other person is guilty of manslaughter and not of murder, and is liable accordingly.

(2) Where two or more persons enter into a suicide pact and in pursuance of it one or more of them kills himself, any survivor is guilty of being a party to a death under a suicide pact contrary to this subsection and is liable to imprisonment for a term not exceeding five years; but he shall not be convicted of an offence against section 199 of this Act.

(3) For the purposes of this section the term "suicide pact" means a common agreement between two or more persons having for its object the death of all of them, whether or not each is to take his own life; but nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact.

(4) It shall be for the person charged to prove that by virtue of subsection (1) of this section he is not liable to be convicted of murder, or that by virtue of subsection (2) of this section he is not liable to be convicted of an offence against section 199 of this Act.

(5) The fact that by virtue of this section any person who in pursuance of a suicide pact has killed another person has not been or is not liable to be convicted of murder shall not affect the question whether the homicide amounted to murder in the case of a third person who is a party to the homicide and is not a party to the suicide pact.

**201. Concealing dead body of child** - Every one is liable to imprisonment for a term not exceeding two years who disposes of the dead body of any child in any manner with intent to conceal the fact of its birth, whether the child died before, or during, or after birth.

### Abortion

**202. Killing unborn child** - (1) Every one is liable to imprisonment for a term not exceeding seven years who causes the death of any child that has not become a human being in such a manner that he would have been guilty of murder if the child had become a human being.

(2) No one is guilty of any crime who before or during the birth of any child causes its death by means employed in good faith for the preservation of the life of the mother.

**203. Procuring abortion by drug or instrument** - (1) Every one is liable to imprisonment for a term not exceeding seven years who, with intent to procure the miscarriage of any woman or girl, whether she is with child or not,

(a) Unlawfully administers to or causes to be taken by her any poison or any drug or any noxious thing; or

(b) Unlawfully uses on her any instrument.

(2) The woman or girl shall not be charged as a party to an offence against this section.

**204. Procuring abortion by other means** - (1) Every one is liable to imprisonment for a term not exceeding five years who, with intent to procure the miscarriage of any woman or girl, whether she is with child or not, unlawfully uses on her any means whatsoever, not being means to which section 203 of this Act applies.

(2) The woman or girl shall not be charged as a party to an offence against this section.

**205. Female procuring her own Miscarriage** - Every woman or girl is liable to imprisonment exceeding three years who with intent to procure miscarriage, whether she is with child or not,-

- (a) Unlawfully administers to herself, or permits to be administered to her, any poison or any drug or any noxious thing; or
- (b) Unlawfully uses on herself, or permits to be used on her, any instrument; or
- (c) Unlawfully uses on herself, or permits to be used on her, any other means whatsoever.

**206. Supplying means of procuring abortion** - Everyone is liable to imprisonment for a term not exceeding three years who unlawfully supplies or procures any poison or any drug or any noxious thing, or any instrument or other thing, whether of a like nature or not, believing that it is intended to be unlawfully used to procure miscarriage.

**207. Effectiveness of means used immaterial** - The provisions of sections 203 to 206 of this Act shall apply whether or not the poison, drug, thing, instrument, or means administered, taken, used, supplied, or procured was in fact capable of procuring miscarriage.

### **Assaults and Injuries to the Person**

**208. Wounding with intent** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who, with intent to cause grievous bodily harm to any one, wounds, maims, disfigures, or causes grievous bodily harm to any person.

(2) Every one is liable to imprisonment for a term not exceeding seven years who, with intent to injure any one, or with reckless disregard for the safety of others, wounds, maims, disfigures, or causes grievous bodily harm to any person.

**209. Injuring with intent** - (1) Every one is liable to imprisonment for a term not exceeding ten years who, with intent to cause grievous bodily harm to any one, injures any person

(2) Everyone is liable to imprisonment for a term not exceeding five years who, with intent to injure any one, or with reckless disregard for the safety of others, injures any person.

**210. Injuring by unlawful act** - Every one is liable to imprisonment for a term not exceeding three years who injures any other person in such circumstances that if death had been caused he would have been guilty of manslaughter.

**211. Aggravated wounding or injury** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who with intent-

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

wounds, maims, disfigures, or causes grievous bodily harm to any person, or stupefies or renders unconscious any person, or by any violent means renders any person incapable of resistance.

(2) Every one is liable to imprisonment for a term not exceeding seven years who, with any such intent as aforesaid, injures any person.

**212. Aggravated assault** - (1) Every one is liable to imprisonment for a term not exceeding three years who assaults any other person with intent-

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

(2) Every one is liable to imprisonment for a term not exceeding three years who assaults any constable or any person acting in aid of any constable, or any person in the lawful execution of any process, with intent to obstruct the person so assaulted in the execution of his duty.

**213. Assault with intent to injure** - Every one is liable to imprisonment for a term not exceeding three years who, with intent to injure any one, assaults any person.

**214. Assault on a child, or by a male on a female** - Every one is liable to imprisonment for a term not exceeding two years who-

- (a) Assaults any child under the age of fourteen years; or
- (b) Being a male, assaults any female.

**215. Cruelty to a child** - Every one is liable to imprisonment for a term not exceeding five years who, having the custody, control, or charge of any child under the age of sixteen years, wilfully ill-treats or neglects the child, or wilfully causes or permits the child to be ill-treated, in a manner likely to cause him unnecessary suffering, actual bodily harm, injury to health, or mental disorder or disability.

**216. Common assault** - Every one is liable to imprisonment for a term not exceeding one year who assaults any other person.

**217. Award of part of fine as compensation to party injured by assault** - (1) Where under this Act any person is convicted of any assault and the Court is satisfied that the assault-

- (a) Was wanton and unprovoked; and
- (b) Was attended with bodily injury to the person assaulted or with injury to his clothes, or with injury to any property then in his immediate personal custody;

and where in any such case a fine is imposed on the offender, the Court, in its discretion, may award

to the person assaulted, by way of compensation, any portion, not exceeding half, of the fine so imposed.

(2) In any case, the order of the Court shall be a sufficient authority to the Registrar receiving the fine for the payment of the portion so awarded to the person assaulted.

(3) The award of any portion of a fine under this section shall not affect the right of the person assaulted or of any other person to recover by civil proceedings any damages in excess of the amount so awarded.

**218. Assaulting or resisting constables etc.** - If any person resists or assaults or wilfully obstructs, or invites or encourages any person to resist, assault, or obstruct, any constable in the execution of his duty, or any person acting in aid of such constable, such person may be taken into custody without warrant by any constable, and on conviction shall be liable to imprisonment for a term not exceeding six months or a fine not exceeding one hundred dollars.

**219. Disabling** - Every one is liable to imprisonment for a term not exceeding five years who, wilfully and, without lawful justification or excuse, stupefies or renders unconscious any other person.

**220. Discharging firearm or doing dangerous act with intent** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who, with intent to do grievous bodily harm,-

- (a) Discharges any firearm, airgun, or other similar weapon at any person; or
- (b) Sends or delivers to any person, or puts in any place, any explosive or injurious substance or device; or
- (c) Sets fire to any property.

(2) Every one is liable to imprisonment for a term not exceeding seven years who, with intent to injure, or with reckless disregard for the safety of others, does any of the acts referred to in subsection (1) of this section.

**221. Acid throwing** - Every one is liable to imprisonment for a term not exceeding fourteen years who, with intent to injure or disfigure any one, throws at or applies to any person any corrosive or injurious substance.

**222. Poisoning with intent** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who, with intent to cause grievous bodily harm to any one, administers to or causes to be taken by any person any poison or other noxious substance.

(2) Every one is liable to imprisonment for a term not exceeding three years who, with intent to cause inconvenience or annoyance to any one, or for any unlawful purpose, administers to, or causes to be taken by, any person any poison or other noxious substance.

**223. Infecting with disease** - Every one is liable to imprisonment for a term not exceeding fourteen years who wilfully and without lawful justification or excuse, causes or produces in any other person any disease or sickness.

**224. Setting traps, etc.** - (1) Every one is liable to imprisonment for a term not exceeding five years who, with intent to injure, or with reckless disregard for the safety of others, sets or places or causes to be set or placed any trap or device that is likely to injure any person.

(2) Every one is liable to imprisonment for a term not exceeding three years who, being in occupation or possession of any place where any such trap or device has been set or placed, knowingly and wilfully permits it to remain there in such a condition that any person is likely to be injured by it.

**225. Endangering transport** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who, with intent to injure or to endanger the safety of any person,-

(a) Removes anything from or places anything on, in, over, or under any place, or any area of water, that is used for or in connection with the carriage of persons or of goods by land, water, or air; or

(b) Does anything to any property that is used for or in connection with the carriage of persons or of goods by land, water, or air; or

(c) Shoots or throws anything at, into, or any vehicle, ship, or aircraft; or

(d) Causes anything to come in contact with any vehicle, ship, or aircraft; or

(e) Does any other unlawful act, or wilfully omits to do any act which it is his duty to do, in respect of any each place, area of water, or property as aforesaid, or in respect of any vehicle, ship, or aircraft.

(2) Every one is liable to imprisonment for a term not exceeding five years who, intentionally and in a manner likely to injure or endanger the safety of any person, does any of the acts referred to in subsection (1) of this section.

**226. Impeding rescue** - (1) Every one is liable to imprisonment for a term not exceeding ten years who, without lawful justification or excuse prevents or impedes or attempts to prevent or impede any person who is attempting to save his own life or the life of any other person.

(2) No one is guilty of an offence against this section who does any such act as aforesaid in the course of saving his own life or the life of any other person.

### **Bigamy, Feigned Marriage**

**227. Bigamy defined** - (1) Bigamy is-

(a) The act of a person who, being married, goes through a form of marriage in the Cook Islands with a third person; or

(b) The act of a person who goes through a form of marriage in the Cook Islands with any other person whom he or she knows to be married; or

(c) The act of a person ordinarily resident in the Cook Islands, who, being married, goes through a form of marriage with a third person anywhere outside the Cook

Islands; or

(d) The act of a person ordinarily resident in the Cook Islands, who goes through a form of marriage anywhere outside the Cook Islands with any other person whom he or she knows to be married.

(2) For the purposes of this section, -

(a) A form of marriage is any form of marriage recognised by the law of the Cook Islands, or by the law of the place where it is solemnised, as a valid form of marriage;

(b) No form of marriage shall be held to be an invalid form of marriage by reason of any act or omission of the person charged with bigamy, if it is otherwise a valid form.

(3) It shall not be a defence to a charge of bigamy to prove that if the parties were unmarried they would have been incompetent to contract marriage.

(4) No person commits bigamy by going through a form of marriage if that person-

(a) Has been continuously absent from his or her spouse for seven years then last past; and

(b) Is not proved to have known that his or her spouse was alive at any time during those seven years.

**228. Punishment of bigamy** - Every one who bigamy is liable to imprisonment for a term not exceeding seven years:

Provided that if the Judge is satisfied that the person with whom the offender went through the form of marriage knew, at the time when the offence was committed, that the marriage would be void, the offender is liable to imprisonment for a term not exceeding two years.

**229. Feigned marriage** - Every one is liable to imprisonment for a term not exceeding seven years who goes through a form of marriage with any other person, knowing that the marriage will be void for any reason other than that one of the parties is already married:

Provided that if the Judge is satisfied that that other person knew, at the time when the offence was committed, that the marriage would be void, the offender is liable to imprisonment for a term not exceeding two years.

### **Abduction, Kidnapping**

**230. Abduction of woman or girl** - Every one is liable to imprisonment for a term not exceeding fourteen years who takes away or detains any woman or girl, whether she is married or not, without her consent, or with her consent obtained by fraud or duress, with intent-

(a) To marry her or to have sexual intercourse with her; or



(b) To cause her to be married to or to have sexual intercourse with any other person.

**231. Kidnapping** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who unlawfully carries off or detains any person without his consent, or with his consent obtained by fraud or duress, with intent-

(a) To cause him to be confined or imprisoned; or

(b) To cause him to be sent or taken out of the Cook Islands; or

(c) To hold him for ransom or to service.

(2) A child under the age of sixteen years shall be deemed to be incapable of consenting to being carried off or detained.

(3) No one shall be convicted of an offence against this section who gets possession of any child, claiming in good faith a right to the possession of the child.

**232. Abduction of child under sixteen** - (1) Every one is liable to imprisonment for a term not exceeding seven years who, with intent to deprive any parent or guardian or other person having the lawful care or charge of any child under the age of sixteen years of the possession of the child, or with intent to have sexual intercourse with any child being a girl under that age, unlawfully-

(a) Takes or entices away or detains the child; or

(b) Receives the child, knowing that the child has been so taken or enticed away or detained.

(2) It is immaterial whether or not the child consents, or is taken or goes at the child's own suggestion, or whether or not the offender believed the child to be of or over the age of sixteen.

(3) No one shall be convicted of an offence against this section who gets possession of any child, claiming in good faith a right to the possession of the child.

## PART IX CRIMES AGAINST REPUTATION

**233. Criminal libel and publishing defined** - (1) A criminal libel is matter published, without lawful justification or excuse, either designed to insult any person or likely to injure his reputation by exposing him to hatred, contempt, or ridicule or likely to injure him in his profession, office, business, trade, or occupation, whether such matter is expressed by words, written or printed, or legibly marked on any substance, or by any object signifying such matter otherwise than by words, and whether expressed directly or by insinuation or irony.

(2) Publishing a criminal libel is-

(a) Exhibiting it in public; or

(b) Causing it to be read or seen, or showing or delivering it, or causing it to be shown or delivered, with a view to its being read or seen by any person other than the person defamed.

**234. Publishing upon invitation** - A person does not commit a crime by publishing defamatory matter on the invitation or challenge of the person defamed thereby, or if it is necessary to publish it in order to refute some other defamatory statement published by the last-mentioned person concerning the alleged offender, if such defamatory matter is believed to be true, and is relevant to the invitation or challenge or the required refutation, and if the publishing does not in manner or extent exceed what is reasonably sufficient for the occasion.

**235. No prosecution without leave of Judge** - (1) No prosecution for criminal libel shall be commenced without the leave of a Judge of the High Court.

(2) Notice of intention to apply for such leave shall be given to the person to be charged, who shall have an opportunity of being heard against the application.

**236. Plea of Justification** - (1) Every person accused of publishing a criminal libel may plead-

(a) That the defamatory matter published by him was true, or that he believed on reasonable grounds that it was true, or both; and

(b) That it was for the public benefit that the matters charged should, if true, be published in the manner in which and at the time when they were published.

(2) A plea under subsection (1) of this section may justify the defamatory matter in any sense in which it is specified in the information, or in the sense that it bears without being so specified; or separate pleas justifying it in each sense may be pleaded separately to each charge as if two libels had been charged in separate information.

(3) Every such plea shall be in writing, and shall set out the particular fact or facts by reason of which it is alleged that it was for the public benefit that the matter should be so published.

(4) The prosecutor may in his reply deny generally the truth of the plea.

(5) The truth of the matters charged in an alleged libel, and the belief of the accused in the truth thereof, shall not be inquired into in the absence of a plea of justification under this section:

Provided that, if the accused is charged with publishing the libel knowing it to be false, evidence of the truth or of such belief as aforesaid may be given in order to negative the allegation that the accused knew the libel to be false.

(6) In addition to a plea of justification under this section, the accused may plead not guilty; and the pleas shall be inquired into together

(7) Where justification is pleaded in accordance with this section and the accused is convicted, the Court, in pronouncing sentence, may consider whether his guilt is aggravated or mitigated by the plea.

(8) If on a plea of justification under this section the issue is found against the accused the prosecutor shall be entitled to recover from the accused the costs sustained by the prosecutor by reason of the plea.

(9) If the accused is acquitted he shall be entitled to recover from the prosecutor, if a private person, the costs sustained by the accused by reason of the prosecution, including the costs, if any, incurred in connection with the application for leave to prosecute under section 235 of this Act.

(10) The costs so to be recovered by the accused or by the prosecutor shall be taxed by the Registrar.

**237. Punishment of criminal libel** - (1) Every one is liable to imprisonment for a term not exceeding one year who publishes any criminal libel.

(2) Every one is liable to imprisonment for a term not exceeding two years who publishes any criminal libel knowing it to be false.

**238. Criminal slander** - (1) Every one is guilty of criminal slander who, without lawful justification or excuse, uses any words that are likely to injure the reputation of any other person by exposing him to hatred, contempt, or ridicule, or likely to injure him in his profession, office, business, trade, or occupation, if the words are-

(a) Spoken, or reproduced from a recording, within the hearing of more than twelve persons at a meeting to which the public are invited or have access, or within the hearing of more than twelve persons in any place to which the public have or are permitted to have access; or

(b) Broadcast by means of radio or television.

(2) The provisions of sections 234 to 237 of this Act shall apply, so far as they are applicable and with the necessary modifications, to criminal slander:

Provided that no prosecution for criminal slander shall be commenced under this Act unless the application to the Judge for leave, under section 235 of this Act, is made to a Judge within two months after the commission of the alleged offence.

## **PART X CRIMES AGAINST RIGHTS OF PROPERTY**

### **Theft**

**239. Things capable of being stolen** - Every inanimate thing whatsoever, and every thing growing out of the earth, which is the property of any person, and either is or may be made movable, is capable of being stolen as soon as it becomes movable, although it is made movable in order to steal it.

**240. Theft of electricity** - Electricity is hereby declared to be a thing capable of being stolen; and every one commits theft who fraudulently abstracts, consumes, or uses any electricity.

**241. Animals capable of being stolen** - (1) All tame living creatures, whether tame by nature or wild

by nature and tamed, are capable of being stolen; but tame pigeons are capable of being stolen so long only as they are in a dovecote or on their owner's land.

(2) All living creatures wild by nature, such as are not commonly found in a condition of natural liberty in the Cook Islands are, if kept in a state of confinement, capable of being stolen, not only while so confined, but after they have escaped from confinement.

(3) All other living creatures wild by nature are, if kept in a state of confinement, capable of being stolen so long as they remain in confinement, or are being actually pursued after escaping therefrom, but no longer.

(4) A wild living creature shall be deemed to be in a state of confinement so long as it is in a den, cage, small enclosure, sty, or tank, or is otherwise so situated that it cannot escape and that its owner can take possession of it at pleasure.

(5) Oysters and oyster-brood are capable of being stolen when in oyster-beds, oyster farms, layings, and fisheries that are the property of any person and are sufficiently marked out or known as such property.

(6) Wild creatures in the enjoyment of their natural liberty are not capable of being stolen, nor shall the taking of their dead bodies by or by the orders of the person who killed them be deemed to be theft.

(7) Everything produced by or forming part of any living creature capable of being stolen is capable of being stolen.

**242 Theft defined** - (1) Theft or stealing is the act of intentionally and dishonestly taking, or intentionally and dishonestly converting to the use of any person, anything capable of being stolen, with intent-

(a) To deprive the owner, or any person having any special property or interest therein, permanently of such thing or of such property or interest; or

(b) To pledge the same or deposit it as security; or

(c) To part with it under a condition as to its return which the person parting with it may be unable to perform; or

(d) To deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking or conversion.

(2) For the purposes of subsection (1) of this section, the term "taking" does not include obtaining property in or possession of anything with the consent of the person from whom it is obtained, although that consent may be induced by a false pretence; but a subsequent conversion of anything of which possession only is so obtained may be theft.

(3) It is immaterial whether the thing converted was taken for the purpose of conversion or whether it was at the time of the conversion in the possession of the person converting.

(4) Theft is committed when the offender moves the thing, or causes it to move or to be moved, with

intent to steal it.

(5) A factor or agent is not guilty of theft by pledging or giving a lien on any goods or document of title to goods entrusted to him for the purpose of sale or otherwise for any sum of money not greater than the amount due to him from his principal at the time of pledging or giving a lien on the same, together with the amount of any bill of exchange or promissory note accepted or made by him for or on account of his principal.

(6) A servant who, contrary to the orders of master, takes from his possession any food for the purpose of giving it or having it given to any horse or other animal belonging to or in the possession of his master is not by reason thereof guilty of theft.

**243. Theft of animals** - Every one commits theft and steals the creature killed who kills any living creature capable of being stolen, with intent to steal its carcass, skin, or plumage, or any part of it.

**244. Theft by person required to account** - Every one commits theft who, having received any money or valuable security or other thing whatsoever on terms requiring him to account for or pay it, or the proceeds of it, or any part of such proceeds, to any other person though not requiring him to deliver over in specie the identical money, valuable security or other thing received, dishonestly converts to his own use or dishonestly omits to account for or pay the same or any part thereof, or to account for or pay such proceeds or any part thereof, which he was required to account for or pay as aforesaid:

Provided that if it is part of the said terms that the money or other thing received, or the proceeds thereof, shall form an item in a debtor and creditor account between the person receiving it and the person to whom he is to account for or pay the same, and that such last-mentioned person shall rely only on the personal liability of the other as his debtor in respect thereof, the proper entry of the amount of the money or proceeds or any part thereof in that account shall be a sufficient accounting for the amount so entered; and in such case no dishonest conversion of the amount accounted for shall be deemed to have taken place.

**245. Theft by person holding power of attorney** - Every one commits theft who, being entrusted, either solely or jointly with any power of attorney for the sale, mortgage, pledge, or other disposition of any real or personal property, whether it is capable of being stolen or not, dishonestly sells, mortgages, pledges, or otherwise disposes of the property or any part thereof, or dishonestly converts the proceeds of any part of the property, to some purpose other than that for which he was entrusted with the power of attorney.

**246. Theft by misappropriating proceeds held under direction** - Everyone commits theft who, having received, either solely or jointly with any other person, any money or valuable security, or any power of attorney for the sale of any real or personal property, with a direction that the money or any part thereof, or the proceeds or any part of the proceeds of the security or property, shall be applied to any purpose or paid to any person specified in the direction, in violation of good faith and contrary to the direction, dishonestly applies to any other purpose or pays to any other person the money or proceeds, or any part thereof:

Provided that where the person receiving the money, security, or power of attorney, and the person from whom he receives it, deal with each other on such terms that all money paid to the former would, in the absence of any such direction, be properly treated as an item in a debtor and creditor account between them, this section shall not apply unless the direction is in writing.

**247. Theft by co-owner** - Theft may be committed-

- (a) By the owner of anything capable of being stolen against a person having a special property or interest therein; or
- (b) By a person having a special property or interest in any such thing against the owner thereof; or
- (c) By a lessee against his reversion; or
- (d) By one of several joint owners or tenants in common of, or partners in, any such thing against the other persons interested therein; or
- (e) By any director, officer, or member of any body corporate against that body corporate.

**248. Theft by husband or wife** - (1) It is not theft for a husband or a wife to take or convert or otherwise deal with the property of his or her spouse, unless they are living apart from each other.

(2) Notwithstanding anything in subsection (1) of this section, every one commits theft who, while a husband and wife are living together, knowingly assists either of them in dealing with anything that is the property of the other in a manner that would amount to theft if they were not married.

**249. Punishment of theft** - Every one who commits theft is liable to the following punishment:

- (a) To imprisonment for a term not exceeding five years if the theft is one to which section 244 (which relates to theft by a person required to account) or section 245 (which relates to theft by an attorney) or section 246 (which relates to theft by misappropriation) of this Act applies;
- (b) To imprisonment for a term not exceeding five years if the object stolen is-
  - (i) A testamentary instrument, whether it is stolen during the testator's life or after his death;
  - (ii) Anything stolen by a clerk or servant which belongs to or is in the possession of his employer;
  - (iii) Anything in the possession of the offender as a clerk or servant, or as an officer of the Government or of any Island Council, or as a constable;
  - (iv) Anything stolen from the person of another;
  - (v) Anything stolen from a dwellinghouse;
  - (vi) Anything stolen from a separate receptacle, locked or otherwise secured;
  - (viii)[sic] Anything exceeding in value the sum of forty dollars;

(c) To imprisonment for a term not exceeding one year if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen exceeds in value the sum of ten dollars;

(d) To imprisonment for a term not exceeding three months if the theft is one for which no other punishment is prescribed by this Act, and if the object stolen does not exceed in value the sum of ten dollars.

### **Crimes Resembling Theft**

**250. Conversion or attempted conversion of motorcars, etc.** - (1) Every one is liable to imprisonment for a term not exceeding five years who, intentionally and dishonestly, but not so as to be guilty of theft, takes or converts to his use or to the use of say other person any of the following things, namely:

- (a) Any motorcar, or any vehicle of any description;
- (b) Any ship;
- (c) Any aircraft;
- (d) Any part of any motorcar, vehicle, ship, or aircraft;
- (e) Any horse, mare, or gelding.

(2) Every one is liable to imprisonment for a term not exceeding two years who attempts to commit the offence referred to in subsection (1) of this section, or who, intentionally and dishonestly interferes with or gets into or upon or attempts to get into or upon any of the things referred to in paragraphs (a) to (d) of that subsection.

(3) In addition to imposing any penalty for an offence against this section the convicting Court may order the person convicted of the offence to pay to the owner of any thing or animal destroyed or damaged, by way of compensation for the destruction or damage, a sum not exceeding the amount of the loss suffered by him. The making or enforcement of an order under this subsection shall not affect the right of the owner or of any other person to recover by civil proceedings any damages in excess of the sum recovered under the order.

(4) Any order for payment under this section may be enforced in the same manner as a fine.

**251 Being in possession of instrument for conversion** - (1) Every one is liable to imprisonment for a term not exceeding one year who-

- (a) Has in his possession by night any instrument, being an instrument capable of being used for taking or converting say of the things mentioned in paragraphs (a) to (d) of subsection (1) of section 250 of this Act, in circumstances that, *prima facie*, show an intention to use it for the taking or converting of any such thing as aforesaid;
- (b) Has in his possession by day any such instrument as aforesaid with intent to take or covert any such thing as aforesaid.

(2) It is a defence to a charge under paragraph (a) of subsection (1) of this section if the person charged proves that he had lawful excuse for having the instrument in his possession.

**251A. Taking or dealing with certain documents with intent to defraud** - Everyone is liable to imprisonment for a term not exceeding 5 years, who, with intent to defraud-

(a) Takes or obtains any document that is capable of being used to obtain any privilege, benefit pecuniary advantage or valuable consideration; or

(b) Uses or attempts to use any such document for the purposes of obtaining, for himself or for any other person, any privilege benefit, pecuniary advantage, or valuable consideration.

[Added Act 1986/9]

**252. Criminal breach of trust** - (1) Every one commits the crime of criminal breach of trust and is liable to imprisonment for a term not exceeding seven years who, being a trustee, with intent to defraud and in violation of his trust, converts anything of which he is trustee to any use not authorised by the trust.

(2) The following persons and no others are trustees within the meaning of this section, namely:

(a) Trustees upon express trusts created by any deed, will, or instrument in writing, whether for any public or private or charitable object;

(b) Every person upon whom the duty of any such trust devolves or comes;

(c) Executors and administrators;

(d) Official assignees, liquidators, and other like officers acting in any winding up or dissolution of any company, society, or other body corporate, or in any bankruptcy, and any administrator under Part IV of the Administration Act 1952;

(e) Receivers and managers acting on behalf of debenture holders or creditors, or on behalf of any other persons or classes or persons.

(3) No one shall be prosecuted for an offence against this section without the leave of the Minister of Justice, who before giving leave may make such inquiries as he thinks fit.

**253. Dishonestly destroying document** - Every one who destroys, cancels, conceals, or obliterates any document for any dishonest purpose is liable to the same punishment as if he had stolen the document, or to imprisonment for a term not exceeding three years, whichever is the greater.

**254. Dishonest concealment** - Every one is liable to imprisonment for a term not exceeding two years who moves, takes, or conceals anything capable of being stolen, with the dishonest intention of thereby depriving some person other than the owner of any pecuniary benefit arising from the possession thereof.

**255. Bringing into the Cook Islands things stolen, etc.** - (1) Every one is liable to imprisonment for a term not exceeding three years who, having obtained elsewhere than in the Cook Islands any



property by any act which, if done in the Cook Island, would have amounted to a crime involving dishonesty brings that property into or has it in the Cook Islands.

(2) It is a defence to a charge under this section to prove that the doing of the act by which the property was so obtained was not an offence under the law of the place where it was done.

## **Robbery and Extortion**

**256. Robbery** - (1) Robbery is theft accompanied by violence or threats of violence, to any person or property, used to extort the property stolen or to prevent or overcome resistance to its being stolen.

(2) Every one who commits robbery is liable to imprisonment for a term not exceeding ten years.

**257. Aggravated robbery** - Every one is liable to imprisonment term not exceeding fourteen years who-

(a) Robs any person, and at the time of or immediately before or immediately after such robbery causes grievous bodily harm to any person; or

(b) Being together with any other person or persons, robs or assaults with intent to rob, any person; or

(c) Being armed with any offensive[sic] weapon or instrument, robs or assaults with intent to rob, any person.

**258. Compelling execution of documents by force** - Every one is liable to imprisonment for a term not exceeding fourteen years who, with intent to defraud, by violence to or restraint of the person of another, or by the threat that either the offender or any other person will employ such violence or restraint, compels any person-

(a) To execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security; or

(b) To write, impress, or affix any name or seal upon or to any paper or parchment in order that it may be afterwards made or converted into or used or dealt with as a valuable security.

**259. Assault with intent to rob** - Everyone is liable to imprisonment for a term not exceeding seven years who assaults any person with intent to rob him.

**260. Extortion by certain threats** - (1) Everyone is liable to imprisonment for a term not exceeding fourteen years who, with intent to extort or gain anything from any person-

(a) Threatens expressly or by implication to make against or about that person or any other person, living or dead, say accusation or disclosure of any offence, or of any sexual misconduct, whether the accusation or disclosure is true or false; or

(b) Threatens expressly or by implication that any person shall make any such accusation against or disclosure about any person, living or dead; or

(c) Threatens to publish, or offers to abstain from publishing, any criminal libel or criminal slander; or

(d) Sends or causes to be sent to any person any document or writing containing any such threat as aforesaid, knowing the contents of that document or writing; or

(e) By any of the means aforesaid compels or attempts to compel any person to execute, make, accept, endorse, alter, or destroy the whole or any part of any valuable security, or to write, impress, or affix any name or seal upon or to any document, in order that it may be afterwards used or dealt with as a valuable security.

(2) For the purposes of subsection (1) of this section, the expression "intent to extort or gain" includes an intent to induce any person to confer upon or procure for any person any appointment or office of profit or trust or business.

(3) Every one is liable to imprisonment for a term not exceeding seven years who does any of the acts mentioned in paragraphs (a) to (e) of subsection (1) of this section, with intent to induce any person-

(a) To do any act against his will, other than an act which it is his legal duty to do; or

(b) Not to do any lawful act.

**261. Demanding with intent to steal** - Everyone is liable to imprisonment for a term not exceeding seven years who, with menaces, demands from any person, either for himself or for any other person, anything capable of being stolen, with intent to steal it.

### **Burglary**

**262. Interpretation** - (1) For the purposes of this section and of sections 263 to 266 of this Act-

"To break" in relation to any building or ship, means to break any part, internal or external, of the building or ship, or to open by any means whatsoever (including lifting, in the case of things kept in their places by their own weight) any door, window, shutter, cellar-flap, port, hatch, scuttle, or other thing intended to cover openings to the building or ship or to give passage from one part of it to another;

"Building" means any building, erection, or structure of any description, whether permanent or temporary and includes a tent, a caravan, or a houseboat; and also includes any enclosed yard or any closed cave or tunnel.

(2) For the purposes of the said sections,-

(a) Every one who obtains entrance into any building or ship by any threat or artifice used for that purpose, or by collusion with any person in the building or ship, or who enters any chimney or aperture of the building or ship permanently left open for any necessary purpose, shall be deemed to have broken and entered that building or ship;

(b) An entrance into a building or ship is made as soon as any part of the body of the person making the entrance, or any part of any instrument used by him, is within the building or ship.

**263. Burglary** - Every one is guilty of burglary and is liable to imprisonment for a term not exceeding ten years who-

(a) Breaks and enters any building or ship with intent to commit a crime therein; or

(b) Breaks out of any building or ship either after committing a crime therein or after having entered with intent to commit a crime therein.

**264. Entering with intent** - Every one is liable to imprisonment for a term not exceeding five years who unlawfully enters or is in any building or ship with intent to commit any crime therein.

**265. Being armed with intent to break or enter** - Every one is liable to imprisonment for a term not exceeding five years who is found armed with any dangerous or offensive weapon or instrument whatever, with intent to break or enter any building or ship and to commit any crime therein.

**266. Being disguised or in possession of instruments for burglary** - (1) Every one is liable to imprisonment for a term not exceeding three years who-

(a) Has in his possession by night any instrument, being an instrument capable of being used for burglary, in circumstances that *prima facie* show an intention to use it for burglary; or

(b) Has in his possession by day any such instrument as aforesaid with intent to commit any crime; or

(c) Has his face masked or blackened or is otherwise disguised by night, without lawful excuse (the proof whereof shall lie on him); or

(d) Has his face masked or blackened or is otherwise disguised by day, with intent to commit any crime.

(2) It is a defence to a charge under paragraph (a) of subsection (1) of this section if the person charged proves that he had lawful excuse for having the instrument in his possession.

**267. Being found on property without lawful excuse but under circumstances disclosing criminal intent** - Every one commits an offence and is liable to imprisonment for a term not exceeding three months or to a fine not exceeding forty dollars who without lawful excuse (the proof of which excuse shall be on him), but in circumstances that do not disclose the commission of or an intention to commit any other offence, is found at any time in or on any building or in any enclosed yard, garden or area, or in or on board any ship, launch, dredge, yacht, boat, or other vessel.

### False Pretences

**268. Definition of false pretence** - (1) In this section,-

"False representation" means -

- (a) A representation known to the person making it to be false; or
- (b) A representation in the form of a promise which the promisor intends not to perform;

"Representation" means a representation-

- (a) Of a matter of fact, either present or past; or
- (b) About a future event; or
- (c) About an existing intention, opinion, belief, knowledge, or other state of mind.

(2) A false pretence is a false representation, either by words or otherwise, made with a fraudulent intent to induce the person to whom it is made to act upon it.

(3) Where the representation is in the form of a promise, the existence of an intention not to perform the promise shall not be inferred from the fact alone that the promise is not performed.

(4) Exaggerated commendation or depreciation of the quality of anything is not a false pretence unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

(5) It is a question of fact whether such commendation or depreciation as aforesaid does or does not amount to a fraudulent misrepresentation of fact.

**269. Obtaining by false pretence** - (1) Every one is liable to imprisonment for a term not exceeding seven years who, with intent to defraud or cause loss to any person by any false pretence, causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix any name or seal on any document in order that it may afterwards be made or converted into or used or dealt with as a valuable security.

(2) Every one who, with intent to defraud by any false pretence, either directly or through the medium of any contract obtained by the false pretence, obtains possession of or title to anything capable of being stolen or procures anything capable of being stolen to be delivered to any person other than himself, is liable-

(a) To imprisonment for a term not exceeding five years if the value of the thing so obtained or procured exceeds the sum of forty dollars;

(b) To imprisonment for a term not exceeding one year if the value of the thing so obtained or procured exceeds the sum of ten dollars and does not exceed the sum of forty dollars;

(c) To imprisonment for a term not exceeding three months if the value of the thing so obtained or procured does not exceed the sum of ten dollars.

*[Amended Act 1973/5]*

**270. Obtaining credits fraudulently** - Every one is liable to imprisonment for a term not exceeding one year who, in incurring any debt or liability, obtains credit by means of any false pretence or by means of any other fraud.

### **Personation**

**271. Personation** - Every one is liable to imprisonment for a term not exceeding seven years who personates or represents himself or herself to be any person, living or dead, or the husband, wife, widower, widow, executor, administrator, or any relative of any such person, with intent to fraudulently obtain, for himself or any other person, possession, of or title to any property or any qualification, certificate, diploma, licence, or benefit.

**272. Acknowledging instrument in false name** - Every one is liable to imprisonment for a term not exceeding seven years who, without lawful authority or excuse (the proof whereof shall lie on him), acknowledges in the name of any other person before any Court, Judge, or other person lawfully authorised in that behalf, any recognizance or bond, or any confession of judgment, consent to judgment, or judgment, or any deed or other instrument.

### **Fraud**

**273. False statement by promoter, etc.** - Every one is liable to imprisonment for a term not exceeding ten years who, being a promoter, director, manager, or officer of any company or body corporate either existing or intended to be formed, makes, circulates, or publishes, or concurs in making, circulating, or publishing, any prospectus, statement, or account which he knows to be false in any material particular,-

- (a) With intent to induce persons, whether ascertained or not, to become shareholders or members; or
- (b) With intent to deceive or defraud the members, shareholders, or creditors of the company or body corporate, or any of them, whether ascertained or not; or
- (c) With intent to induce any person or persons, whether ascertained or not, to entrust or advance any property to the company or body corporate, or to enter into any security for its benefit.

**274. Falsifying accounts relating to public funds** - Every one is liable to imprisonment for a term not exceeding ten years who, with intent to defraud,-

- (a) Makes any false entry or any alteration in any accounts kept by any Government Department or by any Island Council or public body, or by any bank, being accounts of any public money, or of any other public fund, or being accounts of the owners of any stock, debentures, or other interest in the, debt of any Island Council or public body; or
- (b) In any manner wilfully falsifies any such accounts as aforesaid; or
- (c) Makes any transfer of any interest in any stock, debentures, or debt, in the name of any person other than the owner of that interest.

**275. False accounting by officer or member of body corporate** - Every one is liable to imprisonment for a term not exceeding seven years who, being a director or an officer or a member of any company or body corporate, with intent to defraud,-

(a) Destroys, mutilates, alters, or falsifies any book, account, valuable security, or document belonging to the company or body corporate, or concurs in so doing; or

(b) Makes or concurs in making any false entry in, or omits or alters, or concurs in omitting or altering, any material particular from or in any such book, account, valuable security, or document.

**276. False accounting by employee** - Every one is liable to imprisonment for a term not exceeding seven years who, being or acting in the capacity of an officer or a clerk or servant, with intent to defraud,-

(a) Destroys, mutilates, alters, or falsifies any book, account, valuable security, or document belonging to or in the possession of his employer, or received by him for or on behalf of his employer, or concurs in so doing; or

(b) With intent to deceive or defraud the members, shareholders, or creditors of the company or body corporate, or any of them, whether ascertained or not; or

(c) With intent to induce any person or persons, whether ascertained or not, to entrust or advance any property to the company or body corporate, or to enter into any security for its benefit.

**277. False statement by public officer** - Every one is liable to imprisonment for a term Not exceeding two years who, being an officer, collector, or receiver entrusted with the receipt, custody, or management of any public money, or any part of the revenues of any Island Council or public body, knowingly furnishes any false statement or return of any sum of money collected by him, or entrusted to his care, or of any balance of money in his hands or under his control.

**278. Issuing false dividend warrants** - Every one is liable to imprisonment for a term not exceeding seven years who, being in the employment of the Crown or of any Island Council or public body, or of any bank, or of any company or body corporate, with intent to defraud makes out or delivers any dividend warrant, or any warrant for the payment of any interest or money, for an amount, greater or less than that to which the person on whose account the warrant is made out is entitled.

**279. Concealing deeds and encumbrances** - -Every one is liable to imprisonment for a term not exceeding five years who, being a seller or mortgagor of any property, or being the solicitor or agent of any such seller or mortgagor, in order to induce the purchaser or mortgagee to accept the title offered or produced to him, and with intent to defraud, conceals from the purchaser or mortgagee any instrument material to the title, or any encumbrance, or falsifies any document or other evidence on which the title depends or may depend.

**280. Cons conspiracy to defraud** - Every one is liable to imprisonment or a term not exceeding five years who conspires with any other person by deceit or falsehood or other fraudulent means to defraud the public, or any person ascertained or unascertained, or to affect the public market price of

stocks, funds, and, Merchandise, or anything else publicly sold, whether the deceit or falsehood or other fraudulent means would or would not amount to a false pretence as hereinbefore defined.

## Receiving

**281. Receiving property dishonestly obtained** - (1) Every one who receives anything obtained by any crime, or by any act wherever committed which, if committed in the Cook Islands, would constitute a crime, knowing that thing to have been dishonestly obtained, is liable-

(a) To imprisonment for a term not exceeding five years if the value of the thing so received exceeds the sum of forty dollars;

(b) To imprisonment for a term not exceeding one year if the value of the thing so received exceeds the sum of ten dollars and does not exceed the sum of forty dollars;

(c) To imprisonment for a term not exceeding three months if the value of the thing so received does not exceed the sum of ten dollars.

(2) Except as provided in subsection (3) of this section, where any one is being proceeded against for an offence against this section, the following matters may be given in evidence to prove guilty knowledge, that is to say,-

(a) The fact that other property obtained by means of any such crime or act as aforesaid was in the possession of the accused within the period of twelve months before the date on which he was first charged with the offence for which he is being tried;

(b) The fact that, within the period of five years before the date on which he was first charged with the offence for which he is being tried, he was convicted of the crime of receiving:

Provided that the last-mentioned fact may not be proved unless there has been given to the accused, either before or after an information has been laid seven days notice in writing of the intention to prove the previous conviction, nor until evidence has been given that the property in respect of which the accused is being tried was in his possession.

(3) Nothing in subsection (2) of this section shall apply in any case where the accused is at the same time being tried on a charge of any offence other than receiving.

**282. Receiving property of husband or wife** - Every one commits the crime of receiving within the meaning of section 281 of this Act. who, while a husband and wife are living together, receives from either of them anything the property of the other obtained from that other in a manner that would amount to a crime if they were not married, knowing it to have been dishonestly obtained; and the provisions of that section shall apply accordingly.

**283. When receiving is complete** - The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or any other person, possession of or control over the thing, or aids in concealing or disposing of it.

**284. Receiving after restoration to owner** - When the thing unlawfully obtained has been restored

to the owner, or when a legal title to the thing so obtained has been acquired by any person, a subsequent receiving of it is not an offence, although the receiver may know that the thing had previously been dishonestly obtained.

**285. Taking reward for recovery of stolen goods** - Every one is liable to imprisonment for a term not exceeding three years who corruptly takes or bargains for any reward, directly or indirectly, in consideration that he will help any person to recover anything obtained by any crime, unless he has used all due diligence to cause the offender to be brought to trial for the crime.

### Forgery

**286. Interpretation** - (1) For the purposes of this section and or sections 287 to 302 of this Act,-

"Bank note" means any negotiable instrument used or intended for use as currency and issued by the Reserve Bank of New Zealand, or by any bank in any country other than New Zealand, or by the Government of any such country, or by any other authority authorised by law to issue notes;

"Document" means any paper, parchment, or other material used for writing or printing, marked with matter capable of being read; but does not include any trade mark on any goods, or any inscription on stone or metal or other like material;

"False document" means a document-

- (a) Of which the whole or any material part purports to be made by any person who did not make it or authorise its making; or
- (b) Of which the whole or any material part purports to be made on behalf of any person who did not authorise its making; or
- (c) In which, though it purports to be made by the person who did in fact make it or authorizes its making, or purports to be made on behalf of It the person who did in fact authorise its making, the time or place of its making, where either is material, or any number or distinguishing mark identifying the document, where either in material, is falsely stated; or
- (d) Of which the whole or some material part purports to be made by a fictitious or deceased person, or purports to be made on behalf of any such person; or
- (e) Which is made in the name of an existing person, either by him or by his authority, with the intention that it should pass as being made by some person, real or fictitious, other than the person who makes or authorises it;

"Revenue paper" means any paper provided by the proper authority in the Cook Islands or in any other country for the purpose of being used for stamps, licences, permits, post office money orders, postal notes, or postal orders, or for any purpose whatsoever connected with the public revenue of the Cook Islands or of any other country.



(2) For the purposes aforesaid -

(a) It is immaterial in what language a document is expressed or in what country or place it is expressed to have effect;

(b) A crossing on any cheque, draft on a banker, post office money order, postal note, postal order, coupon, or other document of which the crossing is authorised or recognised by law shall be deemed to be a material part of it.

**287 Forgery** - (1) Forgery is making a false document, knowing it to be false, with the intent that it shall in any way be used or acted upon as genuine, whether within the Cook Islands or not, or that some person shall be induced by the belief that it is genuine to do or refrain from doing anything, whether within the Cook Islands or not.

(2) For the purposes of this section, the expression "making a false document" includes making any material alteration in a genuine document, whether by addition, insertion, obliteration, erasure, removal, or otherwise.

(3) Forgery is complete as soon as the document is made with such knowledge and intent as aforesaid, although the offender may not have intended that any particular person should use or act upon it as genuine, or should be induced by the belief that it is genuine to do or refrain from doing anything.

(4) Forgery is complete although the false document may be incomplete, or may not purport to be such a document as would be binding or sufficient in law, if it is so made and is such as to indicate that it was intended to be acted on as genuine.

**288. Punishment of forgery** - Every one who commits forgery is liable to imprisonment for a term not exceeding ten years.

**289. Uttering forged documents** - (1) Every one is liable to imprisonment a term not exceeding ten years who, knowing a document to be forged,-

(a) Uses, deals with, or acts upon it as if it were genuine; or

(b) Causes any person to use, deal with, or act upon it as if it were genuine.

(2) For the purposes of this section, a document made or altered outside the Cook Islands in a manner that would have amounted to forgery if the making or alteration had been done in the Cook Islands shall be deemed to be a forged document.

**290. Counterfeiting public seals** - Every one is liable to imprisonment for a term not exceeding ten years who-

(a) Unlawfully makes or counterfeits any public seal in use at any time in the Cook Islands or any other country, or any seal or stamp used in the Cook Islands or any other country by any Court, Island Council public body, or public officer, or the impression of any such seal; or

(b) Uses any such seal, stamp, or impression, knowing it to be counterfeit.

**291. Counterfeiting corporate seals** - Every one is liable to imprisonment for a term not exceeding five years who -

(a) Unlawfully makes or counterfeits any seal or stamp used in the Cook Islands or any other country by any company or any body corporate to which section 290 of this Act does not apply, or by any other person whomsoever, or the impression of any such seal or stamp; or

(b) Uses any such seal, stamp, or impression, knowing it to be counterfeit.

**292. Sending false telegram** - Every one is liable to imprisonment for a term not exceeding five years who, with intent to defraud, causes or procures any telegram to be sent or delivered as being sent by the authority of any other person,-

(a) Knowing that it is not sent by that person's authority; and

(b) With intent that it should be acted upon as being so sent.

**293. Procuring execution of document by fraud** - Every one is liable to imprisonment for a term not exceeding ten years who procures the execution of any document by any person by falsely and fraudulently pretending that the contents thereof are different from what they really are.

**294. Possessing forged bank notes** - Every one is liable imprisonment for a term not exceeding seven years who, without lawful authority or excuse (the proof whereof shall lie on him), purchases or receives from any person, or has in his custody or possessions, any forged bank note, whether complete or not, knowing it to be forged.

**295. Drawing document without authority** - Every one is liable to imprisonment for a term not exceeding ten years who, without colour of lawful authority, makes or executes, draws, signs, accepts, or endorses in the name or on the account of another person, by procuration or otherwise, any document, or makes use of or utters any such document knowing it to be so made, executed, drawn, signed, accepted, or endorsed.

**296. Using probate obtained by forgery or perjury** - (1) Every one is liable to imprisonment for a term not exceeding ten years who demands, receives, or obtains, or causes or procures to be delivered or paid to any person, anything whatever under, upon, or by virtue of any probate or letters of administration, knowing the will, codicil, or testamentary writing on which the probate or letters of administration were obtained to be forged, or knowing the probate or letters of administration to have been obtained by any false oath, affirmation, or affidavit.

(2) For the purposes of this section, the expression "probate or letters of administration" has the same meaning as in Part II of the Administration Act 1952.

**297. Paper or implements for forgery** - Every one is liable to imprisonment term not exceeding ten years who, without lawful authority or excuse, the proof whereof shall lie on him,-

(a) Makes, uses, or knowingly has in his custody or possession, any paper intended to resemble and pass as revenue paper, or as special paper such as is provided and used for making any bank notes; or

(b) Makes, uses, or knowingly has in his custody or possession, any frame, mould, or instrument for making any such paper, or for producing in or on any such paper any words, figures, letters, marks, lines, or devices peculiar to and used in or on any such paper; or

(c) Engraves or in any way makes upon any plate, wood, stone, or other material any words, figures, letters, marks, lines or devices, the print whereof resembles in whole or in part any words, figures, letters, marks, lines, or devices peculiar to and used in or on any bank note, or in or on any document entitling or evidencing the title of any person to any share or interest in any public stock, annuity, funds or debt of the Cook Islands or any other country, or in any stock, annuity, fund, or debt of any Island Council or public body, or of any company or any body corporate, whether in the Cook Islands or not; or

(d) Uses or knowingly has in his custody or possession any plate, wood, stone, or other material upon which any such words, figures, letters, marks, lines, or devices have been engraved or in any way made as aforesaid; or

(e) Uses or knowingly has in his custody or possession any paper upon which any such words, figures, letters, marks, lines, or devices have been printed or in any way made as aforesaid.

**298. Counterfeiting, stamps** - Every one is liable to imprisonment for a term not exceeding seven years who-

(a) Counterfeits any stamp, whether impresses or adhesive used at anytime for the of postage or revenue by the Government of the Cook Islands or of any other country;

(b) Knowingly sells or exposes for sale or utters or uses any such counterfeit stamp;

(c) Without lawful excuse (the proof whereof shall lie on him) makes or knowingly has in his possession any die or instrument capable of making the impression of any such stamp as aforesaid;

(d) Fraudulently cuts, tears, or in any way removes from any material any such stamp with intent that any use should be made of the stamp or of any part thereof;

(e) Fraudulently mutilates any such stamp with intent that any use should be made of any part of any such stamp;

(f) Fraudulently fixes or places upon any material, or upon any such stamp as aforesaid, any stamp or part of a stamp which, whether fraudulently or not, has been cut, torn, or in any way removed from any other stamp;

(g) Fraudulently erases or otherwise removes, whether really or apparently, from any stamped material any name, sum, date, or other matter or thing whatsoever written on it, with the intent that any use should be made of the stamp upon such material;

(h) Knowingly and without lawful excuse (the proof whereof shall lie on him) has in his possession any stamp or part of a stamp which has been fraudulently cut, torn, or otherwise removed from any material, or any stamp which has been fraudulently mutilated, or any stamped material out of which any name, sum, date, or other matter or thing has been fraudulently erased or otherwise removed whether wholly or partially.

**299. Falsifying registers** - Every one is liable to imprisonment for a term not exceeding ten years who unlawfully -

(a) Destroys, defaces, or damages any register of births, baptisms, marriages, deaths, burials, or cremations, or any copy of any such register, or of any part thereof, required by law to be transmitted to the Registrar of the High Court or any other officer; or

(b) Inserts in any such register, or in any such copy as aforesaid, any entry, known by him to be false, of any matter relating to any birth, baptism, marriage, death, burial, or cremation.

**300. Falsifying extracts from registers** - Every one is liable to imprisonment for a term not exceeding seven years who-

(a) Certifies say writing to be a true copy of any entry in any such register as is mentioned in section 299 of this Act, or to be an extract from any such register, knowing the writing to be false; or

(b) Knowingly utters any such certificate; or

(c) Unlawfully and for any fraudulent purpose takes any such register or any certificate relating thereto from its place of deposit or conceals it; or

(d) Being a person having the custody of any such register or certificate, permits it to be so taken or concealed as aforesaid.

**301. Uttering false certificates** - Every one is liable to imprisonment for a term not exceeding seven years who,-

(a) Being by law required to certify that any entry has been made in any such register as is mentioned in section 299 of this Act, makes such certificate knowing that the entry has not been made;

(b) Being by law required to make any statement, or a certificate or declaration, concerning any particular required for the purpose of making entries in any such registers knowingly makes such statement falsely, or makes any such certificate or declaration knowing the same to contain a falsehood;

(c) Being an officer having custody of the records of any Court, or being the deputy of any such officer, wilfully utters a false copy or certificate of any record;

(d) Being an officer required or authorised by law to make or issue a certified copy of any document, or a certified extract from any document, wilfully certifies as a true

copy of any document or as a true extract from any document any writing which he knows to be untrue in any material particular.

**302. Forging certificates** - Every one is liable to imprisonment for a term not exceeding seven years who,-

(a) Not being an officer, or deputy of an officer, having custody of the records of any Court, fraudulently signs or certifies any copy or certificate of any record, or any copy of any certificate, as if he were such an officer or deputy;

(b) Not being an officer required or authorised by law to make or issue a certified copy of any document, or a certified extract from any document, fraudulently signs or certifies any copy of any document, or any extract from any document, as if he were such an officer.

**303 Imitating authorised marks** - Every one is liable to imprisonment for term not exceeding five years who, with intent to defraud or deceive counterfeits or imitates any mark, word, or description which under law is impressed upon or otherwise made or written upon or affixed to any chattel, or upon or to anything containing or connected with any chattel, for the purpose of denoting the quality of that chattel or the fact that it has been tested or examined and approved by or under the authority of any Island Council or public body, or by any public officer.

**304. Imitating customary marks** - Every one is liable to imprisonment for a term not exceeding five years who, with intent to defraud or deceive, counterfeits or imitates any mark, word or description impressed or otherwise made or written upon or affixed to any chattel, or upon or to anything containing or connected with any chattel, which mark, word, or description is by recognised practice understood to denote that the thing upon or to which it is impressed, made, written, or affixed has been examined and certified to be of a particular quality by any particular officer or person, whether that officer or person is or is not authorised by law so to certify.

### Coinage

**305. Interpretation** - (1) For the purposes of this section and of section 306 to 315 of this Act,-

"Counterfeit coin" includes any coin which has been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble any current coin of a higher denomination;

"Current coin" means coin of any substance whatsoever lawfully current in the Cook Islands or in any other country.

(2) For the purposes aforesaid,-

(a) A thing shall be deemed to be in the possession of any person if he has it in his personal custody or possession, or if he knowingly and wilfully has it in the actual custody or possession of any other person, or in some place (whether occupied by himself or not), for the use or benefit of himself or of any other person;

(b) A coin apparently intended to resemble or pass for any current coin shall be deemed to resemble that current coin.

**306. Preparations for coining** - (1) Every one is liable to imprisonment for a term not exceeding ten years who, without lawful justification or excuse (the proof whereof shall lie on him), knowingly makes or mends, or begins or proceeds to make or mend, or buys or sells or has in his possession, any puncheon, counter-puncheon, matrix, stamp, die, pattern, or mould in or upon which there is made or impressed, or which will make or impress, or which is adapted and intended to make or impress, the figure, stamp, or apparent resemblance of both or either of the sides of any current coin, or any part of both or either of those sides.

(2) Every one is liable to imprisonment for a term not exceeding ten years who, without lawful justification or excuse (the proof whereof shall lie on him), makes or mends, or begins or proceeds to make or mend, or buys or sells, or has in his possession-

(a) Any edger, edging or other tool, collar, instrument, or engine adapted and intended for the marking of coin round the edges with letters, grainings, or other marks or figures apparently resembling those on the edges of any current coin, knowing it to be so adapted and intended as aforesaid; or

(b) Any press for coinage, or any cutting engine for cutting, by force of a screw or of any other contrivance, round blanks out of any metal or other substance, or any other machine, knowing the press to be a press for coinage or knowing the engine or machine to have been used or to be intended to be used for the false making or counterfeiting of any current coin.

**307. Counterfeiting coin** - (1) Every one is liable to imprisonment for a term not exceeding ten years who falsely makes or counterfeits any coin resembling any current coin.

(2) This offence shall be deemed to be complete although the coin made or counterfeited is not in a fit state to be uttered or the making or counterfeiting thereof has not been finished or perfected.

**308. Altering coin** - (1) Every one is liable to imprisonment for a term not exceeding ten years who gilds or silvers, or with any wash or materials capable of producing the colour or appearance of gold or silver or by any means whatsoever washes, cases over, or colours,-

(a) Any coin whatsoever resembling any current coin; or

(b) Any current coin, with intent to make it resemble or pass for any other current coin; or

(c) Any substance, being of a fit nature, size, and figure to be coined, with intent that it shall be coined into a counterfeit coin resembling any current coin.

(2) Every one is liable to imprisonment for a term not exceeding ten years who files or in any manner alters any current coin with intent to make it resemble or pass for any other current coin.

**309. Impairing coin** - (1) Every one is liable to imprisonment for a term not exceeding seven years

who impairs, diminishes, or lightens any current coin with intent that the coin so impaired, diminished, or lightened may pass for a current coin.

(2) Every person is liable to imprisonment for a term not exceeding five years who unlawfully has in his possession any filing or clipping, or any gold or silver bullion, or any metal or other substance in dust, solution, or otherwise, which has been produced or obtained by impairing, diminishing, or lightening any current coin, knowing that it has been so produced or obtained.

**310. Defacing coin** - Every one is liable to imprisonment for a term not exceeding one year who-

(a) Defaces any current coin by stamping thereon any names, words, or figures, whether the coin is or is not thereby diminished or lightened; or

(b) Utters any current coin, knowing it to have been so defaced.

**311. Melting coin** - (1) Every one is liable to imprisonment for a term not exceeding one year who, without the consent of the Minister of Finance (the proof whereof shall lie on the person charged), melts down, breaks up, or uses otherwise than as currency any current coin.

(2) Notwithstanding any thing in subsection (1) of this section, where any person suspects that any coin tendered to him as current coin has been diminished otherwise than by reasonable wear, or that it is counterfeit, it shall be lawful for him to break the coin. If the coin, when so broken, appears to have been diminished otherwise than by reasonable wear, or to be counterfeit, the person tendering it shall bear the loss; but if it is of due weight and appears to be current coin, the person breaking it shall receive it at the rate it was coined for. In this subsection, references to breaking include references to cutting, bending, and defacing.

**312. Possessing counterfeit coin** - Every one is liable to imprisonment for a term not exceeding one year who has in his possession any counterfeit coin resembling any current coin, knowing it to be counterfeit, with intent to utter it.

**313. Uttering counterfeit coin** - Every one is liable to imprisonment for a term not exceeding three years who-

(a) Utters any counterfeit coin resembling any current coin, knowing it to be counterfeit; or

(b) With intent to defraud, utters as current coin any coin which is not current coin, or any medal or piece of metal or other substance.

**314. Buying and selling counterfeit coin** - (1) Every one is liable to imprisonment for a term not exceeding seven years who, without lawful justification or excuse (the proof whereof shall lie on him), buys, sells, receives, pays, or puts off, or offers to buy, sell, receive, pay, or put off, any counterfeit coin resembling any current coin at or for a lower rate or value than the counterfeit coin imports, or apparently is intended to import.

(2) An offence against this section shall be deemed to be complete although the coin bought, sold, received, paid, or put off, or offered to be bought, sold, received, paid, or put off is not in a fit state to be uttered, or the counterfeiting thereof has not been finished or perfected.

**315. Importing and exporting counterfeit coin** - Every one is liable to imprisonment for a term not exceeding seven years who, without lawful justification, or excuse (the proof whereof shall lie on him),-

(a) Imports or receives into the Cook Islands any counterfeit coin resembling any current coin, knowing it to be counterfeit; or

(b) Exports from the Cook Islands, or puts on board any ship or aircraft for the purpose of being so exported, any counterfeit coin resembling any current coin, knowing it to be counterfeit.

### **Criminal Damage**

**316. What constitutes criminal damage** - (1) For the purposes of sections 317 to 328 of this Act, every one who causes any event by an act which he knew would probably cause it, being reckless whether that event happens or not, shall be deemed to have caused it wilfully.

(2) Nothing shall be an offence against any of the provisions of those sections unless it is done without lawful justification or excuse, and without colour of right.

(3) Where the act done results in the destruction of or any damage to anything in which the person charged has an interest, whether total or partial, the existence of that interest shall not prevent his act being a crime if it is done with intent to defraud or to cause loss to any other person. For the purposes of this subsection, where any property is subject to any mortgage or charge, each of the parties to the mortgage or charge shall be deemed to have a partial interest in that property.

**317. Arson** - Every one commits arson and is liable to imprisonment for a term not exceeding fourteen years who wilfully sets fire to, or damages by means of any explosive,-

(a) Any building, erection, or structure or any ship or aircraft, or any well of any combustible substance, or any mine, or any bush, forest, or plantation; or

(b) Any property, whether he has an interest in it or not, if he knows or ought to know that danger to life is likely to ensue.

**318. Attempted arson** - Every one is liable to imprisonment for a term not exceeding ten years who attempts to commit arson, or who wilfully sets fire to, or damages by means or any explosive, any property, whether he has an interest in it or not knowing that any property mentioned in paragraph (a) of section 317 of this Act is likely to catch fire or be damaged in consequence thereof.

**319. Damage to other property by fire or explosive** - Every one is liable to imprisonment for a term not exceeding seven years who wilfully sets fire to, or damages by means of any explosive, any property other than that mentioned in paragraph (a) of section 317 of this Act.

**320. Attempt to damage property by fire or explosive**- Every one is liable to imprisonment for a term not exceeding five years who attempts to commit any offence specified in section 319 of this Act, or who wilfully sets fire to or damages by means of any explosive his own property, knowing that any property other than that mentioned in paragraph (a) of section 317 of this Act is likely to



catch fire or be damaged in consequence thereof.

**321. Wilful damage** - (1) Every one is liable to imprisonment for a term not exceeding fourteen years who wilfully destroys or damages-

(a) Any property, whether he has an interest in it or not, if he knows or ought to know that danger to life is likely to ensue; or

(b) Any road, railway, bridge, tunnel, or similar means of communication, or any aerodrome, wharf, quay, or jetty, if he knows or ought to know that it is thereby likely to be rendered dangerous, impassable, or unusable[sic];

(c) Any power station or gas works, or any building, erection, or structure, or any equipment, line, cable, or pipe, used for or in connection with the production, transmission, or distribution of electricity or gas, if he knows or ought to know that the supply of electricity or gas is thereby likely to be affected.

(2) Every one is liable to imprisonment for a term not exceeding seven years who wilfully destroys or damages-

(a) Any stopbank, wall, dam, or sluice gate, or any pumping station or pumping equipment, or any other works, if the destruction or damage causes actual danger of flooding; or

(b) Any container, building, erection, or structure used for the storage of bulk supplies of gas or liquid fuel.

(3) Every one is liable to imprisonment for a term not exceeding seven years who wilfully destroys or damages any rare or irreplaceable book, manuscript, original painting, etching, engraving, print, or other work of art, or any rare or irreplaceable article kept for purposes of art or science.

(4) Everyone who wilfully destroys or damages any property in any case not provided for elsewhere in this Act, shall be liable to-

(a) Imprisonment for a term not exceeding one year where the value of the property destroyed or damage done, does not exceed fifty dollars;

(b) Imprisonment for a term not exceeding three years where the value of the property destroyed or damage done, exceeds fifty dollars.

*[Amended Act 1972/4]*

**322. Wilful waste or diversion of water, gas, or electricity** - Every one imprisonment for a term not exceeding five years who, wilfully and with intent to cause loss or harm to any other person, wastes or diverts, or causes to be wasted or diverted, any water, gas, or electricity, not being water, gas, or electricity that he has, or honestly believes he has, a legal right to use.

**323. Interfering with means of transport** - (1) Every one is liable to imprisonment for a term not exceeding seven years who, with intent to cause danger to property,-

- (a) Removes anything from or places anything on, in, over, or under any place, or any area of water, that is used for or in connection with the carriage of persons or of goods by land, water, or air; or
- (b) Does anything to any property that is used for or in connection with the carriage of persons or of goods by land, water, or air; or
- (c) Shoots or throws anything at, into, or upon any vehicle, ship, or aircraft; or
- (d) Causes anything to come in contact with any vehicle, ship, or aircraft; or
- (e) Does any other unlawful act, or wilfully omits to do any act which it is his duty to do, in respect of any such place, area of water, or property as aforesaid, or in respect of any vehicle, ship, or aircraft.

(2) Every one is liable to imprisonment for a term not exceeding five years who, intentionally and in a manner likely to cause danger to property, does any of the acts referred to in subsection (1) of this section.

**324. Wrecking** - Every one is liable to imprisonment for a term not exceeding fourteen years who-

- (a) Casts away or destroys any ship or aircraft, whether complete or unfinished; or
- (b) Does any act tending to the immediate loss or destruction of any ship or aircraft in distress, whether or not he has an interest in the ship or aircraft; or
- (c) Interferes with any marine or aeronautical mark, light, signal, or equipment used for the guidance or control of ships or aircraft, or exhibits or transmits any false mark, light, or signal, with intent to bring any ship or aircraft into danger, whether or not he has an interest in the ship or aircraft.

**325. Attempting to wreck** - Every one is liable to imprisonment for a term not exceeding ten years who attempts to cast away or destroy any ship or aircraft, whether complete or unfinished.

**326. Interfering with signals, etc.** - Every one is liable to imprisonment for a term not exceeding seven years who destroys, damages, alters, removes, or conceals, or attempts to destroy, damage, alter, remove, or conceal, any mark, light, signal, or equipment used for the guidance or control of ships or aircraft.

**327. Interfering with mines** - Every one is liable to imprisonment for a term not exceeding seven years who, with intent to damage a mine or obstruct the working thereof,-

- (a) Causes water to run into the mine or any subterranean channel communicating therewith; or
- (b) Damages any shaft or any passage of the mine; or
- (c) Damages, with intent to render useless, any apparatus, building, bridge, or road belonging to the mine, whether the object damaged is complete or not; or

- (d) Hinders the working of any such apparatus;
- (e) Damages or unfastens, with intent to render useless, any rope, chain, or tackle used in any mine, or upon any way or work connected therewith.

**328. Providing explosive to commit crime** - Every one is liable to imprisonment for a term not exceeding two years who knowingly has in his possession or makes any explosive substance, or any dangerous engine, instrument, or thing, with intent thereby to commit, or for the purpose of enabling any other person to commit, a crime.

**328A.** *[Repealed]*

*[Repealed Act 1989/33]*

## **PART XI THREATENING, CONSPIRING, AND ATTEMPTING TO COMMIT OFFENCES**

**329. Threatening to kill or do grievous bodily harm** - Every one is liable to imprisonment for a term not exceeding seven years who -

- (a) Threatens to kill or do grievous bodily harm to any person; or
- (b) Sends or causes to be received, knowing the contents thereof, any letter or writing containing any threat to kill or do grievous bodily harm to any person.

**330. Threatening to destroy property** - (1) Everyone is liable to imprisonment for a term not exceeding three years who sends or causes to be received, knowing the contents thereof, any letter or writing threatening to destroy or damage any property, or to destroy or injure any animal.

(2) Nothing shall be an offence against subsection (1) of this section unless it is done without lawful justification or excuse, and without colour of right.

**331. Threatening acts** - Every one is liable to imprisonment for a term not exceeding three years who, with intent to intimidate or annoy any person, -

- (a) Breaks or damages or threatens to break or damage any dwellinghouse; or
- (b) By the discharge of firearms or otherwise, alarms or attempts to alarm any person in any dwellinghouse.

**332. Conspiring to prevent collection of rates or taxes** - Everyone is liable to imprisonment for a term not exceeding two years who conspires with any person by force or intimidation to prevent the collection of any rates or taxes the levying and collection of which is authorised by law.

**333. Conspiring to commit offence** - (1) Subject to the provisions of subsection (2) of this section, every one who conspires with any person to commit any offence, or to do or omit, in any part of the world, anything of which the doing or omission in the Cook Islands would be an offence, is liable to

imprisonment for a term not exceeding seven years if the maximum punishment for that offence exceeds seven years' imprisonment, and in any other case is liable to the same punishment as if he had committed that offence.

(2) This section shall not apply where a punishment for the conspiracy is otherwise expressly prescribed by this Act or by some other enactment.

(3) Where under this section any one is charged with conspiring to do or omit anything anywhere outside the Cook Islands it is a defence to prove that the doing or omission of the act to which the conspiracy relates was not an offence under the law of the place where it was, or was to be, done or omitted.

**334. Attempt to commit or procure commission of offence** - (1) Every one who attempts to commit any offence in respect of which no punishment for the attempt is expressly prescribed by this Act or by some other enactment is liable to imprisonment for a term not exceeding ten years if the maximum punishment for that offence is imprisonment for life, and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed that offence.

(2) Every one who incites, counsels, or attempts to procure any person to commit any offence, when that offence is not in fact committed, is liable to the same punishment as if he had attempted to commit that offence, unless in respect of any such case a punishment is otherwise expressly provided by this Act or by some other enactment.

**335. Accessory after the fact to crime** - Every one who is accessory after the fact to any crime punishable by imprisonment, being a crime in respect of which no express provision is made by this Act or by some other enactment for the punishment of an accessory after the fact, is liable to imprisonment for a term not exceeding seven years if the maximum punishment for that crime is imprisonment for life, and not exceeding five years if such maximum punishment is imprisonment for ten or more years; and in any other case is liable to not more than half the maximum punishment to which he would have been liable if he had committed the crime.

## PART XII PROCEDURE

**336.-411.** *[Repealed]*

*[Repealed Act 1980-81/28.]*

*[Amendment of Act 1991/7 ineffective]*

## PART XIII MISCELLANEOUS PROVISIONS

**412.-413.** *[Repealed]*

*[Repealed Act 1980-81/28]*

**414. Costs** - (1) Where any person is convicted by the Court of any offence, the Court may order the

offender to pay such sum as it thinks just and reasonable towards the costs of the prosecution.

(2) Where on the arrest of the offender any money was taken from him the Court may in its discretion order the whole or any part of the money to be applied to any such payment.

(3) Where any person is acquitted by the Court of any offence, the Court may order the prosecutor to pay to that person such sum as it thinks just and reasonable towards the costs of his defence.

(4) Any order for payment, under this section, upon being filed in the Court, shall have the effect of a judgment.

**415. Compensation for loss of property** - (1) On the conviction of any person for any offence the Court may order the offender to pay to any person such sum as it thinks fit by way of compensation for any loss of or damage to property suffered by that person through or by means of the offence.

(2) Where on the arrest of the offender any money was taken from him the Court may in its discretion order the whole or any part of the money to be applied to any such payment.

(3) Any order for payment under this section may be enforced in the same manner as a fine.

(4) An order under this section shall not affect the right of any person to recover by civil proceedings any sum in excess of the amount recovered under the order.

**416. Restitution of property** - (1) Where any one is convicted of any offence, any property found in his possession, or in the possession of any other person for him, may be ordered by the Court to be delivered to the person who appears to the Court to be entitled thereto.

(2) Where an order is made under subsection (1) of this section, and it appears to the Court that a purchaser has bought the property in good faith and without knowledge that it was dishonestly obtained, the Court may order that on the restitution of the property the offender shall pay to the purchaser a sum not exceeding the amount paid by him. The provisions of subsections (2) to (4) of section 415 of this Act shall apply to any such order.

(3) Where any one is convicted of having stolen or dishonestly obtained any property, and it appears to the Court that the property has been pawned to a pawnbroker, the Court may order the pawnbroker to deliver it to the person appearing to the Court to be entitled to it, either on payment or without payment to the pawnbroker of the amount of the loan or any part thereof, as the Court in all the circumstances of the case deems just:

Provided that before an order is made for the delivery of the property without payment to the pawnbroker, he shall be given an opportunity to be heard.

(4) If the person in whose favour any order under subsection (3) of this section is made thereby obtains the property, he shall not afterwards question the validity of the pawn.

(5) Except as provided in subsection (4) of this section, no order made under this section shall have any further effect than to change the possession, and no such order shall prejudice any right of property, or any right of action in respect of any property, existing or acquired in the goods either before or after the offence was committed.

**417. Civil remedy not suspended** - No civil remedy for any act or omission shall be suspended by

reason that such act or omission amounts to an offence.

**418. Act to bind the Crown** - This Act shall bind the Crown.

**419. Regulations** - (1) The High Commissioner may from time to time, by Order in Executive Council, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then in session, and if not, shall be laid before the Legislative Assembly within twenty-eight days after the date of the commencement of the next ensuing session.

**420. Amendments, repeals and revocation** - (1) The Cook Islands Act 1915 is hereby amended in the manner indicated in the Second Schedule to this Act.

(2) The enactments specified in the Third Schedule to this Act are hereby repealed.

(3) Rule 87 of the Rules of the High Court 1916 is hereby revoked.

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*[Schedules not attached]*

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