

ACT NO. 9 OF 2017

I assent.

J. K. KONROTE
President

[16 February 2017]

AN ACT**TO AMEND THE PUBLIC ORDER ACT 1969**

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

- 1.—(1) This Act may be cited as the Public Order (Amendment) (No. 2) Act 2017.
- (2) This Act comes into force on the date or dates of its publication in the Gazette.
- (3) The Public Order Act 1969 is referred to as the “Principal Act”.

PARTS inserted

2. The Principal Act is amended by—
 - (a) before section 1, inserting “PART 1—PRELIMINARY”;
 - (b) before section 3, inserting “PART 2—PROHIBITED ACTS UNDER THE ORDER”;
 - (c) before section 8, inserting “PART 3—POWER TO GRANT ETC., PERMIT TO HOLD MEETINGS AND PROCESSIONS”;

- (d) before section 13, inserting “PART 4—OFFENCES AND PENALTIES”;
and
- (e) before section 18, inserting “PART 5—MISCELLANEOUS”.

*Section 2 amended***3.** Section 2 of the Principal Act is amended by inserting the following definitions—

“Convention State” means a country which is a State party to the relevant Convention;

“entity” includes an organisation, group or an individual;

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

“foreign terrorist fighters” means a person who travel to a state other than his or her state of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, including in connection with armed conflict;

“freezable property” means any property that—

- (a) is owned or controlled by a specified entity; or
- (b) is a property of a listed entity pursuant to section 12Q(1); or
- (c) is derived or generated from property mentioned in paragraph (a) or (b);

“internationally protected persons” means—

- (a) a head of State, including any member of a collegial body performing the functions of a head of State under the constitution of the State concerned, a head of government or a Minister for foreign affairs, whenever any such person is in a foreign State, as well as members of his or her family who accompany him or her; or
- (b) any representative or official of a State or any official or other agent of an international organisation of an intergovernmental character who, at the time when and in the place where a crime against him or her, his or her official premises, private accommodation or means of transport is committed, is entitled pursuant to international law to special protection from any attack on his or her person, freedom or dignity, as well as members of his or her family forming part of his or her household;

“nuclear material” means special nuclear material with the potential to be made into nuclear weapons;

“Nuclear Materials Convention” refers to the Convention on the Physical Protection of Nuclear Materials;

“Plastic Explosives Convention” refers to the Convention on the Marking of Plastic Explosives for the Purpose of Detection; and

“specified entity” means a person or entity—

- (a) for which a declaration under section 12P has been made; or
- (b) that is a United Nations listed entity as described in section 12Q.

New sections inserted

4. The Principal Act is amended by inserting the following new sections after section 12E—

“Offences against internationally protected persons

12F.—(1) A person who—

- (a) murders, kidnaps or otherwise attacks an internationally protected person or interferes with the liberty of an internationally protected person;
- (b) commits an act of violence on the official premises, private accommodation or means of transport, of an internationally protected person, which endangers the internationally protected person or interferes with that person’s liberty; or
- (c) threatens to commit such act or attempts to commit such act,

with intent to compel the Government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person, commits an indictable offence and is liable upon conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years, or to both.

Offence of hostage taking

12G. A person who—

- (a) seizes or detains another person; or
- (b) threatens to kill, injure or continue to detain the other person,

with intent to compel the Government of a country, an international organisation or a person or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of the other person, commits an indictable offence and is liable upon conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years, or to both.

Movement of nuclear material

12H.—(1) A person who, knowingly imports or exports nuclear material to or from Fiji except in accordance with a licence or written permit given by the Minister, commits an indictable offence.

(2) A person must not knowingly, without a licence or written permission from the Minister, transport nuclear material—

- (a) over the territory of Fiji; or
- (b) through any of its seaports or airports.

(3) A person must not knowingly transport nuclear material within Fiji without a licence or written permission from the Minister.

(4) A person must not knowingly make a false statement or provide a false assurance to the Minister, under subsections (1), (2) or (3).

(5) Without limiting any other conditions that may be imposed, a licence or written permission mentioned in subsections (1), (2) or (3) may be given only if the Minister has received a written undertaking from the person that the material will, during international nuclear transport, be protected at the levels mentioned in the Nuclear Material Convention.

(6) Any person who commits an offence under this section is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years, or to both.

Possession or use of nuclear material

12I. A person who, without lawful authority—

- (a) intentionally receives, possesses, uses, transfers, alters, disposes of or disperses nuclear material in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property or to the environment;
- (b) steals nuclear material;
- (c) embezzles or fraudulently obtains nuclear material;
- (d) demands nuclear material by threat or use of force or any other form of intimidation;
- (e) threatens to—
 - (i) use nuclear material to cause death or serious injury to any person or substantial damage to any property or to the environment; or
 - (ii) steal nuclear material to compel a person, State or an international organisation to do or refrain from doing any act;
- (f) commits an act, or threatens to commit an act against a nuclear facility, or interferes with a nuclear facility in a way that causes or is likely to cause death or serious injury to a person or substantial damage to property or to the environment; or

- (g) provide, facilitate the provision of, or procure the provision of any financial assistance or services to, any person which relates to the receipt, possession, use, transfer, alteration, manufacture, maintenance, disposal and dispersal of any nuclear material,

commits an indictable offence and is liable upon conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years, or to both.

Possession or use of radioactive material or devices

12J.—(1) A person who—

- (a) makes or possesses radioactive material or a radioactive device with intent to cause—
 - (i) death or serious bodily injury; or
 - (ii) substantial damage to property or to the environment; or
- (b) uses, in any way, radioactive material or a radioactive device, or uses or damages a nuclear facility in a manner which causes a release or increases the risk of the release of radioactive material with the intent to—
 - (i) cause death or serious bodily injury;
 - (ii) cause substantial damage to any property or to the environment; or
 - (iii) compel a person, State or an international organisation to do or refrain from doing any act,

commits an indictable offence.

(2) A person who—

- (a) threatens to commit an offence mentioned in subsection (1)(b);
- (b) unlawfully and intentionally makes any demand accompanied by a threat or use of force for—
 - (i) the supply of radioactive material or a radioactive device; or
 - (ii) a nuclear facility to be made available or for access to a nuclear facility; or
- (c) provide, facilitate the provision of, or procure the provision of any financial assistance or services to, any person which relates to the receipt, possession, use, transfer, alteration, manufacture, maintenance, disposal and dispersal of any radioactive material,

commits an indictable offence.

(3) A threat under subsection (2) must be made in circumstances which indicate the credibility of the threat.

(4) Any person who commits an indictable offence under this section is liable upon conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years, or to both.

Acts of violence on board ships or fixed platforms

12K.—(1) A person who—

- (a) seizes or exercises control over a ship or fixed platform, by force or threatens to use force or other form of intimidation;
- (b) commits an act of violence, against a person on board a ship or fixed platform, that is likely to endanger the safe navigation of the ship or safety of the fixed platform;
- (c) destroys a ship or fixed platform;
- (d) causes damage, to a ship or its cargo or a fixed platform, that is likely to endanger the safe navigation of the ship or safety of the fixed platform;
- (e) places or causes to be placed, on a ship or fixed platform a device or substance, likely—
 - (i) for a ship, to destroy the ship, or to cause damage to the ship or its cargo or likely to endanger the safe navigation of the ship; or
 - (ii) for a fixed platform, to destroy the fixed platform or to endanger its safety;
- (f) destroys or seriously damages maritime navigational facilities or seriously interferes with the operation in a way that is likely to endanger the safe navigation of a ship;
- (g) communicates information, that the person knows to be false, endangering the safe navigation of a ship; or
- (h) injures or kills a person in connection with the commission, or attempted commission, of an offence mentioned in this subsection,

commits an indictable offence.

(2) A person commits an indictable offence if he or she, intending to compel another person to do or to refrain from doing any act, threatens to commit an offence mentioned in subsection (1)(b), (c), (d) or (f) in relation to a ship or fixed platform, if the threat is likely to endanger the safety of the ship or fixed platform.

(3) Any person who commits an offence under this section is liable upon conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years, or to both.

Use of nuclear material on board ships or fixed platforms

12L.—(1) A person who, knowingly and with the intention of intimidating a population, or compelling a Government or international organisation to do or to refrain from doing any act—

- (a) uses against or discharges from a fixed platform or ship any nuclear, chemical, or biological weapon or radioactive or nuclear material in a manner that causes or is likely to cause death or serious injury or damage;
- (b) discharges from a fixed platform, ship oil, liquefied natural gas, or other hazardous or noxious substance, which is not covered under paragraph (a), in such quantity or concentration that causes or is likely to cause death or serious injury or damage;
- (c) uses a ship in a manner that causes death or serious injury or damage;
- (d) threatens to commit an offence under subsection (1)(a), (b) or (c);
- (e) injures or causes the death of another person in connection with the commission of any offence under this section; or
- (f) transports on a ship—
 - (i) any explosive or radioactive material knowing that it is intended to cause or be threatened to cause death or serious injury or damage with the intention to intimidate a population or compel a Government or international organisation to do or refrain from doing any act;
 - (ii) any nuclear, chemical, or biological weapon;
 - (iii) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing and use or production of special fissionable material knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguard pursuant to an International Atomic Energy Agency comprehensive safeguards agreement;
 - (iv) any equipment, material, or software or related technology that is intended to significantly contribute to the design, manufacture, or delivery of a nuclear, chemical or biological weapon; or
 - (v) any person who has committed an act that constitutes an offence under this section, with the intent to assist that person to avoid criminal prosecution,

commits an indictable offence and is liable upon conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years, or to both.

Arrest and delivery

12M.—(1) The master of a registered ship in Fiji waters who has reasonable grounds to believe that a person has committed an offence under sections 12K or 12L against, or on board, any ship may—

- (a) arrest and detain the person; and
- (b) deliver the person to the appropriate authorities in any other Convention State.

(2) The master of the ship must—

- (a) notify the authorities in the other Convention State before delivering the person; and
- (b) give to the authorities, evidence in the master's possession that the person has committed the offence.

(3) The master of the ship commits an offence if he or she, fails to comply with the provisions of subsection (2).

(4) Any person who contravenes subsection (2) commits an offence and is liable upon conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 5 years, or to both.

(5) If the person is delivered to a police officer or any officer from the authorised law enforcement agencies—

- (a) the police officer or any officer from the authorised law enforcement agencies must take the person into custody unless the officer has reasonable grounds to believe that the person has not committed the offence; or
- (b) if the police officer or any officer from the authorised law enforcement agencies refuses to take the person into custody, the officer must give written reasons for the refusal.

Plastic explosives offences

12N.—(1) A person who knowingly—

- (a) manufactures unmarked plastic explosives, knowing that they are unmarked;
- (b) possesses, or transports unmarked plastic explosives, knowing that they are unmarked; or
- (c) imports or exports unmarked plastic explosives into or out of Fiji,

commits an indictable offence and is liable upon conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years, or to both.

- (2) Subject to subsection (3), it is not an offence under subsection (1)(a) or (b) if the—
- (a) person manufactures or holds unmarked plastic explosives in a quantity approved in writing by the Commissioner for Police solely for use—
 - (i) in the research, development or testing of new or modified explosives;
 - (ii) in training in explosives detection or in the development or testing of explosives detection equipment; or
 - (iii) for forensic science purposes; or
 - (b) unmarked plastic explosives are destined to be, and are incorporated as, an integral part of duly authorised military devices in Fiji within 3 years after the coming into force of the Plastic Explosives Convention in Fiji.

(3) It is not an offence under subsection (1)(b) if the person possesses or transports unmarked plastic explosives in a quantity approved in writing by the Commissioner of Police solely for use mentioned in subsection (2).

Terrorist bombing offences

120.—(1) Subject to subsection (2), a person who unlawfully and intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a—

- (a) part of a building, land, street or waterway or other location that is accessible or open to members of the public, whether continuously, periodically or occasionally, including a commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place;
 - (b) facility or conveyance that is used or occupied, in connection with his or her official duties, by—
 - (i) a representative of any Government;
 - (ii) the Head of State of any country;
 - (iii) the Minister or a minister of any country;
 - (iv) a member of the legislature of any country;
 - (v) a Judge of any country; or
 - (vi) an official or employee of a Government or public authority or an intergovernmental organisation;
 - (c) facility, conveyance or instrumentality, whether public or privately owned, that is used in or for a publicly available service for the transportation of persons or cargo; or
 - (d) publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, energy, fuel or communications,
- commits an indictable offence.

(2) This section applies to an action that is intended by a person to cause—

- (a) death or serious bodily injury; or
- (b) extensive damage to a place mentioned in subsection (1)(a) or (b), a facility mentioned in subsection (1)(c) or a system mentioned in subsection (1)(d), if the damage results in or is likely to result in major economic loss.

(3) Any person who commits an offence under this section is liable upon conviction to a fine not exceeding \$200,000 or to imprisonment for a term not exceeding 25 years, or to both.”

New part inserted

5. The Principal Act is amended by inserting the following new part after Part 3A—

“PART 3B—SPECIFIED ENTITIES

Declarations that certain entities are specified entities

12P.—(1) The Minister through the Attorney-General may apply to the court for a declaration under subsection (3) if the Minister has reasonable grounds to believe that an entity—

- (a) has knowingly committed, attempted to commit, participated in committing or facilitated the commission of a terrorist act;
- (b) has knowingly committed, attempted to commit, participated in the commission or facilitation of the proliferation of weapons of mass destruction;
- (c) is knowingly acting on behalf of, at the direction of, or in association with, an entity mentioned in paragraph (a); or
- (d) other than an individual, is wholly owned or effectively controlled directly or indirectly by an entity mentioned in paragraph (a) or (b).

(2) The court must—

- (a) make orders for service of the application; and
- (b) deal with the application *ex parte*.

(3) If the court is satisfied that there is reasonable grounds to support the application, it must—

- (a) declare the entity to be a specified entity; and
- (b) require the Minister to give notice of the declaration to any person who may be affected by the declaration.

(4) The declaration must be published in the Gazette.

United Nations listed entities to be specified entities

12Q.—(1) For the purposes of this Act, the specified entities listed pursuant to resolutions 1267, 1988, 1540, 1718, 1737, 1989, 2253 and successor resolutions of the United Nations Security Council are listed accordingly as specified entities in Fiji, as if a declaration had been made by the court pursuant to section 12P of this Act.

(2) The Minister must, by notice published in the Gazette, declare that the Financial Intelligence Unit or any relevant Government ministry, department or Government agency, to publish in their respective website giving notice of the list of specified entities referred to in subsection (1) and continue to give notice as and when the Security Council of the United Nations adds or removes any specified entity from that list.

(3) A list of the United Nations specified entities prepared and certified by the Minister is deemed to be *prima facie* evidence that the list is a correct list of entities designated by the United Nations Security Council as specified entities.

Revocation of declarations

12R.—(1) If the court has made a declaration under section 12P in relation to an entity, the court may, on application by the Attorney-General, and upon the advice of the Minister, or the specified entity, revoke the declaration.

(2) If the application is made by the specified entity—

- (a) the specified entity must give reasonable written notice of the application to the Minister and the Attorney-General; and
- (b) before deciding on the application, the court may hear from the Minister through the Attorney-General.

(3) The court may, if it decides that there are—

- (a) reasonable grounds to do so, revoke the declaration; or
- (b) no reasonable grounds to revoke the declaration, refuse the application.

(4) If the court revokes the declaration, the Minister must—

- (a) if practicable, inform the entity in writing; and
- (b) publish a notice of revocation in the Gazette.

(5) If the application is made by a specified entity that is subject to section 12Q of this Act, the sole ground upon which the court may revoke the declaration is on the basis that it is satisfied that there are no reasonable grounds to believe that the entity is a specified entity listed by the Security Council of the United Nations.

(6) Specified entities listed in Fiji by virtue of section 12Q(1), automatically cease to be specified once they are delisted by the United Nations Security Council or the relevant United Nations Security Council Sanctions Committees.

Procedure

12S.—(1) For a hearing under this Part, the court—

- (a) may receive any information, or hear any evidence presented by the Minister through the Attorney-General in the absence of the entity or counsel representing the entity, or the public, if it considers that the disclosure of such evidence or information would prejudice national security, or endanger the safety of any person; and
- (b) may receive in evidence anything that would not otherwise be admissible as evidence (including information from the Government or institution or agency of a foreign country or an international organisation), that it thinks is reliable and relevant.

(2) For a hearing under sections 12Q or 12R, the court must give the entity a statement summarising the information available to the court, without disclosing any information that the court thinks could prejudice national security or endanger the safety of any person.

Review of declarations

12T.—(1) The Minister must review all declarations made under section 12P(3) and 12Q(1) every 3 years to determine whether there are still reasonable grounds, as set out in section 12P, for the declarations to continue to apply to specified entities.

(2) If the Minister deems that there are no reasonable grounds for a declaration to continue to apply to a specified entity, the Minister may request the Attorney-General to make an application to the court for the declaration to be revoked, in relation to the specified entity.

Appeal

12U. The Attorney-General on the advice of the Minister or an entity in relation to which a declaration is made, may appeal to the court of Appeal against a decision made by the court under this Part.

Duty to disclose information relating to terrorist property, terrorist groups or specified entities

12V.—(1) Every person must disclose to the Fiji Police Force or any officer from the authorised law enforcement agencies—

- (a) the existence of any property in his or her possession or control, which to his or her knowledge, is terrorist property, property belonging to a specified entity or for which there are reasonable grounds to suspect is terrorist property or property associated with a specified entity;
- (b) the existence of any property in his or her possession or control, owned or controlled by or on behalf of a specified entity or for which there are reasonable grounds to suspect is owned or controlled by or on behalf of a specified entity;

- (c) any information relating to the existence or likely existence of any terrorist property or property belonging to a specified entity or terrorist groups; or
- (d) any information regarding a transaction or proposed transaction for which there are reasonable grounds to suspect that it may involve terrorist property or property belonging to a specified entity.

(2) Any person who fails to disclose any relevant information or purposefully discloses false information pursuant to subsection (1) commits an offence.

(3) Any person who commits an offence under this section is liable on conviction to a fine not exceeding \$150,000 or to a term of imprisonment not exceeding 20 years, or to both.

Terrorist and proliferation financing offences

12W.—(1) Where a declaration has been made by the court under section 12P(3) or specified entities declared pursuant to 12Q(1)—

- (a) no person or entity incorporated in Fiji must within or outside Fiji knowingly provide or collect by any means, directly or indirectly, property with the intention that the property be used, or in the knowledge that the property is to be used, by a specified entity;
- (b) no citizen of Fiji and no entity incorporated in Fiji must within or outside Fiji knowingly—
 - (i) deal, directly or indirectly, in any property of a specified entity, including funds derived or generated from property owned or controlled directly or indirectly by that entity;
 - (ii) enter into or facilitate, directly or indirectly, any transaction related to a dealing referred to in subparagraph (i);
 - (iii) provide any financial or other related service in respect of the property referred to in subparagraph (i); or
 - (iv) make available any property or any financial or other related service, directly or indirectly, for the benefit of a specified entity;
- (c) no citizen of Fiji and no entity incorporated in Fiji must within or outside Fiji knowingly do anything that causes, assists or promotes, or is intended to cause, assist or promote, any activity prohibited by paragraph (a) or (b);
- (d) every citizen of Fiji and every entity incorporated in Fiji must disclose immediately to the Fiji Police Force or any officer from the authorised law enforcement agencies—
 - (i) the existence of property in their possession or control that they have reason to believe is owned or controlled by or on behalf of a specified entity; and

- (ii) information about a transaction or proposed transaction in respect of property referred to in subparagraph (i).

(2) Any person who contravenes or fails to comply with this section commits an offence and is liable upon conviction to a fine not exceeding \$150,000 or imprisonment for a term not exceeding 20 years, or to both.

(3) In a prosecution for an offence against this section, it is not necessary to prove that the property collected or provided was actually used, in full or in part, to carry out a terrorist act.

(4) Any property referred to in this section is deemed as tainted and freezable property.

Foreign terrorist fighters

12X. Any person who—

- (a) finances, recruits, organises, transports or equips individuals who travel abroad or to Fiji for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;
- (b) travels or attempts to travel abroad, or, travels or attempts to travel to Fiji, for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts, or the providing or receiving of terrorist training;
- (c) wilfully provides or collects, by any means, directly or indirectly, funds with the intention that the funds should be used, or in the knowledge that they are to be used, in order to finance the travel of individuals who travel abroad or to Fiji for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training;
- (d) wilfully organises, facilitates, plans, supports, including acts of recruitment, by any means, the travel of individuals abroad or to Fiji for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training; or
- (e) participates in, facilitates, organises, or supports acts prohibited under the United Nations Security Council Resolution 2178 and subsequent resolutions,

commits an indictable offence and is liable upon conviction to a fine not exceeding \$150,000 or imprisonment for a term not exceeding 20 years, or to both.”

Passed by the Parliament of the Republic of Fiji this 9th day of February 2017.