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Counter Terrorism and Transnational Organised Crime (Amendment) Act 2008

Commencement: 7 July 2008

REPUBLIC OF VANUATU

COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME (AMENDMENT) ACT NO. 18 OF 2008

Arrangement of Sections

1. Amendment
2. Commencement

REPUBLIC OF VANUATU

Assent: 12/06/2008
Commencement: 07/07/2008

COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME (AMENDMENT) ACT NO. 18 OF 2008

An Act to amend the [Counter Terrorism and Transnational Organised Crime Act](#) [CAP 313].

Be it enacted by the President and Parliament as follows:

1 Amendment

The [Counter Terrorism and Transnational Organised Crime Act](#) [CAP 313] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS TO THE [COUNTER TERRORISM AND TRANSNATIONAL ORGANISED CRIME ACT](#) [CAP 313]

1. Section 2

Insert the following definitions in their correct alphabetical order:

"consular officer" means a consular officer of Vanuatu including a consul-general, pro-consul or consular agent of Vanuatu;

"detection agent" means a substance mentioned in the table to [Part 2](#) of the Technical Annex to the Plastic Explosives Convention;

"fixed platform" means an artificial island, installation or structure permanently attached to the sea bed for the purposes of exploration or exploitation of resources or for other economic purposes;

"international nuclear transport" means the carriage of a consignment of nuclear material by any means of transportation intended to go beyond the territory of the country where the shipment originates;

(a) beginning with the departure from a facility of the shipper in the country; and

(b) ending with the arrival at a facility of the receiver within the country of ultimate destination;

"landing" includes alighting on water;

"means of delivery" means missiles, rockets and other unmanned systems capable of delivering nuclear, chemical and biological weapons that are specifically designed for delivering those weapons;

"military aircraft" means an aircraft of the naval, military or air forces of any country;

"military device" includes a shell, bomb, projectable, mine, missile, rocket charge, grenade or perforator, lawfully manufactured exclusively for military or police purposes;

"nuclear, chemical, or biological weapon" means:

(a) nuclear weapons and other nuclear explosive devices; or

(b) chemical weapons which are, together or separately; or

(c) toxic chemicals and their precursors, except where intended for:

(i) industrial, agricultural, research, medical, pharmaceutical, or other peaceful purposes;

or

(ii) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against toxic chemicals and to protection against chemical weapons; or

(iii) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(iv) law enforcement including domestic riot control purposes, as long as the types and quantities are consistent with such purposes:

(A) ammunitions and devices specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specifically in subparagraph (i), which would be released as a result of the employment of such munitions and devices;

(B) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (ii); or

(d) biological weapons which are:

(i) microbial or other biological agents, or toxins whatever their origin or method of production, of types and in quantities that have no justification for prophylactic, protective, or other peaceful purposes; or

(ii) weapons, equipment or means of delivery designed to use such agents or toxins for

hostile purposes or in armed conflict;

"nuclear facility" means:

(a) any nuclear reactor, including reactors installed on vessels, vehicles, aircraft (whether or not used for military, customs or police services) or space objects for use as an energy source in order to propel the vessels, vehicles, aircraft or space objects or for any other purpose;

(b) any plant or convenience being used for the production, storage or processing or transport of radioactive material;

"plastic explosive" means an explosive that:

(a) is formulated with 1 or more high explosives that in their pure form have a vapour pressure less than 10⁻⁴ Pa at a temperature of 25°C; and

(b) is formulated with a binder material; and

(c) is, when mixed, malleable or flexible at normal room temperature;

"Plastic Explosives Convention" means the Convention on the Marking of Plastic Explosives for the purpose of identification, done at Montreal on 1 March 1991;

"premises" includes the whole or any part of a structure, building, craft or vehicle;

"privileged communication" means a confidential communication, whether made directly or indirectly through an agent:

(a) between:

(i) a lawyer in his or her professional capacity and another lawyer in the same capacity; or

(ii) a lawyer in his or her professional capacity and his or her client; and

(b) to obtain or give legal advice or assistance; and

(c) not for the purpose of committing or assisting the commission of an illegal or wrongful act;

"radioactive device" means:

(a) any nuclear explosive device; or

(b) any radioactive material dispersal or radiation-emitting device which may, owing to its radiological properties, cause death, seriously bodily injury or substantial damage to property or to the environment;

"radioactive material" means nuclear material and other radioactive substances which contain nuclides which undergo spontaneous disintegration (a process accompanied by emission of one or more types of ionizing radiation, such as alpha-, beta-, neutron particles and gamma rays) and which may, owing to their radiological or fissile properties, cause death, serious bodily injury or substantial damage to property or to the environment;

"unlawful employee for an employer" means a person whom the employer knows, or ought reasonably to know, is not entitled under Vanuatu law to undertake employment in the employer's service;

"unmarked plastic explosive" means a plastic explosive that:

(a) does not contain a detection agent; or

(b) at the time of manufacture, does not contain the minimum concentration level of a detection agent mentioned in the table to [Part 2](#) of the Technical Annex to the Plastic Explosives Convention.

2 Paragraph 3 (2) (a)

Delete "or (iv)", substitute ", (iv), (v), (vi), (vii) or (viii)"

3 Subsection 6(1)

After "terrorist act", insert "or that the person will benefit an entity that the person knows is a specified entity"

4 Subsection 10(1)

After the words "a weapon" insert ", explosive or lethal device"

5. After section 10

Insert

"10A. Participation in a terrorist group

(1) A person must not knowingly participate (whether as a member, associate member or prospective member) in a terrorist group.

(2) If a person contravenes subsection (1) the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both."

6 Subsection 31(1)

After "Vanuatu", insert "except in accordance with a written permit given by the Attorney General after consultation with the Council of Ministers"

7 Subsection 31(2)

After "material", insert "without a licence or written permission from the Attorney General after consultation with the Council of Ministers"

8. Subsection 31(3)

After "airspace", insert "without a licence or written permission from the Attorney General after consultation with the Council of Ministers"

9. After section 33

Insert

"33A Maritime Safety offences

(1) A person must not unlawfully and intentionally:

(a) seize, or exercise control over, a ship or fixed platform by force or threat of force or other form of intimidation; or

(b) commit 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; or

(c) destroy a ship or fixed platform; or

(d) cause 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; or

(e) place, or cause 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 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; or

(f) destroy or seriously damage maritime navigational facilities or seriously interfere with their operation in a way that is likely to endanger the safety of a fixed platform or the safe navigation of a ship; or

(g) communicate information, that he or she knows to be false, endangering the safety of a

fixed platform or the safe navigation of a ship; or
(h) injure or kill a person in connection with the commission, or attempted commission, of an offence mentioned in paragraph (a), (b), (c), (d), (e), (f) or (g).

(2) A person must not, with the intention of compelling another person to do or to refrain from doing any act, threaten to commit an offence mentioned in paragraph (1) (b),(c), (d), (e) 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) If a person contravenes this section, the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

33B Maritime Protocol offences

(1) A person must not unlawfully and intentionally, with the intention of intimidating a population or compelling a government or international organisation to do or to refrain from doing any act:

(a) use against or on or discharge 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; or

(b) discharge from a fixed platform or ship oil, liquefied natural gas, or other hazardous or noxious substance which is not covered by paragraph (a), in such quantity or concentration that causes or is likely to cause death or serious injury or damage; or

(c) use a ship in a manner that causes death or serious injury or damage; or

(d) threaten to commit an offence in paragraphs (a), (b), (c) or (d).

(2) A person must not unlawfully and intentionally transport on a craft:

(a) any explosive or radioactive material knowing that it is intended to cause or threatened to be used 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 for doing any act; or

(b) any nuclear, chemical, or biological weapon; or

(c) any source material, special fissionable material, or equipment or material especially designed or prepared for the processing, use or production of special fissionable material knowing that it is intended to be used in a nuclear explosive activity or in any other nuclear activity not under safeguard pursuant to an International Atomic Energy Agency comprehensive safeguards agreement; or

(d) 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

(e) a person who has committed an act that constitutes an offence under this section with the intent to assist that person to avoid criminal prosecution.

(3) A person must not unlawfully and intentionally injure or cause the death of another person in connection with the commission of any offence under this section.

(4) If a person contravenes this section, the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

33C. Arrest and delivery

(1) The master of a ship registered in Vanuatu who has reasonable grounds to believe that a person has committed an offence under section 33B 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 his or her possession that the person has committed the offence.

(3) If the person is delivered to a police officer:

- (a) the police officer must take the person into custody unless he or she has reasonable grounds to believe that the person has not committed the offence; and
- (b) if the police officer refuses to take the person into custody – give written reasons for the refusal.

(4) If a person contravenes subsection (2), the person is guilty of an offence punishable on conviction by a fine not exceeding VT 800,000.

33D Plastics explosives offences

(1) A person must not manufacture unmarked plastic explosives, knowing that they are unmarked.

(2) A person must not possess or transport unmarked plastic explosives, knowing that they are

unmarked.

(3) Subject to subsection (5), it is not an offence under subsections (1) or (2) if:

(a) The person manufactures or holds unmarked plastic explosives in a quantity approved in writing by the Attorney General solely for use:

(i) in research, development or testing of new or modified explosives; or

(ii) in training in explosives detection or in the development or testing of explosives detection equipment; or

(iii) for forensic science purposes; or

(b) the unmarked plastic explosives are destined to be, and are incorporated as an integral part of duly authorized military devices in Vanuatu within 3 years after the coming into force of the Convention on the Marking of Plastic Explosives for the Purpose of Detection in Vanuatu.

(4) It is not an offence under subsection (2) if the person possesses or transports unmarked plastic explosives in a quantity approved in writing by the Attorney General.

(5) If unmarked plastic explosives have been manufactured in, or imported into, Vanuatu before the commencement of this Act:

- (a) if they are held by authorities performing military or police functions and are not incorporated as an integral part of a military device, they must be destroyed, marked or rendered permanently ineffective within 3 years after the commencement of this Act; and
- (b) if they are held by any other person, they must be destroyed, marked or rendered permanently ineffective within 3 years after the commencement of this Act.

(6) A person must not import or export unmarked plastic explosives.

(7) If a person contravenes this section, the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

33E Power of Entry

(1) An authorized officer may enter premises where he or she has reasonable grounds to believe that explosives are being manufactured, kept or stored and do any of the following:

- (a) investigate and make inquiries on the premises to find out whether an offence under section 33D is being committed;
- (b) inspect any records, documents or equipment found on the premises;
- (c) take copies of, or extracts from, the records or documents.

(2) A person must not:

- (a) resist or obstruct an officer authorized for subsection (1) exercising the powers mentioned in subsection (1); or

- (b) knowingly give false information in response to an inquiry under subsection (1); or
- (c) suppress any material information in response to an inquiry under subsection (1).

(3) If a person contravenes subsection (2), the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

33F Nuclear terrorism offences

(1) A person must not:

(a) unlawfully possess radioactive material or make or possess a radioactive device:

(i) with the intent to cause death or serious bodily injury; or

(ii) with the intent to cause substantial damage to property or to the

(b) unlawfully use in any way radioactive material or a radioactive device, or use or damage a nuclear facility in a manner which causes a release or increases the risk of the release of radioactive material:

(i) with the intent to cause death or serious bodily injury; or

(ii) with the intent to cause substantial damage to property or to the environment; or

(iii) with the intent to compel a person, State or an international organisation to do or refrain from doing any act.

(2) A person must not:

(a) threaten to commit an offence mentioned in paragraph (1)(b); or

(b) unlawfully and intentionally make a demand supported by a threat or use of force:

(i) for the supply of radioactive material or a radioactive device; or

(ii) for a nuclear facility to be made available or for access to a nuclear facility.

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

(4) If a person contravenes this section, the person is guilty of an offence punishable on conviction by a term of imprisonment of not more than 20 years or a fine of not more than VT 100 million, or both.

10 Schedule

After item 12, insert

"13 International Convention for the Suppression of Acts of Nuclear Terrorism, adopted by the General Assembly of the United Nations on 13 April 2005"

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