

INTRODUCTION FILE

IMMIGRATION BILL 2011

(NAME OF BILL)

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Bill
Objects and Reasons
Notice of Presentation
Covering letter from Minister to Clerk to Parliament
(Authorisation from Minister of Finance under s.60 of Constitution)

FROM: Attorney General's Chambers *Ref* 1.12.11

TO: Minister *[Signature]* 1.12.11
(for signing Objects & Reasons, Notice of Presentation and covering letter to Clerk)

TO: Minister of Finance
(for signing of letter to Clerk signifying Cabinet approval under s.60 of Constitution)

TO: Clerk to National Parliament *[Signature]*
(for certificate by Speaker) 5/12/11

TO: Attorney General's Chambers
(for printing)

TO: Clerk to National Parliament *[Signature]*
(for reference during 1st, 2nd and 3rd Readings)
(Date passed.....10/12/12..... Act No.....)

TO: Attorney General's Chambers
(for checking before Assent) *[Signature]* 21/3/12

TO: Governor-General
(for Assent) *F. O. Kabui*
9/3/012.

TO: Clerk to National Parliament
(for distribution)



IMMIGRATION ACT 2012

(NO. 3 OF 2012)



IMMIGRATION ACT 2012

(NO. 3 OF 2012)

Passed by the National Parliament this 10th day of February 2012.

(This printed impression has been compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill).

Taeasi Sanga (Mrs)
Clerk to Parliament

Assented to in Her Majesty's name and on her Majesty's behalf this 9th day of March 2012.

Sir Frank Utu Ofagioro Kabui
Governor-General

Dated of Commencement: see section 1

AN ACT to provide for new immigration laws for Solomon Islands and to repeal the Immigration Act (Cap. 60), repeal the Deportation Act (Cap 58) and for related matter

ENACTED by the National Parliament of Solomon Islands.

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IMMIGRATION ACT 2012

PART 1 – PRELIMINARY

Short title and commencement	1. This Act may be cited as the Immigration Act 2012, and comes into operation on a date to be appointed by the Minister by notice in the Gazette.
Interpretation	2. In this Act, unless the context otherwise requires – “approved sponsor” has the meaning given by the regulations; “authorised electronic system” means an electronic program, system or process approved under section 92(1); “commercial carrier” includes a company, and the owner, operator or master of any means of transport, that engages in the transportation of goods or people for commercial gain; “competent authority” has the meaning given by section 89(4); “concessional entry arrangement country” means a country included on the list of countries published under section 3; “deportation order” means an order under section 31; “designated airport” means an airport or aerodrome that has been designated under section 4; “designated port” means a port that has been designated under section 5; “designated warning notice” has the meaning given by section 44(3); “Director” means the Director of Immigration referred to in section 83; “eligible dependant”: a person is an eligible dependant of another person (“the refugee”) if –

- (a) the person was accompanying the refugee at the time the refugee made a claim for protection under the laws of the Solomon Islands; and
- (b) either –
 - (i) the person is the spouse, or a child aged under 18, of the refugee; or
 - (ii) the person is a relative of the refugee whom the Permanent Secretary is satisfied is ordinarily dependent on the refugee;

“enter” means –

- (a) for a person who arrives in Solomon Islands by sea, disembark from the vessel on which the person arrived; and
- (b) for a person who arrives in Solomon Islands by air at a designated airport, departs the precincts of the airport; and
- (c) for a person who arrives in Solomon Islands by air other than at a designated airport, land in Solomon Islands; and

has been cleared by an immigration officer for entry

“exempt person” means a person who is exempt under section 11 from the requirement to hold a visa to enter or stay in Solomon Islands;

“false document” means a document that –

- (a) has been made, or altered in a material way, by a person other than a person or agency lawfully authorised to make or issue the document; or
- (b) has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner; or
- (c) is being improperly used by a person other than the rightful holder;

"family" means the spouse and dependent children under the age of 18 years

"holder" of a visa means the person to whom it was granted and any other person included in the visa;

"immigration document" means any of the following –

- (a) a document, entry or annotation made under or for the purposes of this Act;
- (b) a document material to a decision made or to be made under or for the purposes of this Act;
- (c) a true copy of a document referred to in paragraph (a) or (b);

"immigration officer" means any of the following –

- (a) the Director;
- (b) an officer referred to in section 84;
- (c) a police officer;
- (d) a Customs officer;

"maritime entry advance notification" has the meaning given by section 44(4);

"Minister" means the Minister responsible for administering this Act;

"Ministry" means the Ministry administered by the Minister;

"Prescribed" means made or provided by regulations made under this Act;

"refugee protection visa" has the meaning given by the regulations;

"restriction period" has the meaning given by section 42;

"reviewable decision" means a decision listed in section 90(2);

"sponsor obligation" has the meaning given by the regulations;

“stop departure request” means a request under section 89;

“this Act” includes regulations made under this Act;

“traditional passage” means a traditional inhabitant who arrives in the Solomon Islands under free movement and for traditional activities as set out in the Agreement between the Government of Papua New Guinea and the Government of Solomon Islands concerning the Administration of Special Areas; or, by regulation, any similar agreement entered into by the Government from time to time.

“unlawful non-citizen” has the meaning given by subsection 28(1);

“visa evidence” means evidence of a visa in accordance with subsection 12(2).

3. The Minister may, by notice published in the *Gazette*, make a list of countries that are concessional entry arrangement countries for the purposes of this Act.

Concessional entry
arrangement
country

4. The Minister may, by notice published in the *Gazette*, declare an airport to be a designated airport for the purposes of this Act.

Designated airport

5. The Minister may, by notice published in the *Gazette*, declare a port to be a designated port for the purposes of this Act.

Designated port

PART 2 – CONTROL OF ARRIVALS AND DEPARTURES

6. (1) A person who arrives in Solomon Islands must present himself or herself to an immigration officer to obtain permission to enter Solomon Islands. The person must do so –

Permission to enter
Solomon Islands

- (a) at the place (if any) and in the manner (if any) directed by an immigration officer; and
- (b) if the person arrived at a designated airport, before the person leaves the precincts of the airport; and
- (c) if the person arrived at a designated port, before the person leaves the precincts of the port; and
- (d) otherwise, before the end of the prescribed period.

(2) The immigration officer must permit the person to enter Solomon Islands if the officer is satisfied that the person meets the prescribed entry requirements.

(3) Without limitation, the officer may conclude that the person does not meet the prescribed entry requirements if the person fails to make a declaration, answer a question or produce a document in accordance with a requirement made of the person under section 51.

(4) Subsection (1) does not apply to –

- (a) a person who arrives in Solomon Islands by way of traditional passage; or
- (b) a prescribed person.

(5) A person who fails to comply with subsection (1) commits an offence and is liable on conviction –

- (a) unless paragraph (b) applies, to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both; or
- (b) if a restriction period applies to the person under section 42, to a fine not exceeding 20,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

Refusal of
permission to enter
Solomon Islands

7. (1) If an immigration officer is not satisfied that a person meets the prescribed entry requirements, the officer must –

- (a) refuse to permit the person to enter Solomon Islands; and
- (b) cancel any visa the person holds; and
- (c) take all necessary steps to remove the person from Solomon Islands as soon as practicable. These steps may include detaining the person in the custody of an immigration officer until removal is effected.

(2) Subsection (1) does not apply if the Director is satisfied that the person has made a claim for protection within the meaning of the Refugee Status Determinations Act.

8. (1) A person who intends to board an aircraft or vessel that is departing Solomon Islands must present himself or herself to an immigration officer to obtain permission to depart Solomon Islands. The person must do so –

- (a) at the place (if any) and in the manner (if any) directed by an immigration officer; and
- (b) if the aircraft is departing from a designated airport, at the designated airport before the person boards the aircraft; and
- (c) if the person is departing from a designated port, before the person boards the vessel; and
- (d) otherwise, during the prescribed period before the aircraft or vessel departs.

(2) The immigration officer must permit the person to depart unless the officer is required or permitted to refuse departure under section 9.

(3) Subsection (1) does not apply to –

- (a) a person who departs Solomon Islands by way of traditional passage; or
- (b) a prescribed person.

(4) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

9. (1) An immigration officer must refuse a person permission to depart if a stop departure request is in force under section 89 in relation to the person.

(2) The officer must refuse the person permission to depart if the person fails to present to the officer a passport or other travel document acceptable to the Director that the officer is satisfied belongs to the person and is in force.

(3) The officer may refuse the person permission to depart Solomon Islands if the person fails to present to the officer a document (other than a document referred to in subsection (2)) requested by the officer under section 51(3).

PART 3 – VISAS

Division 1 – Requirement to hold a Visa

Requirement to
hold a visa

10. A non-citizen who is not an exempt person must not –

- (a) enter Solomon Islands; or
- (b) having entered, stay in Solomon Islands;

unless the non-citizen holds a visa that is in force.

Exempt persons

11. (1) The following non-citizens are exempt from the requirement to hold a visa to enter or stay in Solomon Islands –

- (a) a person to whom the Minister is satisfied diplomatic privileges and immunities have been extended in Solomon Islands, and the family of the person (as defined in subsection (3));
- (b) a person whom the Minister is satisfied is employed in the service of the Government of Solomon Islands, and the family of the person (as defined in subsection (3));
- (c) a serving member of Her Majesty's Forces, if the Director is satisfied that responsibility for the member's repatriation has been accepted by the Service concerned;
- (d) a prescribed person, subject to any conditions imposed under subsection (2);
- (e) any other person or class of persons exempted by the Minister by notice published in the Gazette, subject to any conditions imposed under subsection (2).

(2) Conditions may be imposed for the purposes of subsection (1)(d) or (e) by –

- (a) regulation; or
- (b) the Minister by notice published in the Gazette; or

- (c) the Director by written notice given to the person, but only if the condition relates to a particular person and not to a class of persons or exempt persons generally.

(3) For the purposes of subsection (1)(a) and (b), someone is part of the family of a person if he or she is the person's spouse or is a child of the person aged under 18.

(4) Section 37 of the Labour Act (Cap. 73) does not apply in relation to an exempt person unless –

- (a) the person is an exempt person because he or she is family of a person referred to in subsection (1)(a) or (b); or
- (b) if the person is exempt under subsection (1)(d), the regulations specify that section 37 applies in relation to the person; or
- (c) if the person is exempt under subsection (1)(e), the notice referred to in that paragraph specifies that section 37 applies in relation to the person.

(5) A person in relation to whom section 37 of the Labour Act (Cap.73) applies ceases to be an exempt person (including for the purposes of section 69 of this Act) if he or she contravenes section 37.

Division 2 – Grant of Visa

12. (1) The Director may, upon application in the prescribed form, grant a non-citizen a visa if the Director is satisfied that the non-citizen meets the prescribed requirements for the visa.

Grant of visa

(2) The Director must give the holder of the visa evidence of the visa in a prescribed form or in any form the Director considers appropriate.

(3) The Director may grant a single visa to more than one non-citizen in circumstances prescribed by the regulations.

13. (1) The Director must refuse to grant a visa to a person if

Refusal to grant visa

- (a) the person does not meet the prescribed requirements for the visa; or

- (b) section 14 (fraud in relation to application) applies.

(2) If the Director refuses to grant a visa, the Director must promptly give the person notice in writing of –

- (a) the refusal; and
- (b) if the person has the right to apply for review of the decision under section 90, that right and the reasons for the refusal.

Fraud in relation to application

14. (1) For the purposes of section 13(1)(b), this section applies (and the Director must refuse to grant a visa) if the Director is satisfied that the person's visa application includes or is accompanied by information or a document that is misleading or false.

(2) It does not matter whether or not the person knows that the information is false or misleading or that the document is a false document.

Division 3 – Nature and Effect of Visa

Effect of visa

15. (1) A visa that is in force authorises the holder of the visa –

- (a) to enter and stay in Solomon Islands; or
- (b) to stay in Solomon Islands (but not to enter Solomon Islands);

in accordance with this Act and the terms and conditions prescribed for or otherwise applying to the visa.

(2) Nothing in this section or in any visa limits the power of an immigration officer to refuse a non-citizen entry to Solomon Islands or to cancel a visa held by a non-citizen.

When a visa is in force

16. A visa granted to a non-citizen is in force until the earlier of –

(a) the day the visa is cancelled under section 7 or 21; or

(b) the day the visa ceases to be in force under section 22.

Classes of visa

17. The classes of visas and different kinds of visas within classes of visa may be prescribed by regulation for the following purposes–

- (a) visitors; or

- (b) employment; or
- (c) investors; or
- (d) family; or
- (e) any other prescribed purpose.

18. (1) The regulations may prescribe requirements that must be met for a person to be granted or to hold a visa.

Requirements for
visa

(2) The Director may, by notice published in the Gazette, issue written directions to be known as the onshore change of status directions, specifying the circumstances in which a person who is already present in Solomon Islands and the holder of a visa of a class may apply for a visa of another class.

19. (1) The regulations may prescribe terms and conditions that apply to visas.

Terms and
conditions of visa

(2) In addition to any prescribed terms or conditions, the Director may, by notice published in the Gazette, specify terms or conditions that apply in relation to visas or visas of a particular class.

(3) The Director may, by notice in writing given to the holder of a visa –

- (a) amend or revoke a prescribed term or condition in relation to the visa; or
- (b) amend or revoke a term or condition specified under subsection (1) in relation to the visa; or
- (c) impose a term or condition in relation to the visa.

20. (1) The regulations may prescribe fees for visa applications, for the grant of a visa or for any other matters in relation to visas.

Fees in relation to
visas

(2) Without limiting section 93 of this Act or section 66(2) of the Interpretation and General Provisions Act (Cap.85), the regulations may prescribe different fees in respect of visas of the same class if different circumstances, prescribed by the regulations, apply.

- (3) The Minister may, by notice published in the *Gazette*, make a list of countries to be known as the fee-free entry list for the purposes of this Act.

Division 4 – Cessation of Visa

Cessation of visa
by cancellation

21. (1) The Director may cancel a visa, other than a refugee protection visa, if the Director is satisfied that –

- (a) the holder has breached a condition of the visa; or
- (b) the requirements for the visa have ceased to be met or were never met; or
- (c) there is a character concern about the holder within the meaning of section 23; or
- (d) there is a serious health concern about the holder within the meaning of section 24; or
- (e) the visa was obtained through fraud or false information or document;

(2) The Director must cancel a refugee protection visa if –

- (a) the Permanent Secretary has determined that the holder has ceased to qualify for refugee status; or
- (b) the Permanent Secretary has cancelled a determination that the holder qualifies for refugee status; or
- (c) the Minister has made an expulsion declaration or a return declaration in relation to the holder; or
- (d) the holder is an eligible dependant of a person whose refugee protection visa is cancelled.

(3) The Director cancels a visa by making a record of the cancellation.

(4) The Director must give the person who was the holder of the visa written notice of the cancellation, including –

- (a) the reasons for cancellation; and
- (b) if the person has the right to apply for review of the decision under section 90, notice of that right.

(5) For the purposes of subsection (1)(c), even if the Director is satisfied that there is a character concern about a holder within the meaning of section 23, the Minister may determine in writing that it is in the national interest for the Director to disregard that character concern in making a decision about whether to cancel the holder's visa. If the Minister does so, the Director must comply.

(6) If there is a character concern about the holder because of a recommendation by a relevant authority under section 23(1)(c), the Minister must not make a determination under subsection (5) without the agreement of that relevant authority.

(7) This section does not apply in relation to the cancellation of a visa by an immigration officer under section 7.

22. A visa that is not cancelled ceases to be in force on the earliest of the following days –

Cessation of visa
other than by
cancellation

- (a) for a visa granted on application made outside Solomon Islands, the day after the last day of the period of entry validity prescribed for the visa or specified in the visa evidence if the visa holder has not entered Solomon Islands at least once by the end of that period;
- (b) for a visa granted on application made outside Solomon Islands, the day on which the visa holder enters Solomon Islands after the grant of that visa, if the visa holder fails to comply with section 6;
- (c) the day after the last day of the period of stay prescribed for the visa or specified in the visa evidence;
- (d) if the regulations prescribe an overall limit on the amount of time a visa holder can spend in Solomon Islands while holding a visa of a particular class, the day after that limit is reached if the visa is a visa of that class.

Division 5—Character Concern and Serious Health Concern

- Character concern 23. (1) There is a character concern about a person if –
- (a) for a person who has not yet been granted a visa, the Director considers that the person has a record of serious criminal conduct within the meaning of subsection (2); or
 - (b) for a person who has been granted a visa—both –
 - (i) the Director considers that the person has a record of serious criminal conduct within the meaning of subsection (2); and
 - (ii) to the extent to which the record was acquired before the person was granted the visa, the person did not disclose it in a declaration made for the purposes of section 51(1); or
 - (c) the Minister declares, in accordance with a recommendation by a relevant authority within the meaning of subsection (3), that the person is a threat to national security; or
 - (d) the Director considers that, having regard to the person's past and present conduct (including but not limited to criminal conduct), the person is not of good character; or
 - (e) the Director considers that there is a significant risk that, if the person were allowed to enter or stay in Solomon Islands, the person would –
 - (i) engage in criminal conduct in Solomon Islands; or
 - (ii) vilify a segment of the Solomon Islands community; or
 - (iii) incite discord in the Solomon Islands community or in a segment of that community; or

- (iv) represent a danger to the Solomon Islands community or to a segment of that community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community or segment, or in any other way.

(2) For the purposes of subsection (1)(a) and (b), a person has a record of serious criminal conduct if –

- (a) the person has been convicted of a criminal offence (whether in Solomon Islands or a foreign country) and sentenced to death, life imprisonment or a term of imprisonment of more than one year; or
- (b) the person has been convicted of more than one criminal offence (whether in Solomon Islands or in a foreign country or both) and sentenced to terms of imprisonment together totalling at least 2 years; or
- (c) the person has been convicted of an offence (whether in Solomon Islands or a foreign country) connected with a terrorist act, people smuggling, people trafficking or child sex; or
- (d) the person has been acquitted of an offence (whether in Solomon Islands or a foreign country) on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution.

(3) For the purposes of subsection (1)(c), each of the following is a relevant authority –

- (a) the Commissioner of Police;
- (b) the Minister responsible for national security.

24. There is a serious health concern about a person if a Government medical officer has certified that the person is suffering from a physical or psychological condition that poses a serious threat to the health or safety of the community.

Serious health
concern

Division 6 – Sponsorship

Regulations may
make provisions in
relation to sponsors

25. Without limiting Division 2 or 3 of this Part, regulations may make provision in relation to any or all of the following matters in relation to visas or a class of visa –

- (a) requirements for visa applicants to have an approved sponsor;
- (b) requirements to be met in order to qualify as an approved sponsor;
- (c) obligations imposed on approved sponsors;
- (d) penalties (including offences in addition to the offences in this Division) for approved sponsors who do not comply with the obligations imposed on them.

Offence – failure to
comply with
sponsor obligation

26. An approved sponsor who fails to comply with a sponsor obligation commits an offence and is liable on conviction –

- (a) for a natural person, to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both; or
- (b) in any other case, to a fine not exceeding 25,000 penalty units.

Offence – sponsor
giving misleading
information or false
document

27. (1) A person who is, or is seeking to become, an approved sponsor commits an offence if –

- (a) the person gives information or produces a document to an immigration officer in connection with the sponsor's sponsorship or proposed sponsorship of a visa applicant or visa holder; and
- (b) the person knows that, or there are reasonable grounds to suspect that –
 - (i) the information is false or misleading (including information that is misleading because of what it omits); or
 - (ii) the document is a false document.

(2) A person who is convicted on an offence under subsection (1) is liable –

- (a) for a natural person, to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both; or
- (b) in any other case, to a fine not exceeding 25,000 penalty units.

(3) An approved sponsor is taken to have given the officer any information or document given in connection with the sponsor's sponsorship or proposed sponsorship of a visa applicant or visa holder, unless the person proves otherwise.

PART 4 – UNLAWFUL NON-CITIZENS

Division 1—Unlawful Non-Citizens and Duty to Depart, Daily Fine and Imposition of Conditions

28. (1) A person is an unlawful non-citizen if person's entry into or presence in Solomon Islands contravenes section 10.

Unlawful non-citizens and duty to depart

(2) An unlawful non-citizen has a duty to depart Solomon Islands, unless subsection (3) applies.

(3) An unlawful non-citizen does not have a duty to depart Solomon Islands if all of the following apply –

- (a) the unlawful non-citizen has applied for a visa in accordance with the regulations; and
- (b) the application bar referred to in the regulations does not apply; and
- (c) the application has not been finally determined; and
- (d) the Director has no reason to believe that there is a character concern about the person within the meaning of section 23.

(4) An application is finally determined for the purposes of subsection (3)(c) if –

- (a) the Director has granted the person a visa; or

(b) if the Director has refused to grant the person a visa –

- (i) the person does not have a right to apply for review of the refusal under section 90; or
- (ii) the prescribed period for applying for review of the refusal under section 90 has ended and the person has not applied for review under that section or to the High Court for judicial review; or
- (iii) a refusal to grant the person a visa has been affirmed on review under section 90.

Daily fine

29. (1) A fine of the prescribed amount is payable, by a person who is an unlawful non-citizen, for each day on which the person is present in Solomon Islands as an unlawful non-citizen, up to and including the day on which the person departs.

(2) The regulations may prescribe circumstances in which a person prescribed by the regulations is jointly and severally liable for the fine payable by the unlawful non-citizen.

(3) Despite subsection (1), a fine is not payable in the following circumstances –

- (a) if the person departs Solomon Islands before the end of the 21st day after the day on which the person became an unlawful non-citizen;
- (b) if the person became an unlawful non-citizen because the person's visa was cancelled.

(4) The fine may be recovered by the Director in a court of competent jurisdiction as a civil debt due to the Crown.

Imposition of conditions

30. (1) The Director may require an unlawful non-citizen to do any or all of the following –

- (a) lodge a bond of an amount not more than the prescribed maximum in the prescribed way (if any);

- (b) report at specified times or specified intervals to a specified place of immigration business;
- (c) reside at a specified place;
- (d) report the person's place of residence and any changes to that place of residence;
- (e) present evidence, of a kind specified by the Director, of the person's arrangements to depart Solomon Islands;
- (f) present evidence, of a kind specified by the Director, of the person's efforts to obtain a travel document;
- (g) any other thing specified by the Director for the purposes of ensuring that the unlawful non-citizen either departs Solomon Islands or applies for a visa in accordance with the regulations.

(2) Subsection (1) does not apply to an unlawful non-citizen who is being detained. However, the Director may impose conditions on an unlawful non-citizen who is released from detention from the time of release or any later time.

Division 2—Deportation

31. (1) The Minister may, by signed instrument, make an order under this section for the deportation of an unlawful non-citizen who has a duty to depart Solomon Islands under section 28, if the Minister is satisfied that –

Deportation order

- (a) section 23(2) (record of serious criminal conduct) has started to apply to the unlawful non-citizen as a consequence of one or more offences committed in Solomon Islands; or
- (b) if paragraph (a) does not apply, there is a character concern of another kind about the unlawful non-citizen within the meaning of section 23; or
- (c) the unlawful non-citizen has been given a reasonable opportunity to voluntarily depart Solomon Islands and it is reasonable to conclude that the person is unlikely to

voluntarily depart Solomon Islands (whether because the person does not have the means to do so or for any other reason).

(2) The Minister must cause the deportation order to be served on the unlawful non-citizen as soon as practicable.

Deporting a person to whom a deportation order applies

32. (1) An immigration officer may, in accordance with this section, deport a person to whom a deportation order applies. The officer may take all necessary steps, and may use reasonable force if necessary, to effect the person's deportation.

(2) An immigration officer must not deport a person until at least 7 days after the day on which the person is served with the deportation order, unless the person consents in writing to be deported sooner.

(3) An immigration officer must not deport a person if either of the following applies –

- (a) the person applied to the High Court for judicial review of the decision to make the deportation order before the end of the 7th day after the day on which the person was served with the order, and the High Court has not yet made a decision;
- (b) a stop departure request is in force in relation to the person under section 89.

Voluntary departure may still be possible

33. (1) Even if a deportation order applies to a person, the Minister may, if the Minister considers it appropriate and if the person's visa was not cancelled because of a character concern about the person within the meaning of section 23, allow the person to depart Solomon Islands voluntarily before the end of a period specified by the Minister.

(2) If the person departs voluntarily before the end of the specified period, the person is taken not to have been deported from Solomon Islands.

Costs of deportation

34. (1) An unlawful non-citizen who is deported from Solomon Islands is liable to pay the Government the costs of the person's deportation, including, if the non-citizen is escorted from Solomon Islands, the costs of that escort.

(2) If a sponsor is liable for the costs of removal of a person who is deported from Solomon Islands, the sponsor

and the unlawful non-citizen are jointly and severally liable for those costs.

- (3) A liability under this section may be recovered by the Director in a court of competent jurisdiction as a civil debt due to the Crown.

Division 3—Detention

35. (1) An immigration officer may detain a person who is, or whom the officer suspects on reasonable grounds is, an unlawful non-citizen who has a duty to depart under section 28 for the purpose of effecting the person's departure from Solomon Islands.

Detention of
unlawful non-
citizens

- (2) An immigration officer who detains a person must, as soon as practicable and in a language the person understands, inform the person of the reasons the person is being detained.

- (3) A person may be detained under this Division only for so long as is reasonably necessary —

- (a) if the person's identity or immigration status is uncertain, to ascertain that identity or status; and
- (b) to effect the person's departure from Solomon Islands.

36. (1) An immigration officer who detains a person under section 35 must, as soon as practicable, ask the Director to make a detention order for the person.

Approval by
Director

- (2) The Director may make a detention order if the Director is satisfied that —

- (a) the person is, or there are reasonable grounds to suspect that the person is, an unlawful non-citizen; and
- (b) in all the circumstances, detaining the person is the most appropriate way of ensuring that the person departs Solomon Islands.

- (3) A detention order must —

- (a) be in writing in the prescribed form (if any); and

- (b) specify the place of detention in accordance with section 37(2); and
- (c) if the place of detention is a correctional centre, specify that –
 - (i) for the purposes of the Correctional Services Act 2007, the person is a remand prisoner; and
 - (ii) the person must be brought before a magistrate every 14 days in accordance with section 40; and
 - (iii) the person may be released from detention by order of the Director or by court order.

(4) The immigration officer must release the person from detention if –

- (a) the Director decides not to make a detention order for the person; or
- (b) the Director does not make a detention order for the person by the end of the second working day after the day the immigration officer detained the person.

Place of detention

37. (1) If a detention order has not been made for a person, the person must be detained in the custody of an immigration officer.

(2) If a detention order has been made for a person, the person must be detained –

- (a) at a place, or in the custody of a person, approved in writing by the Director; or
- (b) in a correctional centre.

(3) For the purposes of subsection (2)(a), the Director may approve a place or person generally or for the purposes of the detention of a particular person. If the Director approves a place or person for the purposes of the detention of a particular person, the Director does so by specifying the place or person in the detention order.

38. (1) If a detention order is made for a person, an immigration officer must inform the person, as soon as practicable and in a language the person understands, of –

- (a) the Director's duty to review the person's detention under section 39; and
- (b) the person's right to be brought before a magistrate for a hearing under section 40; and
- (c) the person's right to choose to have a legal representative accompany the person to the hearing.

(2) If a detention order is made for a person, the Director must, as soon as reasonably practicable –

- (a) if the person's identity is uncertain, take or cause to be taken all reasonable steps to identify the person; and
- (b) if the person's immigration status is uncertain, take or cause to be taken all reasonable steps to ascertain whether the person is an unlawful non-citizen; and
- (c) if the person is ascertained to be an unlawful non-citizen, take or cause to be taken all reasonable steps to effect the person's departure from Solomon Islands.

(3) The person must be released from detention if –

- (a) the person is granted a visa; or
- (b) the Director orders that the person be released under subsection (4) or section 39; or
- (c) a court orders that the person be released.

(4) If the person is ascertained not to be an unlawful non-citizen, the Director must order that the person be released.

39. (1) If a person is detained under this Division for at least 7 days, the Director must, before the end of the 10th day after the person was first detained, consider –

- (a) the reasons for and the circumstances of the person's detention; and
- (b) progress made to –
 - (i) if the person's identity or immigration status is uncertain, ascertain that identity or status; or
 - (ii) otherwise, effect the person's departure from Solomon Islands;

and decide whether or not to order that the person be released.

(2) The Director must order that the person be released from detention if the person is ascertained not to be an unlawful non-citizen.

(3) The Director may order that the person be released from detention if –

- (a) the Director is satisfied that the person will, if released, depart Solomon Islands as soon as practicable and not pose a threat to the community in the meantime; or
- (b) it appears to the Director for any other reason that it is no longer appropriate for the person to be detained.

(4) An order must be made in writing in the prescribed form (if any).

Hearing of
detention order by
Principal Magistrate

40. (1) If a detention order is made for a person under section 36, the person must be brought before the Principal Magistrate every 14th day after the day on which the order was made, for a hearing in accordance with this section.

(2) The person may choose to be accompanied by a legal representative, who may make or respond to submissions on behalf of the person.

(3) The Principal Magistrate must decide whether it is reasonable to continue to detain the person for the purpose of effecting the person's departure from Solomon Islands, having regard to –

- (a) any considerations noted by the Director in making a decision under section 36 or 39; and
 - (b) any submissions made by the Director; and
 - (c) any submissions made by the person, including submissions in response to considerations noted or submissions made by the Director.
- (4) The Principal Magistrate must give the person the opportunity to respond to considerations noted or submissions made by the Director before making the decision under subsection (3).
- (5) The Principal Magistrate may order that the person be released if –
 - (a) the person satisfies the Magistrate that he or she will, if released from detention, depart Solomon Islands before the end of a period specified by the magistrate (which must not be longer than 21 days from the date of the person's release) and not pose a threat to the community in the meantime; or
 - (b) it appears to the Magistrate for any other reason that it is no longer reasonable for the person to be detained for the purposes of effecting his or her departure.
- (6) If the Principal Magistrate orders that a person be released, the Magistrate –
 - (a) must, if the release is ordered under subsection (5)(b), impose as a condition of the order that the person depart Solomon Islands before the end of the specified period referred to in that paragraph; and
 - (b) may, in any case, impose any or all of the conditions in section 30 on the person.
- (7) An immigration officer may detain a person released by order of the Principal Magistrate under this section if the person breaches a condition of the order.
- (8) Subsection (1) is taken to be satisfied if –

- (a) apart from this subsection, a person would be required to be brought before the Principal Magistrate on a Saturday or Sunday or a day that is a public holiday in Solomon Islands or the province of Solomon Islands in which the person is being detained; and
- (b) the person is brought before the Magistrate on the next working day.

Offence of escaping
from detention

41. A detained person who escapes from custody commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

Division 4 – Restriction on Return to Solomon Islands

Restriction on
return to Solomon
Islands

42. (1) A person must not travel to Solomon Islands during a restriction period that applies to the person under subsection (3).

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 20,000 penalty units or to imprisonment for a term not exceeding 2 years, or both.

(3) A restriction period applies to a person in the circumstances specified in column 1 of the table. The *restriction period* is the period specified for those circumstances in column 2 of the table.

	Column 1 A restriction period applies to a person if:	Column 2 The restriction period is:
1	The person is deported from Solomon Islands on the ground referred to in section 31(1)(a) (record of serious criminal conduct)	The period of 20 years starting on the day the person is deported
2	The person is deported from Solomon Islands on the ground referred to in section 31(1)(b) (other character concern)	The period of 10 years starting on the day the person is deported
3	The person is deported from Solomon Islands on the ground referred to in section 31(1)(c) (unlikely to voluntarily depart)	The period of 5 years starting on the day the person is deported
4	At the time the person departs Solomon Islands, the person has been an	The period of 2 years starting on the day

	unlawful non-citizen for at least 21 days and the person is not covered by another item of this table	the person departs
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(3) The Minister may, by notice published in the Gazette, reduce the restriction period that applies to a person under subsection (2) if –

- (a) the person requests the Minister to do so in the prescribed form (if any); and
- (b) for a person who was deported from Solomon Islands, at least 2 years have passed since the day the person was deported; and
- (c) the Minister considers that it is in the public interest to allow the person to return to Solomon Islands before the end of the restriction period; and
- (d) the person has satisfied any financial liability arising under this Act.

(4) If the Minister reduces a restriction period under subsection (3), the restriction period that applies to the person ends on the day specified by the Minister in the notice published under that subsection.

PART 5 – AIRCRAFT AND VESSELS

Division 1 – Arrival of Aircraft and Vessels

43. (1) The master of an aircraft or vessel arriving in Solomon Islands must –

Duties in relation to arrival of aircraft or vessel

- (a) give notice to the Director –
 - (i) of all persons on board the aircraft or vessel; and
 - (ii) of any other prescribed details or details required by the Director in writing; and
- (b) give the notice referred to in paragraph (a) –

- (i) in the prescribed manner and form or (if a manner or form is not prescribed) in any manner and form approved by the Director in writing; and
- (ii) before the end of the prescribed period or (if a period is not prescribed) a period approved by the Director in writing; and
- (c) bring the aircraft or vessel directly to a designated airport or designated port without landing anywhere else in Solomon Islands; and
- (d) if an immigration officer directs the master to bring the aircraft or vessel to a specified place, bring the vessel to that specified place and not move it from there until authorised by an immigration officer; and
- (e) if an immigration officer requests to board the aircraft or vessel, allow the officer to do so; and
- (f) if an immigration officer directs the master not to allow any person, or not to allow a specified class of persons, to disembark, prevent any person, or the specified class of persons, from disembarking until or unless disembarkation is authorised by an immigration officer; and
- (g) if the master knows or has reasonable grounds to believe that any person on board does not have the travel documents necessary for lawful entry to Solomon Islands or is a stowaway, inform an immigration officer; and
- (h) if an immigration officer directs the master to present to the officer any person on board for the purposes of exercising powers under section 51, present that person to the officer; and
- (i) pay the prescribed fee (if any) in relation to arrival of the aircraft or vessel.

- (2) Subsection (1)(a) does not apply in relation to an aircraft or vessel prescribed by notice.
- (3) Subsection (1)(b)(ii) does not apply in relation to an aircraft or vessel to which subsection (4)(b) applies.
- (4) Subsection (1)(c) does not apply if –
- (a) before an aircraft or vessel arrives in Solomon Islands, the Director gives the master of the aircraft or vessel authorisation in writing (including in electronic form) to bring it directly to another place in Solomon Islands, and the master does so; or
 - (b) both –
 - (i) the aircraft or vessel is compelled to land by stress of weather, the condition of the aircraft or vessel or an air, maritime or medical emergency; and
 - (ii) the master takes all reasonable steps to give notice in accordance with subsection (1)(a) and subsection (1)(b)(i) as soon as practicable after landing; or
 - (c) in the case of a vessel, the vessel arrives in Solomon Islands by way of traditional passage.
- (5) The master of an aircraft or vessel commits an offence if the master –
- (a) contravenes subsection (1)(a); or
 - (b) gives the Director notice under subsection (1)(a) that the master knows or has reasonable grounds to believe is false or misleading.
- (6) The master of an aircraft or vessel who is convicted under subsection (5) is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for term not exceeding 6 months, or both.

44. (1) The master of a vessel commits an offence if –
- (a) the Director gives the master a designated warning notice before any person disembarks from the vessel in Solomon Islands; and
 - (b) a person specified in the notice disembarks from the vessel in Solomon Islands.

(2) The master of a vessel who is convicted under subsection (1) is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for term not exceeding 6 months, or both.

- (3) A designated warning notice is a notice –
- (a) given by the Director to the master of a vessel in response to a maritime entry advance notification for that vessel; and
 - (b) specifying a person or persons who were named in the maritime entry advance notification and whom the Director intends to refuse permission to enter Solomon Islands.

(4) A *maritime entry advance notification* is a notice given to the Director by the master of a vessel, in a form and in the manner (if any) approved by the Director in writing, notifying of the vessel's intended arrival in Solomon Islands.

45. (1) The master of an aircraft or vessel that has arrived in Solomon Islands must not discharge in Solomon Islands any member of the crew of the aircraft or vessel unless that member –

- (a) is a Solomon Islands citizen; or
- (b) is an exempt person and has been permitted to enter in accordance with section 6; or
- (c) holds a visa and has been permitted to enter in accordance with section 6.

(2) The master of an aircraft or vessel who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for term not exceeding 6 months, or both.

46. (1) If, after a vessel arrives in Solomon Islands and before it departs, a person ceases to be, or becomes, a passenger on or member of the crew of the vessel, the master of the vessel must give the Director notice of the change, in the manner and form approved by the Director and within one week of the change having occurred.

(2) Subsection (1) does not apply in relation to a person who becomes a passenger on the vessel in order to travel to another place in Solomon Islands without departing Solomon Islands.

Division 2 – Departure of Aircraft and Vessels

47. (1) The master of an aircraft or vessel departing Solomon Islands must –

- (a) if an immigration officer directs the master to bring the aircraft or vessel to a specified place, bring the vessel to that specified place and not move it from there until authorised by an immigration officer; and
- (b) if an immigration officer requests to board the aircraft or vessel, allow the officer to do so; and
- (c) if an immigration officer requests the master to answer any questions or give any information in relation to the persons on board, comply with the request; and
- (d) in the case of a vessel or an aircraft departing on a flight other than a scheduled commercial passenger service, not depart Solomon Islands until authorised to do so by an immigration officer; and
- (e) before departure, pay the prescribed fee (if any) in relation to departure of the aircraft or vessel.

(2) The master of an aircraft or vessel commits an offence if the master –

- (a) contravenes subsection (1); or
- (b) under subsection (1)(c), answers a question in a way, or gives information that, the master

knows or has reasonable grounds to believe is false or misleading.

- (3) The master of an aircraft or vessel who is convicted under subsection (2) is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for term not exceeding 6 months, or both.

Duty in relation to persons being deported or prevented from entering

48. (1) The master of an aircraft or vessel departing Solomon Islands must accept on board, and prevent, using reasonable force if necessary, from disembarking before departure a person –

- (a) to whom a deportation order relates and whom an immigration officer requires to be placed on board the aircraft or vessel; or
- (b) who, an immigration officer has informed the master, is or will be refused entry to Solomon Islands.

- (2) The master of an aircraft or vessel who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for term not exceeding 6 months, or both.

Division 3 – Carriage of Unlawful Non-Citizens by Aircraft or Vessel

Liability for cost of return of unlawful non-citizen

49. If a person is brought to Solomon Islands by a commercial carrier and an immigration officer refuses under section 7 to permit the person to enter, the commercial carrier is liable for the costs of removing the person from Solomon Islands.

Liability for cost of return of unlawful non-citizen

50. (1) A commercial carrier commits an offence if –

- (a) the carrier brings a person to Solomon Islands; and
- (b) an immigration officer refuses under section 7 to permit the person to enter because the person does not have the travel documents necessary for lawful entry.

- (2) A commercial carrier convicted under subsection (1) is liable on conviction to a fine not exceeding 50,000 penalty units.

- (3) Subsection (1) does not apply if –

- (a) before the person boarded the carrier's transport to Solomon Islands, the person presented to the carrier or its agent –
 - (i) the travel documents required for the person's lawful entry to Solomon Islands; or
 - (ii) travel documents that the carrier or agent had reasonable grounds to believe were the travel documents required for the person's lawful entry to Solomon Islands; or
- (b) the person entered Solomon Islands only because the carrier's means of transport was compelled to land by stress of weather, the condition of the means of transport or an air, maritime or medical emergency.

(4) A commercial carrier who commits an offence under subsection (1) is, in addition to being liable for costs under section 49, liable for any costs incurred by the Government in maintaining the person while in Solomon Islands.

PART 6 – POWERS OF IMMIGRATION OFFICERS

Division 1 – Power to Question and Require Production of Documents

51. (1) An immigration officer may require a person arriving in or departing from Solomon Islands to make and sign a declaration in writing in the prescribed form or in a form approved by the Director.

Power to require declaration, answer questions and production of documents

(2) An immigration officer may, for the purposes of this Act, require a person to answer any questions asked by the officer if –

- (a) the person is entering or departing Solomon Islands; or
- (b) the person is applying for a visa or being considered for the status of exempt person; or
- (c) the person is a sponsor; or
- (d) the officer knows or suspects on reasonable grounds that the person is an unlawful non-citizen; or

- (e) the officer has reason to believe that the person may be able to give the officer information about a person to whom paragraph (a), (b), (c) or (d) applies.

(3) An immigration officer may, for the purposes of this Act, require a person to whom subsection (2) applies to produce any documents specified by the officer.

(4) For the purposes of subsection (2) or (3), the officer may –

- (a) specify the way in which the question is to be answered or the document produced, including by requiring the person to attend an immigration office; and
- (b) specify the time at which or before which the question is to be answered or the document produced.

(5) A person who is required to answer a question or produce a document under this section must do so even if the answer or document might tend to incriminate the person. However, an answer given or document produced under this section is not admissible in any criminal or civil proceedings against the person other than proceedings for an offence under subsection (8).

(6) An immigration officer may –

- (a) take a copy of any document produced; and
- (b) retain possession of any document produced (including a document that an officer has copied) for so long as necessary for the purposes of this Act.

(7) An immigration officer must provide a person whose document is retained under subsection (6) with access to, or a copy of, the document on request by the person (unless it is a false document).

(8) A person commits an offence if –

- (a) an immigration officer requires the person to make and sign a declaration, answer a

question or produce a document under this section; and

(b) either –

- (i) the person fails to make or sign the declaration, answer the question or produce the document in accordance with the requirement; or
- (ii) the person makes a declaration or gives an answer that is false or misleading (including a declaration or answer that is misleading because of what it omits) or produces a false document.

(9) A person who is convicted under subsection (8) is liable to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

Division 2 – Powers in relation to Aircraft and Vessels

52. An immigration officer may, in relation to an aircraft or vessel that has arrived in or is departing from Solomon Islands, do any or all of the following –

Power in relation
to arriving or
departing aircraft
and vessels

- (a) direct the master to bring the aircraft or vessel to a specified place and not move it from that place until authorised by an immigration officer;
- (b) board the aircraft or vessel;
- (c) direct the master of the aircraft or vessel not to allow any person, or not to allow a specified class of person, to disembark until disembarkation is authorised by the officer;
- (d) require the master to present to the officer any person on board for the purposes of exercising powers under section 51.

Division 3 – Search Powers

Power to search
persons

53. (1) If an immigration officer has reasonable grounds to suspect that a person arriving in Solomon Islands is not being truthful about the person's identity or reasons for coming to Solomon Islands, the officer may search the person and any item belonging to the person for the purposes of ascertaining the person's identity or reasons for coming to Solomon Islands.

(2) If an immigration officer has reasonable grounds to suspect that a person is an unlawful non-citizen, the officer may search the person and any item belonging to the person for the purposes of ascertaining whether or not the person is an unlawful non-citizen.

(3) If –

- (a) an immigration officer is conducting a search of a vessel, aircraft, vehicle or premises under another section of this Division; and
- (b) a person is on or in the vessel, aircraft, vehicle or premises; and
- (c) the officer has reasonable grounds to suspect that the person may be a person the officer is searching for or may have on the person anything the officer is searching for,

the officer may search the person and any item that belongs to the person for the purposes of ascertaining the person's identity or finding the item.

(4) A person must only be searched by an immigration officer of the same sex as the person.

(5) For the purposes of this section, a search of a person includes patting down the person's outer clothing and requiring the person to turn out his or her pockets. It does not include a strip search or any kind of invasive body search.

Power to search
places

54. (1) An immigration officer may enter and search premises, or board and search an aircraft, vessel or vehicle, in accordance with this section.

(2) The officer may enter and search the place if the officer suspects on reasonable grounds that any of the following is in the place –

- (a) an unlawful non-citizen;
 - (b) anything that may identify, or relate to the immigration status of, an unlawful non-citizen;
 - (c) anything relating to whether a person who holds a visa is complying with the conditions of the visa;
 - (d) anything relating to whether a sponsor is complying with this Act;
 - (e) evidence relating to the commission of an offence against this Act.
- (3) The officer –
- (a) may stop an aircraft, vessel or vehicle for the purposes of conducting a search; and
 - (b) may (subject to subsection (5)) enter premises or board an aircraft, vessel or vehicle and conduct the search whether or not consent to enter or board is granted; and
 - (c) may (subject to subsection (5)) use reasonable force to enter or board and to enter any locked part of the place if the person in charge of the place does not authorise the entry or unlocking; and
 - (d) may (subject to subsection (5)) search anything in the place and may use reasonable force to open any locked or sealed container or other item if the person in charge of the place does not authorise the unlocking or unsealing; and
 - (e) may detain an aircraft, vessel or vehicle for the purposes of conducting the search; and
 - (f) may order the person in charge of an aircraft, vessel or vehicle to bring the aircraft, vessel or vehicle to a designated airport or designated port for the purposes of conducting the search.

(4) If an aircraft, vessel or vehicle is detained or brought to a designated airport or designated port for the purposes of conducting a search, any person on board is taken to be in lawful custody for the duration of the search no civil or criminal proceedings of any kind lie against an immigration officer in respect of the detention of the person.

(5) If premises are a private dwelling house, the officer may only enter and search those premises if, and to the extent to which –

- (a) the owner or occupier of the premises consents to the officer doing so; or
- (b) the officer has a search warrant to do so.

(6) A magistrate may issue a search warrant for the purposes of subsection (5)(b) if the officer satisfies the magistrate that the officer has reasonable grounds for a suspicion referred to in subsection (2). The warrant must –

- (a) name the officer or officers authorised to conduct the search; and
- (b) authorise the seizure of things found during the search, and subsequent dealing with such things, in accordance with Division 4.

(7) Sections 102 to 103 and section 105 of the Criminal Procedure Code (Cap.7) apply to a search warrant issued for this purpose in the same way as they apply to search warrants issued under section 101 of that Code.

(8) The powers under this section may be exercised in relation to premises, vehicles and vessels in Solomon Islands (including Solomon Islands waters) and in relation to aircraft that are on land in Solomon Islands.

Division 4 – Seizure and Forfeiture

Seizure

55. (1) An immigration officer may seize or impound any of the following –

- (a) any item found during a search under Division 3, if the item is, or contains anything that is, relevant to a purpose of the search;

- (b) a weapon or other dangerous goods found during a search under Division 3;
- (c) an aircraft or vessel that is forfeited to the Government under section 58;
- (d) a document (including a passport) produced to the officer that the officer suspects on reasonable grounds is a false document.

(2) Without limitation, subsection (1)(a) includes a power to seize a computer or other electronic device that contains data relevant to the purpose of the search.

(3) Any illegal item seized under this section shall be sent forthwith to the Police.

56. (1) A seized item may be retained by an immigration officer for so long as the item is needed for the purposes of this Act.

Dealing with seized items

(2) An immigration officer may make copies of seized documents, or of data in electronic form, for the purposes of this Act.

(3) If a seized item –

- (a) is no longer needed for the purposes of this Act; and
- (b) is not forfeited under section 57;

the immigration officer must return the item.

57. (1) The following items are forfeited to the Government

Forfeiture

- (a) items in respect of which a court makes an order under subsection (2);
- (b) any false document seized during a search under Division 3;
- (c) any weapon or other dangerous goods seized during a search under Division 3, unless the person proves that he or she has a legal right to be in possession of such items.

(2) If a court convicts a person of an offence against this Act, the court may order the forfeiture of an item used or involved in the commission of the offence.

Forfeiture of
aircraft and vessels
carrying unlawful
non-citizens

58. (1) An aircraft or vessel to which this section applies is automatically forfeited to the Crown.

(2) This section carrying unlawful applies to an aircraft if –

- (a) the aircraft is used to bring an unlawful non-citizen to Solomon Islands; and
- (b) at the time of doing so the aircraft is not engaged in a scheduled commercial service.

(3) This section applies to a vessel if the vessel is used to bring an unlawful non-citizen to Solomon Islands, unless the Director is satisfied that –

- (a) the vessel is a substantial vessel engaged in legitimate commercial traffic to or through Solomon Islands; and
- (b) the carriage of the unlawful non-citizen was inadvertent or incidental to the primary purpose of the traffic.

(4) This section applies whether or not the master of the aircraft or vessel knew or should have known that the aircraft or vessel was bringing an unlawful non-citizen to Solomon Islands.

(5) The owner or operator of an aircraft or vessel forfeited under subsection (1) may apply to a court of competent jurisdiction for the return of the aircraft or vessel to the owner or operator. The court may order the return of the aircraft or vessel to the owner or operator if the court is satisfied that –

- (a) this section does not apply in the circumstances; or
- (b) in all the circumstances, it is reasonable that the aircraft or vessel should be returned to the owner or operator.

Dealings with
forfeited items

59. The Minister is responsible for an item forfeited to the Government under this Act and must ensure that –

- (a) if the item has a market value and a legitimate market, it is sold by an auction or tender that is publicly advertised or, if it fails to sell in that process, is retained for the benefit of the Government and periodically re-offered for sale; or
- (b) if the item is a false document, it is dealt with or destroyed in accordance with the instructions of the Director; or
- (c) otherwise, disposed of in accordance with the instructions of the Minister.

Division 5 – Miscellaneous Powers

60. (1) An immigration officer may arrest a person if the officer suspects on reasonable grounds that the person is committing or has committed an offence against this Act.

Arrest

- (2) The officer must give the person into police custody as soon as practicable.

61. An immigration officer may, if the officer suspects on reasonable grounds that there could be a serious health concern about a non-citizen within the meaning of section 24, require the non-citizen to –

Requirements to undergo health assessment or testing

- (a) undergo a health assessment by a Government medical officer; and
- (b) submit to any examinations that the Government medical officer considers necessary to enable the officer to determine whether to certify that there is a serious health concern about the person.

PART 7 – OFFENCES AND PENALTIES

Division 1 – General Offences and Penalties

62. (1) A person must not, in relation to a matter material to the exercise of a function or power of an immigration officer under this Act, give the officer –

Misleading an immigration officer

- (a) information that the person knows or has reasonable grounds to believe is false or misleading (including information that is misleading because of what it omits); or

- (b) a document that the person knows or has reasonable grounds to suspect is a false document.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(3) An applicant for a visa is taken to have given the officer any information or document in or included with the application (other than information or a document taken to have been given by an approved sponsor under subsection (5)), unless the applicant proves otherwise.

(4) If more than one person is included in the application, subsection (3) applies only to the person identified in the application as the primary applicant.

(5) A person who is, or who is seeking to become, an approved sponsor is taken to have given the officer any information or document given in connection with the sponsor's sponsorship or proposed sponsorship of a visa applicant or visa holder, unless the person proves otherwise.

Obstruction etc.,
of immigration
officers

63. (1) A person commits an offence if the person is required to do something by an immigration officer under this Act and the person fails to do the thing, and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(2) A person who hinders, obstructs, resists or otherwise interferes with an immigration officer in the performance of the officer's functions or powers under this Act commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

Failure to submit to
examination, etc.

64. (1) If an immigration officer requires a person to undergo a health assessment or submit to an examination in accordance with section 61, the person must comply.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

Forging or
unlawfully altering
an immigration
document

65. (1) A person must not –

- (a) make a false document that purports to be an immigration document; or
- (b) alter an immigration document so that it becomes a false document.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

66. (1) A person must not possess, provide to another person or use a false document that purports to be an immigration document, if the person knows or has reasonable grounds to believe that the document is a false document.

Possessing,
providing or using
false document or
another person's
document

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(3) A person must not possess an immigration document that is a document of identification for another person.

(4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(5) Subsection (3) does not apply to a person who has lawful authority to possess the immigration document.

(6) A person must not use an immigration document that is a document of identification for another person.

(7) A person who contravenes subsection (6) commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months, or both.

67. (1) A person must not give, lend, sell or otherwise part with possession of an immigration document that is a document of identification for the person if the person knows or has reasonable grounds to believe that the document may be used by another person to commit an offence under section 65 or 66.

Giving, lending
etc., person's
immigration
document

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding

5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

Harbouring etc.,
unlawful non-
citizen

68. (1) A person must not harbour or assist another person whom the person knows, or has reasonable grounds to believe, is an unlawful non-citizen.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(3) Subsection (1) only applies if the unlawful non-citizen has a duty to depart Solomon Islands under section 28.

Employing a non-
citizen not
authorised to work

69. (1) A person must not employ, or continue to employ, a non-citizen unless –

- (a) the non-citizen is an exempt person; or
- (b) the non-citizen holds a visa with a condition authorising the non-citizen to work or take up employment in Solomon Islands and the employment is in accordance with the condition and any circumstances specified in relation to the condition.

(2) A person who contravenes subsection (1)(a) or (b) commits an offence and is liable on conviction –

- (a) for a natural person, to a fine not exceeding 5,000 penalty units or to imprisonment for a term not exceeding 6 months, or both; or
- (b) in any other case, to a fine not exceeding 25,000 penalty units.

Division 2 – People Smuggling and People Trafficking Offences

Definitions

70. In this Act, unless the contrary intention appears –

“exploitation” includes all forms of sexual exploitation (including sexual servitude and exploitation of another person’s prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs;

“illegal entry” means crossing the border of any country, including Solomon Islands, without complying with the requirements for lawful entry to that country;

“people smuggling”: a person engages in people smuggling if the person arranges or assists another person’s (the smuggled person’s) illegal entry into any country, including Solomon Islands, of which the smuggled person is not a citizen or permanent resident, knowing that, or reckless as to whether, the smuggled person’s entry is an illegal entry;

“people trafficking”: a person engages in people trafficking if the person recruits, transports, harbours or receives another person (the trafficked person) for the purposes of exploitation;

“receiving country” means the country into which the smuggled person’s illegal entry is arranged or assisted;

“smuggled person” means the person referred to as the smuggled person in the definition of “people smuggling”, regardless of whether the person willingly participated in the people smuggling;

“trafficked person” means the person referred to as the trafficked person in the definition of “people trafficking”.

71. The offences in this Division apply in any of the following circumstances, regardless of whether the conduct constituting the offence takes place inside or outside Solomon Islands –

Application of
people smuggling
and people
trafficking offences

- (a) if the receiving country is Solomon Islands;
- (b) in the case of an offence under section 76, 77 and 78, if the exploitation occurs in Solomon Islands;
- (c) if the receiving country is not Solomon Islands but the people smuggling or people trafficking starts in Solomon Islands or transits Solomon Islands;
- (d) if the person who engages in the people smuggling or people trafficking is a citizen of Solomon Islands.

72. A person who intentionally engages in people smuggling, whether or not the smuggled person arrives in the receiving country commits

Offence of people
smuggling

an offence and is liable on conviction to a fine not exceeding 20,000 penalty units or to imprisonment for a term not exceeding 2 years.

Aggravated people
smuggling offences

73. (1) A person commits an offence if the person intentionally engages in people smuggling under one or more of the following circumstances –

- (a) the person intends that the smuggled person be subjected to exploitation (whether or not by the person);
- (b) the smuggled person is subjected to torture or to cruel, inhuman or degrading treatment;
- (c) the life or safety of the smuggled person is, or is likely to be, endangered.

(2) A person who is convicted under subsection (1) of this Act is liable on conviction to a fine not exceeding 45,000 penalty units or to imprisonment for a term not exceeding 5 years.

(3) Subsection (1) applies regardless of whether the smuggled person arrives in the receiving country.

Offence to facilitate
stay of smuggled
person

74. (1) A person who intentionally facilitates, by any unlawful means, the continued presence of a smuggled person in a receiving country commits an offence and is liable on conviction to a fine not exceeding 10,000 penalty units or to imprisonment for a term not exceeding 12 months.

(2) For the purposes of subsection (1), *unlawful means* includes producing, providing or procuring false travel or identity documents in respect of the smuggled person.

Immunity from
prosecution for
smuggled person

75. (1) A smuggled person is not liable to prosecution for an offence under this Division in respect of any of the following –

- (a) the smuggled person's illegal entry into the receiving country;
- (b) any period of illegal residence in the receiving country;
- (c) the smuggled person's procurement or possession of any false document that is a

travel or identity document that the smuggled person obtained, or that was supplied to the smuggled person, for the purpose of entering the receiving country.

(2) To avoid doubt, nothing in this section prevents Part 4 of this Act from operating in relation to the smuggled person.

76. (1) A person commits an offence if the person engages in people trafficking by one or more of the following means –

Offence of people trafficking

- (a) threats;
- (b) use of force or other coercion;
- (c) abduction;
- (d) fraud;
- (e) deception;
- (f) abuse of power or of a position of vulnerability;
- (g) giving or receiving payments or benefits to obtain the consent of a person who has control over another person.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding 45,000 penalty units or to imprisonment for a term not exceeding 5 years or, or both.

77. A person who engages in people trafficking, by any means, when the trafficked person is aged under 18 commits an offence and is liable on conviction to a fine not exceeding 90,000 penalty units or to imprisonment for a term not exceeding 10 years or, or both.

Offence of trafficking in children

78. A person who engages in, or profits from, the exploitation of a trafficked person commits an offence and is liable on conviction to a fine not exceeding 45,000 penalty units or to imprisonment for a term not exceeding 5 years or, or both.

Offence of exploiting a trafficked person

79. For the purposes of sections 76, 77 and 78, it is not a defence that the trafficked person consented to the people trafficking or to the exploitation.

Consent of trafficked person is not relevant

Offence relating to
false travel or
identity document

80. A person commits an offence if the person makes, obtains, gives, sells or possesses a false document that is a travel or identity document for the purpose of facilitating people smuggling or people trafficking commits an offence and is liable on conviction to a fine not exceeding 20,000 penalty units or to imprisonment for a term not exceeding 2 years or both.

Immunity from
prosecution for
trafficked persons

81. A trafficked person is not liable to prosecution for an offence under this Division in respect of any of the following –

- (a) the trafficked person's illegal entry into the receiving country;
- (b) any period of illegal residence in the receiving country;
- (c) the trafficked person's procurement or possession of any false document that is a travel or identity document that the trafficked person obtained, or that was supplied to the trafficked person, for the purpose of entering the receiving country.

Money laundering,
extradition and
mutual assistance

82. The offences under this Division are –

- (a) predicate offences for the purposes of the Money Laundering and Proceeds of Crime Act (No. 5 of 2002); and
- (b) extraditable offences for the purposes of the Extradition Act (No. 3 of 2010); and
- (c) offences in respect of which mutual assistance may be granted under the Mutual Assistance in Criminal Matters Act (No.4 of 2002).

PART 8 – ADMINISTRATION

Director of
Immigration

83. (1) There is to be a Director of Immigration.
- (2) The Director is a public officer who is to be appointed in accordance with the Constitution.

Immigration
officers

84. (1) Public officers, including a Deputy Director of Immigration, may be appointed as immigration officers in accordance with the Constitution.

(2) The Minister may appoint suitably qualified and trained provincial government officers as immigration officers.

85. (1) The Director may, by notice published in the *Gazette*, determine that a specified function or power conferred by this Act on an immigration officer –

Limit on powers of
certain immigration
officers

- (a) must not be exercised by a person who is an immigration officer within the meaning of paragraph (c) or (d) of the definition of "immigration officer"; or
- (b) may only be exercised by a person who is an immigration officer within the meaning of paragraph (c) or (d) of the definition of "immigration officer" in specified circumstances.

(2) If a determination under subsection (1) is in force, any exercise of a function or power that is inconsistent with the determination is invalid to the extent of the inconsistency.

86. (1) The Minister may, by signed notice, delegate any or all of the Minister's powers or functions under this Act (including, to avoid doubt, a power or function conferred by the regulations) to the Director, other than the power to make a deportation order on the ground referred to in section 31(1)(a) or (b) (record of serious criminal conduct or other character concern).

Delegation

(2) The Director may, by signed notice, delegate any or all of the Director's powers or functions under this Act (including, to avoid doubt, a power or function conferred by the regulations), other than a power or function specified in subsection (3) or (4), to an immigration officer.

(3) For the purposes of subsection (2), the Director must not delegate the following powers –

- (a) the power under section 39 to review the detention of an unlawful non-citizen;
- (b) a power or function conferred by the regulations that the regulations specify cannot be delegated.

(4) For the purposes of subsection (2), the Director may only delegate the following powers to the Deputy Director –

- (a) the power to make a decision under section 14(1)(b) (fraud in relation to application);
- (b) the power in section 36(2) to make a detention order.

Provisions relating
to delegation

87. (1) A person to whom a power or function is delegated (the *delegate*) under section 86 must comply with any directions of the person who delegated the power or function (the *delegator*) in relation to the exercise of the power or function. However, the delegator must not direct the delegate to reach a particular decision in a particular case.

(2) The notice of delegation may include conditions and if it does, the delegate must exercise the power or function in accordance with any conditions.

(3) The delegation may be made to a specified person or to any person from time to time holding or performing the duties of a specified office.

(4) The delegation may be either general or specific.

(5) The delegate cannot delegate the function.

(6) A delegated power or function, when exercised by the delegate, is taken for the purposes of this Act to have been exercised by the delegator.

(7) The delegation of the function does not prevent the delegator from exercising the power or function.

(8) If the delegated power or function depends on the opinion, belief or state of mind of the delegator, the power or function may be exercised by the delegate on the opinion, belief or state of mind of the delegate.

(9) The delegator may vary or revoke the delegation at any time, by signed notice to the delegate.

(10) The delegation continues in force until revoked notwithstanding any change in the identity of the delegator.

(11) Section 62 of the Interpretation and General Provisions Act (Cap.85) does not apply in relation to a delegation under this section.

PART 9 – MISCELLANEOUS

88. For the purposes of section 90(2), the Minister may declare in writing that a decision is not a reviewable decision, if the Minister is satisfied that it would be contrary to the national interest for the decision to be reviewed.

Declaration relating
to national interest

89. (1) A competent authority may, by notice in writing given to the Director, request that a non-citizen be stopped from departing Solomon Islands if the authority is satisfied that –

Stop departure
request

- (a) the person should remain in Solomon Islands temporarily for the purposes of any of the following –
 - (i) the Extradition Act (No. 3 of 2010) or regulations made under it;
 - (ii) the Correctional Services Act (No. 8 of 2007) or regulations made under it;
 - (iii) a prescribed Act or regulations made under it;
 - (iv) to assist with investigation of an offence under this Act; or
- (b) there is a warrant for the arrest of the person in relation to an offence against a law of Solomon Islands or of a foreign country, that is a felony or equivalent to a felony; or
- (c) a court order requires that the person be stopped from travelling internationally, refused a passport or that any passport held by the person be cancelled or surrendered; or
- (d) the person is prevented from travelling internationally by a condition of parole, or of a recognisance, surety, bail bond or licence for early release from prison, granted under a law of Solomon Islands; or
- (e) the person is prevented from travelling internationally by a law of Solomon Islands, or an order (however described) made under a law of Solomon Islands.

(2) The competent authority may, by notice in writing to the Director, withdraw the request at any time and must withdraw the request if the authority is satisfied that the reason for the request has ceased to apply.

(3) A request is in force from the time it is made until the time it is withdrawn.

(4) *Competent authority* means –

- (a) in subsection (1)(a), the Attorney-General or the Minister for Justice and Legal Affairs; or
- (b) in any other paragraph of subsection (1), any of the following –
 - (i) the Commissioner of Police;
 - (ii) a person declared by the Minister by notice in writing in the *Gazette* to be a competent authority.

Administrative
review of decisions

90. (1) A person who is aggrieved by a reviewable decision may apply for review of the decision.

(2) Each of the following is a reviewable decision, unless the Minister has made a declaration under section 88 in respect of the decision –

- (a) a decision to refuse to grant a visa, other than –
 - (i) a visa applied for outside Solomon Islands for which an approved sponsor is not required; or
 - (ii) a visa applied for in Solomon Islands that is a visitor visa or a business visa within the meaning of the regulations; or
 - (iii) a refugee protection visa (decisions in relation to these visas are dealt with under the Refugee Status Determinations Act);
- (b) a decision to cancel a visa, unless –

- (i) section 7(1)(b) applies to the cancellation; or
 - (ii) the visa is a refugee protection visa (decisions in relation to these visas are dealt with under the Refugee Status Determinations Act);
- (c) a decision by the Director under subsection (5)(a) or (b).
- (3) The application must be made –
 - (a) if the decision was made by an immigration officer other than the Director, to the Director; or
 - (b) if the application is for review of a decision made by the Director, to the Minister.
- (4) The application must be –
 - (a) in the prescribed form (if any) or in a form approved by the Director; and
 - (b) accompanied by the prescribed fee (if any); and
 - (c) made before the end of the prescribed period.
- (5) The Director or Minister must consider an application and must decide, before the end of the prescribed period, whether to –
 - (a) affirm the decision; or
 - (b) replace the decision with a new decision; or
 - (c) return the matter to the original decision-maker and request that he or she make the decision again.
- (6) If –
 - (a) the Director makes a decision in the applicant's favour; or

- (b) in any case, the Minister makes a decision;

the Director or Minister must give the applicant written notice of the decision and, if the decision is not favourable to the applicant, the reasons for that decision, within 2 days of making it.

(7) If the Director makes a decision that is not in the applicant's favour, the Director must, as soon as practicable, refer the Director's decision to the Minister together with the original application for review. The Minister must, in accordance with subsection (5), consider the Director's decision as if the original application were an application for review of the Director's decision.

(8) A reviewable decision has effect unless it is replaced on review under this section.

Indemnity

91. The Ministry, officers, employees and persons acting under the authority of the Ministry, including persons with delegated authority, for the purposes of implementing this Act, shall not be subject to any action, liability, claim or demand for any matter or thing done or omitted to be done in good faith (whether negligently or not) in the performance or purported performance of any function or duty, or exercise or purported exercise of any power under this Act.

Authorised
electronic system

92. (1) The Minister may, by notice published in the *Gazette*, approve an authorised electronic system for the purposes of making applications and decisions in relation to visas under this Act.

(2) If an authorised electronic system is used to make a decision, the decision is taken to have been made by the person required or permitted to make the decision under this Act.

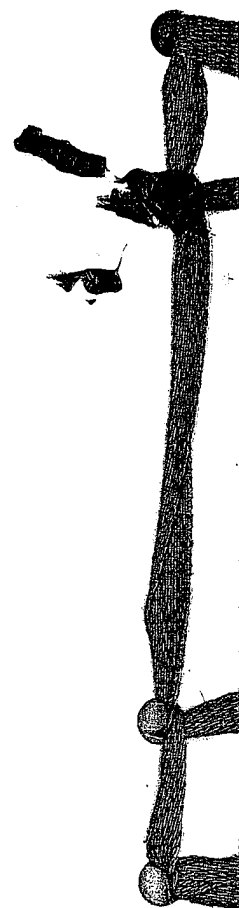
Regulations

93. (1) The Minister may make regulations prescribing matters –

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Regulations that prescribe matters required or permitted by this Act to be prescribed may do so by authorising the Director or another person specified in the regulations to determine the matter.

94. (1) The following Acts are repealed –
- (a) the Deportation Act (Cap. 58); and
 - (b) the Immigration Act (Cap. 60).
- (2) The person who was the Director of Immigration immediately before the commencement of this Act continues, on and from the commencement of this Act, to be the Director of Immigration as if that person had been appointed in accordance with this Act.
- (3) A person who was an immigration officer immediately before the commencement of this Act continues, on and from the commencement of this Act, to be an immigration officer as if that person had been appointed in accordance with this Act.
- (4) If an application for a visa has been made and not determined before the commencement of this Act, the Director may after that day treat the application as if it were an application for an equivalent kind of visa under this Act.
- (5) A visa that is in force immediately before the commencement of this Act continues in force as if it were a visa of an equivalent kind under this Act, for the remainder of the period of stay for the visa.
- (6) The Director may determine what is an equivalent kind of visa for the purposes of subsection (5).
- (7) The Minister may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the repeal of the Immigration Act (Cap. 60) and the commencement of this Act.



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