



Tonga

**CRIMINAL OFFENCES (AMENDMENT)  
BILL 2019**





## CRIMINAL OFFENCES (AMENDMENT) BILL 2019

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## CRIMINAL OFFENCES (AMENDMENT) BILL 2019

### A BILL FOR AN ACT TO AMEND THE CRIMINAL OFFENCES ACT (CAP 18) AS A CONSEQUENTIAL AMENDMENT TO THE COMPUTER CRIMES BILL 2019

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

#### 1 Short Title

- (1) This Act may be cited as the Criminal Offences (Amendment) Bill 2019.
- (2) In this Act, the Criminal Offences Act (Cap 18), as amended, shall be referred to as the “Principal Act”.

#### 2 Section 2 amended

Section 2 of the Principal Act is amended by inserting the following definitions in the appropriate place:

“**computer data**” has the meaning given in section 2 of the Computer Crimes Act 2019.

“**computer system**” has the meaning given in section 2 of the Computer Crimes Act 2019.

“**data storage medium**” has the meaning given in section 2 of the Computer Crimes Act 2019.

“**hosting service provider**” has the meaning given in section 2 of the Communications Act 2015.

“**service**” has the meaning given in section 2 of the Computer Crimes Act 2019.

“**service provider**” has the meaning given in section 2 of the Computer Crimes Act 2019.

### 3 Section 115A replaced

Section 115A of the Principal Act is amended by repealing the section and replacing it with the following section:

#### “115A Definitions for sections 115B to 115Q

(1) For the purposes of this section and sections 115B to 115Q:

“**access**”, in relation to material, includes but not limited to:

- (i) the display of the material by a computer system or any other output of the material from a computer system; or
- (ii) the copying or moving of the material to any place in a computer system or to a data storage medium; or
- (iii) in the case of material that is a program—the execution of the program;

“**child abuse material**” means:

- (i) material that depicts or describes a person, or a representation of a person, who is, or appears to be, or is implied to be under 18 years of age; and
  - (A) is, or appears to be, or is implied to be, a victim of torture, cruelty or physical abuse; or
  - (B) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other people); or
  - (C) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity; and does this in a way that a reasonable person would regard as being, in all the circumstances, offensive; or
- (ii) material that depicts a person, or a representation of a person, who is, or appears to be, under 18 years of age and who:
  - (A) is engaged in, or appears to be engaged in, a sexual pose or sexual activity (whether or not in the presence of other people); or
  - (B) is in the presence of a person who is engaged in, or appears to be engaged in, a sexual pose or sexual activity;

and does this in a way that a reasonable person would regard as being, in all the circumstances, offensive; or

(iii) material, that describes or the dominant characteristic of which is the depiction, for a sexual purpose, of:

(A) a sexual organ or the anal region of a person who is, or appears to be, under 18 years of age; or

(B) a representation of such a sexual organ or anal region; or

(C) the breasts, or a representation of the breasts, of a female person who is, or appears to be, under 18 years of age;

in a way that a reasonable person would regard as being, in all the circumstances, offensive.

“**data**” has the meaning given in section 2 of the Computer Crimes Act 2019;

“**obtaining**” includes but not limited to:

(i) obtaining for another person; and

(ii) inducing a third person to do something that results in another person obtaining;

(2) In this section:

(a) “**depict**” includes, but not limited to, content data from which a visual image (whether still or moving) can be generated;

(b) “**describe**” includes, but not limited to, content data from which text or sounds can be generated;

(c) “**engage in sexual activity**”— a person is taken to engage in sexual activity if the person is in the presence of another person (including, but not limited to, by a means of communication that allows the person to see or hear the other person) while the other person engages in sexual activity;

(d) “**make available**”, in relation to material, includes, but not limited to, describing how to obtain access, or describing methods that are likely to facilitate access, to material;

(e) “**publish**” includes, but not limited to:

(i) distribute, transmit, disseminate, circulate, deliver, exhibit, lend for gain, exchange, barter, sell or offer for sale, let on hire or offer to let on hire, offer in any other way, make known or make available in any way; or

(ii) have in possession or custody, or under control, for the person of doing an act referred to in subsection (1); or

(iii) print, photograph, copy or make in any other manner (whether of the same or of a different kind or nature) for the purpose of doing an act referred to in subsection (1);

- (f) **“sexual activity”** means:
- (i) sexual intercourse; or
  - (ii) any activity of a sexual or indecent nature (including an indecent assault) that involves the human body, or bodily actions or functions (whether or not that activity involves physical contact between people).
- (g) **“sexual intercourse”** means:
- (i) the penetration, to any extent, of the vagina or anus of a person by any part of the body of another person; or
  - (ii) the penetration, to any extent, of the vagina or anus of a person, by an object, carried out by another person; or
  - (iii) fellatio; or
  - (iv) cunnilingus; but
  - (vi) does not include an act of penetration that is carried out for:
    - (A) a proper medical or hygienic purpose; or
    - (B) a proper law enforcement purpose;
- (h) **“vagina”** includes:
- (i) any part of a female person’s genitalia; and
  - (ii) a surgically constructed vagina.”.

#### 4 New sections 115B to 115Q inserted

The Principal Act is amended by inserting the following sections after section 115A:

##### **“115B Possession or control of data or material in the form of data**

- (1) A reference in sections 115F to 115Q to a person having possession or control of data, or material that is in the form of data, includes a reference to the person:
- (a) having possession of a computer system or data storage medium that holds or contains the data; or
  - (b) having possession of a document in which the data is recorded; or
  - (c) having control of data held in a computer system that is in the possession of another person (whether inside or outside Tonga).

##### **115C Producing, supplying or obtaining data or material in the form of data**

- (1) A reference in sections 115F to 115Q to a person producing, supplying or obtaining data, or material that is in the form of data, includes a reference to the person:
- (a) producing, supplying or obtaining data held or contained in a computer system or data storage medium; or



- (b) producing, supplying or obtaining a document in which the data is recorded.

**115D Determining whether material is offensive**

The matters to be taken into account in deciding for the purposes of sections 115F to 115Q whether a reasonable person would regard particular material, or particular use of a service, as being, in all the circumstances, offensive, includes but not limited to:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the material; and
- (c) the general character of the material (including whether it is of a medical, legal or scientific character).

**115E Use of a service**

- (1) For the purposes of sections 115F to 115Q, a person is taken not to have committed an offence if engaging in a particular conduct:
  - (a) the person is a service provider and, in engaging in that conduct, is acting solely in the person's capacity as a service provider; or
  - (b) the person is a hosting service provider and, in engaging in that conduct, is acting solely in the person's capacity as an internet content host.

**115F Possessing, controlling, producing, distributing or obtaining child abuse material**

- (1) A person commits an offence if the person:
  - (a) Has possession or control of material; or
  - (b) Produces, distributes or obtains material; or
  - (c) Facilitates the production or distribution of material; and
  - (d) The material is child abuse material.
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment not exceeding 15 years.

**115G Using a service for child abuse material**

- (1) A person commits an offence if the person:
  - (a) intentionally:
    - (i) accesses material; or
    - (ii) causes material to be transmitted to the person; or
    - (iii) transmits, makes available, publishes, distributes, advertises or promotes material; or
    - (iv) solicits material; and
  - (b) does so using a service; and

- (c) the material is child abuse material; and
  - (d) the person is reckless about whether the material is child abuse material;
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment not exceeding 15 years.

**115H Possessing, controlling, producing, supplying or obtaining child abuse material for use through a service**

- (1) A person commits an offence if:
- (a) the person intentionally:
    - (i) has possession or control of material; or
    - (ii) produces, supplies or obtains material; and
  - (b) the material is child abuse material; and
  - (c) the person:
    - (i) knows, or is reckless about whether, the material is child abuse material; and
    - (ii) has that possession or control, or engages in that production, supply or obtaining, with the intention that the material be used by:
      - (A) that person; or
      - (B) another person;
- in committing an offence against section 115G.
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment not exceeding 15 years.
- (3) A person may be found guilty of an offence against subsection (1) even if committing the offence against section 115G is impossible.

**115I Defences in relation to child abuse material**

- (1) A person is not criminally responsible for an offence against section 115F, 115G or section 115H because of engaging in particular conduct if the conduct:
- (a) is of public benefit; and
  - (b) does not extend beyond what is of public benefit.
- (2) In determining whether a person is, under subsection (1), not criminally responsible for an offence:
- (a) the question whether the conduct is of public benefit is a question of fact; and
  - (b) the person's motives in engaging in the conduct are irrelevant.
- (3) For the purposes of subsection (1), conduct is of public benefit if the conduct is necessary for or of assistance in any of the following:

- (a) enforcing a law of Tonga;
  - (b) monitoring compliance with, or investigating a contravention of, a law of Tonga;
  - (c) the administration of justice;
  - (d) conducting scientific, medical or educational research that has been approved by the Attorney-General in writing for the purposes of this section.
- (4) A person is not criminally responsible for an offence against section 115F, 115G or section 115H if:
- (a) the person is, at the time of the offence, a police officer acting in the course of the officer's duties; and
  - (b) the conduct of the person is reasonable in the circumstances for the purpose of performing that duty.

**115J Aggravated offence—offence involving conduct on 3 or more occasions and 2 or more people**

- (1) A person commits an offence against this section if:
- (a) the person commits an offence against one or more of the following provisions on 3 or more separate occasions:
    - (i) section 115F;
    - (ii) section 115G;
    - (iii) section 115H; and
  - (b) the commission of each offence involves 2 or more people.
- (2) An offence against subsection (1) is punishable, on conviction, of imprisonment for a period not exceeding 25 years.
- (3) To avoid doubt, a person does not commit an offence against section 115F, section 115G, or section 115H for the purposes of paragraph (1) (a) if the person has a defence to that offence.
- (4) For the purposes of subsection (1), it is immaterial whether the offence, or the conduct constituting the offence, is the same on each occasion.
- (5) A person who has been convicted or acquitted of an offence (the “**aggravated offence**”) against this section may not be convicted of an offence against section 115F, section 115G, or section 115H in relation to the conduct that constituted the aggravated offence.
- (7) A person who has been convicted or acquitted of an offence (the “**underlying offence**”) against section 115F, section 115G, or section 115H may not be convicted of an offence against this section in relation to the conduct that constituted the underlying offence.

**115K Alternative verdict if aggravated offence not proven**

- (1) If, on a trial for an offence (the “**aggravated offence**”) against subsection 115J (1), the Court:

(a) is not satisfied that the defendant is guilty of the aggravated offence; but

(b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the “**underlying offence**”) against section 115F, section 115G, or section 115H;

the Court may find the defendant not guilty of the aggravated offence but guilty of the underlying offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

**115L Using service for sexual activity with person under 18 years of age**

(1) A person who:

(a) engages in sexual activity with another person (the “**child**”) using a service; and

(b) knows, or is reckless about whether, the child is under 18 years of age; and

(c) is at least 18 years of age;

commits an offence punishable, on conviction, by imprisonment not exceeding 15 years.

(2) A person (the “**defendant**”) commits an offence if:

(a) the defendant engages in conduct in relation to another person (the “**child**”); and

(b) that conduct causes, and the defendant intends the conduct to cause, the child to engage in sexual activity with another person (the “**participant**”) using a service; and

(c) the child is under 18 years of age when the sexual activity is engaged in; and

(d) the participant is at least 18 years of age when the sexual activity is engaged in.

(3) An offence against subsection (2) is punishable, on conviction, by imprisonment not exceeding 15 years.

**115M Aggravated offence—child with mental impairment or under care, supervision or authority of defendant**

(1) A person commits an offence against this section if:

(a) the person commits an offence against either of the following provisions in relation to another person (the “**child**”):

(i) section 115L (1);

(ii) section 115L (2); and

(b) either or both of the following apply when the person commits the offence:

(i) the child has a mental impairment;

- (ii) the person is in a position of trust or authority in relation to the child, or the child is otherwise under the care, supervision or authority of the person.
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment not exceeding 25 years.
- (3) If, on a trial for an offence (the “**aggravated offence**”) against subsection (1), the Court:
  - (a) is not satisfied that the defendant is guilty of the aggravated offence; but
  - (b) is satisfied beyond reasonable doubt that the defendant is guilty of an offence (the “**underlying offence**”) against subsection 115L (1) or (2);

it may find the defendant not guilty of the aggravated offence but guilty of the underlying offence, so long as the defendant has been accorded procedural fairness in relation to that finding of guilt.

#### **115N Using service to procure person under 18 years of age**

- (1) A person (the “**sender**”) commits an offence if:
  - (a) the sender uses a service to transmit a communication to another person (the “**recipient**”); and
  - (b) the sender does this with the intention of procuring the recipient to engage in sexual activity with the sender or with another person (“**the participant**”); and
  - (c) the recipient is someone who is, or who the sender believes to be, under 18 years of age; and
  - (d) the sender is at least 18 years of age and the participant is someone who is, or who the sender believes to be, at least 18 years of age..
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment not exceeding 15 years.
- (3) A person (the “**sender**”) commits an offence if:
  - (a) the sender uses a service to transmit a communication to another person (the “**recipient**”); and
  - (b) the sender does this with the intention of procuring the recipient to engage in sexual activity with another person; and
  - (c) the recipient is someone who is, or who the sender believes to be, under 18 years of age; and
  - (d) the other person mentioned in paragraph (b) is someone who is, or who the sender believes to be, under 18 years of age; and
  - (e) the sender intends that the sexual activity will take place in the presence of:
    - (i) the sender; or

- (ii) another person (the **“participant”**) who is, or who the sender believes to be, at least 18 years of age.
- (4) An offence against subsection (3) is punishable, on conviction, by imprisonment not exceeding 15 years.
- (5) For the purposes of this section, it does not matter that the recipient to whom the sender believes the sender is transmitting the communication is a fictitious person represented to the sender as a real person.

### **1150 Using service to “groom” person under 18 years of age**

- (1) A person (the **“sender”**) commits an offence if:
  - (a) the sender uses a service to transmit a communication to another person (the **“recipient”**); and
  - (b) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with the sender; and
  - (c) the recipient is someone who is, or who the sender believes to be, under 18 years of age; and
  - (d) the sender is at least 18 years of age.
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment not exceeding 15 years.
- (3) A person (the **“sender”**) commits an offence if:
  - (a) the sender uses a service to transmit a communication to another person (the **“recipient”**); and
  - (b) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with another person (the **“participant”**); and
  - (c) the recipient is someone who is, or who the sender believes to be, under 18 years of age; and
  - (d) the participant is someone who is, or who the sender believes to be, at least 18 years of age.
- (4) An offence against subsection (3) is punishable, on conviction, by imprisonment not exceeding 15 years.
- (5) A person (the **“sender”**) commits an offence if:
  - (a) the sender uses a service to transmit a communication to another person (the **“recipient”**); and
  - (b) the sender does this with the intention of making it easier to procure the recipient to engage in sexual activity with another person; and
  - (c) the recipient is someone who is, or who the sender believes to be, under 18 years of age; and
  - (d) the other person mentioned in paragraph (b) is someone who is, or who the sender believes to be, under 18 years of age; and

- (e) the sender intends that the sexual activity will take place in the presence of:
  - (i) the sender; or
  - (ii) another person (the “**participant**”) who is, or who the sender believes to be, at least 18 years of age.
- (6) An offence against subsection (5) is punishable, on conviction, by imprisonment not exceeding 15 years.
- (7) For the purposes of this section, it does not matter that the recipient to whom the sender believes the sender is transmitting the communication is a fictitious person represented to the sender as a real person.

**115P Using a service to transmit indecent communication to person under 18 years of age**

- (1) A person (the “**sender**”) commits an offence if:
  - (a) the sender uses a service to transmit a communication to another person (the “**recipient**”); and
  - (b) the communication includes material that is indecent; and
  - (c) the recipient is someone who is, or who the sender believes to be, under 18 years of age; and
  - (d) the sender is at least 18 years of age.
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment not exceeding 7 years.
- (3) For the purposes of this section, it does not matter that the recipient to whom the sender believes the sender is transmitting the communication is a fictitious person represented to the sender as a real person.
- (4) In this section:
  - “**indecent**” means indecent according to the standards of a reasonable person.

**115Q Provisions relating to offences against 115L to 115P**

- (1) For the purposes of sections 115N, 115O and 115P, evidence that the recipient was represented to the sender as being under or of a particular age is, in the absence of evidence to the contrary, proof that the sender believed the recipient to be under or of that age.
- (2) For the purposes of sections 115L, 115N and 115O, evidence that the participant was represented to the sender as being:
  - (a) at least 18 years of age; or
  - (b) over a particular age;is, in the absence of evidence to the contrary, proof that the sender believed the participant to be at least 18 years of age or over or of that age.

- (3) In determining for the purposes of sections 115L to 115P how old a person is or was at a particular time, a Court may treat any of the following as admissible evidence:
- (a) the person's appearance;
  - (b) medical or other scientific opinion;
  - (c) a document that is or appears to be an official or medical record;
  - (d) a document that is or appears to be a copy of such a record mentioned in paragraph (c)."

## 5 New section 169A

The Principal Act is amended by inserting the following section after section 144:

### **"169A Computer-related fraud**

- (1) A person who:
- (a) causes:
    - (i) unauthorised access to computer data held in a computer system; or
    - (ii) unauthorised modification of computer data held in a computer system, or
    - (iii) unauthorised impairment of electronic communication to or from a computer system; and
  - (b) knows the access, modification or impairment is unauthorised; and
  - (c) as a consequence, causes loss of property to another person with the intention of procuring an economic benefit;
- is guilty of the offence of fraud.
- (2) An offence against subsection (1) is punishable on conviction:
- (a) in the case of an individual, by a fine not exceeding \$100,000, or imprisonment not exceeding 10 years, or both; or
  - (b) in the case of a corporation, by a fine not exceeding \$200,000.
- (3) For the purposes this section:
- "access"**, to computer data, has the meaning given in section 2 of the Computer Crimes Act 2019;
- "electronic communication"** has the meaning given in section 2 of the Computer Crimes Act 2019;



“**impairment**” of electronic communication to or from a computer system has the meaning given in section 2 of the Computer Crimes Act 2019;

“**modification**” of computer data has the meaning given in section 2 of the Computer Crimes Act 2019.”.

## 6 Sections 170 to 172

The Principal Act is amended by repealing sections 170 to 172 and replacing them with the following sections:

### “170 Meaning of “false document” for sections 171 to 172C

- (1) For the purposes of sections 171 to 172C, a document is “**false**” only if the document, or any part of the document, purports:
  - (a) to have been made in the form in which it is made by a person who did not make it in that form; or
  - (b) to have been made in the form in which it is made on the authority of a person who did not authorise its making in that form; or
  - (c) to have been made in the terms in which it is made by a person who did not make it in those terms; or
  - (d) to have been made in the terms in which it is made on the authority of a person who did not authorise its making in those terms; or
  - (e) to have been changed in any way by a person who did not change it in that way; or
  - (f) to have been changed in any way on the authority of a person who did not authorise it to be changed in that way; or
  - (g) to have been made or changed by an existing person who did not exist; or
  - (h) to have been made or changed on the authority of an existing person who did not exist; or
  - (i) to have been made or changed on a date when, at a time or place where, or otherwise in circumstances in which it was not made or changed.
- (2) For the purposes of sections 171 to 172C, “**making**” a false document includes changing the document whether in print or electronic form, so as to make it a false document under subsection (1) (whether or not it already was false in some other way).
- (3) For this section, a document that purports to be a true copy of another document is to be treated as if it were the original document.

### 171 Inducing acceptance that document genuine

For the purposes of section 172, section 172A and section 172B:

- (a) a reference to “inducing a person to accept a document as genuine” includes a reference to “causing a computer system or electronic device to respond to the document as if it were genuine”; and
- (b) it is not necessary to prove an intention to induce a particular person to accept the false document as genuine.

### **172 Forgery**

- (1) A person who makes a false document with the intention that the person or someone else will use it:
  - (a) to induce another person to accept it as genuine; and
  - (b) because the other person accepts it as genuine, to:
    - (i) obtain property belonging to another person; or
    - (ii) obtain financial advantage or cause financial disadvantage; or
    - (iii) influence the exercise of a public duty;is guilty of the offence of forgery.
- (2) An offence against subsection (1) is punishable on conviction:
  - (a) in the case of an individual, to a fine not exceeding \$100,000, or imprisonment not exceeding 10 years, or both; or
  - (b) in the case of a corporation, to a fine not exceeding \$200,000.

### **172A Using false document**

- (1) A person who uses a false document, knowing that it is false, with the intention of:
  - (a) inducing someone else to accept it as genuine; and
  - (b) because the other accepts it as genuine:
    - (i) obtaining property; or
    - (ii) obtaining financial advantage or cause financial disadvantage; or
    - (iii) influencing the exercise of a public duty;commits an offence.
- (2) An offence against subsection (1) is punishable, on conviction:
  - (a) in the case of an individual, to a fine not exceeding \$100,000, or imprisonment not exceeding 10 years, or both; or
  - (b) in the case of a corporation, to a fine not exceeding \$200,000.

### **172B Possessing false document**

- (1) A person who has in the person’s possession a false document, knowing that it is false, with the intention that the person or someone else will use it:
  - (a) to induce another person to accept it as genuine; and

- (b) because the other person accepts it as genuine, to:
  - (i) obtain any property; or
  - (ii) obtain any financial advantage or cause any financial disadvantage; or
  - (iii) influence the exercise of a public duty;commits an offence.
- (2) An offence against subsection (1) is punishable, on conviction:
  - (a) in the case of an individual, to a fine not exceeding \$100,000, or imprisonment not exceeding 10 years, or both; or
  - (b) in the case of a corporation, to a fine not exceeding \$200,000.

### **172C Making or possessing a equipment etc for making false document**

- (1) A person who makes, or has in the person's possession, any equipment, material or other thing adapted for the making of a false document:
  - (a) knowing that the thing is designed or adapted for making a false document; and
  - (b) with the intention that the person or someone else will use the thing to commit the offence of forgery,commits an offence.
- (2) An offence against subsection (1) is punishable, on conviction, by imprisonment not exceeding 10 years.
- (3) A person who, without reasonable excuse, makes, or has in the person's possession, any equipment, material or other thing designed or adapted for the making of a false document, knowing that it is designed or adapted for the making of a false document, commits an offence.
- (4) An offence against subsection (3) is punishable, on conviction, by imprisonment not exceeding 3 years.
- (5) A person who possesses any equipment, material or other thing that is capable of being used to make a false document, with the intention that the person or someone else will use the equipment, material or other thing to commit the offence of forgery, commits an offence.
- (6) An offence against subsection (5) is punishable, on conviction, by imprisonment not exceeding 3 years.”.

Passed by the Legislative Assembly this        day of        2019.

**EXPLANATORY NOTES**

(These notes do not form part of the Bill and are only intended to explain its scope and purpose)

- (1) The amendments to the Criminal Offences Act are to ensure that traditional crimes that are being committed or facilitated by or on a computer system are criminalized. These amendments implement Article 7 to 9 of the Council of Europe Convention on Cybercrime (“Convention”) which criminalizes computer related forgery, computer related fraud and offences related to child pornography.
- (2) The amendments made in relation to the implementation of Article 9 of the Convention have been broadened to criminalize child abuse which includes the elements of child pornography.
- (3) This amendment firstly inserts the definitions of computer data, computer system, data storage medium, hosting service provider, service and service provider.
- (4) Secondly, section 115A in the Principal Act is repealed and replaced with new sections 115A to 115Q in relation to child abuse. These new sections create definitions (section 115A), criminal offences (sections 115F, 115G, 115H, 115L, and 115P), aggravated offences (sections 115J and 115M), alternative verdicts (section 115K), criminal sanctions (sections 115F, 115G, 115H, 115J, 115L, 115M, 115N, 115O, and 115P), defences (section 115I) and elaborations in sections 115B, 115C, 115D, 115E, and 115Q.
- (5) Thirdly, section 169A is a new provision which creates the offence of computer-related fraud, whereas sections 170 to 172 of the Principal Act are repealed and replaced with new sections 170 to 172C in relation to forgery. This also covers computer related forgery. These new sections criminalize and sanction the offences of forgery (section 172), using or possessing a false document (section 172A and 172B) and making or possessing equipment, etc. for making a false document (172C). Elaborations on the “making of a false document” and “inducing acceptance that a document is genuine” are made in sections 170 and 171.

**2 Section 2 amended**

- (1) This amendment inserts the definitions of computer data, computer system, data storage medium, service and service provider, under section 2 of the Principal Act, so that there is consistency in the definitions stated under section 2 of the Computer Crimes Act.
- (2) This amendment also inserts the definition of hosting service provider, under section 2 of the Principal Act, so that there is consistency in the definitions stated under section 2 of the Communications Act.

**3 Section 115A replaced**

- (1) This provision repeals the current section 115A of the Principal Act and replaces it with a new section 115A which provides for the definitions in relation to section 115B to 115Q. The terms defined include access, child abuse material, data, obtaining, depict, describe, engage in sexual activity, make available, publish, sexual activity, sexual intercourse and vagina.

**4 New sections 115B to 115Q inserted**

- (1) **Section 115B** elaborates on situations when a person is in possession or control of data, or material that is in the form of data when referred to in sections 115F to 115Q.
- (2) **Section 115C** elaborates on situations where a person produces, supplies or obtains data, or material that is in the form of data when referred to in sections 115F to 115Q.
- (3) **Section 115D** provides for matters that need to be taken into account when deciding when a reasonable person would regard particular material, or particular use of a service, as being, in all the circumstances, offensive, when referred to in sections 115F to 115Q.
- (4) **Section 115E** provides for situations where a person is taken to not have committed an offence if the person is a service provider or a hosting service provider, and is solely acting in the capacity of a service provider or hosting service provider, when referred to in sections 115F to 115Q.
- (5) **Section 115F** criminalizes and sanctions the possession, control, production, distribution or the obtaining of child abuse material by a person.

- (6) **Section 115G** criminalizes and sanctions the intentional use of a service for child abuse material.
- (7) **Section 115H** criminalizes and sanctions the intentional possession, control, production, supply or obtaining of child abuse material by a person for use through a service.
- (8) **Section 115I** provides that a person is not criminally responsible for an offence against sections 115F, 115G or section 115H, if the conduct of the person is of public benefit and does not extend beyond what is of public benefit.
- (9) **Section 115J** is referred to as an “aggravated offence” in that it criminalizes and sanctions a person who on three or more occasions commits an offence under either sections 115F, 115G, 115H or all three sections (“underlying offence”), and involves two or more people.
- (10) **Section 115K** provides for an alternative verdict where if the Court finds a person not guilty of the “aggravated offence” against section 115J(1), but is satisfied beyond reasonable doubt that a person is guilty of an “underlying offence” against sections 115F, 115G, or 115H, the Court may find the person guilty of the “underlying offence”.
- (11) **Section 115L** criminalizes and sanctions the using of a service for sexual activity with a person under the age of 18.
- (12) **Section 115M** is referred to as an “aggravated offence” in that it criminalizes and sanctions a person who commits an offence against sections 115L(1) and 115L(2) (“underlying offences”), either where the child has a mental impairment or where the person is in a position of trust or authority in relation to the child, or the child is otherwise under the care, supervision or authority of the person, or both.
- (13) **Section 115N** criminalizes and sanctions when a person (“sender”) uses a service to transmit a communication to another person (“recipient”) with the intention of procuring the “recipient” to engage in sexual activity with the “sender” or another person (“the participant”), and where the “sender” uses a service to transmit a communication to the “recipient” with the intention of procuring the “recipient” to engage in sexual activity with another person (who is or who the sender believes to be, under 18 years of age) in the presence of the “sender” or the “participant”.

- (14) **Section 115O** sanctions and criminalizes three offences. Firstly, where a person (“sender”) uses a service to transmit a communication to another person (“recipient”) with the intention of making it easier to procure the “recipient” to engage in sexual activity with the “sender”. Secondly, where the “sender” uses a service to transmit a communication to the “recipient” with the intention of making it easier to procure the “recipient” to engage in sexual activity with another person (“the participant”). Thirdly, where the “sender” uses a service to transmit a communication to the “recipient” with the intention of making it easier to procure the “recipient” to engage in sexual activity with another person (who is, or who the “sender” believes to be under 18 years of age) in the presence of the “sender” or the “participant”.
- (15) **Section 115P** criminalizes and sanctions a person (“sender”) who uses a service to transmit communication which includes indecent material to another person (“recipient”).
- (16) **Section 115Q** elaborates on evidence that determines a person’s age at a particular time, including what a Court may deem to be admissible evidence, in relation to offences against sections 115L to 115P.

## 5 New Section 169A

- (1) The intention of this new provision is to criminalize and sanction any unnecessary manipulation of data that is being processed with the intention to cause an illegal transfer of property. This property could be represented or administered by or through a computer system.
- (2) **Section 169A** criminalizes and sanctions computer-related fraud.

## 6 Sections 170 to 172

- (1) The intention of these new provision are to fill the gaps relating to traditional forgery of tangible documents by including the unauthorised creating or altering of electronic stored data, which is relied on as if it were a genuine document.
- (2) **Section 170** provides for the meaning of a “false document” and what constitutes of a “making a false document” in relation to sections 171 to 172C.
- (3) **Section 171** provides for the reference to “inducing a person to accept a document as genuine” in that it includes a reference to “causing a computer system or electronic device to respond to the document as if it were genuine” in relation to sections 172, 172A, and 172B.

- (4) **Section 172** criminalizes and sanctions the offence of forgery.
- (5) **Section 172A** criminalizes and sanctions the using of a false document.
- (6) **Section 172B** criminalizes and sanctions the possessing of a false document.
- (7) **Section 172C** criminalizes and sanctions three offences. Firstly, the making and possessing any equipment, material or other thing adapted for making a false document. Secondly, knowingly making or possessing any equipment, material or other thing adapted for making a false document. Thirdly, possessing any equipment, material or other thing that is capable of making a false document.

**Hon. Sione Vuna Fa'otusia**  
**Minister of Justice and Prisons**