

POLICE SERVICE ACT 2008

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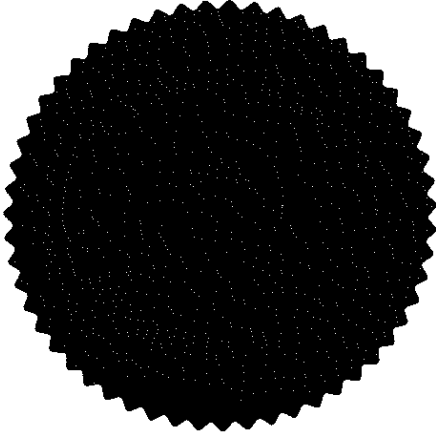
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REPUBLIC OF KIRIBATI
(No. 15 of 2008)

I assent,

Auto-Tung
Beretitenti
23 Decemba, 2008

**AN ACT TO PROVIDE FOR THE ORGANISATION AND DISCIPLINE OF THE KIRIBATI
POLICE AND OF SPECIAL CONSTABLES; AND FOR INCIDENTAL MATTERS**

Commencement:
2008

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti

PART I—PRELIMINARY

1. Short title

This Act may be cited as the Police Service Act 2008.

2. Purpose of this Act

The purpose of this Act is to provide for the administration of the police service.

3. Act to bind all persons

This Act binds all persons, including the Republic.

4. Definitions

In this Act, unless the context otherwise requires—

‘administrative staff member’ has the meaning given in section 6(3);

‘Commissioner’ means the Commissioner of Police;

‘Commissioner’s duties’ means those duties set out in section 12;

‘dangerous drug’ has the meaning given in section 2 of the Dangerous Drugs Ordinance (Cap. 23);

‘death in custody’ means the death of a person when the person was—

- (a) being lawfully detained by a police officer; or
- (b) escaping, or trying to escape, from lawful detention by a police officer; or
- (c) trying to avoid being put into lawful detention by a police officer;

'dismiss' a member of the police service includes remove the member from the police service;

'industrial award' means an award of a tribunal under the *Industrial Relations Code 1998*;

'international law enforcement agency' means a law enforcement agency of another country that has an obligation under the laws of that country to assess the integrity of persons employed or engaged by the government of that country;

'junior police officer' means a police officer who holds or is acting in an office in the police service below the rank of Assistant Superintendent;

'member of the police service' means a person who holds an appointment as a police officer, police recruit or administrative staff member;

'officer in charge' of a place means—

- (a) the police officer appointed by the Commissioner to be in charge of the members of the police service stationed at the place; or
- (b) if the Commissioner has not appointed a police officer to be in charge, the highest-ranking police officer stationed in the district in which the place is situated; or
- (c) if there are no police officers stationed in the district in which the place is situated, the highest-ranking employee of the public service stationed in the district;

'police officer' has the meaning given in section 6(2);

'police service' means the Kiribati Police;

'senior police officer' means a police officer who holds or is acting in an office in the police service below the rank of Commissioner, but not below the rank of Assistant Superintendent;

'special constable' means a person who holds an appointment as a special constable under section 19;

'vehicle' includes a vessel;

'volunteer' means a person who the Commissioner appoints to perform duties for the police service on an unpaid voluntary basis.

PART II—ADMINISTRATION OF THE POLICE SERVICE

Division 1—The Police Service

5. The police service

There shall continue to be established in Kiribati a force of police known as the Kiribati Police (the 'police service').

6. Membership of the police service

- (1) The police service consists of police officers, special constables, police recruits and administrative staff members.
- (2) 'Police officers' are—
 - (a) the Commissioner; and
 - (b) the persons holding an appointment as a senior police officer; and
 - (c) the persons holding an appointment as a junior police officer.
- (3) 'Administrative staff members' are persons employed in the public service who are assigned to perform duties in the police service.
- (4) In spite of any provision to the contrary in the National Conditions of Service, an administrative staff member is subject to the Commissioner's direction when performing duties in the police service.

7. Ranks of police officers

The ranks of police officers are those for the time being declared in the regulations.

8. Mission of the police service

The mission of the police service is to work with the community to—

- (a) promote public safety; and
- (b) reduce crime, violence and fear.

9. Responsibilities of the police service

- (1) The police service is responsible for—
 - (a) preserving peace and good order; and
 - (b) preventing crime; and
 - (c) detecting offenders and bringing offenders to justice; and
 - (d) upholding the law generally; and
 - (e) administering, in a responsible, fair and efficient way and subject to due process of law and the directions of the Commissioner—
 - (i) the *Penal Code* (Cap.67); and
 - (ii) all other Acts or laws for the time being committed to the responsibility of the police service; and
 - (iii) the powers and duties given to police officers under any Act; and
 - (f) providing essential services in emergencies.

- (2) Subsection (1) does not reduce the responsibility that is appropriately had by the community of Kiribati, and members of the community of Kiribati, in relation to—
- (a) the preservation of peace and good order; and
 - (b) the prevention and detection of breaches of the law.
- (3) The members of the police service, when discharging the responsibilities of the police service, are to work together with the community to the extent that is compatible with the efficient and proper discharge of those responsibilities.

10. Values of the police service

Each member of the police service must act in a way that—

- (a) places integrity above all; and
- (b) upholds the rule of law; and
- (c) preserves the rights and freedoms of individuals; and
- (d) seeks to improve the quality of life by community involvement in policing; and
- (e) makes efficient and economical use of public resources; and
- (f) ensures that authority is exercised responsibly.

Division 2—The Commissioner of Police

11. Appointment, suspension and removal of the Commissioner

The Commissioner is to be appointed in accordance with section 100(3) of the *Constitution*, and may be suspended or removed from office in accordance with section 101 of the *Constitution*.

12. Commissioner's duties

- (1) The Commissioner is responsible for the control and management of the police service in accordance with the law.
- (2) This includes, for example—
- (a) determination of priorities; and
 - (b) determination of the appropriate organisational structure of the police service; and
 - (c) designation and redesignation of offices; and
 - (d) control of the human, financial and other resources of the police service; and
 - (e) determination of the number and deployment of police officers and administrative staff members; and

- (f) determination of the number and location of police stations; and
 - (g) recommending, for determination by the Cabinet, the levels of salaries or wages and allowances of members of the police service; and
 - (h) qualifications for offices within the police service and duties attaching to those offices; and
 - (i) promotion and demotion of members of the police service; and
 - (j) training and development of members of the police service; and
 - (k) dress and appearance of members of the police service; and
 - (l) appraisal of performance of members of the police service; and
 - (m) approval and administration of leave arrangements; and
 - (n) internal redeployment and retraining of members of the police service; and
 - (o) determination of times within which members of the police service are to perform their ordinary hours of work; and
 - (p) development of ways to ensure that all members of the police service are treated fairly, justly and with compassion; and
 - (q) maintenance of proper records, including, but not limited to, records about—
 - (i) the action taken by a police officer or someone else in relation to a person suspected of having committed an offence; and
 - (ii) the result of any proceeding against the person for the offence; and
 - (r) the effective, efficient and economical management of the police service.
- (3) When discharging the Commissioner's duties, the Commissioner—
- (a) must comply with all relevant industrial awards; and
 - (b) subject to this Act, must ensure compliance with—
 - (i) the requirements of all Acts and laws that are binding on members of the police service; and
 - (ii) the Commissioner's directions.

13. Commissioner's powers

- (1) The Commissioner has power to do, or cause to be done, all lawful acts and things that the Commissioner considers to be necessary or convenient for the efficient and proper discharge of the Commissioner's duties.
- (2) In addition to the powers that the Commissioner may delegate under section 102(3) of the *Constitution*, the Commissioner may delegate his other powers to a senior police officer.

14. Commissioner's directions

- (1) The Commissioner may give, and cause to be issued to members of the police service, the directions that the Commissioner considers necessary or convenient for the efficient and proper functioning of the police service.
- (2) Without limiting subsection (1), the Commissioner's directions may include a code of ethics that is to be observed in the police service.
- (3) A direction may be general or particular, and may be given orally or in writing.
- (4) A direction is of no effect to the extent that it is inconsistent with this Act or another Act.
- (5) Subject to subsection (4), every member of the police service to whom a direction of the Commissioner is addressed is to comply with the direction in all respects.
- (6) In all proceedings—
 - (a) a document that purports to be certified by the Commissioner to be a true copy of a direction under this section is admissible as evidence of the direction; and
 - (b) a direction under this section is taken to be effectual until the contrary is proven.

15. Communications between the Commissioner and the Minister

- (1) The Commissioner—
 - (a) must give reports and recommendations about the administration of the police service to the Minister, when required to do so by the Minister; and
 - (b) may give the Minister, at any time, the reports and recommendations that the Commissioner considers necessary for the efficient and effective administration of the police service.
- (2) The Minister, after consultation with the Commissioner, may give written directions to the Commissioner about—
 - (a) the overall administration of the police service; and
 - (b) the policies and priorities to be pursued in performing the duties of the police service.
- (3) The Commissioner must comply with the Minister's directions.
- (4) The Commissioner must keep a record of—
 - (a) all reports and recommendations made to the Minister under paragraph (a) of subsection (1); and
 - (b) all directions given to the Commissioner under subsection (2).

16. Commissioner's official stamp

- (1) The Commissioner is to have an official stamp.
- (2) All courts and persons who act judicially are to take judicial notice of—
 - (a) the signature of the Commissioner or any person who, at any time, was the Commissioner (a 'former Commissioner'); and
 - (b) the fact that the Commissioner has, or a former Commissioner had, an official stamp; and
 - (c) the official stamp of the Commissioner or a former Commissioner, if the signature or official stamp appears on a document made for the purposes of judicial proceedings or on a document purporting, or seeming, to have been made for the purposes of this Act.

Division 3—Other Members of the Police Service

17. Appointing senior police officers

- (1) This section applies to the appointment of senior police officers by the Beretitenti under section 99 of the *Constitution*.
- (2) The number of senior police officers to be appointed is to be the number that the Beretitenti, acting in accordance with the advice of the Cabinet, tendered after consultation with the Commissioner, determines is necessary for the effectual administration of this Act, and the efficient and proper discharge of the Commissioner's duties.

18. Appointing junior police officers

- (1) This section applies to the appointment of junior police officers by the Commissioner under section 102 of the *Constitution*.
- (2) The number of junior police officers to be appointed is to be the number that the Beretitenti, acting in accordance with the advice of the Cabinet, tendered after consultation with the Commissioner, determines is necessary for the effectual administration of this Act, and the efficient and proper discharge of the Commissioner's duties.

19. Appointing special constables

- (1) The Commissioner, in writing, may appoint persons to be special constables.
- (2) The number of special constables to be appointed is to be the number that the Beretitenti, acting in accordance with the advice of the Cabinet, tendered after consultation with the Commissioner, determines is necessary for the effectual administration of this Act, and the efficient and proper discharge of the Commissioner's duties.

- (3) The Commissioner may appoint special constables on the terms and conditions that the Commissioner thinks appropriate.
- (4) A special constable may perform paid employment while holding an appointment as a special constable, if the special constable has the written consent of the Commissioner.
- (5) The Commissioner must not withhold consent unreasonably if the type of employment is compatible with the mission, responsibilities and values of the police service.
- (6) While a person holds an appointment as a special constable—
 - (a) the person has the duties and powers of a police officer specified in the person's instrument of appointment as a special constable, and has no other duties or powers; and
 - (b) the provisions of this Act that apply to police officers, and that may be reasonably applied to special constables, also apply to the person as if they were a police officer.
- (7) Notwithstanding section 105 of this Act, the Beretitenti, acting in accordance with the advice of the Cabinet, may make regulations for giving effect to any of the purposes or provisions of this section.

20. Appointments to be based on merit of applicants

- (1) This section applies to a decision to appoint a member of the police service, including by promotion.
- (2) The decision must be made by fair and equitable procedures that—
 - (a) prevent unjust discrimination, whether in favour of or against a person; and
 - (b) include inviting applications and selecting the applicant who has the greatest merit.
- (3) The 'merit' of an applicant is comprised of—
 - (a) the integrity of the applicant; and
 - (b) the diligence and good conduct shown by the applicant in the course of the applicant's career; and
 - (c) the physical and mental fitness of the applicant to perform the duties of the position in question; and
 - (d) the suitability of the applicant to be engaged by the police service, as determined under Division 5 of this Part; and
 - (e) the potential of the applicant to discharge the duties of the position in question; and

- (f) the ability of the applicant to fluently speak and write English.
- (4) The 'potential of an applicant to discharge the duties of the position in question' is to be determined by taking at least the following factors into account—
 - (a) the performance of duties of office in the course of the applicant's career; and
 - (b) the range of practical experience of the applicant in or outside the police service; and
 - (c) any relevant academic, professional or trade qualification of the applicant; and
 - (d) the ability, aptitude, skill, knowledge and experience determined by the Commissioner to be necessary for the proper performance of the duties of the position.
- (5) The Commissioner may require an applicant to submit to an examination or assessment to gauge the applicant's potential and their physical and mental fitness to perform the duties of the position in question.

21. Appointment on probation

- (1) An appointment as a police officer of a person who was not a police officer immediately before the appointment is an appointment on probation for—
 - (a) a period of two years; or
 - (b) a longer period determined by the Commissioner.
- (2) Unless the position of a police officer is advertised as one to which appointment is to be made without a probationary period, an appointment of a police officer to a position on promotion is an appointment on probation for—
 - (a) a period of six months; or
 - (b) a longer period determined by the Commissioner.
- (3) In the case of a junior police officer appointed on probation, the Commissioner may—
 - (a) at any time during the initial probationary period, or during any extension of a probationary period – terminate the appointment of a person; and
 - (b) at the end of a probationary period – confirm the appointment of the person, extend or further extend the probationary period, or terminate the appointment of a person.
- (4) If the appointment of a junior police officer appointed on probation has been terminated under subsection (3), the person may appeal against the decision of the Commissioner to the Public Service Commission under section 68.

- (5) In the case of a senior police officer appointed on probation, the Beretitenti, acting in accordance with the advice of the Public Service Commission, may—
- (a) at any time during the initial probationary period, or during any extension of a probationary period – terminate the appointment of a person; and
 - (b) at the end of a probationary period – confirm the appointment of the person, extend or further extend the probationary period, or terminate the appointment of a person.
- (6) If an appointment of a police officer on promotion is terminated under subsection (3) or (5), the police officer is to be retained in employment as a police officer, at a level of salary not less than the level of salary of the police officer immediately before the appointment that is terminated, until—
- (a) the police officer is appointed to another position in the police service; or
 - (b) the police officer is otherwise dealt with under this Act.

22. Appointment on part-time basis

Appointment to a position as a member of the police service, including by way of promotion, may be on the basis of part-time employment.

23. Appointment excludes other paid employment

A police officer must not perform any other paid employment while holding an appointment as a police officer.

24. Oath or affirmation of office

- (1) Before a person begins to perform duty as a police officer or special constable, the person must make the oath or affirmation that is prescribed in the regulations.
- (2) The person must make the oath or affirmation in front of—
 - (a) the Commissioner; or
 - (b) a senior police officer; or
 - (c) a justice of the peace.

25. Decision to transfer police officers

- (1) The Commissioner may transfer a police officer to any position where the police officer's services are required.
- (2) However, a decision to transfer a police officer must be made by fair and equitable procedures that prevent unjust discrimination, whether in favour of or against a police officer.

- (3) The 'transfer' of a police officer means the appointment of a police officer to a position in which the police officer will hold the same rank and be entitled to at least the same level of salary.
- (4) A police officer who is transferred to a position must accept the transfer, even if the police officer did not apply for the transfer.
- (5) However, if the police officer did not apply for the transfer, the police officer may appeal against the decision of the Commissioner to the Public Service Commission under section 68, and the notice informing the police officer of the transfer must also inform the police officer of his or her right of appeal.
- (6) The Commissioner cannot direct a police officer to attend for duty within 14 days after the police officer was notified of the Commissioner's decision.
- (7) However, subsection (6) does not limit the Commissioner's powers to direct a police officer to attend for duty in circumstances that the Commissioner considers are urgent.

Division 4—Chain of Command

26. Commissioner has overall command

The Commissioner has the command, supervision and control of the police service.

27. Command at a police station

- (1) The Commissioner may appoint a police officer to be in charge of the members of the police service stationed in a particular place.
- (2) However, the police officer in charge must carry out the directions and orders of the Commissioner and other more senior police officers.

28. Command at incidents

- (1) This section applies to any incident that calls for action by police at which police officers are present.
- (2) The following person is responsible for taking action, and for action taken, at the incident—
 - (a) the police officer designated for that purpose in accordance with administrative arrangements established by the Commissioner;
 - (b) if the police officer mentioned in paragraph (a) is not there – the police officer present who is most senior by rank;
 - (c) if the police officers mentioned in paragraphs (a) and (b) are not there – the police officer present who is most senior by length of continuous service as a police officer.

- (3) For subsection (2)(c), any service other than as a police officer must not be counted, even though it may count as continuous service under section 97.

Division 5—Suitability of persons engaged by the police service

29. Purpose of this Division

- (1) The purpose of this Division is to ensure that the Commissioner—
- (a) may gather all the relevant information that the Commissioner needs about a person who is engaged, or who is seeking to be engaged, by the police service; and
 - (b) may use this information to assess the person's suitability to be, or to continue to be, engaged by the police service.
- (2) The following persons are 'engaged by the police service'—
- (a) a police officer;
 - (b) a police recruit;
 - (c) a special constable;
 - (d) an administrative staff member;
 - (e) a person performing functions at a police station under a contract for services (including an electrician, for example);
 - (f) a person working in the police service as a volunteer, or as a person undertaking unpaid work experience.
- (3) The reasons why a person may be unsuitable to continue to be engaged by the police service include, for example—
- (a) that the person's methods or way of executing his or her duties are not compatible with the requirements of the police service; or
 - (b) that there may be insufficient grounds for dismissal, but it is in the interests of the police service to dispense with the person's services.
- (4) The information obtained by the Commissioner is to be used only for assessing the person's suitability to be, or to continue to be, engaged by the police service.
- (5) Nothing in subsection (4) is to be taken as preventing the Commissioner using any of the information that discloses the commission of an offence, or is, or leads to the discovery of, evidence of the commission of an offence, for an investigation into the offence and any proceedings started or facilitated because of the investigation.

30. Relevant information that is to be disclosed

In this Division, 'relevant information' about a person includes information about the following matters, whether they relate to circumstances arising in Kiribati or overseas—

- (a) offences (including traffic offences, for example) of which the person has been convicted;
- (b) arrests of the person;
- (c) warrants issued in relation to the person;
- (d) cautions or warnings given to the person;
- (e) orders made against the person;
- (f) whether the person has had a weapons licence suspended or cancelled;
- (g) any alias that the person has used.

31. Disclosure by persons seeking to be engaged by the police service

- (1) A person who is seeking to be engaged by the police service must, if required by the Commissioner, disclose to the Commissioner any relevant information known to the person that may affect the person's suitability to be engaged by the police service.
- (2) The person must disclose the information before being engaged by the police service.

32. Disclosure by persons already engaged by the police service

- (1) A person who is engaged by the police service must, if required by the Commissioner, disclose to the Commissioner any relevant information known to the person that may affect the person's suitability to be engaged by the police service.
- (2) If a person who is engaged by the police service is aware that there is a change in relevant information about the person, the person must immediately disclose details of the change to the Commissioner.
- (3) Without limiting subsection (2), the person must disclose the details of any offence that the person is charged with, including details of when the offence was alleged to have been committed.

33. Commissioner may request information from other agencies

The Commissioner may ask an international law enforcement agency to give the Commissioner a report that includes relevant information about a person.

34. Prosecutor to notify Commissioner about convictions, etc.

- (1) This section applies if—
 - (a) a person is charged with an offence; and
 - (b) the person who is prosecuting the offence (the 'prosecutor') is aware that the person is engaged by the police service.
- (2) The prosecutor must give the Commissioner written notice of the following particulars within seven days after the prosecutor becomes aware of the particulars—
 - (a) the person's name and the particulars of the offence with which the person is charged; and
 - (b) if the person is convicted of an offence by a court—
 - (i) particulars of the offence; and
 - (ii) the date of the conviction; and
 - (iii) the court that convicted the person; and
 - (iv) the sentence imposed by the court; and
 - (c) if the person is convicted of an offence and appealed the conviction, and the appeal has been finally decided or has otherwise ended—
 - (i) particulars of the offence; and
 - (ii) the date on which the appeal was decided or otherwise ended; and
 - (iii) if the appeal was decided – the court that decided the appeal; and
 - (iv) if the appeal was decided – particulars of the decision.
- (3) This section does not apply if the person was charged with the offence by a police officer.

35. Fingerprinting of applicants

- (1) The Commissioner may require a person who is seeking to be engaged by the police service to agree to have a fingerprint or hand print taken for the Commissioner's use in deciding whether the person is suitable to be engaged by the police service.
- (2) The person must be informed, in writing, that the prints may be used for the purposes of checking the person's criminal history, before the fingerprint or hand print are taken.
- (3) The Commissioner must destroy any fingerprint or hand print taken under this section from a person who is not appointed to a position within the police service, as soon as practicable after that decision is made.
- (4) A person who stops being a police officer may request that any fingerprint or hand print taken under this section be destroyed.

- (5) The Commissioner must ensure that the request is complied with as soon as practicable after the request is made.

36. Integrity testing of police officers

- (1) The Commissioner may conduct, or authorise a police officer or another person to conduct, a test of the integrity of a particular police officer or a class of police officers.
- (2) The test may involve an act or omission, by a person who is participating in the test, that offers a police officer whose integrity is being tested an opportunity to engage in behaviour (either lawful or unlawful) in contravention of the integrity required of a police officer.
- (3) The act or omission of the person who is participating in the test is declared to be lawful, in spite of any law to the contrary, but only to the extent to which the act or omission occurs in the course of, and for the purposes of, the test.
- (4) A certificate that is issued by the Commissioner stating that, on a specified date or during a specified period, a specified police officer or other person was authorised to participate in a test that involved a specified act or omission is admissible in any proceedings, and is conclusive evidence of the statements made in the certificate.

37. Assessment of suitability

- (1) When assessing a person's suitability to be, or to continue to be, engaged by the police service, the Commissioner may have regard to all relevant information available to the Commissioner.
- (2) This relevant information includes, but is not limited to—
 - (a) information that is given to the Commissioner under this Division; and
 - (b) information that is stored on—
 - (i) a database kept by the Commissioner; or
 - (ii) a database kept by an international law enforcement agency to which the Commissioner has access; or
 - (c) information that is otherwise available to the Commissioner.

38. Person to be advised if they are not suitable

- (1) This section applies if, because of information relied on by the Commissioner under this Division, the Commissioner considers that a person may not be suitable to be, or to continue to be, engaged by the police service.

- (2) The Commissioner, before deciding that the person is not suitable, must—
- (a) give the person written notice of the information upon which the Commissioner has relied to form the opinion that the person may not be suitable; and
 - (b) allow the person a reasonable opportunity to make written representations to the Commissioner about the information.
- (3) Also, the Commissioner must give his or her written reasons why the person may not be suitable, unless the Commissioner considers that disclosure of the reasons—
- (a) may prejudice the investigation of a contravention or possible contravention of the law; or
 - (b) may enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
 - (c) may endanger a person's life or physical safety; or
 - (d) may prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
 - (e) may prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
 - (f) may prejudice national security; or
 - (g) is prohibited under another Act.
- (4) If, after considering any written representations made by the person, the Commissioner decides that the person is suitable to be, or to continue to be, engaged by the police service, the Commissioner must—
- (a) notify the person of the decision in writing; and
 - (b) if appropriate, direct that improvements be made, or that action be taken to improve the person's performance.
- (5) If, after considering any written representations made by the person, the Commissioner decides the person is not suitable to be, or to continue to be, engaged by the police service, the Commissioner must give the person a written notice that states—
- (a) in the case of a person seeking to be engaged by the police service – that the person will not be engaged in the police service; or
 - (b) in the case of a person engaged by the police service, other than a serving member of the police service – that the person's engagement is terminated immediately; or
 - (c) in the case of a serving member of the police service, other than a senior police officer or an administrative staff member—
 - (i) that the person's appointment is terminated in accordance with subsection (11); and

- (ii) that the person has a right to appeal against the decision to the Public Service Commission under section 68; or
 - (d) in the case of a senior police officer or an administrative staff member – that the Commissioner will seek the termination of the person’s appointment under subsection (7).
- (6) If the Commissioner decides under subsection (5)(c) to terminate the appointment of a serving member of the police service (other than a senior police officer or an administrative staff member) the person may appeal to the Public Service Commission under section 68.
 - (7) If the Commissioner decides under subsection (5)(d) that a senior police officer or an administrative staff member is not suitable to continue to be engaged by the police service, the Commissioner must request the Public Service Commission to advise the Beretitenti to terminate the person’s appointment.
 - (8) A request under subsection (7) must be accompanied by copies of all information relied on by the Commissioner in reaching the decision that a senior police officer or an administrative staff member is not suitable to continue to be engaged by the police service, together with a copy of any written representations made by the person.
 - (9) On receiving a request under subsection (7) the Public Service Commission may—
 - (a) advise the Beretitenti to terminate the person’s appointment; or
 - (b) reject the Commissioner’s request, informing the Commissioner in writing of the reasons for rejecting the request.
 - (10) In considering a request under subsection (7), the Public Service Commission is entitled to rely on the material provided under subsection (8) and is not obliged to give the person any further opportunity to be heard.
 - (11) A serving member of the police service whose appointment is to be terminated under this Division is entitled to one month’s notice of the proposed termination, or one month’s salary instead of the notice.

39. Confidentiality of relevant information

- (1) This section applies to a person who—
 - (a) is, or has been—
 - (i) a person engaged by the police service; or
 - (ii) a member of a selection panel; or
 - (iii) a member of the Public Service Commission; and
 - (b) in that capacity, acquired relevant information about another person.

- (2) The person commits an offence if the person discloses the information to anyone, unless—
- (a) the disclosure—
 - (i) is to a police officer, an administrative staff member, a member of a selection panel or a member of the Public Service Commission, for the purposes of assessing the person's suitability to be, or to continue to be, engaged by the police service; or
 - (ii) is with the person's consent; or
 - (iii) is of information that is relevant to an existing investigation of an offence; or
 - (iv) is for a proceeding started because of an existing investigation of an offence; or
 - (v) is information that the person may disclose to a person who is entitled to ask for it under another Act; or
 - (b) the information discloses evidence of the commission or suspected commission of an offence and an investigation is started or facilitated because of the information.
- (3) The maximum penalty for an offence under this section is a fine of \$5000 and two years' imprisonment.
- (4) A person involved in any way in anything done under this Division cannot be compelled to produce to a court any document kept, or to disclose to a court any information obtained, because of doing the thing.
- (5) In this section—
- a 'member of a selection panel' is a member of a panel formed to make a recommendation to the Commissioner about a person's engagement by the police service; and
- 'relevant information' has the meaning given under section 30.

Division 6—Disciplinary Control

Sub-division 1—General

40. Purpose of this Division

- (1) The purpose of this Division is to provide a system of disciplining members of the police service, to ensure that appropriate standards of behaviour are maintained within the police service.
- (2) It is intended that breaches of discipline, other than serious breaches of discipline, be dealt with through progressive disciplinary action.

- (3) For example, disciplinary action could start with verbal counseling and be followed by a first written warning, a final written warning, and then dismissal.
- (4) To remove any doubt, a member of the police service may be penalised for a breach of discipline, and also dealt with for the commission of an offence, for the same act or omission.
- (5) This Division does not apply to the Commissioner, in respect of whom the provisions of section 101 of the *Constitution* applies.

41. Breaches of discipline

- (1) A police officer, special constable or police recruit commits a breach of discipline if the person, while in Kiribati or overseas—
 - (a) contravenes—
 - (i) this Act or the regulations; or
 - (ii) the *Police Powers and Duties Act 2008*, or any regulations thereunder; or
 - (b) is careless, lazy or negligent in carrying out his or her duties, without reasonable cause, including for example by failing to properly supervise his or her subordinates; or
 - (c) acts in a disgraceful or improper way, either on or off duty, including for example by conducting himself or herself—
 - (i) in a way that is likely to bring discredit to the police service; or
 - (ii) in dishonest or unethical way; or
 - (d) acts in a way that is prejudicial to the good order and discipline of the police service, including for example by—
 - (i) disobeying a lawful direction or order made by a superior officer; or
 - (ii) using abusive, insulting, obscene or threatening language while on duty; or
 - (iii) consuming alcohol while on duty without the approval of the Commissioner; or
 - (e) fails to deal with a contravention of the law that happens in his or her presence, unless it would not be reasonable in the circumstances because of an imminent risk to the police officer's safety; or
 - (f) is absent from duty without—
 - (i) leave; or
 - (ii) reasonable cause; or
 - (g) is convicted in Kiribati of an offence, or is convicted overseas of an offence that if committed in Kiribati would have been an offence; or

(h) aids, abets, counsels or procures the commission of a breach of discipline under this subsection.

(2) If disciplinary control over a police officer, special constable or police recruit is contemplated on a ground mentioned in subsection (1)(f), the Commissioner may appoint a medical practitioner to examine the person and to report to the Commissioner on the person's physical or mental condition.

42. Types of penalties

The following types of penalties may be imposed on a police officer, special constable or police recruit who commits a breach of discipline—

- (a) a caution or reprimand; or
- (b) a fine of up to 14 days' pay; or
- (c) the forfeiture or deferment of a salary increment for up to one year; or
- (d) a reduction in the person's level of salary, within the limits of the salary fixed for the rank held by the person; or
- (e) a reduction in rank; or
- (f) a transfer; or
- (g) dismissal.

43. Application of the National Conditions of Service

- (1) Subject to this Act, the National Conditions of Service shall apply to the dismissal and disciplinary control of administrative staff members.
- (2) Nothing in the National Conditions of Service shall prevent the Commissioner from—
 - (a) determining the suitability of an administrative staff member under Division 5 of this Part; and
 - (b) taking steps to have the appointment of the administrative staff member terminated under section 38.
- (3) To remove any doubt, the National Conditions of Service do not apply to the dismissal and disciplinary control of police officers, special constables and police recruits.

Sub-division 2—Disciplinary control over junior police officers, special constables and police recruits

44. Application of this Sub-division

- (1) This Sub-division applies to all junior police officers, special constables and police recruits, and a reference in this Sub-division to a junior police officer includes a reference to a special constable and a police recruit.

- (2) In this Sub-division, an 'accused officer' is a junior police officer accused of a disciplinary breach.

45. Order to appear before a disciplinary board

- (1) Where any junior police officer is accused of a disciplinary breach, the Commissioner may order the accused officer to appear before a disciplinary board, which is to conduct a hearing and recommend to the Commissioner what action is to be taken, if any, in respect of the alleged disciplinary breach.
- (2) The order must be in writing and state—
- (a) the disciplinary breach that is alleged to have been committed by the accused officer; and
 - (b) the alleged facts on which the disciplinary breach is based; and
 - (c) the time, date and place of the disciplinary board hearing.
- (3) The order must be given to the accused officer at least seven days before the disciplinary board hearing is to begin.
- (4) If all reasonable attempts to give the order to the accused officer have failed, at least seven days before the disciplinary board hearing is to begin, the order may—
- (a) be published in a newspaper that is circulating in the area where the accused officer was last known to live; or
 - (b) be advertised on a radio station that is transmitting in the area where the accused officer was last known to live.

46. Establishing a disciplinary board

- (1) A disciplinary board is to be established by the written order of the Commissioner.
- (2) A disciplinary board may be—
- (a) a summary board, which may only recommend to the Commissioner imposition of the following penalties—
 - (i) a caution or reprimand; or
 - (ii) a fine of up to 14 days' pay; or
 - (b) a non-summary board, which may recommend to the Commissioner imposition of any of the penalties provided for in section 42.
- (3) A disciplinary board consists of—
- (a) in the case of a summary board – one police officer who is higher in rank than the accused officer; or
 - (b) in the case of a non-summary board – three police officers who are not lower in rank or seniority than the accused officer.

- (4) However, none of the following persons can be appointed as a member of a disciplinary board—
 - (a) the investigating officer;
 - (b) the complainant;
 - (c) any of the witnesses to be called in the hearing;
 - (d) any other person who has any interest that may conflict with a fair and impartial hearing of the charges made against the accused officer.
- (5) The order that establishes a non-summary board must specify which member of the disciplinary board is to be the Chairman of the board.
- (6) A single disciplinary board may be established to hear and decide proceedings against a number of accused officers, unless the defence of any of the accused officers may be prejudiced.

47. Proceedings before a disciplinary board

- (1) The proceedings before a disciplinary board must be heard in the presence of the accused officer unless, despite having been given notice of the proceedings in accordance with section 45, the accused officer fails to attend before the disciplinary board.
- (2) However, if, prior to the review of the disciplinary board's decision by the Commissioner under section 49, the accused officer shows sufficient cause that prevented the accused officer from attending before the disciplinary board, the accused officer is entitled to a rehearing.
- (3) The proceedings before the disciplinary board are to be conducted with as little formality and technicality as possible, given the need to properly and fairly consider the complaint made against the accused officer.
- (4) The disciplinary board may decide all or part of the proceedings from the documents brought before the disciplinary board, without the parties or the witnesses appearing, if—
 - (a) the parties agree; and
 - (b) the disciplinary board considers it appropriate in all the circumstances.
- (5) Subject to subsection (4), the accused officer is entitled to—
 - (a) be represented by a person, whether or not that person is a legal practitioner; and
 - (b) cross-examine witnesses; and
 - (c) make a statement in his or her defence, either orally or in writing.
- (6) The disciplinary board may direct the accused officer to answer a question even if the answer might tend to incriminate the accused officer.

- (7) However—
- (a) the answer given by the accused officer in response to a direction under subsection (6) is not admissible in any other proceedings, whether criminal or civil; and
 - (b) any information, document or other evidence that is obtained only as a direct or indirect result of the answer given by the accused officer in response to a direction under subsection (6) is not admissible in any criminal or civil proceedings.
- (8) The disciplinary board is not bound by the rules of evidence, but may inform itself in any way it considers appropriate.
- (9) The standard of proof in the proceedings is strict liability, which is more than the balance of probabilities, but less than beyond a reasonable doubt.
- (10) The disciplinary board must keep a written record of the proceedings, in which it records—
- (a) the statements of the accused officer and all witnesses; and
 - (b) any reports relating to the accused officer that are tendered at the proceedings.
- (11) If the disciplinary board finds the accused officer guilty of a breach of discipline, the disciplinary board may consider any breaches of discipline committed by the accused officer in the past when recommending to the Commissioner what penalty to impose on the accused officer.
- (12) At the end of the proceedings, the disciplinary board must—
- (a) inform the accused officer—
 - (i) of its decision, together with any recommendation as to penalty; and
 - (ii) that the Commissioner is required to review the disciplinary board's decision under section 49; and
 - (iii) that the accused officer is entitled, within 14 days of having been informed of the decision, to make written representations to the Commissioner about its decision and any recommendation as to penalty; and
 - (b) forthwith communicate its decision and any recommendation to the Commissioner.

48. Suspension of penalty

- (1) If the disciplinary board finds an accused officer guilty of a breach of discipline, the disciplinary board may recommend to the Commissioner that the effect of any penalty imposed on an accused officer for a breach of discipline be suspended, if the accused officer agrees to—
- (a) perform community service specified by the disciplinary board; or

- (b) undergo a course of counselling and rehabilitation specified by the disciplinary board.
- (2) The disciplinary board must specify a type of community service, or course of counselling and rehabilitation, that is relevant to the breach of discipline.
- (3) If the Commissioner agrees to suspend the effect of a penalty imposed on an accused officer, and the accused officer successfully completes the community service or course of counselling and rehabilitation, the penalty is rescinded.
- (4) If the accused officer fails to successfully complete the community service or course of counselling and rehabilitation, the Commissioner must determine the penalty to be imposed for the breach of discipline.
- (5) The Commissioner must not consider the question of the penalty to be imposed for the breach of discipline until—
 - (a) the accused officer has been given a written notice that states—
 - (i) that the Commissioner intends to determine the penalty to be imposed for the breach of discipline; and
 - (ii) that the accused officer is entitled, within seven days of receipt of the notice, to make written representations to the Commissioner on the question of penalty; and
 - (b) at least seven days have elapsed from the date on which the accused officer received the notice under paragraph (a), unless the accused officer has, before the expiration of the seven days,—
 - (i) made written representations to the Commissioner on the question of penalty; or
 - (ii) informed the Commissioner in writing that he or she does not intend to make any representations to the Commissioner on the question of penalty; and
 - (c) the written representations, if any, have been considered by the Commissioner.
- (6) Upon consideration of the written representations, if any, from the accused officer, the Commissioner must impose a penalty that is appropriate in all the circumstances, taking into account the proportion of the community service performed or course of counselling and rehabilitation undertaken by the accused officer.
- (7) If the Commissioner decides under subsection (6) to impose a penalty the accused officer may appeal to the Public Service Commission under section 68.

49. Commissioner's review of disciplinary board's decision

- (1) Subject to subsection (2), the Commissioner must review the decision of a disciplinary board, and any recommendation as to penalty, as soon as possible after being advised of the decision.
- (2) The Commissioner may not review the decision of a disciplinary board until at least 14 days have elapsed from the date on which the accused officer was informed of the decision under section 47(12)(a), unless—
 - (a) the accused officer has, before the expiration of the 14 days, made written representations to the Commissioner about—
 - (i) the decision; and
 - (ii) any recommendation as to penalty, of the disciplinary board; or
 - (b) the accused officer has, before the expiration of the 14 days, informed the Commissioner in writing that he or she does not intend to make any representations to the Commissioner about the decision or the recommendation.
- (3) After reviewing the disciplinary board's decision, the Commissioner must—
 - (a) confirm the decision and impose the penalty recommended by the disciplinary board; or
 - (b) confirm the decision but impose a different penalty to the penalty recommended by the disciplinary board; or
 - (c) annul the decision and the penalty; or
 - (d) order a rehearing.
- (4) However, the Commissioner must not impose a penalty greater than the penalty recommended by the disciplinary board until—
 - (a) the accused officer has been given a written notice that states—
 - (i) that the Commissioner is considering the imposition of a greater penalty; and
 - (ii) that the accused officer is entitled, within seven days of receipt of the notice, to make further written representations to the Commissioner on the question of penalty; and
 - (b) at least seven days have elapsed from the date on which the accused officer received the notice under paragraph (a), unless the accused officer has, before the expiration of the seven days,—
 - (i) made further written representations to the Commissioner on the question of penalty; or
 - (ii) informed the Commissioner in writing that he or she does not intend to make any further representations to the Commissioner on the question of penalty; and

- (c) the further written representations, if any, have been considered by the Commissioner.
- (5) If the Commissioner decides under subsection (3) to impose a penalty the accused officer may appeal to the Public Service Commission under section 68.
- (6) The Commissioner must give the accused officer a written notice that states—
 - (a) the Commissioner's decision; and
 - (b) if a penalty is imposed – that the accused officer may appeal against the Commissioner's decision to the Public Service Commission under section 68.

Sub-division 3—Disciplinary control over senior police officers

50. Application of this Sub-division

- (1) This Sub-division applies to all senior police officers.
- (2) In this Sub-division, an 'accused officer' is a senior police officer accused of a disciplinary breach.

51. Notice of disciplinary hearing by Commissioner

- (1) Where any senior police officer is accused of a disciplinary breach, the Commissioner may conduct a hearing into the alleged disciplinary breach and recommend to the Public Service Commission what action, if any, is to be taken.
- (2) The accused officer must be given a written notice that states—
 - (a) the disciplinary breach that is alleged to have been committed by the accused officer; and
 - (b) the alleged facts on which the disciplinary breach is based; and
 - (c) the time, date and place of the disciplinary hearing.
- (3) The notice must be given to the accused officer at least seven days before the disciplinary hearing is to begin.
- (4) If all reasonable attempts to give the order to the accused officer have failed, at least seven days before the disciplinary hearing is to begin, the notice may—
 - (a) be published in a newspaper that is circulating in the area where the accused officer was last known to live; or
 - (b) be advertised on a radio station that is transmitting in the area where the accused officer was last known to live.

52. The disciplinary hearing

- (1) The disciplinary hearing must be conducted in the presence of the accused officer unless, despite having been given notice of the proceedings in accordance with section 51, the accused officer fails to attend before the Commissioner.
- (2) The disciplinary hearing is to be conducted with as little formality and technicality as possible, given the need to properly and fairly consider the complaint made against the accused officer.
- (3) The Commissioner may decide all or part of the proceedings from the documents brought before the Commissioner, without the parties or the witnesses appearing, if—
 - (a) the parties agree; and
 - (b) the Commissioner considers it appropriate in all the circumstances.
- (4) Subject to subsection (3), the accused officer is entitled to—
 - (a) be represented by a person, whether or not that person is a legal practitioner; and
 - (b) cross-examine witnesses; and
 - (c) make a statement in his or her defence, either orally or in writing.
- (5) The Commissioner may direct the accused officer to answer a question even if the answer might tend to incriminate the accused officer.
- (6) However—
 - (a) the answer given by the accused officer in response to a direction under subsection (5) is not admissible in any other proceedings, whether criminal or civil; and
 - (b) any information, document or other evidence that is obtained only as a direct or indirect result of the answer given by the accused officer in response to a direction under subsection (5) is not admissible in any criminal or civil proceedings.
- (7) The Commissioner is not bound by the rules of evidence, but may inform himself or herself in any way he or she considers appropriate.
- (8) The standard of proof in the disciplinary hearing is strict liability, which is more than the balance of probabilities, but less than beyond a reasonable doubt.
- (9) The Commissioner must keep a written record of the disciplinary hearing, in which is recorded—
 - (a) the statements of the accused officer and all witnesses; and
 - (b) any reports relating to the accused officer that are tendered at the proceedings.

- (10) If the Commissioner finds the accused officer guilty of a breach of discipline, the Commissioner may consider any breaches of discipline committed by the accused officer in the past when recommending to the Public Service Commission what penalty to impose on the accused officer.
- (11) At the end of the disciplinary hearing, the Commissioner must—
 - (a) inform the accused officer—
 - (i) of his or her decision, together with any recommendation as to penalty; and
 - (ii) that the Public Service Commission is required to review the Commissioner's decision under section 54; and
 - (iii) that the accused officer is entitled, within 14 days of having been informed of the decision, to make written representations to the Public Service Commission about the Commissioner's decision and any recommendation as to penalty; and
 - (b) forthwith communicate his or her decision and any recommendation to the Public Service Commission.

53. Suspension of penalty

- (1) If the Commissioner finds an accused officer guilty of a breach of discipline, the Commissioner may recommend to the Public Service Commission that the effect of any penalty imposed on an accused officer for a breach of discipline be suspended, if the accused officer agrees to—
 - (a) perform community service specified by the Commissioner; or
 - (b) undergo a course of counselling and rehabilitation specified by the Commissioner.
- (2) The Commissioner must specify a type of community service, or course of counselling and rehabilitation, that is relevant to the breach of discipline.
- (3) If the Public Service Commission agrees to suspend the effect of a penalty imposed on an accused officer, and the accused officer successfully completes the community service or course of counselling and rehabilitation, the penalty is rescinded.
- (4) If the accused officer fails to successfully complete the community service or course of counselling and rehabilitation, the Commissioner must return the matter to the Public Service Commission for determination of penalty under subsections (5) and (6).
- (5) The Public Service Commission must not consider the question of the penalty to be imposed for the breach of discipline until—
 - (a) the accused officer has been given a written notice that states—
 - (i) that the Commissioner has returned the matter to the Public Service Commission for determination of penalty; and

- (ii) that the accused officer is entitled, within seven days of receipt of the notice, to make written representations to the Public Service Commission on the question of penalty; and
 - (b) at least seven days have elapsed from the date on which the accused officer received the notice under paragraph (a), unless the accused officer has, before the expiration of the seven days,—
 - (i) made written representations to the Public Service Commission on the question of penalty; or
 - (ii) informed the Public Service Commission in writing that he or she does not intend to make any representations to the Public Service Commission on the question of penalty; and
 - (c) the written representations, if any, have been considered by the Public Service Commission.
- (6) Upon consideration of the written representations, if any, from the accused officer, the Public Service Commission must advise the Beretitenti to impose a penalty that is appropriate in all the circumstances, and such advice must take into account the proportion of the community service performed or course of counselling and rehabilitation undertaken by the accused officer.

54. Public Service Commission's review of Commissioner's decision

- (1) Subject to subsection (2), the Public Service Commission must review the decision of the Commissioner, and any recommendation as to penalty, as soon as possible after being advised of the Commissioner's decision.
- (2) The Public Service Commission may not review the decision of the Commissioner until at least 14 days have elapsed from the date on which the accused officer was informed of the decision under section 52(11)(a), unless—
 - (a) the accused officer has, before the expiration of the 14 days, made written representations to the Public Service Commission about—
 - (i) the decision; and
 - (ii) any recommendation as to penalty, of the Commissioner; or
 - (b) the accused officer has, before the expiration of the 14 days, informed the Public Service Commission in writing that he or she does not intend to make any representations to the Public Service Commission about the decision or the recommendation.
- (3) After reviewing the Commissioner's decision, the Public Service Commission must—
 - (a) confirm the decision and advise the Beretitenti to impose the penalty recommended by the Commissioner; or

- (b) confirm the decision but advise the Beretitenti to impose a different penalty to the penalty recommended by the Commissioner; or
 - (c) annul the decision and the penalty; or
 - (d) order a rehearing.
- (4) However, the Public Service Commission must not advise the Beretitenti to impose a penalty greater than the penalty recommended by the Commissioner until—
- (a) the accused officer has been given a written notice that states—
 - (i) that the Public Service Commission is considering the imposition of a greater penalty; and
 - (ii) that the accused officer is entitled, within seven days of receipt of the notice, to make further written representations to the Public Service Commission on the question of penalty; and
 - (b) at least seven days have elapsed from the date on which the accused officer received the notice under paragraph (a), unless the accused officer has, before the expiration of the seven days,—
 - (i) made further written representations to the Public Service Commission on the question of penalty; or
 - (ii) informed the Public Service Commission in writing that he or she does not intend to make any further representations to the Public Service Commission on the question of penalty; and
 - (c) the further written representations, if any, have been considered by the Public Service Commission.

Sub-division 4—Suspension and standing down

55. Power to suspend and stand down

- (1) This section applies if—
 - (a) the Commissioner considers, on reasonable grounds, that—
 - (i) a police officer, special constable or police recruit is liable to disciplinary control under Sub-division 2 or 3 of this Division; or
 - (ii) an administrative staff member is liable to disciplinary control under the National Conditions of Service or any law; or
 - (iii) the efficient and proper discharge of the Commissioner's duties might be prejudiced if the employment of a member of the police service is continued; or
 - (b) a member of the police service is charged with an offence; or
 - (c) a member of the police service is unfit for reasons of health to such an extent that the member is unfit to carry out his or her duties.

- (2) The Commissioner may—
- (a) in the case of a member of the police service to whom paragraph (a) or (b) of subsection (1) applies—
 - (i) if the member is a junior police officer, special constable or police recruit – suspend the member from duty; or
 - (ii) if the member is a senior police officer or an administrative staff member – request the Public Service Commission to advise the Beretitenti to suspend the member from duty; or
 - (b) in the case of a member of the police service to whom any of the paragraphs of subsection (1) applies, stand down the member from duty, and direct the member to—
 - (i) perform other duties that the Commissioner considers appropriate; or
 - (ii) take administrative leave of absence.
- (3) If the reason for taking action under subsection (2) no longer applies, the Commissioner may—
- (a) if a junior police officer, special constable or police recruit has been suspended from duty under this section – revoke the suspension; or
 - (b) if a senior police officer or administrative staff member has been suspended from duty under this section – request the Public Service Commission to advise the Beretitenti to revoke the suspension; or
 - (c) if a member of the police service has been stood down from duty under this section – return the member to duty.

56. Salary and allowances while suspended

- (1) A member of the police service who is suspended from duty under section 55(2)(a) is entitled to be paid a salary and allowances at the rate that the member would have received had the member not been suspended, unless—
- (a) if the member is a junior police officer, special constable or police recruit – the Commissioner; or
 - (b) if the member is a senior police officer or administrative staff member – the Beretitenti, acting in accordance with the advice of the Public Service Commission,
- decides otherwise in a particular case.
- (2) However, the member's salary can not be reduced by more than half.
- (3) If the suspension is revoked and the member resumes duty, the member is entitled to receive the amount (if any) by which the member's salary and allowances were reduced, unless—

- (a) if the member is a junior police officer, special constable or police recruit – the Commissioner; or
- (b) if the member is a senior police officer or administrative staff member – the Beretenti, acting in accordance with the advice of the Public Service Commission,

decides otherwise.

(4) If the Commissioner decides—

- (a) under subsection (1)(a) that the salary and allowances of the member are to be reduced during the period of the suspension; or
- (b) under subsection (3)(a) that the member is not to receive the amount by which the member's salary and allowances were reduced during the period of the suspension,

the member may appeal to the Public Service Commission under section 68.

57. Salary and allowances while stood down

A member of the police service who is stood down under section 55(2)(b) is entitled to be paid a salary and allowances at the rate at which the member would have received a salary and allowances had the member not been stood down.

58. Officer relieved of powers and duties while suspended or stood down

While a police officer remains suspended or stood down under this Sub-division, the police officer is relieved of the powers and duties of a police officer.

Sub-division 5—Medical unfitness

59. Unfitness for duty on medical grounds

- (1) This section applies if the Commissioner suspects, on reasonable grounds, that a police officer is incapable of performing the duties of office, or any other duties as a police officer that the Commissioner might reasonably direct the police officer to perform, because of a physical or mental illness.
- (2) The Commissioner must advise the police officer, in writing, of the Commissioner's suspicion.
- (3) If the police officer, within seven days after receiving notice of the Commissioner's suspicion, advises the Commissioner that the police officer does not agree with the Commissioner's suspicion, the Commissioner must obtain a medical report on the matter.
- (4) The Commissioner may—
 - (a) nominate a medical practitioner to examine the police officer and to report to the Commissioner on the police officer's physical or mental health; and
 - (b) direct the police officer to submit to the examination.

- (5) If the Commissioner considers that the police officer is sufficiently fit to perform duties as an administrative staff member, the Commissioner may—
- (a) appoint, in writing, the police officer to a position as an administrative staff member, on a salary that is not less than the salary that the police officer was being paid immediately before the appointment; and
 - (b) direct the police officer to report for, and perform duty, in that position.
- (6) When the police officer is appointed to a position as an administrative staff member, that person ceases to be a police officer and is relieved of all powers and duties of a police officer.
- (7) If the Commissioner considers that the police officer is not sufficiently fit to perform duties as a member of the police service because—
- (a) of any medical reports from medical practitioners on the physical or mental health of the police officer, including medical reports provided by the police officer; or
 - (b) the police officer fails, without reasonable cause, to comply with the Commissioner's direction to submit to the examination,
- the Commissioner may call on the police officer to retire within a time (being not less than 14 days) specified in a written notice from the Commissioner.
- (8) If the police officer does not retire within the time specified—
- (a) in the case of a junior police officer – the Commissioner may terminate the police officer's appointment without further notice;
 - (b) in the case of a senior police officer – the Commissioner may request the Public Service Commission to advise the Beretitenti to terminate the police officer's appointment without further notice.
- (9) If the Commissioner terminates a police officer's appointment under subsection (8)(a), the police officer may appeal to the Public Service Commission under section 68.
- (10) A request to the Public Service Commission under subsection (8)(b) must be accompanied by copies of all information relied on by the Commissioner in reaching the decision that the police officer is not sufficiently fit to perform duties as a member of the police service, including any medical reports provided by the police officer.
- (11) On receiving a request under subsection (8)(b) the Public Service Commission may—
- (a) advise the Beretitenti to terminate the police officer's appointment; or
 - (b) reject the Commissioner's request, informing the Commissioner in writing of the reasons for rejecting the request.

- (12) In considering a request under subsection (8)(b), the Public Service Commission is entitled to rely on the material provided under subsection (10) and is not obliged to give the police officer any further opportunity to be heard.

Sub-division 6—Miscellaneous

60. Complaints of police misconduct

- (1) The Commissioner must promptly investigate every complaint made about the conduct of a police officer, and give the person who made the complaint a written notice that details—
- (a) the findings of the investigation; and
 - (b) the action proposed to be taken as a result of those findings.
- (2) However, if during the investigation the Commissioner decides, on reasonable grounds, that the complaint concerns a frivolous matter or was made vexatiously, the Commissioner may—
- (a) direct that no further action be taken in relation to the complaint; and
 - (b) give the person who made the complaint written notice that the Commissioner considers that the complaint is frivolous or was made vexatiously, and so is taking no further action in relation to the complaint.
- (3) The Commissioner must keep a written record of all written complaints made about the conduct of a police officer, and the action taken in relation to the complaint.
- (4) A person commits an offence if the person makes a complaint knowing the complaint is false.
- (5) The maximum penalty for an offence under this section is a fine of \$2000 and one year's imprisonment.
- (6) In this section, a reference to a police officer includes a reference to a person who is no longer a police officer but who was a police officer when the misconduct is alleged to have happened.

61. Duty to report offences by other police officers

- (1) This section applies if a police officer knows, or suspects on reasonable grounds, that another police officer has committed an offence against this Act or another Act.
- (2) The police officer must, as soon as is practicable, report the offence to the Commissioner.

- (3) A person commits an offence if the person—
- (a) prejudices, or threatens to prejudice, the safety or career of another person because that other person or someone else complied with subsection (2); or
 - (b) intimidates or harasses, or threatens to intimidate or harass, another person because that other person or someone else complied with subsection (2); or
 - (c) takes any action that is, or is likely to be, to the detriment of another person because that other person or someone else complied with subsection (2).
- (4) The maximum penalty for an offence under this section is a fine of \$2000.

62. The Police Fund

- (1) There shall continue to be established a fund called the Police Fund, which shall be a Special Fund under section 107(2) of the *Constitution* and section 13 of the *Public Finance (Control and Audit) Ordinance* (Cap.79).
- (2) If a police officer is ordered to pay a fine for a breach of discipline, the fine must be paid into the Police Fund.
- (3) While the Police Fund is to be managed by the Minister responsible for finance, in accordance with section 13 of the *Public Finance (Control and Audit) Ordinance* (Cap.79), no payment may be made out of the Police Fund except with the written approval of the Commissioner, and then only for the following purposes—
- (a) assistance to the spouses and families of—
 - (i) deceased junior police officers; or
 - (ii) junior police officers who are discharged from the police service as medically unfit;
 - (b) contributions to be given at athletic meetings, assault-at-arms, or other similar events, that are organised by or for the benefit of the police service;
 - (c) the purchase of ammunition for weapons practice by police officers;
 - (d) payments to junior police officers as rewards for meritorious acts or service in the execution of duty, if those payments are not met out of public funds;
 - (e) expenditure for the benefit and advancement of authorised recreation and sport and other police activities organised within the police service;
 - (f) another purpose that the Commissioner considers to be for the general welfare of members of the police service.

Division 7—Impairment by alcohol or drugs

63. Purpose of this Division

The purpose of this Division is—

- (a) to ensure that appropriate steps are taken in the interest of the health and welfare of relevant members of the police service; and
- (b) to enhance the community's confidence in the police service and integrity of the police service.

64. Duty not to be impaired by alcohol or drugs

(1) This section applies only to—

- (a) a police officer; and
- (b) a special constable; and
- (c) a police recruit; and
- (d) an administrative staff member whose duties include duties performed in a critical area.

(2) A 'critical area' is any of the following areas in which an administrative staff member performs duties—

- (a) an area that is used to store weapons or explosives;
- (b) an area that is used to store dangerous drugs;
- (c) a communications centre;
- (d) any other area that is declared in the regulations to be a critical area.

(3) The physical or mental capacity of a member of the police service mentioned in subsection (1) must not be impaired by alcohol or a drug—

- (a) when reporting for duty for a rostered shift; or
- (b) while on duty for a rostered shift; or
- (c) while on call for duty.

(4) A 'drug' means any substance (including a dangerous drug, for example) that may impair a person's physical or mental capacity to perform their duties.

(5) An authorised testing officer may require a member of the police service mentioned in subsection (1) to submit to a substance test if—

- (a) an authorised testing officer suspects, on reasonable grounds, that the member is contravening subsection (3); or
- (b) the person has been involved in—
 - (i) a death of a person in custody; or
 - (ii) an incident at a police station in which a person died or was severely injured; or

- (iii) an incident in which a police officer who was on duty discharged a firearm in circumstances that caused, or could have caused, injury to a person; or
 - (iv) a pursuit in a vehicle or vessel during which a person died or was severely injured.
- (6) An 'authorised testing officer' is—
- (a) in all cases – the Commissioner or an Assistant Commissioner; or
 - (b) in the case of a test of a police officer or special constable – a police officer who holds a rank above the rank of the police officer who is to be tested; or
 - (c) in the case of a police recruit or administrative staff member – any police officer.
- (7) A 'substance test' is a test designed to test whether a person's physical or mental capacity is impaired by alcohol or a drug, and includes a test using a breathalyser device, for example.
- (8) A member who fails to submit to a substance test, without reasonable cause, is taken to have contravened subsection (3).

65. What happens if a member is impaired by alcohol or drugs

- (1) This section applies if a substance test shows that a member of the police service mentioned in section 64(1) has contravened section 64(3).
- (2) The Commissioner must suspend the member from duty until the member's physical or mental capacity is no longer impaired by alcohol or a drug.
- (3) Disciplinary control may be exercised over the member under Division 6 of this Part.
- (4) Also, the Commissioner may do any one or more of the following—
 - (a) counsel the member;
 - (b) direct the member to undergo a course of counselling and rehabilitation that is approved by the Commissioner;
 - (c) direct the member to attend a medical practitioner for a medical examination of the member's fitness to continue his or her normal duties without danger to himself or herself or to someone else;
 - (d) after considering a report of a medical practitioner under paragraph (c), direct the member to perform other duties until the Commissioner considers the member is able to perform his or her normal duties without danger to himself or herself or to someone else.
- (5) If a member fails—
 - (a) to attend or complete a course of counselling or rehabilitation as directed under subsection (4)(b); or

- (b) to attend a medical practitioner as directed under subsection (4)(c), disciplinary control may be exercised over the member under Division 6 of this Part.
- (6) However, if two or more contraventions of this section by a member arise out of the same facts or circumstances, disciplinary control may be exercised over the member for only one contravention.
- (7) A member who is directed to perform other duties under subsection (4)(d) is entitled to be paid a salary and allowances at the rate at which the member would be paid if the member was performing normal duties.
- (8) A medical practitioner who prepares a report under this section is authorised to give the report to the Commissioner.

Division 8—Disclosure of Information

66. Improper disclosure of confidential information

- (1) A person who is, or who has been, a member of the police service commits an offence if the person discloses confidential information, unless—
 - (a) the disclosure is for the purposes of the police service; or
 - (b) the disclosure is authorised under this or another Act; or
 - (c) the disclosure is made under due process of law; or
 - (d) the information would normally be made available to any member of the public on request.
- (2) The maximum penalty for an offence under this section is a fine of \$5000 and two years' imprisonment.
- (3) In this section, 'confidential information' is information that is not generally known to the community, that—
 - (a) has come to the knowledge of, or has been confirmed by, the person through the exercise of a power, or the performance of a duty, of a member of the police service; or
 - (b) has come to the knowledge of the person because of employment in the police service.
- (4) In proceedings for an offence against this section, it is irrelevant that information of the nature of the information disclosed had also come to the defendant's knowledge otherwise than in a way mentioned in subsection (3).

67. Disclosure of information authorised by the Commissioner

- (1) Despite section 66, the Commissioner may, in writing, authorise the disclosure of information that is in the possession of the police service, other than information that must not be disclosed under section 39.

- (2) For example, the Commissioner may authorise the disclosure of information to an international law enforcement agency.
- (3) The Commissioner may impose conditions on the disclosure of information.
- (4) A person commits an offence if—
 - (a) the Commissioner disclosed information to the person subject to conditions; and
 - (b) the person contravenes any of the conditions.
- (5) The maximum penalty for an offence under this section is a fine of \$2000.
- (6) The Commissioner's power to authorise the disclosure of information under this section is subject to—
 - (a) any other Act that prevents or restricts the Commissioner from disclosing the information; and
 - (b) any provision in the regulations about the disclosure of information that is in the possession of the police service.
- (7) No one, including the Republic, incurs any liability in law because of a disclosure of information made in accordance with the Commissioner's authorisation.

PART III—LEGAL PROCEEDINGS

68. Appeal from certain decisions of the Commissioner

- (1) This section applies where a provision of this Act confers a right to appeal against a decision of the Commissioner to the Public Service Commission.
- (2) The appeal must be made within 14 days after the person affected by the Commissioner's decision was notified of the decision.
- (3) On the appeal, the Public Service Commission—
 - (a) has the same powers as the Commissioner; and
 - (b) may—
 - (i) confirm the decision; or
 - (ii) set the decision aside, and substitute another decision that the Public Service Commission considers appropriate.
- (4) However, the Public Service Commission must give the person an opportunity to be heard before the Public Service Commission increases any punishment that was imposed by the Commissioner.

69. Service and production of documents

- (1) Any document that an Act requires or authorises to be given to or served on the Commissioner is taken to have been given or served if it is given to the

holder of the office nominated by the Commissioner by a notice in the *Gazette*.

- (2) With the leave of the court or tribunal concerned, a member of the police service may represent the Commissioner in the court or tribunal in order to produce a document or other thing that was required to be produced in response to the document given or served under subsection (1).

70. Proceedings for offences under this Act

- (1) Proceedings for an offence under this Act may be commenced—
- (a) within two years after the offence was committed; or
 - (b) within one year after the offence comes to the complainant's knowledge, but within five years after the offence was committed.
- (2) A statement in a complaint that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.
- (3) Proceedings for an offence under this Act are to be taken on the complaint of a police officer who is authorised, in writing, by the Commissioner.

71. Statements in complaints

- (1) A statement in a complaint that—
- (a) the complainant is a police officer; or
 - (b) the complainant is authorised by the Commissioner to make the complaint,
- is sufficient proof of the statement, in the absence of evidence to the contrary.
- (2) In any proceedings, a statement in a complaint, in a pleading or in an affidavit that states any of the following things is evidence of that thing—
- (a) that, at a stated time or during a stated period, a stated place was a police station or police premises;
 - (b) a stated thing was appropriated to the use of, or was used by, the police service or a member of the police service in the member's official capacity;
 - (c) a stated act, omission, conduct or breach of duty has not been authorised or consented to by the Commissioner in relation to anything mentioned in paragraph (a) or (b);
 - (d) that, at a stated time or during a stated period, stated property was the property of the Commissioner under this Act.

72. Representation of police officers in court

- (1) Any police officer may appear for and represent another police officer in a magistrates' court in a proceeding—
 - (a) for an application made by a police officer in the performance of a duty under any Act; or
 - (b) in which a police officer is involved in the performance of a duty other than only as a witness; or
 - (c) in which the Commissioner is involved, or of which the Commissioner or another police officer is required to be given notice.
- (2) Also, any police officer may appear and act for the prosecution in a proceeding in a magistrates' court for a charge of an offence, even though the officer is not the informant or complainant.
- (3) Any police officer conducting a prosecution under subsection (2) is subject to the express directions of the Attorney-General.

73. Proof of appointment

If a question arises as to a person's appointment as a police officer or special constable, or to a person's entitlement to exercise the powers or perform the duties of a police officer—

- (a) the general reputation of the person is evidence of that identity and entitlement; and
- (b) the absence of, or failure to produce, any written appointment or other documentary proof to establish that identity or entitlement does not prejudice or otherwise affect the exercise of the powers or the performance of the duties by a person who is a police officer or special constable.

74. Ownership of police property

In any proceedings—

- (a) a place that is declared to be a police station or other police premises under section 100; and
- (b) anything, which is not the private property of any person, that the Republic has appropriated to the use of the police service or a member of the police service,

is taken to be the property of the Commissioner and may be sufficiently described as the property of the Commissioner.

75. Liability for acts under a warrant

- (1) This section applies if proceedings are started for an act done by a police officer.

- (2) It is a defence to the proceedings for the police officer to prove that the act was done—
 - (a) honestly and without negligence; and
 - (b) in obedience to a warrant that purports to be have been signed by a judge, magistrate or justice of the peace.
- (3) A signature on a warrant that purports to be the signature of a judge, magistrate or justice of the peace is evidence of the signature it purports to be.

76. Liability for reports

- (1) It is lawful for a police officer or administrative staff member to express, in a report that is made in good faith in the execution of a duty, matters of opinion, judgement or recommendation (of the person making the report or someone else) as well as matters of fact.
- (2) A report is made in the execution of a duty if the person who made the report believed, on reasonable grounds, that the person to whom the report was made to had a duty or authority to receive the report.
- (3) Neither the Republic, nor anyone else, incurs liability in law because of a report that was made in good faith in the execution of duty about the efficiency, conduct or character of a police officer or administrative staff member.
- (4) However, a report that contains a matter that is false, or grossly misleading in a material particular, was not made in good faith, unless the defendant proves that the person who made the report—
 - (a) believed, on reasonable grounds, that the matter was true; and
 - (b) could not, by exercising reasonable diligence, have discovered the false or misleading nature of the matter.
- (5) The burden of proving an absence of good faith is on the person who alleges the absence of good faith.

77. Liability for torts

- (1) If a member of the police service or volunteer, who is acting or purporting to act in the execution of a duty as a member of the police service or volunteer, commits a tort, the Republic is jointly liable for the tort.
- (2) The Republic may—
 - (a) pay the whole or part of—
 - (i) an amount under a settlement of a claim that has, or might have, been made in relation to the tort; or

- (ii) damages (other than punitive damages) and costs awarded against the member of the police service or volunteer in relation to the tort; and
 - (b) pay the whole or part of costs incurred, but not recovered, by the member of the police service or volunteer in the proceedings for the tort; and
 - (c) recover, in a court of competent jurisdiction, a contribution from the member of the police service or volunteer of an amount that the court considers to be just in the circumstances.
- (3) However, if—
- (a) the tort was committed while the member of the police service or volunteer was rendering assistance, directly or indirectly, to a person in a medical emergency; and
 - (b) the member of the police service or volunteer was acting honestly and without gross negligence,
- the Republic must indemnify the member of the police service or volunteer.
- (4) A 'medical emergency' is a situation in which a person is suffering or apparently suffering from an illness or injury, in circumstances that the member of the police service or volunteer reasonably considered to be an emergency.
- (5) The Republic's liability under this section does not extend to a liability to pay punitive damages.

78. Commissioner may provide legal representation

- (1) The Commissioner may provide legal representation for a member of the police service if a demand is made, or proceedings are started, against the member (by someone other than the Republic) in relation to an act done or omission made by the member while acting or purporting to act in the execution of a duty.
- (2) If it is found, or it is conceded, that the member was not in fact acting in the execution of a duty, the Commissioner may require the member of the police service to repay the costs and expenses incurred by the Commissioner in providing the legal representation.
- (3) If the member of the police service does not repay the costs and expenses, the Commissioner may recover them in a court of competent jurisdiction as a debt that is due and payable.

PART IV—OFFENCES

79. Impersonation of a member of the police service

- (1) A person commits an offence if the person claims to be a police officer with intent to mislead.
- (2) The maximum penalty for an offence under this section is a fine of \$2000.

80. Entertaining, etc. police officers

- (1) A person commits an offence if the person knowingly—
 - (a) harbours or entertains a police officer in any place; or
 - (b) allows a police officer to linger in any place over which the person has control,
at any time when the police officer is on duty, unless the actual performance of the police officer's duty requires the police officer to be present at the place.
- (2) The maximum penalty for an offence under this section is a fine of \$2000.

81. Bribery or corruption of members of the police service

- (1) A person commits an offence if the person provides a member of the police service with a benefit or property with a view to—
 - (a) the member neglecting the member's duties; or
 - (b) influencing the member in the performance of the member's duties or the exercise of the member's powers; or
 - (c) the member using or taking advantage of the member's position in the police service—
 - (i) to facilitate the commission of an offence; or
 - (ii) to give the person any information, service or advantage, whether or not the person would otherwise be entitled to that information, service or advantage.
- (2) A person provides a member of the police service with a benefit or property if the person—
 - (a) gives the benefit or property to the member of the police service; or
 - (b) confers the benefit or property on the member of the police service; or
 - (c) procures the benefit or property for the member of the police service; or
 - (d) offers, promises or agrees to do anything mentioned in paragraph (a), (b) or (c).

- (3) A member of the police service commits an offence if the member solicits, agrees to accept, or accepts, from a person a benefit or property with a view to—
- (a) the member neglecting the member's duties; or
 - (b) influencing the member in the performance of the member's duties or the exercise of the member's powers; or
 - (c) the member using or taking advantage of the member's position in the police service—
 - (i) to facilitate the commission of an offence; or
 - (ii) to give the person any information, service or advantage, whether or not the person would otherwise be entitled to that information, service or advantage.
- (4) The maximum penalty for an offence under this section is a fine of \$10,000 and ten years' imprisonment.
- (5) The liability of a person under this section does not affect the person's liability under the *Penal Code* for an offence defined in the *Penal Code* that is constituted by the person's conduct.
- (6) However, the person cannot be dealt with under both this section and the *Penal Code* in relation to the same conduct.

82. Mutiny and riots

- (1) In this section—
- 'mutiny' means a gathering of three or more persons who are collectively challenging authority under this Act, with intent to subvert authority;
- 'riot' means a gathering of three or more persons with intent to carry out a common purpose, that has begun to act in so tumultuous a way as to disturb the peace.
- (2) A police officer commits an offence if the police officer—
- (a) being aware of an intended mutiny in the police service, does not inform a superior officer of the intended mutiny; or
 - (b) being aware of a mutiny in the police service, does not use the police officer's best endeavours to suppress the mutiny; or
 - (c) being present at a gathering that is tending towards a riot or is rioting, does not use the police officer's best endeavours to prevent or suppress the riot.
- (3) The maximum penalty for an offence under this section is a fine of \$2000 and one year's imprisonment.

83. Striking or otherwise withdrawing service

- (1) A police officer commits an offence if the police officer—
 - (a) does any act or makes any omission that, if done or omitted to be done by two or more police officers, would constitute a strike within the meaning of the *Industrial Relations Code 1998*; or
 - (b) withdraws from his or her services as a police officer, unless the withdrawal is authorised by this Act or by the Commissioner.
- (2) The maximum penalty for an offence under this section is a fine of \$2000.

84. False representations causing police investigations

- (1) A person commits an offence if—
 - (a) the person represents an act has been done, or circumstances exist, that requires investigation by a police officer; and
 - (b) the person knows that the representation is false.
- (2) For subsection (1), the representation may be made—
 - (a) by conduct; or
 - (b) by oral or written statements; or
 - (c) by conduct and oral or written statements.
- (3) The maximum penalty for an offence under this section is a fine of \$2000.
- (4) However, if statements that are alleged to have been made by a person relate to the conduct of a police officer, the person cannot be convicted of the offence only on the uncorroborated evidence of a police officer.
- (5) If a person is convicted of an offence against this section, the court may order the person to pay to the Republic a reasonable amount for the expenses of, or incidental to, any investigation made by a police officer because of the false representation.
- (6) The court may make that order even if it does not impose a penalty for the offence.
- (7) This section does not apply to a representation relating to an offence, or the circumstances of an offence, if the offence has actually been committed.

85. Trespassing on police property

- (1) A person commits an offence if the person is found on, or having just left, any place that is appropriated to the use of the police service, unless the person has a lawful excuse.
- (2) The maximum penalty for an offence under this section is a fine of \$2000.
- (3) The burden of proving a lawful excuse lies on a person who claims it.

86. Unlawful possession of police property

- (1) A person commits an offence if the person possesses any of the following things, or supplies them to someone else—
 - (a) a print of a photo or part of a photo taken by a member of the police service; or
 - (b) an audio or video recording of a police interview; or
 - (c) a transcript of an audio or video recording of a police interview, unless the person has a lawful excuse.
- (2) Subsection (1) does not prevent a person supplying any of those things to—
 - (a) a person who is charged with an offence of which those things are evidence; or
 - (b) that person's lawyer,for the purposes of enabling the person to defend the charge.
- (3) However, a person mentioned in subsection (2)(a) commits an offence if the person does not return those things to the Commissioner after the end of the time allowed for any appeal against a conviction for the offence, unless the property is kept as part of the records of that person's lawyer.
- (4) A person commits an offence if the person possesses—
 - (a) a document of a confidential nature that was brought into existence for the purposes of the police service; or
 - (b) anything appropriated to the use of the police service; or
 - (c) anything on issue to a police officer or to a former police officer, unless the person has a lawful excuse.
- (5) The maximum penalty for an offence under this section is a fine of \$2000.
- (6) The burden of proving a lawful excuse under this section lies on a person who claims it.

87. Prohibited use of words suggesting association with police

- (1) In this section, a 'police expression' is any of the following expressions, or its equivalent in the Kiribati language—
 - (a) police;
 - (b) police service;
 - (c) police force;
 - (d) Kiribati Police;
 - (e) police officer;

- (f) any expression that resembles any of the expressions mentioned in paragraphs (a) to (e), or that includes words taken from two or more of the expressions.
- (2) A body or association of persons, whether incorporated or not, commits an offence if it—
 - (a) has a police expression as, or as part of, its name; or
 - (b) uses a police expression in conjunction with its name, in any context.
 - (3) A person commits an offence if the person—
 - (a) has a police expression as, or as part of, a name under which the person conducts business; or
 - (b) uses a police expression in conjunction with a name under which the person conducts business, in any context.
 - (4) A person commits an offence if the person, for the purposes of any business, occupation or employment—
 - (a) assumes or uses the designation 'detective' or another designation that includes the word 'detective' (including 'private detective', for example); or
 - (b) assumes or uses the designation, rank or description of a police officer, or a class of police officer.
 - (5) The maximum penalty for an offence under this section is a fine of \$2000.
 - (6) If a body or association of persons is convicted of an offence against this section, each member of its governing body is also taken to have committed the offence.

PART V—MISCELLANEOUS PROVISIONS

88. Police officers must be familiar with this Act

- (1) All police officers must take reasonable steps to familiarise themselves with the provisions of this Act, the regulations, and the directions that apply to police officers.
- (2) The Commissioner must—
 - (a) direct the attention of all new police officers to the requirements of subsection (1); and
 - (b) ensure that a copy of this Act, the regulations, and the directions are reasonably accessible to each police officer.

89. War or other states of public emergency

- (1) This section applies if—
 - (a) Kiribati is at war; or

- (b) a proclamation made under section 16 of the *Constitution* is in force.
- (2) The Beretitenti, acting in accordance with the advice of the Cabinet, may direct the police service, or part of the police service—
 - (a) to be employed as a military force; and
 - (b) to comply with the orders of any military authority that the Beretitenti specifies.
- (3) However, a direction by the Beretitenti does not affect—
 - (a) any powers of appointment, dismissal or disciplinary control of members of the police service that are conferred on someone under this Act; and
 - (b) except as far as the Beretitenti, acting in accordance with the advice of the Cabinet, may otherwise direct, the command and supervision of the police service vested in the Commissioner under this Act.
- (4) If a police officer's period of service is due to expire while a direction of the Beretitenti under subsection (2) is in effect, the Minister may direct that his period of service be extended for as long as the Minister considers is necessary in the circumstances.

90. Fires or other emergencies

On receiving information of a fire or other emergency, the Commissioner or the police officer in charge, at the time, of the police station nearest to the location of the fire or other emergency must immediately send as many police officers as are considered necessary to help at the fire or other emergency and to preserve order.

91. Service in a neighbouring territory

- (1) The Minister, on the application of the government of a neighbouring territory, may order the number of police officers as the Minister considers necessary to serve in the neighbouring territory.
- (2) However, before the Minister makes the order, the Minister must be satisfied that satisfactory arrangements have been, or will be, made for the inclusion in the law of the neighbouring territory of a provision that is reciprocal to this section.
- (3) If police officers from the police service of a neighbouring territory are in Kiribati in response to an application made by the Government to assist Kiribati Police in a temporary emergency, the following provisions have effect with regard to the police officers—
 - (a) the police officers are to be under the orders of their own officers who are present with them (if any), subject to the command of the Commissioner;

- (b) the police officers may exercise the powers and perform the duties of police officers of equivalent rank in the Kiribati Police, and for those purposes are taken to be members of the Kiribati Police;
 - (c) any contract of service between the government of the neighbouring territory and any of the police officers may be enforced as if it were made between the Republic and the officer;
 - (d) any law that affects the discipline or terms and conditions of service of the police officers while serving in a neighbouring territory are, as far as is possible in the circumstances, to be applied in Kiribati as if the law were a law of Kiribati.
- (4) Subsection (3)(d) does not empower a member of the Kiribati Police to exercise disciplinary control over a police officer from the police service of a neighbouring territory.
- (5) However, if a law of the neighbouring territory confers jurisdiction on a court to try and to punish an offence by a police officer from the police service of the neighbouring territory, that jurisdiction may be exercised by a court of comparable jurisdiction in Kiribati.

92. Performance appraisal

The Commissioner must ensure that a regular system of appraisal is established that will provide a police officer with information on—

- (a) the police officer's performance; and
- (b) appropriate remedial steps to improve the police officer's performance if this is considered appropriate (including after a police officer has been disciplined, for example).

93. Resignation

A police officer may resign by giving the Commissioner written notice of the police officer's intention to resign at least three months before the date of the intended resignation, unless the Commissioner approves some shorter period.

94. Police associations

- (1) A police officer must not be, or become, a member of a professional association other than a professional organisation that is prescribed in the regulations.
- (2) A 'professional organisation' is—
- (a) a trade union, or a body or association affiliated to a trade union; or
 - (b) a body or association that has as its object, or one of its objects, controlling or influencing conditions of employment in a trade or profession.

- (3) For the purposes of section 13(2) of the *Constitution*, it is the intention of the Maneaba ni Maungatabu to make this section—
- (a) in the interests of public safety and public order; and
 - (b) for the purpose of protecting the rights and freedoms of other persons; and
 - (c) in relation to public employees.

95. Exemption from tolls and charges

- (1) A police officer who is engaged in the actual performance of duties as a police officer is exempt from payment of any toll or other charge for using a road, causeway or ferry.
- (2) The exemption extends to—
- (a) all prisoners in the police officer's custody; and
 - (b) all vehicles and vessels in the police officer's possession; and
 - (c) a return journey to the police officer's operational base undertaken as soon as practicable after the actual performance of the duties that have taken the police officer away from the operational base.

96. Payment during imprisonment or absence without leave

- (1) A member of the police service is not entitled to be paid a salary or allowances during any period when—
- (a) the member is imprisoned; or
 - (b) the member is absent without leave.
- (2) However, subsection (1) does not apply—
- (a) to any period when the member is imprisoned, while awaiting trial for an offence, if—
 - (i) the member is acquitted or discharged; or
 - (ii) the prosecution does not proceed with the prosecution of the offence; or
 - (b) if the Commissioner decides that the member should be paid.

97. Continuous service as a police officer

- (1) In calculating the length of service of a member of the police service, the following periods are not to be considered—
- (a) any period when the member is imprisoned, other than a period of imprisonment while awaiting trial for an offence if—
 - (i) the member was acquitted or discharged; or
 - (ii) the prosecution did not proceed with the prosecution of the offence;

(b) any period when the member is absent without leave.

- (2) If the member's service in the police service immediately precedes, or immediately follows, the member's service as a public officer, both periods of service count as continuous service as a member of the police service.

98. Police band

- (1) There shall continue to be a police band, which may consist of members of the police service, or other persons approved by the Commissioner, or both.
- (2) The Commissioner is to determine the ceremonial and other roles of the police band.

99. Awards

- (1) The Commissioner may award a medal entitled the Kiribati Police Service Valour Award to a member of the police service who performs an act of exceptional bravery in hazardous circumstances.
- (2) If a member of the police, who has previously been awarded the Kiribati Police Service Valour Award, performs an act of exceptional bravery in hazardous circumstances, the Commissioner may add a Silver Bar to the member's Kiribati Police Service Valour Award.
- (3) The design of the Kiribati Police Service Valour Award is to be as approved by the Beretitenti, following consultation with the Commissioner.
- (4) The Commissioner may make other awards that the Commissioner considers necessary to recognise and commend conspicuous or especially meritorious—
- (a) bravery by a member of the police service acting in the execution of his or her duty as a member; or
 - (b) performance of police work by a police officer acting in the execution of his or her duty as a police officer.
- (5) An award may be made—
- (a) posthumously or to a person who has left the police service; or
 - (b) for conduct that happened before the commencement of this Act.
- (6) The Commissioner may decide the occasions on which an award may be worn.

100. Police stations

- (1) The Commissioner may, by a notice in the *Gazette*—
- (a) declare a place to be a police station or other police premises; or
 - (b) assign a name to a police station.

- (2) In this section, 'place' means a place that the Republic has appropriated to the use of the police service.

101. Uniforms and other police property issued to police officers

- (1) If a police officer or special constable sells, gives away, loses by neglect or wilfully damages any property (including a uniform, for example) that was issued to the police officer or special constable by the Commissioner, the police officer or special constable must pay the amount of the loss or damage to the Commissioner.
- (2) The amount of the loss or damage may be recovered by stopping a police officer's salary.
- (3) Subsection (1) applies in addition to any disciplinary control that may be exercised over the police officer or special constable.
- (4) When a person stops being a police officer or special constable, the person must return all property that was issued to the person as a police officer or special constable.
- (5) The person must return the property to the officer in charge of the police station where the person was last stationed.
- (6) The person commits an offence if the person does not return the property in accordance with this section.
- (7) The maximum penalty for an offence under this section is a fine of \$2000.
- (8) A police officer may apply to a magistrate under the *Police Powers and Duties Act 2008* for a warrant to enter a place and search for and seize any property that has not been returned in accordance with this section.

102. Vacating police premises

- (1) If the Commissioner becomes entitled to possession of police premises, the Commissioner may give written notice to the person who is in possession of the premises to vacate the premises within 28 days after the notice is given.
- (2) The written notice may be given in any way that is designed to bring it to the notice of the person to whom it is directed (including by advertising the written notice in an appropriate newspaper, for example).
- (3) On receiving a complaint from the Commissioner, or a police officer authorised in writing by the Commissioner, a magistrate may issue a warrant that authorises any police officer—
 - (a) to enter the premises; and
 - (b) remove from the premises any person, together with their property, who is not authorised by the Commissioner to be in the premises.
- (4) The police officer who executes the warrant, and anyone assisting the police officer, may execute the warrant using the reasonable force that is

necessary and doing whatever other things are reasonably required to execute the warrant.

103. Charges for extraordinary police services

- (1) If a member of the police service (whether or not in compliance with any law)—
 - (a) attends a sporting or entertainment event, at the request of the person conducting or organising the event, for the purposes of maintaining order; or
 - (b) provides, at the request of a person, an escort for a vehicle carrying a long or wide load; or
 - (c) provides a person with information under section 67, at the person's request;

the Commissioner may demand payment by the person of the amount that is prescribed in the regulations or, if no amount is prescribed in the regulations, of the amount that the Commissioner considers reasonable.
- (2) The regulations may make provision with respect to payment of the services mentioned in subsection (1).

104. Annual report

- (1) As soon as practicable after 31 December in each year, the Commissioner must give the Minister a report on the operations of the police service within the last year.
- (2) The annual report must be prepared in a way that does not disclose confidential information.

105. Regulations

- (1) The Beretitenti, acting in accordance with the advice of the Cabinet, may make regulations, which are not inconsistent with the Act, prescribing—
 - (a) matters required or permitted by this Act to be prescribed; and
 - (b) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) For example, the regulations may provide for—
 - (a) the management and control of the affairs of the police service; and
 - (b) appeals about appointments, disciplinary control or related action within the police service; and
 - (c) powers and entitlements of members of the police service; and
 - (d) duties, obligations and liabilities of members of the police service.

- (3) The regulations may provide for any matter (other than the duties, obligations or liabilities of members of the police service) by referring to—
 - (a) determinations or rulings to be made from time to time by the Commissioner; or
 - (b) standards to be set or adopted from time to time by the Commissioner.
- (4) A regulation made under this section may prescribe or allow for penalties for offences, being terms of imprisonment not exceeding two years, fines not exceeding \$5000, or both.

106. Expanded jurisdiction of magistrates' courts

A magistrates' court shall have jurisdiction to hear any criminal proceedings for a contravention of this Act.

PART VI—TRANSITION FROM THE *POLICE ORDINANCE* TO THIS ACT

107. Definition of 'Police Ordinance'

In this Part, the 'Ordinance' means the *Police Ordinance* (Cap.73) that is repealed by section 128.

108. Continuation of appointments

- (1) This section applies if, immediately before the commencement of this section, a person held an appointment as a member of the police service.
- (2) The appointment continues in force and effect—
 - (a) until the end of the term of the appointment, if any; and
 - (b) on those conditions of the appointment that are consistent with this Act.

109. Continuation of oath or affirmation

An oath or affirmation made by a member of the police service under the Ordinance is taken to be an oath or affirmation made under this Act.

110. Police stations

A place that, immediately before the commencement of this section, was a police station continues to be a police station under this Act.

111. Actions and decisions

- (1) This section applies to—
 - (a) an action taken under a provision of the Ordinance, if the action continued to have effect immediately before the commencement of this section; and
 - (b) a decision made under a provision of the Ordinance, if the decision was in force immediately before the commencement of this section.
- (2) A 'decision' includes an approval, authorisation, certificate, classification, declaration, determination, direction, instrument, order (given orally or in writing), notice, permission, policy, procedure, recommendation, warrant or other decision.
- (3) If there is a corresponding provision of this Act for the provision of the Ordinance, the action or decision—
 - (a) continues in force and effect, according to its terms, but with the changes that are necessary—
 - (i) to make it consistent with this Act; and
 - (ii) to adapt its operation to this Act; and
 - (b) is taken to have been made, or taken, under the corresponding provision of this Act.
- (4) The action or decision may be amended or repealed under this Act.

112. Proceedings for breaches of discipline, or offences, under the Ordinance

A proceeding for a breach of discipline, or an offence, committed under the Ordinance, may be brought and continued as if this Act had not passed.

113. References to rank under the Ordinance

- (1) A police officer who, immediately before the commencement of this section, held the rank of Corporal is taken to hold the rank of Senior Constable under this Act.
- (2) A reference in any Act or document to a member of the police force, a police officer or a constable holding another rank that does not exist in this Act, but did exist under the Ordinance, is taken to be a reference to a police officer holding a corresponding rank under this Act.

114. References to the Ordinance

If the context permits, a reference to the Ordinance in an Act or document is taken to be a reference to this Act.

PART VII—CONSEQUENTIAL AMENDMENTS TO OTHER LAWS

115. *Aircraft Security Act 1990* is amended

- (1) This section amends the *Aircraft Security Act 1990*.
- (2) Section 3(2)(b)(iii) of that Act is amended by repealing the words 'Kiribati Police Force' and substituting the words 'Kiribati Police'.

116. *Arms and Ammunition Ordinance (Cap.3)* is amended

- (1) This section amends the *Arms and Ammunition Ordinance (Cap.3)*.
- (2) Section 2 of that Ordinance is amended by repealing the definition of 'officer in charge of police' and substituting the following definition—
"officer in charge of police' has the same meaning as the expression 'officer in charge' in section 5 of the *Police Service Act 2008*;"

117. *Civil Aviation Act 2004* is amended

- (1) This section amends the *Civil Aviation Act 2004*.
- (2) Section 92 of that Act is amended by repealing the words 'Kiribati Police Force' and substituting the words 'Kiribati Police'.
- (3) Section 95 of that Act is amended by repealing the words—
 - (a) 'Kiribati Police Force' on both occasions; and
 - (b) 'Police Force' wherever they appear,and substituting the words 'Kiribati Police'.
- (4) Section 101(3) of that Act is amended by repealing the words 'Kiribati Police Force' and substituting the words 'Kiribati Police'.

118. *Extradition Act 2003* is amended

- (1) This section amends the *Extradition Act 2003*.
- (2) Section 3 of that Act is amended by repealing the definition of 'police officer'.

119. *Industrial Relations Code 1988* is amended

- (1) This section amends the *Industrial Relations Code 1988*.
- (2) The definition of 'trade dispute' in section 2 of that Code is amended by repealing the words '(a) members of the Police force;' where they appear in the proviso and substituting the words '(a) members of the police service;'.

120. *Interpretation and General Clauses Ordinance (Cap.46)* is amended

- (1) This section amends the *Interpretation and General Clauses Ordinance (Cap.46)*:-
- (2) Section 3(1) of that Ordinance is amended—
 - (a) in the definition of 'disciplined force', by repealing the words 'Police Force', and substituting the words 'Kiribati Police'; and
 - (b) by repealing the definition of 'police officer', and substituting the following definitions—

“police officer’ and words referring to ranks in the police service have the meanings given to them under the *Police Service Act 2008*;
‘police service’ has the meaning given under the *Police Service Act 2008*;

121. *Magistrates’ Courts Ordinance (Cap.52)* is amended

- (1) This section amends the *Magistrates’ Courts Ordinance (Cap.52)*.
- (2) Section 18 of that Ordinance is amended by repealing the words 'officers, non commissioned officers or constables of the Police Force', and substituting the words 'police officers'.
- (3) Section 48 of that Ordinance is amended by repealing the words 'Police Force', and substituting the words 'Kiribati Police'.

122. *Merchant Shipping Act 1983* is amended

- (1) This section amends the *Merchant Shipping Act 1983*.
- (2) The definition of 'ship' in section 2 of that Act is amended in paragraph (b)(iii) by repealing the words 'Police Force', and substituting the words 'Kiribati Police'.

123. *Penal Code (Cap.67)* is amended

- (1) This section amends the *Penal Code (Cap.67)*.
- (2) Section 2(f) of that Code is amended by repealing the words 'Police Force', and substituting the words 'Kiribati Police'.
- (3) Section 58 of that Code is amended by repealing the words 'police force', and substituting the words 'Kiribati Police'.
- (4) Section 175 of that Code is amended by repealing the words 'Police Force' on both occasions where they appear, and substituting the words 'Kiribati Police'.

124. *Prisons Ordinance (Cap.76)* is amended

- (1) This section amends the *Prisons Ordinance (Cap.76)*.

- (2) Section 5(1A) of that Ordinance is amended by repealing the words 'Superintendent of Police', and substituting the words 'Superintendent of Prisons'.
- (3) Section 9(1) of that Ordinance is amended by repealing the words 'rank of assistant inspector', and substituting the words 'rank of Inspector'.

125. *Prohibited Areas Ordinance (Cap.77)* is amended

- (1) This section amends the *Prohibited Areas Ordinance (Cap.77)*.
- (2) Section 5 of that Ordinance is amended by repealing the words 'rank of assistant inspector', and substituting the words 'rank of Inspector'.

126. *Public Highways Protection Act 1989* is amended

- (1) This section amends the *Public Highways Protection Act 1989*.
- (2) Section 2 of that Act is amended by repealing the definition of 'police officer'.

127. *Public Order Ordinance (Cap.82)* is amended

- (1) This section amends the *Public Order Ordinance (Cap.82)*.
- (2) Section 2 of that Ordinance is amended by repealing the definition of 'officer in charge of police' and substituting the following definition—
"officer in charge of police' has the same meaning as the expression 'officer in charge' in section 5 of the *Police Service Act 2008*;"

PART VIII—REPEAL

128. *Police Ordinance (Cap.73)* repealed

The *Police Ordinance (Cap.73)* is repealed.

POLICE SERVICE ACT 2008

EXPLANATORY MEMORANDUM

This Act provides the framework for the Kiribati Police. Together with the *Police Powers and Duties Act 2008*, it provides the foundation for significant reform of the police service.

The principal provisions of this Act deal with:

- a. the structure of the Kiribati Police;
- b. the duties and powers of the Commissioner of Police;
- c. the appointment and disciplinary control of other members of the police service;
- d. the chain of command; and
- e. procedures for dealing with complaints against police.

Part I of the Act provides for a number of preliminary matters, including definitions of various expressions used elsewhere in the Act.

In Part II, section 5 continues in existence a force of police in Kiribati, first established in 1965 under the *Police Ordinance (Cap.73)*. This force is known as the Kiribati Police.

The remainder of Division 1 of Part II provides for the membership, ranks, mission, responsibilities and values of the police service. Division 2 deals with the appointment, duties and powers of the Commissioner, as well as communications between the Commissioner and the responsible Minister. Division 3 makes provision for other members of the police service - senior police officers (those of the rank of Assistant Superintendent and above), junior police officers (those below the rank of Assistant Superintendent), and special constables. It provides for appointment — which must be based on merit - and transfer. Division 4 details the chain of command. Division 5 sets out the procedures by which a person's suitability for appointment to the police service is determined.

Division 5 of Part II deals with disciplinary control of police officers. Particular attention has been paid to these provisions to ensure that the Commissioner has the ability to deal appropriately with disciplinary breaches, while at the same time ensuring that the principles of natural justice are maintained. Different approaches for senior and junior police officers are necessitated by virtue of their different treatment under the *Constitution*. In addition to disciplinary matters and complaints of police misconduct, this Division also deals with medical unfitness.

In Part III, section 68 provides a mechanism for the hearing by the Public Service Commission of appeals against certain decisions of the Police Commissioner. The remainder of Part III deals with various legal matters.

Part IV deals with offences concerning the police service, both by police officers and by civilians. Part V contains a number of miscellaneous provisions, including: service in a neighbouring territory (such as under RAMSI); police associations; the police

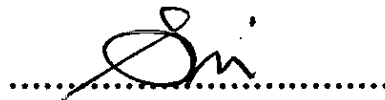
band; bravery awards; the levying of charges for provision of extraordinary police services; and the making of regulations.

Part VI provides for various transitional matters in the move from the Ordinance to the new Act, while Part VII makes consequential amendments to a number of other laws. Finally, Part VIII effects the repeal of the *Police Ordinance*.

Titabu Tabane
Attorney General
30 July 2008

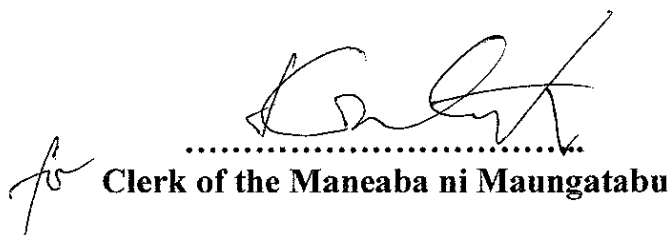
**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

This printed impression of the Bill has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 11th December 2008 and is found by me to be a true and correctly printed copy of the said Bill.



Eni Tekanene
Clerk of the Maneaba ni Maungatabu

Published by exhibition at the Maneaba ni Maungatabu this^{23rd}
day of December 2008.



Clerk of the Maneaba ni Maungatabu