

REPUBLIC OF KIRIBATI



An Act
entitled

I assent,
Auto Tang
Beretitenti
24 Decemba, 2015

AN ACT TO AMEND THE POLICE SERVICE ACT 2008

Commencement:

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

1. Short title

This Act may be cited as the *Police Service (Amendment) Act 2015*.

2. Meaning of 'principal Act'

In this Act, 'principal Act' means the *Police Service Act 2008*.

3. Amendment of section 4 of the principal Act

Section 4 of the principal Act is amended by inserting the words "special constable," after the words "police officer," in the definition of 'member of the police service'.

4. Amendment of section 19 of the principal Act

Section 19 of the principal Act is amended by repealing it and substituting it as follows

"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) 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.
- (4) The Commissioner must not withhold consent unreasonably if the type of employment is compatible with the mission, responsibilities and values of the police service.
- (5) A special constable is junior in rank to a police officer.

(6). Subject to subsection (8), a special constable:

- (a) has and may exercise the powers of a constable under any law (including the common law); and
- (b) has and must perform the duties of a constable under any law (including the common law).

(7). A provision of an Act that applies to a police officer applies to a special constable as if he or she were a police officer if—

- (a) the provision is not section 21 (probation periods), 23 (other paid employment) or 25 (transfers) of this Act, or a provision in Sub-division 3 of Division 6 of Part II (disciplinary control of senior police officers) of this Act; and
- (b) the provision may reasonably be applied to special constables; and
- (c) no other provision of an Act specifically deals with the same matter in relation to special constables.

(8). However, the powers and duties conferred on a police officer under the following provisions do not apply to a special constable as if he or she were a police officer (unless the person is authorised to exercise the power or perform the duty under an instrument made under subsection (9))

- (a) section 72 of this Act to the extent that it empowers a police officer to appear for and represent another police officer or the prosecution in a magistrates court proceeding;
- (b) section 53 of the *Police Powers and Duties Act 2008* to the extent that it empowers a police officer to give a report to the Commissioner;
- (c) section 88 of the *Police Powers and Duties Act 2008* to the extent that it empowers a police officer to give a notice to appear;
- (d) section 94 or 95 of the *Police Powers and Duties Act 2008* to the extent that it confers a duty on a police officer to bring an arrested person before a court;
- (e) Division 7 of Part IV of the *Police Powers and Duties Act 2008* to the extent that it empowers a police officer to detain and take or photograph all or any of the identifying particulars of a person in custody;
- (f) subsection 108(2) of the *Police Powers and Duties Act 2008* to the extent that it empowers a police officer to detain and question a suspect in custody;
- (g) Part V of the *Police Powers and Duties Act 2008* to the extent that it empowers a police officer to question, and obliges a police officer to give information to, a suspect in custody;
- (h) a provision of the *Police Powers and Duties Act 2008* that empowers a police officer to apply to a magistrate, a judge or a Court for an instrument, including (but not limited to) the following—
 - (i) section 27(7) (asking a magistrate for an order to keep a motor vehicle longer than one month);

- (ii) section 42(2)(b) (asking a magistrate to make an order under section 8 of the *Death and Fire Inquiries Ordinance* (Cap. 24) directing a medical practitioner to examine the body of a deceased person and determine the cause of death);
 - (iii) sections 48 (search warrants), 52(3) (warrant for search to prevent loss of evidence), 79 (arrest warrants), 91 (arrest warrant for failure to appear) and 135 (urgent warrants);
 - (iv) making applications for the purposes of obtaining an order in relation to a seized thing under section 69, 70, 71 or 73;
 - (v) making applications for the purposes of obtaining an order to extend a detention period under section 109.
- (i) a provision of an enactment (other than those mentioned in this subsection) that empowers a police officer to apply to a magistrate, a judge or a Court for an instrument.

(9). The Commissioner may, in writing, authorise a special constable to exercise a power or perform a duty mentioned in subsection (8).

(10). 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.

5. Insertion of new section after section 25 of the principal Act

The principal Act is amended by inserting the following new section 25A after section 25—

“25A. Interaction of this law with the National Conditions of Service etc.

- (1) The National Conditions of Service apply to a member of the police service to the extent that this Act does not deal with the conditions of service of the member.
- (2) However, the National Conditions of Service do not apply to a special constable.
- (3) If a provision of the National Conditions of Service is inconsistent with a provision of this Act dealing with the conditions of service of a member of the police service, the provision of the National Conditions of Service has no effect to the extent of the inconsistency.
- (4) This section does not affect the operation of section 43.
- (5) This Act does not affect the operation of the *Workmen's Compensation Ordinance* 1977 (Cap. 102) as it applies in relation to workmen's compensation matters for a member of the police service or a special constable.”

6. Amendment of section 46 of the principal Act

Section 46 of the principal Act is amended—

- (a) by repealing paragraph (3)(b) and substituting the following paragraph—
 - “3 “(b) in the case of a non-summary board—a chair who is a police officer higher in rank than the accused officer and two persons who, in the Commissioner's opinion, are suitable for membership of a non-summary board.”; and

- (b) by repealing subsection (5).

7. Insertion of new section after section 109 of the principal Act

The principal Act is amended by inserting the following new section 109A after section 109—

“109A. Continuation of special constables

- (1) This section applies if, immediately before the commencement of section 128 of this Act, a person was—
 - (a) enrolled as a special constable under section 47 of the Ordinance as in force at that time; or
 - (b) appointed as a special constable under section 48 of the Ordinance as in force at that time.
- (2) Despite the repeal of the Ordinance by section 128 of this Act, the person’s enrolment or appointment is taken to have been continued in force by this Act at all times during the period (in this section called the *transition period*)—
 - (a) starting at the time when section 128 of this Act commenced; and
 - (b) ending immediately before the commencement of this section.
- (3) For the purposes of subsection (2), the person’s enrolment or appointment is taken to have been continued in force until the end of the term that would have applied to the person’s enrolment or appointment had the repeal not happened—
 - (a) on the conditions that are consistent with this Act to which the person’s enrolment or appointment would have been subject had the repeal of the Ordinance by section 128 of this Act not happened; and
 - (b) at the same rank that applied to the person immediately before the commencement of section 128 of this Act.
- (4) Any thing done by the person in the exercise or purported exercise of a power, or the performance or purported performance of a duty, during the transition period is taken always to have been validly exercised or performed, as it would have been had the person’s enrolment or appointment been continued in force by this Act.
- (5) On and after the commencement of this section, the person’s enrolment or appointment (as taken to have been continued in force by subsection (3)) continues in force for the same term as set out in subsection (3)—
 - (a) on the same conditions that are consistent with this Act as set out in subsection (3); and
 - (b) at the same rank that applied to the person immediately before the commencement of section 128 of this Act.
- (6) Subsection (5) does not apply if the term set out in subsection (3) would have ended before the commencement of this section.
- (7) An oath or affirmation made by a special constable under the Ordinance (as in force immediately before the commencement of section 128 of this Act) is—

- (a) taken to have been an oath or affirmation made under this Act during the transition period; and
- (b) on and after the commencement of this section, taken to be an oath or affirmation made under this Act.”

POLICE SERVICE (AMENDMENT) ACT 2014

EXPLANATORY MEMORANDUM

The purpose of this amendment Act is to deal with matters arising from implementation of the *Police Service Act 2008* and the *Police Powers and Duties Act 2008*.

Section 3 amends the definition of “member of the police service” to include special constables. Throughout the *Police Service Act 2008* there are provisions that refer to “members of the police service” where it is clear that the reference should include “special constables”. This amendment aligns the existing definitions to confirm the policy adopted in the Act.

Section 4 amends existing section 19 of the *Police Service Act 2008* by repealing it and substituting a new section 19, subsections (6) to (9) set out the powers and duties of special constables. Generally, special constables have the powers and duties of police officers, but are subject to different appointment processes. Subsection 19(6) provides that special constables have the powers and duties of constables at common law and under statute. A provision of a statute that confers a power or duty on a police officer is taken by this provision to apply to a special constable as if the special constable were a police officer, subject to specified conditions.

It is not always appropriate for the provisions of an Act to be applied to special constables as if they were police officers. Broadly, it is not appropriate for special constables to be making formal applications to magistrates, judges and courts. Subsection (8) provides for this policy by listing certain provisions that are not applicable to special constables as if they were police officers. In certain special circumstances (for example, if the police officer at a police station on an outer island is taken unwell), special constables will need to be able to perform tasks around making formal applications to magistrates, judges and courts. Subsection (9) empowers the Commissioner to authorise a special constable to exercise a power or perform a duty that the special constable would not ordinarily be empowered to exercise or perform because of subsection (8).

Section 5 inserts new section 25A into the *Police Service Act 2008*. The purpose of this provision is to clarify the interaction between the provisions of the *Police Service Act 2008* (which deals specifically with employment of the police service) and the National Conditions of Service (which deals generally with employment of public servants) and certain other instruments.

Section 25A provides for the following:

1. if there is no provision in the *Police Service Act 2008* that deals with the conditions of service of a member of the police service, then the National Conditions of Service apply
2. section 25A expressly states that the National Conditions of Service do not apply to special constables
3. if there is provision in both instruments and they are inconsistent, then the provision in the *Police Service Act 2008* will prevail to the extent of any inconsistency
4. if section 43 of the Act (about dismissal and disciplinary control of police officers, special constables and police recruits) applies, nothing in section 25A affects that operation, and
5. Section 25A expressly states that the Act does not affect the operation of the *Workmen's Compensation Ordinance 1977* (Cap. 102). This Act deals specifically with matters relating to workers' compensation matters and should apply on its terms.

Section 6 amends section 46 of the *Police Service Act 2008* to vary the constitution of non-summary disciplinary boards (that is, boards that hear disciplinary matters for which a penalty other than a caution or reprimand or a fine of up to 14 days' pay can be imposed).

The existing constitution of 3 police officers is changed to one senior police officer and 2 other persons who the Commissioner considers suitable for example, a traditional elder. This amendment reinforces the commitment of the Kiribati Police Service to a service-oriented policing approach by giving greater scope for the community to contribute to policing matters, as well as defraying the financial and administrative costs of arranging for police officers to attend hearings, especially on the outer islands.

Finally, section 7 includes a transitional provision to save the appointment of special constables, if they were appointed before the commencement of the *Police Service Act 2008* and the *Police Powers and Duties Act 2008*. A reference to special constables was not included in the transitional provisions originally included in the *Police Service Act 2008*, so special provisions are required to:

1. ensure that appointments and enrolments of special constables made before the repeal of the *Police Ordinance* (Cap. 73) have been continued in effect throughout the period between that repeal and the commencement of these provisions (despite that repeal)
2. ensure that all acts engaged in by special constables during that transition period are valid
3. ensure that the terms, conditions and rank of special constables in that period are the same to which they would have been subject had that repeal not happened
4. save their appointments from commencement of this provision (unless their appointment or enrolment would have ended during the transition period), and
5. save oaths or affirmations that they have made in the transition period and going forward from commencement of this Act.

Titabu Tabane
Attorney-General

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

This printed impression of the Police Service Amendment Act 2015 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 17th August 2015 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 ²⁴..... day of
DECEMBER..... 2015.



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