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Schedule 1
Police Crest and Badge

An Act to repeal the Police Act 1981 and revoke the Police Regulations 1983, provide for effective governance and administration, and consolidate the law relating to the establishment and regulation of the Cook Islands Police Service including their powers and duties.

(8 December 2012

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Police Act 2012.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Preliminary matters

3 Interpretation

In this Act, unless the context otherwise requires,—

blood test means a test of a person's blood to determine the amount of alcohol (if any) in the person's blood:

bodily sample means any of the following:

(a) any human biological fluid;

(b) any human biological tissue (whether alive or otherwise);

(c) any human breath:

breath test means a test of a person's breath to determine the amount of alcohol (if any) in the person's blood:

Commissioner means the Commissioner of Police appointed under section 9:

Commissioned Officer means a member of Police above the rank of Senior Sergeant, commissioned under section 23:

Constable means a member of Police who has taken the Oath of Constable under section 21, or was previously appointed as a constable under the Police Act 1981:

Deputy Commissioner means a Deputy Commissioner of Police appointed under section 12:

employee means any person employed to do any work for hire or reward under contract of service, including those appointed on a temporary or casual basis and includes any recruit, contractor, or probationer:

employment has a corresponding meaning and includes any office held as a member of Police:

General Instructions means General Instructions issued by the Commissioner under section 17:

identifying particulars means, in relation to a person, any or all of the following: the person's biographical details (for example, the person's name, address, and date of birth), the person's photograph or visual image, impressions of the person's fingerprints, palm-prints, footprints, or any other physical details relevant to the offence that the person is suspected of committing including non-invasive bodily samples confirming the person's identity:

justified in relation to any person, means not guilty of an offence and not liable to any civil proceeding:

lockout means the act of the Commissioner, with a view to compelling any member of Police, or other employee, to accept terms and conditions of employment made by the Commissioner—

(a) closing any office of Police; or

(b) breaking some or all of the conditions of employment fixed in respect of any employee in an agreement; or

(d) refusing or failing to engage employees for any work for which they are usually employed.

law enforcement agency means any authority or person responsible for the enforcement of laws whether in the Cook Islands, another country or internationally:

medical health includes psychological fitness and wellbeing:

Minister means the Minister of Police:

misconduct means any misconduct, and includes neglect of duty and unsatisfactory performance:

offence means any act or omission for which under any enactment a person can be punished on conviction:

Non-commissioned officer means a member of Police above the rank of constable and below the rank of inspector:

place includes any land, building, premises, or vehicle:

Police means the instrument of the Crown continued under section 4 and includes all members of either sex appointed to the Cook Islands Police Service under this Act or:

Police article means any crest, badge, emblem, design, logogram, or other distinguishing article used, worn, or carried by Police in the course of duty or business:

Police dog means a dog which has successfully qualified from a course of instruction as required by the Commissioner under General Instructions and is being used for law enforcement duties:

Police dog handler means a member of Police who has successfully completed a course of instruction as required by the Commissioner under General Instructions and has thereby qualified to perform duties as a police dog handler:

serious misconduct means misconduct sufficient to justify removal or calling into question the member's suitability for continued employment as a member of Police:

service organisation means an authorised union or representative of any member or class of members of Police that may negotiate with the Commissioner for scales of remuneration and terms and conditions of employment:

strike means the act of any number of members of Police—

(a) In discontinuing the performance of their duties, whether wholly or partially, or in reducing the normal performance of their duties; or

(b) In breaking their conditions of employment; or

(c) In refusing or failing after any such discontinuance to resume or return to their duties; or

(d) In refusing or failing to accept engagement for any work in which they are usually employed; or

(e) In reducing their normal output or their normal rate of work—the said act being due to any combination, agreement, common understanding, or concerted action, whether express or implied, made or entered into by any members of the Police; but does not include a service organisation meeting whether or not authorised by the Commissioner:

supervisor means a member of Police who holds a supervisory position in relation to that member of Police and includes a member of Police who is nominated by a supervisor to be acting supervisor of any member of Police.

4 Cook Islands Police Service.

(1) There continues to be an instrument of the Crown known as the Cook Islands Police Service.

(2) The Cook Islands Police Service is the same organisation as—

(a) the Cook Islands Police Service under the Cook Islands Act 1915; and

(b) continued in existence as the Police of the Cook Islands under the Police Act 1981; and

(c) existing immediately before the commencement of this Act.

(3) The Cook Islands Police Service is not part of the Public Service of the Cook Islands.

(4) Any person who, immediately before the commencement of this Act, held the powers of constable, or was appointed as a sworn or non-sworn member of Police within the meaning of the Police Act 1981, continues to be a member of Police at the rank or designation currently held and the provisions of this Act are deemed to apply.

5 Act binds the Crown

This Act binds the Crown.

Part 2
Organisation and Governance

Principles and functions

6 Principles

This Act is based on the following principles—

(a) Principled, effective, and efficient policing services are a cornerstone of a free and democratic society under the rule of law:

(b) Effective policing relies on public support and confidence:

(c) Policing services are provided under a national mandate:

(d) Policing services are provided in a manner that respects human rights:

(e) Policing services are provided independently and impartially:

(f) In providing policing services every member of the Police is required to act professionally, with honesty and according to their oath.

7 Functions of Police

(1) The functions of the Police include—

(a) Keeping the peace:

(b) Maintaining public safety:

(c) Law enforcement:

(d) Crime prevention:

(e) Community support and reassurance:

(f) National security:

(g) Participation in authorised regional and international policing operations outside the Cook Islands:

(h) Emergency management.

(2) Nothing in sections 6 to 7—

(a) imposes particular duties on, or gives particular powers to, the Police, the Commissioner, any member of Police, or the Minister; or

(b) affects the powers, functions, or duties of any agency other than the Police, or any person who is not the Commissioner, a member of Police, or the Minister.

8 Appropriation by Parliament

There must be paid to the Cook Islands Police Service such annual sums of money as may be appropriated by Parliament from time to time for the purposes of appropriately funding the functions of the Police.

Commissioner, Deputy Commissioners, and Acting Commissioner

9 Appointment of Commissioner

(1) The Queen's Representative must, by Order in Executive Council, on the recommendation of the Prime Minister, appoint a fit and proper person as the Commissioner of Police for a term not exceeding 5 years, and may reappoint that person for further terms of up to 2 years.

(2) A person who holds office as a constable when appointed Commissioner continues to hold the office of constable while Commissioner.

(3) The Queen's Representative, acting on the advice of the Executive Council, conveyed by the Prime Minister may—

(a) suspend the Commissioner, with or without pay, pending an inquiry, and

(b) following an inquiry, remove the Commissioner from office for serious misconduct or any disability affecting performance.

10 Responsibilities and independence of Commissioner

(1) The Commissioner is responsible to the Minister for—

(a) carrying out the functions and duties of Police:

(b) the general conduct of Police:

(c) the effective, efficient, and economical management of Police:

(d) tendering advice to the Minister.

(2) The Commissioner is not responsible to, and must act independently of, any Minister of the Crown (including any person acting on the instruction of a Minister of the Crown) regarding—

(a) maintenance of law and order in relation to any individual or group of individuals:

(b) enforcement of the law:

(c) the prevention, detection, investigation, and prosecution of offences:

(d) decisions about individual employees.

(3) Except as expressly provided in this Act, the Commissioner has all of the rights, duties, and powers of an employer in respect of all members and employees of Police.

11 Inquiry into Commissioner's conduct

(1) The Queens Representative may, by Order in Executive Council, appoint a Judge of the High Court to be a Commission to inquire into and report upon any question arising out of or concerning the conduct of the Commissioner of Police.

(2) For the purposes of this section the Commission has the same powers and authority as are conferred by the Commissions of Inquiry Act 1966.

12 Appointment of Deputy Commissioner

(1) The Queen's Representative may, by Order in Executive Council on the recommendation of the Prime Minister, appoint a fit and proper person as Deputy Commissioner of Police for a term not exceeding 5 years.

(2) A Deputy Commissioner may be reappointed for further terms of up to 2 years.

(3) A person who holds office as a constable when appointed Deputy Commissioner continues to hold the office of constable.

(4) The Queen's Representative, acting on the advice of the Executive Council, conveyed by the Minister on the recommendation of the Commissioner, may—

(a) suspend the Deputy Commissioner, with or without pay, pending an inquiry, and

(b) following an inquiry, remove the Deputy Commissioner from office for serious misconduct or any disability affecting performance.

(5) The Deputy Commissioner has and may exercise such of the powers, authorities, duties, and functions of the Commissioner as the Commissioner may delegate generally or in any particular case.

(6) Every delegation is revocable, and no such delegation prevents the exercise by the Commissioner of any power, authority, duty or function.

(7) When the Commissioner is unavailable (whether by reason of illness, absence from the Cook Islands, or for any other reason) or a vacancy arises in the Office of the Commissioner (whether by reason of death, resignation, or otherwise) and for so long as the unavailability or vacancy continues, the Deputy Commissioner has and may exercise all the powers, authorities, duties, and functions of the Commissioner.

(8) It is the Commissioner's annual responsibility to review the performance of the Deputy Commissioner, and to inquire into and report on any question concerning the conduct of the Deputy Commissioner.

(9) The exercise by the Deputy Commissioner of any power, authority, duty, or function, pursuant to this section, must, in the absence of proof to the contrary, be sufficient evidence of authority to do so.

13 Appointment of Acting Commissioner

(1) In the event of the Commissioner's incapacity because of illness, absence, or any other cause, the Queen's Representative may, by Order in Executive Council on the recommendation of the Prime Minister, appoint an Acting Commissioner for any specified period; and until that appointment, the longest serving Deputy Commissioner is deemed to be appointed acting Commissioner.

(2) The Acting Commissioner has all the powers, functions, duties, and responsibilities of the Commissioner.

(3) No appointment under subsection (1), and no act by a person appointed under subsection (1), may be questioned on the ground that the occasion for the person's appointment had not arisen or had ceased.

14 Appointment process

The Public Service Commissioner is responsible for managing the process for the appointment of the Commissioner and any Deputy Commissioner and must provide advice on nominations for Commissioner and any Deputy Commissioner to the Minister for advice to the Prime Minister.

15 Annual report

(1) The Commissioner must as soon as practicable after the 30th day of June in each year, provide to the Minister a report on the operation of the Police for the year ending on that date.

(2) A copy of the report must be laid before Parliament within 28 days after it has been furnished to the Minister if the Parliament is then in session, and, if not, must be laid before Parliament within 28 days after the commencement of the next ensuing session.

(3) The annual report must include—

(a) an account of the financial and operational performance of the Police, during the period under review;

(b) any information required under any other enactment.

(4) The annual report may include any other matters affecting the Police or policing as the Commissioner thinks fit.

16 Delegation of powers of Commissioner

(1) The Commissioner may delegate to any person any powers, functions, or duties of the Commissioner under this Act or any other enactment, other than the power to remove, transfer, or to reduce in rank any member of Police.

(2) Any delegation under subsection (1)—

(a) may be made subject to any conditions or restrictions that the Commissioner thinks appropriate, including any factors that must be taken into account when the delegation is exercised;

(b) may be made generally or in any particular case;

(c) is revocable at will;

(d) does not prevent the Commissioner from exercising any power, or carrying out any function or duty;

(e) does not affect the responsibility of the Commissioner for the actions of any person acting under delegation.

(3) A person who is delegated any powers, functions, or duties under subsection (1)—

(a) may, with the prior written approval of the Commissioner, delegate those powers, functions, or duties to any other person;

(b) may, subject to any conditions or restrictions, exercise those powers, functions, or duties in the same manner and with the same effect as if they had been conferred on that person directly by this Act and not by delegation.

(4) Every person purporting to act under any such delegation is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

17 General Instructions

(1) The Commissioner may issue General Instructions.

(2) A General Instruction has no effect to the extent that it is inconsistent with this Act or any regulations made under it.

(3) A General Instruction remains in force until cancelled by the Commissioner.

(4) If there is any inconsistency between General Instructions and the provisions of any manual or circular issued under the Commissioner's authority, or any other instruction, the General Instructions prevail.

(5) Without limiting the general power conferred, it is hereby declared that General Instructions may be made under this section for all or any of the following purposes:

(a) providing for the governance, maintenance, duties, discipline, and control of the Police and for the transfer of members of the police to any other duty or position whether on the same island or not;

(b) prescribing the ranks of Commissioned Officers appointed pursuant to this Act, and providing for the promotion of any person to any such rank;

(c) prescribing the ranks of non-commissioned officers, and providing for the promotion of any person to any such rank;

(d) regulating generally the promotion of members of Police, and prescribing the factors to be considered in relation to any promotion;

(e) prescribing any matter relating to the conditions of service of Police members and other employees including standards of medical and physical health and fitness.

(f) prescribing such matters relating to the superannuation of members of the Police as may be considered necessary;

(g) prescribing the procedure at and regulating the conduct of any appeal, review or inquiries under this Act (including matters preliminary or incidental thereto) and enabling the taking of evidence for the purposes of any such appeal, review or inquiry;

(h) providing for the determination of the amount, of rent to be paid by any member of Police who is permitted to use for the purpose of residence or granted a tenancy of any premises or any part of any premises belonging to the Government, and for the deduction of the amount payable in respect of that use or tenancy from any money due or at any time becoming due from the Crown whether in salary or otherwise;

(i) prescribing the numbers, salaries, allowances and other conditions of employment of members of the Police and other employees.

(6) A General Instruction is deemed to have been communicated to employees and members of Police when the instruction has been—

(a) published under the authority of the Commissioner and distributed to all employees and members of Police; or

(b) brought to the personal notice of any employee or member of Police.

(7) Any communication referred to in subsection (6) may be made in one or more of the following ways:

(a) electronic communication:

(b) in non-electronic form:

(c) by distribution through any other form of technology that allows the dissemination of the material in question to members of Police.

18 Command and control

(1) Every employee and member of Police must obey and be guided by—

(a) General Instructions; and

(b) Commissioner's circulars.

(2) Every employee and member of Police must obey the lawful instructions of a supervisor.

(3) In the absence of a supervisor, the supervisor's authority and responsibility devolves on—

(a) the member of Police available who is next in level of position; and

(b) in the case of equality, the longest serving member of Police.

(4) No member of Police may, when exercising any power or carrying out any function or duty, act under the direction, command, or control of—

(a) a Minister of the Crown; or

(b) a person who is not authorised by or under this Act or any other enactment or rule of law to direct, command, or control the actions of a member of Police.

(5) Subsection (4) does not apply to a member of Police outside the Cook Islands who—

(a) is part of an overseas operation; or

(b) is employed within the meaning of section 84.

19 Commissioner may take charge of policing operation

(1) The Commissioner may at any time take charge of, or delegate another member of Police to take charge of, a policing operation.

(2) The Commissioner may relieve any member of Police in charge of a policing operation if the Commissioner considers it necessary for the effective and efficient exercise of the powers, functions, and duties of the Police.

(3) For the purposes of this section **"policing operation"** means a specific policing activity that is not of permanent duration.

Part 3
Employment of Police

Appointment of members of Police

20 Commissioner may appoint members of Police

(1) The Commissioner may appoint such members of Police as the Commissioner considers necessary for the efficient performance of the functions, powers, and duties of the Police.

(2) The power conferred by subsection (1) includes the power to appoint any person on an acting, temporary, or casual basis or for any period.

(3) The Commissioner may assign to a member of Police any level of position that the Commissioner considers appropriate.

(4) The Commissioner in appointing any member of Police must give preference to the person who is best suited to the position.

(5) Despite subsection (1) the maximum number of members of Police must be such as the Cabinet authorises from time to time.

(6) The Commissioner may from time to time appoint such suitable persons, not being members of Police, to be employees (including acting or temporary or casual employees) of the Cook Islands Police Service for the efficient conduct of the Police; and may, subject to any conditions of employment included in the employment agreement applying to the employee, at any time remove any such employee from employment with Police.

(7) The Commissioner may appoint an applicant as a police recruit on a temporary fixed term for training with a view to becoming a constable. Following initial training and a specified probationary period the recruit must be capable of exercising the powers of a constable before the Constable's Oath is administered.

21 Constable's Oath

(1) A person may be appointed as a member of Police and become sworn as a constable by taking the Constable's Oath, in either of the following forms, before the Commissioner or a person authorised by the Commissioner to administer the Constable's Oath:

English form

I,....., swear by Almighty God that I will well and truly serve Her [or His] Majesty [Specify as above] as the Head of State of the Cook Islands, Her [or His] heirs, and successors, in accordance with the Constitution and the law, in the office of constable and I will do right to all manner of people, without favour or affection, malice or ill-will. While a constable I will, to the best of my power, keep the peace and prevent offences against people and property; and will, to the best of my skill and knowledge, perform all the duties of the office of constable according to law. So help me God.

Cook Islands Maori form

"Te taputou nei au ki mua I ta aroaro o te Atua e ka rave au e ka tavini au I tona Ngateitei te Upoko o te Ipukarea Kuki airani, e tona au…e teka mono mai iaia, tei tau kit e papa ture metua e te ture, I roto I te opati o tea kava ka rave au I tei tano ki te iti tangata, ma te kore e piripiri, e pera te manako kino. E I te au tuatau roa rai e mou nei au I te taonga o te akava, ka rave au ma te maroiroi I te mou anga I te au e pera te paruru anga I te au manamanata te ka tupu kit e iti tangata e te au pakau, e ka rave au ma te tae tikai"

(2) Before administering the Constable's Oath, the Commissioner, must be satisfied that the person is:

(a) adequately trained to exercise the powers of a constable; and

(b) capable of exercising the powers of a constable.

(3) The Commissioner and any constable may agree that the member will cease to hold the office of constable.

(4) Subsection (3) does not limit the circumstances in which a member of Police may cease to hold the office of constable.

(5) If a member of Police ceases to hold the office of constable that does not mean that the person is no longer a member of Police.

(6) A member of Police ceases to hold the office of constable if for any reason the person ceases to be a member of Police, or while suspended under Section 39.

(7) For the purposes of this section, a member of Police ceases to hold the office of constable at the outset of any period of leave if, at the expiration of that leave, the member will not return to duty in the Police.

(8) Any person who, immediately before the commencement of this Act, held the powers of constable, or was appointed as a sworn or non-sworn member of Police, within the meaning of the Police Act 1981, continues to be a constable or member of Police at the rank or designation currently held, including Commissioned Officer, and the provisions of this Act are deemed to apply.

22 Solemn undertaking by member of Police

(1) Any new person appointed to the Police, not being a constable, must give a solemn undertaking to professionally and honestly perform their duties as a member of Police.

(2) The undertaking—

(a) must be given before a Commissioned Officer; and

(b) may be recorded in any manner that the Commissioner determines from time to time.

23 Commission by Queen's Representative

(1) The Queen's Representative may declare a member of Police to be a Commissioned Officer.

(2) Before the Queens Representative makes a declaration under subsection (1), the Minister must have received a recommendation from the Commissioner that the member be declared a Commissioned Officer of Police.

(3) The Commissioner may make such a recommendation only if satisfied that the member is competent and qualified to be a Commissioned Officer of Police.

Employment framework

24 Unlawful strikes and lockouts

(1) A strike by, or lockout of, any member of Police is unlawful.

(2) The Commissioner may immediately suspend or remove any member of Police who is party to a strike or lockout, or fails or refuses to resume or return to their employment.

(3) The Queen's Representative may suspend or remove the Commissioner who is party to a lockout without the requirement for an inquiry under section 9(3).

(4) Any member of Police suspended or removed under this section is not entitled to any remuneration by way of salary, wages, allowances, or other emoluments from the date of suspension or removal.

25 Obligation to notify vacancies

(1) If the Commissioner intends to fill a position that is vacant or is to become vacant in the Police, the Commissioner must notify the vacancy or prospective vacancy in a manner sufficient to enable suitably qualified people to apply for the position.

(2) This section is subject to section 40.

26 Obligation to notify appointments

The Commissioner must notify every appointment to a vacant position in Police in a manner that sufficiently informs members of Police, and the public when appropriate, as to the outcome of the appointment process.

27 Review of appointments

(1) The Commissioner must prescribe in General Instructions a procedure for reviewing appointments to vacancies that are the subject of any complaint by a member of Police.

(2) Nothing in this section relates to an acting appointment.

28 Employment negotiations

The Commissioner may support collective bargaining with a service organisation when it is practical and reasonable to do so.

29 Superannuation Fund

(1) The Commissioner may exercise the powers conferred on any employer by section 36 of the Cook Islands National Superannuation Act 2000 (which relates to the establishment of superannuation schemes for employees).

(2) The Commissioner may make it a condition of employment of any member of Police that the member must contribute to—

(a) the New Zealand Government Superannuation Fund established under Government Superannuation Fund Act 1956 of the General Assembly of New Zealand in force in the Cook Islands; or

(b) any other superannuation fund or scheme approved by the National Superannuation Board constituted under section 4 of the Cook Islands National Superannuation Act 2000.

Standards for members of Police

30 Code of conduct

(1) The Commissioner must prescribe in General Instructions a Code of conduct for Police, stating the minimum standards of behaviour expected from members and employees.

(2) It is the duty of every member and employee of Police, including permanent, temporary or casual employees, and those on overseas deployment, to conduct themselves in accordance with the Code of conduct.

(3) If a member of Police does or omits to do an act, and that act or omission would, if it occurred in the Cook Islands, be a breach of the Code of conduct, then the provisions of this Act apply as if the act or omission had occurred in the Cook Islands.

(4) Where any disciplinary matter arises in relation to conduct by a member of Police that occurred before the commencement of this Act, but identified after the commencement of this Act, the matter must be dealt with in accordance with any applicable provisions of this Act as if the conduct had occurred after the commencement of this Act.

31 Commissioner to prescribe standards of fitness

(1) The Commissioner may prescribe by General Instructions standards of medical and physical health required of members of the Police to ensure that they are fit to perform competently the duties of their rank and any other duties that may reasonably be required of them from time to time.

(2) Any such standards may be expressed to apply to all members of the Police generally, or to any particular class of members, whether designated by reference to level of position, duties, or otherwise.

(3) The Commissioner may require any member of Police or person applying to become a member of Police to submit at their own expense to a medical examination by a medical practitioner nominated by the Commissioner.

(4) The Commissioner may require any employee, or person applying to become an employee or member of Police, to undertake alcohol and drug testing procedures set out in General Instructions.

(5) An applicant or employee who refuses or fails to comply with any medical fitness standards, or alcohol and prohibited drug testing procedures required to be undertaken under subsection (4) is ineligible for employment.

32 Commissioner may remove a member of Police due to incapacity

(1) The Commissioner may remove a member of Police, or other employee, under this section if—

(a) satisfied that the person is incapable of competently performing the duties that may reasonably be required of them from time to time; and

(b) 2 medical practitioners, or a medical practitioner and another health practitioner, nominated in each case by the Commissioner, certify—

(i) the person is incapable of meeting the standards prescribed under section 31; and

(ii) they have failed to respond, or are unlikely to respond, within a reasonable time to treatment, counselling, or other remedial assistance; or

(iii) where psychological fitness is in issue, that the person has failed to respond, or is unlikely to respond, within a reasonable time to treatment, counselling, or other remedial assistance.

(2) Where the Commissioner requires the removal of a member of Police, or other employee, under this section, the Commissioner must—

(a) notify the person in writing; and

(b) specify in the notice the time (being not less than one month from the date of the notice) within which the Commissioner requires the employee to leave.

(3) In any case described in subsection (2), the member or employee, may, with the consent of the Commissioner, waive the right to notice and leave the Police immediately.

(4) Any member who is removed under this section may appeal against the requirement.

(5) Every appeal must be commenced by notice of appeal delivered to the Commissioner within 7 days after the receipt of the notice referred to in subsection (2) of this section.

(6) Any appeal under this section must be determined by a medical practitioner appointed by the Secretary of Health.

(7) The medical practitioner appointed under subsection (6) may dismiss the appeal or allow the appeal subject to the appellant complying with any conditions specified by them.

(8) For the purposes of section 36 of the-Superannuation Act 1956, a person who ceases to be a member of Police under this section must be entitled to a retiring allowance in accordance with the said section 36, and the provisions of that section apply accordingly.

33 No compensation for loss of salary

Except as provided in this Act or any other enactment or employment agreement, no employee or member of Police is entitled to any compensation by reason of any reduction in salary, or as a consequence of their services being dispensed with by removal or otherwise.

34 Resignation

(1) No member of the Police may resign unless that member has given the Commissioner not less than 14 days notice in writing of their intention to resign, or has been authorised in writing by the Commissioner to resign.

(2) Except with the permission of the Commissioner, no member of the Police may withdraw a notice of intention to resign.

(3) Where in the opinion of the Queen's Representative special circumstances require that no member of the Police resign without permission, the Queen's Representative may, by Warrant, declare that no member of the Police may resign except on the conditions set out in the Warrant.

(4) A member who fails to return to duty after any authorised absence, deserts or is otherwise absent without leave is deemed to have ceased to be a member of the Police on the date the member was to have returned to duty following the authorised absence, or at the date of the commencement of the unauthorised absence.

(5) Any member who resigns otherwise than in accordance with the provisions of this Act, or in accordance with the provisions of a Warrant for the time being in force under this section, or who deserts from the Police, commits an offence and is liable to imprisonment not exceeding 6 months, to a fine not exceeding $5,000, or both.

(6) Any member who resigns otherwise than in accordance with the provisions of this Act, or in accordance with the provisions of a Warrant for the time being in force under this section, or who deserts from the Police must cease to be a member of Police forfeiting all pay then due or becoming due as a member of the Police, or both.

35 Age of retirement

(1) Every member of the Police, whether or not a contributor to the Government Superannuation Fund, must retire from the Police once the age of 60 years is attained.

(2) Where in the opinion of the Commissioner special circumstances require that any member remain in the Police after the age of 60 years, the Commissioner may reappoint that person for further terms of up to 12 months.

(3) Nothing in this section prevents a member of the Police from receiving leave, or from receiving any payment, salary, or allowance while on leave or instead of leave, after the date when required to retire in accordance with this section if any such leave accrued during a period of service in the Police.

36 Injuries in execution of duty

Any injury suffered by a member of the Police is deemed to have arisen out of and in the course of employment if the injury occurs—

(a) while on duty or while on a direct journey from home to report for duty or to home after duty; or

(b) while not on duty in the performance of some act which is within the scope of the member's ordinary duties; or

(c) in consequence of some act performed in the execution of the member's duty.

37 Disablement or death

(1) Subject to this section, where the disablement or death of any member of the Police has occurred (whether before or after the commencement of this Act) and is attributable to, or aggravated or precipitated by Police service, there may be paid to the member (in the case of disablement) and to the dependants (in the case of death) pensions and allowances at rates not exceeding the rates that would be payable under the provisions of the Cook Islands Workers Compensation Ordinance 1964.

(2) All applications for pensions and allowances under this section must be made in writing to the Treasurer of the Workers Compensation Fund established under the Cook Islands Workers Compensation Ordinance 1964.

38 Police not to engage in politics

In the interests of preserving the independence and integrity of the Cook Islands Police Service, a member must resign from Police before becoming a candidate for election as a Member of Parliament.

39 Suspension or removal of member of Police

(1) The power to exercise disciplinary control over employees and members of the Police, except where otherwise specified in this Act, is vested in the Commissioner including the power to remove, transfer, or reduce in rank or level of position.

(2) The Commissioner, subject to this Act, General Instructions, and the conditions of employment set out in any applicable employment agreement, may at any time—

(a) suspend any member of Police, or other employee, from employment, with or without pay:

(b) remove any member of Police, or other employee, from employment.

(3) Where the Commissioner, by direction in writing, has delegated to any Commissioned Officer any powers to suspend or decide on disciplinary outcomes, an appeal from any such decision must lie to the Commissioner.

40 Power to transfer member of Police

(1) The Commissioner may transfer any member of Police (whether permanently or temporarily) and appoint to another position or location in the Police if—

(a) at any time the substantial duties being carried out by the member are no longer to be carried out by the Police; or

(b) a greater number of Police are employed at a location than the Commissioner considers to be desirable; or

(c) there are reasonable grounds for believing the member of Police has behaved in a manner inconsistent with the Code of conduct and transfer is necessary to maintain good order and discipline within the Police or to avoid bringing the Police into disrepute.

(2) Before making an appointment under subsection (1) the Commissioner must consult with the member affected by the proposed appointment.

(3) Any member of Police who fails to comply with the written direction of the Commissioner requiring the member to transfer from one position or locality to another may be demoted with a consequent reduction in remuneration, or removed from employment.

(4) Nothing in sections 25 to 27 applies in relation to any appointment under this section.

Alcohol and prohibited drug testing

41 Alcohol and drug screening tests

(1) A Commissioned Officer, or authorised person, may require a member of Police, or other employee, to undergo an alcohol or drug screening test if—

(a) the person is on duty; and

(b) the Commissioned Officer reasonably suspects that the person is under the influence of alcohol or drug.

(2) If the result of the alcohol or drug screening test shows that alcohol or drug is not present, the person may return to duty immediately.

(3) The person may be given a written direction under section 42 to undergo a conclusive alcohol or prohibited drug test if:

(a) the result of the alcohol or drug screening test shows that alcohol or a prohibited drug is present; or

(b) the person refuses to undergo the alcohol or drug screening test.

(4) Any employee, not being a member of Police, who has an unacceptable level, or fails or refuses to comply with a requirement under subsection (1)—

(a) must be suspended, and the circumstances reported to the Commissioner; and

(b) may be removed under this subsection.

(5) This section does not limit the operation of section 42.

(6) Any certificate or other document recording the results of a test conducted under sections 41,42, or 43, or answer to a question, or any other document relevant to conducting such a test is admissible for any proceedings under this Act and as evidence in any criminal proceedings.

42 Conclusive alcohol and prohibited drug tests

(1) A Commissioned Officer, or authorised person, may give a person applying to become a member of Police, or member of Police who is on duty, a written direction requiring the person—

(a) to undergo a breath test; or

(b) to provide a bodily sample, of a kind specified in the direction for a prohibited drug test.

(2) Where a test under subsection (1) indicates the presence of alcohol or drugs the person applying to become a member of Police or the member of Police may provide a sample of their blood for the purpose of a blood test.

(3) A member of Police who fails or refuses to comply with a requirement under subsection (1) may be immediately suspended or removed under section 39(2).

43 Alcohol and prohibited drug tests after certain incidents

(1) In this section:

incident means where a member of police causes or appears to have caused, death or serious bodily harm to a person:

involved member means any member of Police directly involved in the incident.

(2) A Commissioned Officer, or authorised person, may, as soon as practicable after an incident has occurred, require an involved member to—

(a) undergo a breath test; or

(b) provide, for the purposes of a prohibited drug test, a bodily sample of a specified kind.

(3) If, shortly after the incident, an involved member attends or is admitted to a hospital for examination or treatment, a Commissioned Officer or authorised person may, subject to subsection (4), require the member or a medical practitioner, or other medical officer responsible for the member's medical care, to—

(a) provide a sample of the member's blood for a blood test; or

(b) provide, for the purposes of prohibited drug test, a bodily sample of a specified kind from the member, regardless of whether the member has consented to the taking of the sample and whether the member is capable of giving consent.

(4) The medical practitioner or other medical officer may refuse to comply with a requirement under this section if, after examining the involved member, they are satisfied that taking the sample will, or is likely to, cause serious harm to the member's health but must report on the circumstances of the refusal to the Secretary of Health within 24 hours.

(5) No civil or criminal proceedings may be taken against the Crown, medical practitioner or medical officer or health authority, or any other person in respect of the taking of a blood or bodily sample under this section, or in respect of the sending of the sample to an approved analyst, on the ground of lack of consent of a person whose consent to the taking of the sample would have been otherwise required if this section had not been enacted.

(6) Nothing in subsection (5) applies to any proceeding on the ground of any negligent act or omission in the taking of the blood or bodily sample.

(7) A member of Police who fails or refuses to comply with a requirement under subsection (2) may be immediately suspended or removed under section 39(2).

44 Alcohol and prohibited drug testing

(1) For the purposes of any of sections 41, 42, or 43, the Commissioner may specify in General Instructions the following—

(a) the authorisation of persons to give directions under those sections;

(b) the authorisation of persons:

(i) to conduct alcohol screening tests, breath tests, blood tests or prohibited drug tests, including urine analysis for the purpose of those sections; and

(ii) to operate equipment for that purpose;

(c) the provision of samples of blood for the purpose of blood tests under those sections;

(d) the provision of bodily samples, including urine, for the purpose of drug tests under those sections;

(e) the conduct of alcohol screening tests, breath tests, blood tests or drug tests including urine analysis under those sections;

(f) the devices used in conducting breath tests, blood tests or drug tests including urine analysis under those sections, including the calibration, inspection and testing of those devices;

(g) the accreditation of persons to conduct analysis in connection with blood tests and drug tests;

(h) the procedure for the handling and analysis of:

(i) samples of blood taken in connection with blood tests under those sections; or

(ii) bodily samples and urine taken in connection with drug tests under those sections;

(i) the giving of the test results in certificates or other documents and the evidentiary effect of such certificates or other documents;

(j) the confidentiality of the test results;

(k) to specify drugs for the purposes of the definition of prohibited drug.

(2) Alcohol and prohibited drug testing must be conducted in accordance with the procedure set out in General Instructions.

Part 4
Powers and Operations

Police powers

45 Arrest without warrant

(1) Any constable, and all persons called to assist, may arrest and take into custody without warrant—

(a) any person found disturbing the public peace or committing any offence punishable by imprisonment:

(b) any person there is good cause to suspect has committed a breach of the peace or any offence punishable by imprisonment:

(c) any person there is good cause to suspect has committed an offence under the provisions of this Act:

(d) any person who within view does any act the constable reasonably believes constitutes an offence under any enactment, and fails to give their name and address on demand, or gives any particulars that the constable reasonably believes to be false.

(2) The power conferred on a constable under subsection (1) is subject to any express provision in any enactment that imposes limitations, restrictions, or conditions on the exercise of the power in respect of any specified offence or class of offences.

(3) Where under any enactment any person, not being a constable, has the power to arrest any other person without warrant, any constable may exercise that power in the same manner.

(4) Nothing in this section may limit or affect any of the provisions of Part III of the Crimes Act 1969 (which relates to matters of justification or excuse).

46 Care and protection of intoxicated people

(1) A constable who finds a person intoxicated in a public place, or trespassing on private property, may detain and take the person into custody if—

(a) the constable reasonably believes that the person is:

(i) incapable of protecting themselves from physical harm; or

(ii) likely to cause physical harm to another person; or

(iii) likely to cause damage to any property; and

(b) the constable is satisfied it is not reasonably practicable to provide for the person's care and protection by taking the person to their place of residence.

(2) A person detained under subsection (1)—

(a) must be released as soon as the person ceases to be intoxicated:

(b) must not be detained longer than 12 hours after the person is first detained, unless a health practitioner recommends that the person be further detained for a period not exceeding 12 hours.

(3) A health practitioner must be satisfied that—

(a) the person remains intoxicated and is incapable of protecting themselves from physical harm; and

(b) the person does not have health needs that may require medical attention.

(4) For the purposes of this section "intoxicated" means affected by alcohol, other drugs, or substances to such a degree that speech, balance, co-ordination, or behaviour are clearly impaired.

Rights of persons arrested or detained

47 Rights of persons arrested or detained

(1) Everyone who is arrested or who is detained under any enactment—

(a) must be informed at the time of the arrest or detention of the reason for it; and

(b) has the right to consult and instruct a lawyer without delay and to be informed of that right; and

(c) must be released immediately if the arrest or detention is not lawful.

(2) Everyone who is arrested for an offence has the right to be charged promptly or to be released.

(3) Everyone who is arrested for an offence and is not released must be brought as soon as possible before Court.

(4) Everyone who is arrested or detained under any enactment for any offence or suspected offence has the right to refrain from making any statement and to be informed of that right.

(5) Everyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the person.

Identification of people detained by Police

48 Identifying particulars of person in custody

(1) Any member of Police may obtain the identifying particulars of a person detained under any enactment or arrested for committing an offence, who is in lawful custody—

(a) at a Police station; or

(b) at any other place being used for Police purposes.

(2) A member of Police must take the person's identifying particulars in a manner that is reasonable in the circumstances and may use or cause to be used only such reasonable force as may be necessary to secure the identifying particulars.

(3) Police may use information obtained under this section now and in the future for any lawful purpose.

(4) Any arrested or detained person who, after being cautioned, fails to comply with a direction under this section commits an offence and is liable to imprisonment for a term not exceeding 6 months, to a fine not exceeding $5,000 or to both.

49 Identifying particulars for summons

(1) Any constable who has good cause to suspect a person of committing an offence and who intends to bring proceedings against the person in respect of that offence by way of summons, may detain that person at any place—

(a) in order to take the person's identifying particulars; and

(b) only for the period necessary to take the person's identifying particulars.

(2) A member of Police must take the person's identifying particulars in a manner that is reasonable in the circumstances and may use or cause to be used only such reasonable force as may be necessary to secure the identifying particulars.

(3) Police may use information obtained under this section now and in the future for any lawful purpose.

(4) Any detained person who, after being cautioned, fails to comply with a direction under this section commits an offence and is liable to imprisonment for a term not exceeding 6 months, to a fine not exceeding $5,000, or to both.

Search of people in Police custody

50 General searches of people in Police custody

(1) A member of Police, may conduct a search of any person who is in lawful custody—

(a) at a Police station; or

(b) in other premises or a vehicle, being used for Police purposes.

(2) A member of Police who searches a person under subsection (1) may remove any money or other property found in possession of that person.

(3) Reasonable force may be used to conduct a search and remove any money or property found in possession of that person.

(4) Subject to any order of the Court, all money and every item of property removed from the detainee must be returned when the detainee is released from Police custody, except—

(a) any money or property that may be required to be given in evidence in any proceeding arising out of any charge brought against the detainee:

(b) any money or property the possession of which by the detainee constitutes an offence.

(5) Where the detainee is released from Police custody into custody in any prison, all money and every item of property taken from the detainee under subsection (1) of this section (other than that referred to in subsection (4) of this section) must, as soon as practicable, be delivered to the manager or other officer in charge of the prison.

(6) Nothing in this section affects the right at common law of a constable to search any person on the person's arrest.

Police Bail

51 Arrested person may be released on Police Bail

(1) Where any person is arrested without warrant and charged with an offence, not punishable by death or imprisonment for more than 2 years, and cannot practicably be brought immediately before the Court: any constable, if it is prudent to do so, may take the bail bond of that person.

(2) Any bail bond taken under this section—

(a) may be either with or without sureties as the constable thinks fit; and

(b) must be in such sum or sums as the constable thinks sufficient; and

(c) may include reasonable terms and conditions; and

(d) is subject to the condition that, at a time and place to be specified in the bond, being a time not later than 7 days from the date of the bond, the person bailed attend personally before the Court.

(3) Every such bail bond must have the same effect as if it had been taken before a Judge or Justice or the Registrar.

(4) In making a decision under subsection (1), the constable must have regard to any other statutory requirements or risk that the arrested person may:

(a) fail to appear in Court;

(b) interfere with witnesses; or

(c) offend while on bail.

(5) Any person having been released on a Police bail bond, who fails to attend personally at the time and court specified in the bail bond, commits an offence and is liable to imprisonment of up to 3 months or a fine not exceeding $2000 or both.

General powers of search

52 Commissioner's search warrant

(1) The Commissioner may give to any constable, by signed written order, an authority to search in the same terms as a search warrant issued under section 96 of the Criminal Procedure Act 1980-81 if the Commissioner is satisfied that there is reasonable ground for believing—

(a) that the case is one of great emergency and that immediate action is necessary:

(b) that there is in any building, aircraft, ship, hovercraft, carriage, vehicle, box, receptacle, premises, or place—

(i) any thing upon or in respect of which an offence against section 80 of the Crimes Act 1969 has been or is suspected of having been committed; or

(ii) any thing which there is reasonable ground to believe will be evidence as to the commission of any such offence; or

(iii) any thing which there is reasonable ground to believe is intended to be used for the purpose of committing any such offence.

(2) Where an authority is given under subsection (1) the provisions of section 96 of the Criminal Procedure Act 1980-81 apply with all necessary modifications.

(3) Every constable exercising the authority conferred by an order made under subsection (1) of this section must—

(a) identify themselves to any person in or on the building, aircraft, ship, hovercraft, carriage, vehicle, premises, or place;

(b) tell the person that the search is being made pursuant to that subsection; and

(c) if not in uniform, produce on initial entry, and, if requested, at any subsequent time, evidence of being a constable.

(4) When the power conferred by subsection (1) is exercised, the Commissioner must as soon as practicable, and in any case within 3 days after the day on which the power is exercised, provide the Minister with a written report on the exercise of the power and the circumstances in which it came to be exercised.

53 Search of suspected persons and seizure of firearms, airguns, pistols, imitation firearms, restricted weapons, ammunition, or explosives

(1) A constable who has reasonable ground to suspect that any person, in a public place, is carrying or is in possession of any firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive, without reasonable excuse, may without warrant—

(a) stop and search that person, or any vehicle, package, or other thing in the possession or control of the person; and

(b) detain the person for the purpose of any search under paragraph (a) of this subsection; and

(c) seize any firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive, and detain it.

(2) A constable who has reasonable ground to suspect that any person has in their possession or under control, in any place, any firearm, airgun, pistol, restricted weapon, ammunition, or explosive, and that the person is, by reason of physical or mental condition, however arising, incapable of having proper control of the firearm, airgun, pistol, restricted weapon, ammunition, or explosive or may kill or do bodily injury to themselves or any other person, may without warrant—

(a) enter and search that place and search any person found there; and

(b) detain any person found there for the purpose of any search under paragraph (a); and

(c) seize any such firearm, airgun, pistol, restricted weapon, ammunition, or explosive, and detain it.

(3) Every constable exercising any power conferred by this section must—

(a) identify themselves to any person detained and searched or to the occupant of any premises searched; and

(b) tell the person searched and the occupant of any premises searched the purpose of the search; and

(c) on initial entry, if not in uniform, produce evidence of being a constable.

(4) Any constable who exercises any power under this section may use such force as is reasonable in the circumstances.

(5) Any constable who exercises any power conferred by this section, must, as soon as practicable, and no longer than 3 days after the day on which the power is exercised, provide the Commissioner a written report on the exercise of the power and the circumstances in which it came to be exercised.

54 Search of land or buildings for firearms, airguns, pistols, imitation firearms, restricted weapons, ammunition, or explosives

(1) If any Commissioned Officer has reason to suspect that there is in any building, aircraft, vessel, hovercraft, carriage, vehicle, premises, or place any firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive in respect of which any offence has been or is about to be committed or which may be evidence of any such offence, the Commissioned Officer, or any constable authorised by a Commissioned Officer in writing, may—

(a) enter the building, aircraft, vessel, hovercraft, carriage, vehicle, premises, or place, by force if necessary, and search it or any part of it; and

(b) seize any firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive found there and detain it.

(2) Every constable exercising any power conferred by subsection (1) of this section must—

(a) identify themselves to the occupant of the premises searched; and

(b) tell the occupant of the premises searched that the search is being made pursuant to this section; and

(c) on initial entry, if not in uniform, produce evidence of being a constable.

(3) Any Commissioned Officer who exercises any power conferred by this section, must as soon as practicable, and no longer than 3 days after the day on which the power is exercised, provide the Commissioner with a written report on the exercise of the power and the circumstances in which it came to be exercised.

55 Search of suspected persons and seizure of firearms in cases of domestic violence

(1) Any constable may exercise the powers listed in subsection (2) if there is reasonable ground to suspect that any person has in their possession, or under control in any place, any firearm, airgun, pistol, restricted weapon, ammunition, or explosive; and either—

(a) there is a state of disharmony between the person and their spouse (including any spouse from a defacto marriage) of such a nature there are grounds for making an order under Part XVIII of the Cook Islands Act 1915 (which relates to separation, occupation and non-molestation); or

(b) such an order is in force under that Act in respect of that person;

(2) Every constable may, without warrant—

(a) enter any building, aircraft, vessel, hovercraft, carriage, vehicle, premises, or place, by force if necessary, and search it or any part thereof; and

(b) seize any firearm, airgun, pistol, imitation firearm, restricted weapon, ammunition, or explosive found there and detain it.

(3) It is the duty of every constable exercising any power conferred by this section—

(a) to identify themselves to any person present at the premises or place searched; and

(b) tell any occupant who is present that the search is being made under this section; and

(c) on initial entry, if not in uniform, produce evidence of being a constable.

(4) Any constable who exercises any power under this section, must as soon as practicable, and no longer than 3 days after the day on which the power is exercised, give the Commissioner a written report on the exercise of the power and the circumstances in which it came to be exercised.

56 Police dogs may accompany Police dog handlers

(1) A Police dog under the control of a Police dog handler may enter and be on any place that the Police dog handler may lawfully enter or be upon.

(2) Neither the Commissioner, nor a Police dog handler in charge of a Police dog, is liable in any way by reason only of a Police dog having entered or been on any place in accordance with subsection (1).

Part 5
Protections and Obligations

Operational protections

57 Arrest by constable pursuant to statutory powers

Every constable is justified in arresting any person without warrant in accordance with the provisions of this Act or in accordance with any other enactment conferring a power to arrest.

58 Arrest by constable of person believed to have committed offence

Where under any enactment any constable has power to arrest without warrant any person who has committed an offence, the constable is justified in arresting without warrant any person the constable believes, on reasonable and probable grounds, to have committed that offence, whether or not the offence has in fact been committed, and whether or not the arrested person committed it.

59 Execution of processes

(1) Every member of Police must obey and execute all lawful court processes.

(2) A court process directed to one constable may be executed by another constable and any person lawfully assisting.

(3) A constable has the same rights, powers, and authorities for and in the execution of a court process directed to another constable as if the process had been originally directed to the constable expressly by name.

(4) A constable may arrest a person for whose arrest an unexecuted court process has been issued even if the constable does not have possession of the process.

60 Protection of members for acts pursuant to process

(1) A member of Police acting under a Court process is not responsible for any irregularity, or any lack of jurisdiction, in its issuing.

(2) This subsection applies to an action if—

(a) it is against a member of Police in respect of acts done in obedience to a court process; and

(b) the process is produced; and

(c) it is proved that:

(i) the process was issued out of a Court; or

(ii) the signature on the process is in the handwriting of the person whose name appears on it, and that the person is reputed to be and acts as a judicial officer, or Registrar or Deputy Registrar of a Court; and

(d) it is proved that the acts were done in obedience to the process.

(3) If subsection (2) applies to an action—

(a) the Court must enter a verdict for the member of Police concerned; and

(b) the member of Police must recover costs.

Evidential protections

61 Members may appear in Court by another member

In any proceedings in the High Court or before any Authority, Inquiry, Board or Tribunal, or before the Liquor Licensing Committee, any member of Police who is to appear in the execution of duty, other than as a witness, may appear by any other member of Police.

62 Evidence of right to hold office

If any question arises as to the right of any member of Police to hold or execute the powers of office, common reputation is evidence of that right, and it is not necessary to have or produce evidence of the member's right to hold or execute the powers of office.

63 Police informers

(1) A Police informer has a privilege in respect of information that would disclose, or is likely to disclose, the informer's identity.

(2) A person is a Police informer for the purposes of this section if the person—

(a) has supplied, gratuitously or for reward, information to a member of Police, or a representative of a law enforcement agency, concerning the possible or actual commission of an offence; and

(b) has supplied the information in circumstances in which the person has a reasonable expectation that their identity will not be disclosed; and

(c) is not called as a witness by the prosecution to give evidence relating to that information.

(3) An informer may be a member of Police, or another law enforcement agency, working undercover.

64 Effect and protection of privilege

(1) A person who has a privilege conferred by section 63 in respect of a communication or any information has the right to refuse to disclose in a proceeding—

(a) the communication; and

(b) the information, including any information contained in the communication; and

(c) any opinion formed by a person that is based on the communication or information.

(2) A person who has a privilege conferred by section 63 may require that the communication, information, opinion, or document not be disclosed in a proceeding—

(a) by the person to whom the communication is made or the information is given, or by whom the opinion is given or the information or document is prepared or compiled; or

(b) by any other person who has come into possession of it with the authority of the person who has the privilege, in confidence and for purposes related to the circumstances that have given rise to the privilege.

(3) If a communication, information, opinion, or document, in respect of which a person has a privilege conferred by any of section 63, is in the possession of a person other than a person referred to in subsection (2), a Judge may, on the Judge's own initiative or on the application of the person who has the privilege, order that the communication, information, opinion, or document not be disclosed in a proceeding.

65 Undercover police officers

(1) This section and section 66 apply in any case where a person is being, or is to be, proceeded against—

(a) for any offence that is punishable by imprisonment for a term of at least 1 year; or

(b) for any other offence against any provisions of the Narcotics and Misuse of Drugs Act 2004, or

(c) for conspiracy to commit, or for attempting to commit, an offence described in paragraph (a) or (b).

(2) If, in any proceeding to which this section applies, it is intended to call an undercover police officer as a witness for the prosecution, the Commissioner may, at any time before an indictment is presented, file in the court in which the proceedings are to be held a certificate signed by the Commissioner stating, in respect of that witness, the following particulars—

(a) that during the period specified in the certificate the witness was a member of the police and acted as an undercover police officer:

(b) that the witness has not been convicted of any offence or that the witness has not been convicted of any offence other than the offence, or offences, described in the certificate:

(c) that the witness has not been found guilty of a breach of the Code of conduct prescribed under section 30 of the Police Act 2012, or that the witness has not been found guilty of any breach of that kind, other than a breach described in the certificate.

(3) If, to the knowledge of the Commissioner, the credibility of the witness in giving evidence in any other proceeding has been the subject of adverse comment by the Judge, the Commissioner must also include in the certificate a statement of the relevant particulars.

(4) It is sufficient for the purposes of subsections (2) and (3) if the certificate includes a statement of the nature of any offence or comment referred to in the certificate and the year in which the offence was committed or the comment was made, and it is not necessary to include the venue or precise date of the proceedings or any other particulars that might enable the true name or true address of the witness to be discovered.

(5) In this section and in section 66, the term "undercover police officer", in relation to any proceeding to which this section applies, means a member of the Police whose identity was concealed for the purpose of any investigation relevant to the proceedings.

66 Effect of a certificate under section 65

(1) If, in any proceeding to which section 65 applies, the Commissioner files a certificate relating to any witness, the following provisions apply—

(a) if a witness is subsequently called for the prosecution and states that, during the period specified in the certificate, they were a member of the Police and acted as an undercover police officer under the name specified in the certificate, it must be presumed, in the absence of proof to the contrary, that the certificate has been given in respect of that witness:

(b) it is sufficient if the witness is identified by the name by which the witness was known while acting as an undercover police officer, and, except if leave is given under paragraph (d), the witness must not be required to state his or her true name or address, or to give any particulars likely to lead to the discovery of that name or address:

(c) except if leave is given under paragraph (d), no lawyer, officer of the court, or other person involved in the proceeding may state in court the true name or the address of the witness, or give any particulars likely to lead to the discovery of that name or address:

(d) no evidence may be given, and no question may be put to the witness, or to any other witness, relating directly or indirectly to the true name or the address of the witness, except by leave of the Judge:

(e) on an application for leave under paragraph (d), the certificate is, in the absence of evidence to the contrary, sufficient evidence of the particulars stated in it.

(2) The Judge may not grant leave under subsection (1)(d) unless the Judge is satisfied—

(a) that there is some evidence before the Judge that, if believed by the jury, could call into question the credibility of the witness; and

(b) that it is necessary in the interests of justice that the defendant be enabled to test properly the credibility of the witness; and

(c) that it would be impracticable for the defendant to test properly the credibility of the witness if the accused were not informed of the true name or the true address of the witness.

(3) An application for leave under subsection (1)(d)—

(a) may be made from time to time and at any stage of the proceeding; and

(b) must, where practicable, be made and dealt with in chambers; and

(c) if the application is made during the trial before a jury, must be dealt with and determined by the Judge in the absence of the jury.

(4) If the Commissioner of Police gives a certificate under section 65 in respect of any witness, the Commissioner must serve a copy of the certificate on the defendant, or on any lawyer acting for the defendant, at least 14 days before the witness is to give evidence.

67 Witness in Police witness protection programme

If, at any time after the events that are the subject of a charge, a witness under a police witness protection programme assumes a new identity, the witness is not required in any proceeding concerning the charge to disclose an assumed name or any particulars likely to disclose the new identity.

Part 6
Offences

68 Gaining employment by false representations

(1) Every person commits an offence who, for the purpose of gaining employment with the Police, intentionally submits false or forged documents or makes false representations when applying for employment.

(2) Any person who commits an offence against this section is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding $5,000, or both.

(3) If the Commissioner believes on reasonable grounds that a member of Police has committed an offence against this section:

(a) the Commissioner may cancel any employment contract without further notice or other proceeding; and

(b) the member may be removed from employment with the Police forfeiting all pay then due or becoming due as a member of the Police, or both.

69 Personation and unlawful representation of Police

(1) Every person commits an offence who, not being a member of Police, without reasonable excuse—

(a) by words, conduct, or demeanour pretends to be a member of Police:

(b) carries on an activity under an operating name that includes the word "Police" in a manner likely to lead any person to believe that the activity is endorsed or authorised by the Cook Islands Police Service:

(c) puts on or assumes the dress, uniform, name, designation, or description of a member of Police (including the word detective):

(d) uses any of the following things in circumstances likely to lead a person to believe that the user is a member of Police, or the activity is endorsed or authorised by the Police:

(i) a Police uniform, or item of that uniform, or a Police article:

(ii) a uniform, or item of uniform, or article that closely resembles a Police uniform, or item of that uniform, or Police article; or

(e) represents any vehicle, craft, or other conveyance as being in the service of the Police in circumstances likely to lead a person to believe the vehicle, craft, or conveyance is in the service of the Police.

(2) Any person who commits an offence against this section is liable,—

(a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding $15,000, or both:

(b) in the case of a body corporate, to a fine not exceeding $20,000.

70 Unlawful possession of Police property

(1) Every person commits an offence who, without lawful authority or reasonable excuse, is in possession any Police property or article.

(2) Any person who commits an offence against this section is liable to imprisonment for a term not exceeding 3 months, or a fine not exceeding $2,000, or both.

(3) In this section ``police property''—

(a) means property used by, or in the possession or under the control of, the Police (whether belonging to the Crown or not); and

(b) includes a confidential Police document or copy of that document.

71 Corrupt use of official information

Any member of Police who, whether within the Cook Islands or elsewhere, corruptly uses or discloses any information acquired in their official capacity, commits an offence and is liable to imprisonment for a term not exceeding 7 years.

72 Unauthorised access or improper use of Police computer systems

(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 2 years who without authorisation—

(a) intentionally accesses, directly or indirectly, any Police computer system; or

(b) having lawful access to any Police computer system, knowingly uses or discloses information obtained from such a computer system; or

(c) receives information obtained from any Police computer system, and knowingly uses, discloses, publishes, or otherwise disseminates such information.

(2) Every person commits an offence and is liable to imprisonment for a term not exceeding 7 years who, without authorisation, intentionally or recklessly—

(a) damages, deletes, modifies, or otherwise interferes with or impairs any data or software in any Police computer system; or

(b) causes any data or software in any Police computer system to be damaged, deleted, modified, or otherwise interfered with or impaired; or

(c) causes any Police computer system to fail or deny service to any authorised users.

73 Failing to help Police

(1) Any member of Police in the lawful execution of duty may, if it is reasonably necessary in the circumstances, call upon any person, not being under the age of 18 years, to help apprehend or secure any person, or convey any person detained by a member of Police to a Police station.

(2) Any person who fails or refuses to give help when called upon by a member of Police commits an offence and is liable to a fine not exceeding $2,000.

74 Resisting Police

(1) Every person commits an offence who resists or intentionally obstructs, or incites or encourages any other person to resist or obstruct—

(a) any member of Police acting in the execution of duty; or

(b) any other person acting in aid of any member of Police; or

(c) any Police dog working under the control of a Police dog handler.

(2) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding $2,000 or both.

75 Assault on Police

Every person who assaults any member of Police, acting in the execution of duty, commits an offence and is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding $15,000 or both.

76 Offences against Police dogs

(1) Every person commits an offence, and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding $5,000 or both, who assaults or threatens any Police dog working under the control of a Police dog handler.

(2) Every person who intentionally kills, maims, wounds, or otherwise injures a Police dog without lawful authority or reasonable excuse commits an offence and is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding $15,000, or both.

77 Unlawful dealings with prisoners

(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding $2,000 or both, who—

(a) holds or attempts to hold any restricted communication with any prisoner in the custody or charge of any member of the Police; or

(b) delivers, or in any manner attempts to deliver, or causes to be delivered anything to any such prisoner without the permission of that member of the Police or a supervisor.

(2) For the purposes of this section ``restricted communication'' means—

(a) any communication that may prejudice the maintenance of the law, the safe custody of the prisoner, the safety of any other person, or the security of any prison:

(b) any communication whatsoever that takes place after the member of Police, in whose custody or charge the prisoner is, has forbidden that communication or directed that it cease.

(3) Any member of Police may arrest without warrant any person who there is reasonable cause to believe is committing or has committed an offence against this section.

78 Bribing Police

(1) Every person commits an offence and is liable to imprisonment for a term not exceeding 5 years who—

(a) gives, offers or promises to give any member of Police any bribe, pecuniary or otherwise, or makes any agreement to induce the member to forego their duty; or

(b) requests or incites or induces any member of Police, or members of Police generally, or any section thereof, to act in any manner contrary to duty; or

(c) connives at any act whereby any regulation or instruction in relation to the Police may be evaded.

(2) Every member of Police commits an offence and is liable to imprisonment for a term not exceeding 7 years who corruptly accepts or obtains, or agrees or offers to accept or attempts to obtain, directly or indirectly any bribe, pecuniary or otherwise, in respect of any act done or omitted, or to be done or omitted, in their official capacity.

79 False allegation or report to Police

(1) Every person commits an offence who—

(a) contrary to the fact and without belief that an offence has been committed, makes or causes to be made to any member of Police any written or verbal statement alleging that an offence has been committed; or

(b) with the intention of causing wasteful deployment or diverting deployment of Police personnel or resources, or being reckless as to that result:

(i) makes a statement to any person that gives rise to serious apprehension for the safety of any person or property, knowing that the statement is false; or

(ii) behaves in a manner that is likely to give rise to such apprehension, knowing that such apprehension would be groundless.

(2) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding $15,000 or both.

(3) On conviction of any offence under this section the Court may order the reimbursement of the actual and reasonable costs additionally incurred by Police or the payment of such sum as is just and reasonable towards such costs. Any costs allowed under this subsection must be specified in the conviction and may be recovered in the same manner as a fine.

80 Jurisdiction

Every offence against this Act is punishable on conviction by the High Court presided over by a Judge alone.

Part 7
International Policing

81 Breach of Code of conduct

If a member of Police does or omits to do an act, and that act or omission would, if it occurred in the Cook Islands, be a breach of the Code of conduct prescribed under section 30, the member may be dealt with as if the act or omission had occurred in the Cook Islands.

82 Jurisdiction over members of Police overseas

(1) This section applies to any member of Police who is—

(a) part of an overseas operation; and

(b) outside the Cook Islands.

(2) For the purposes of this section `` overseas operation" means—

(a) a person, or group of people, that before, on, or after the commencement of this Act, is or are authorised by Order in Executive Council of the Cook Islands to participate in duties overseas involving peacekeeping, the maintenance or restoration of law and order or functioning government institutions, or any other activity in respect of which the Government of the Cook Islands wishes to provide assistance (whether or not in conjunction with personnel from one or more other countries); but

(b) does not include a member of Police who is part of a United Nations activity and to whom section 84 applies:

(3) If any member of Police does, or omits to do, an act outside the Cook Islands (whether or not the act or omission concerned constitutes an offence under the laws in force in the place where it took place) that if done or omitted within the Cook Islands would constitute an offence, that act or omission is deemed to have taken place within the Cook Islands unless—

(a) the member is subject to the criminal jurisdiction of the place in which the act or omission took place; and

(b) the authorities in that place are not subject to:

(i) any obligation to cede jurisdiction to the Cook Islands authorities in respect of that act or omission; or to

(ii) bring criminal proceedings against the person in that place.

(4) No information may be laid against any member of Police over whom jurisdiction is claimed by virtue of subsection (3) without the consent of the Solicitor-General.

83 Powers of arrest and detention

(1) Subsection (2) applies to any offence in respect of which the laying of an information requires the consent of the Solicitor-General under section 82(4).

(2) If any member is alleged to have committed an offence to which this subsection applies—

(a) the person may be arrested without warrant within or outside the Cook Islands; or

(b) a warrant for the person's arrest may be issued in the Cook Islands and executed within or outside the Cook Islands; and the person may be detained in custody within or outside the Cook Islands or, if the person is in, or has been taken to, the Cook Islands, remanded in custody or on bail, even though the consent of the Solicitor-General has not been obtained to the laying of an information in respect of that offence; but no further proceedings may be taken until that consent has been obtained.

(3) The provisions of the Crimes Act 1969 relating to arrest apply in respect of the arrest of a member referred to in subsection (2) for an act or omission to which section 82 applies, in all respects as if the act or omission had occurred in the Cook Islands.

(4) Any member arrested outside the Cook Islands may be detained in custody outside the Cook Islands for as long as is reasonably necessary to enable the member to be taken to the Cook Islands.

84 Trial in the Cook Islands for crimes committed during employment with the United Nations

(1) Any member of Police who commits a crime outside the Cook Islands while employed for the purposes of United Nations activity is liable to be proceeded against and punished as if it had occurred in the Cook Islands and the courts of the Cook Islands have jurisdiction accordingly.

(2) Despite anything in any other enactment, no proceedings for the trial and punishment of a member of the Police employed for the purposes of United Nations activity may be brought in any court without the consent of the Solicitor-General.

(3) The consent of the Solicitor-General is not required for any member of Police employed for the purposes of United Nations activity to be arrested and detained in custody.

(4) For the purposes of this section—

(a) a member of Police is deemed to be employed for the purposes of a United Nations activity once they leave the Cook Islands to undertake duties with the United Nations until their return to the Cook Islands unless the member earlier ceases to be employed by the United Nations;

(b) "crime" means an act or omission that if it occurred in the Cook Islands would be a criminal offence under any enactment.

85 Saving of jurisdiction

Nothing in sections 81 to 84 limits or affects the provision of any enactment or rule of law relating to the liability of persons in respect of acts done or omitted beyond the Cook Islands.

86 International Assistance

In sections 87 to 88, unless the context otherwise requires—

assistance agreement means the assistance agreement identified in the international assistance notice under section 87(2):

assisting country means the assisting country identified in the international assistance notice under section 87(1):

International Assistance Notice means a notice under section 87(1) that causes this Act to apply and may be amended from time to time:

public purpose means the purposes of ensuring the security and safety of persons and property, maintaining supplies and services essential to the life of the community, preventing and suppressing violence, intimidation and crime, maintaining law and order, supporting the administration of justice, supporting and developing Cook Islands institutions and responding to natural catastrophic events:

visiting contingent means the visiting contingent identified in the international assistance notice under section 87.

87 International Assistance notice

(1) The Queens Representative may publish a notice that—

(a) states that the Government has requested assistance of the government of an assisting country for a public purpose;

(b) states that the assistance will be provided by a visiting contingent of persons from the assisting country, which may include personnel from other countries; and

(c) states that this Act applies in relation to the visiting contingent.

(2) The notice may specify an assistance agreement or arrangement between the Government and the government of the assisting country that covers the operations and activities in the Cook Islands of the visiting contingent.

88 Membership of visiting contingent

(1) The visiting contingent may consist of—

(a) members of the police or armed forces of the assisting country, or of another country notified by the assisting country to the Minister of Foreign Affairs and accepted by that Minister; and

(b) other individuals notified by the assisting country to the Minister of Foreign Affairs.

(2) If the assisting country notifies the Minister of Foreign Affairs that specified members of the visiting contingent are not to be accorded specified powers or privileges under this Act, those members may not exercise those powers or privileges.

Part 8
Maritime Policing

89 High seas fishery inspectors

(1) Every constable is deemed to be a high seas fishery inspector, a fishery officer and an enforcement officer.

(2) A constable may direct a person under their command to carry out specified duties of a high seas fishery inspector for such period as necessary.

(3) A person who receives a direction under subsection (2) has, for the purpose of carrying out the specified duties, all the powers of a high seas fishery inspector.

90 General marine powers

(1) Every constable may do all such acts and give such directives as are reasonably necessary for the purposes of exercising any of the powers of an authorised officer under the Marine Resources Act 2005.

(2) The powers of a constable under this Act are exercisable—

(a) within the Cook Islands:

(b) in Cook Islands fisheries waters:

(c) beyond Cook Islands fisheries waters.

(3) Subsection (2)(c) of this section does not authorise a constable to exercise any powers under this Act in respect of any vessel or any person aboard any such vessel unless the constable—

(a) believes on reasonable grounds that any person on board the vessel has committed an offence in Cook Islands fisheries waters; and

(b) is in fresh pursuit of, or has freshly pursued, the vessel; and

(c) commenced that pursuit in Cook Islands fisheries waters.

Part 9
Complaints Against Police

91 Functions of the Ombudsman

(1) Any person may complain to the Ombudsman where any complaint, alleging misconduct or neglect of duty by any member of Police, or concerning any practice, policy, or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity, has been made or conveyed to the Commissioner, and—

(a) the complaint has not been investigated; or

(b) the complaint has been investigated and the complainant is dissatisfied with the final result.

(2) The Ombudsman may also investigate, where satisfied that there are reasonable grounds to carry out an investigation in the public interest, any incident involving death or serious bodily harm notified by the Commissioner under section 92 of this Act;

(3) The Ombudsman may take such action in respect of complaints, incidents, and other matters as is contemplated by the Ombudsman Act 1984.

(4) Nothing in section authorises the Ombudsman to investigate any matter relating to the terms and conditions of service of any member of Police.

92 Duty of Commissioner to notify Ombudsman of certain incidents involving death or serious bodily harm

Where a member of Police acting in the execution of duty causes, or appears to have caused, death or serious bodily harm to any person, the Commissioner must as soon as practicable, and in any case within 5 working days of the incident, provide the Ombudsman a written notice setting out particulars in which the death or serious bodily harm was caused.

93 Duty of Ombudsman to notify Commissioner of complaints

The Ombudsman must notify the Commissioner as soon as practicable, and in any case within 5 working days after receipt of the complaint, of every complaint received, other than a complaint notified to the Ombudsman by the Commissioner, unless the complaint concerns the conduct of the Commissioner.

94 Action by the Ombudsman on receipt of complaint or notified incident

(1) On receiving a complaint, or being notified of an incident under section 92, the Ombudsman may do all or any of the following—

(a) investigate the complaint or notified incident, whether or not the Police have commenced a Police investigation:

(b) oversee a Police investigation of the complaint or notified incident:

(c) defer action until the receipt of a report from the Commissioner on a Police investigation of the complaint or notified incident, including any criminal or disciplinary outcomes:

(d) subject to section 95 of this Act, take no action.

(2) Subject to subsection (3) of this section, the Ombudsman must, as soon as practicable, advise the Commissioner and the complainant of the procedure it proposes to adopt under subsection (1) of this section.

(3) If a complaint is made to the Police and the Ombudsman is satisfied that the Police will inform the complainant of the procedure to be followed, the Ombudsman is not required to inform the complainant of the procedure it proposes to follow.

(4) If a complaint appears capable of being resolved by conciliation the Ombudsman may indicate that view to the Commissioner.

95 Ombudsman may decide to take no action on complaint

(1) The Ombudsman may decide to take no action, or, as the case may require, no further action, on any complaint if—

(a) the complaint relates to a matter of which the person alleged to be aggrieved has had knowledge for more than 12 months before the complaint was made; or

(b) in the opinion of the Ombudsman:

(i) the subject-matter of the complaint is minor; or

(ii) the complaint is frivolous or vexatious or is not made in good faith; or

(iii) the person alleged to be aggrieved does not desire that action be taken or continued; or

(iv) the identity of the complainant is unknown and investigation of the complaint would thereby be substantially impeded; or

(v) there is, or was, in all the circumstances an adequate remedy or right of appeal, that it would be reasonable, or would have been reasonable, for the person alleged to be aggrieved to exercise.

(2) The Ombudsman may decide not to take any further action on a complaint if, in the course of the investigation of the complaint by the Ombudsman or the Police, or as a result of the Commissioner's report on a Police investigation, it appears to the Ombudsman that, having regard to all the circumstances of the case, any further action is unnecessary or inappropriate.

(3) In any case where the Ombudsman decides to take no action, or no further action, on a complaint, the complainant must be informed of that decision and the reasons for it.

96 Commissioner to report after investigation on complaint or notified incident

(1) The Commissioner must as soon as practicable, and in any case no later than 2 months, after the completion of a Police investigation of a complaint or notified incident, report on the result to the Ombudsman including—

(a) whether any complaint has been upheld and, if so, what action has been taken or is proposed to be taken to rectify the matter:

(b) whether the complaint has been settled by conciliation.

(2) When reporting to the Ombudsman under this section, the Commissioner must supply sufficient accompanying material to enable the Ombudsman to assess the adequacy of the Police investigation.

(3) The Commissioner may consult the Ombudsman on any Police proposals for action on a complaint before reporting under this section.

97 Power of Police to investigate complaints and other matters

(1) Nothing in this part of the Act prevents the Commissioner from commencing or continuing a Police investigation into any complaint, incident, or other matter.

(2) If, either before or after the commencement of a Police investigation, the Commissioner forms a view that the complaint, incident, or other matter should be investigated by the Ombudsman, the Commissioner may request the Ombudsman to do so.

98 Procedure after investigation by Police

(1) After receiving a report of the Commissioner given under section 96, the Ombudsman may form an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure was contrary to law, unreasonable, unjustified, unfair, or undesirable.

(2) After considering the Commissioner's report and forming its opinion, the Ombudsman—

(a) must indicate to the Commissioner whether or not it agrees with the Commissioner's decision or proposed decision in respect of the complaint:

(b) may, where it disagrees with the Commissioner's decision or proposed decision, make such recommendations, supported by reasons, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of Police.

99 Procedure after investigation by Ombudsman

(1) Where the Ombudsman undertakes an investigation under this Act and forms an opinion on whether or not any decision, recommendation, act, omission, conduct, policy, practice, or procedure was contrary to law, unreasonable, unjustified, unfair, or undesirable, the Ombudsman must convey the opinion, with reasons, to the Commissioner.

(2) The Ombudsman may make recommendations to the Commissioner, including a recommendation that disciplinary or criminal proceedings be considered or instituted against any member of Police.

100 Implementation of recommendations

(1) The Commissioner must, as soon as reasonably practicable after receiving any recommendation of the Ombudsman under section 98 or section 99 of this Act—

(a) notify the Ombudsman of the action (if any) proposed to be taken to give effect to the recommendation; and

(b) give reasons for any proposal to depart from, or not to implement, any such recommendation.

(2) If, within a reasonable time after a recommendation is made, no action is taken which seems to the Ombudsman to be adequate and appropriate, the Ombudsman may, after considering any comments made by the Commissioner—

(a) send a copy of its opinion and recommendations on the matter, together with any comments of the Commissioner, to the Solicitor General and the Minister of Police;

(b) the Solicitor General must, as soon as practicable, lay before the Executive Council such report on the matter as appropriate.

101 Parties to be informed of progress and result of investigation

Where the Ombudsman investigates a complaint, the investigation must—

(a) be conducted with due expedition; and

(b) if appropriate, the complainant and the Commissioner are to be informed of the progress of the investigation; and

(c) in every case, the parties concerned must, as soon as reasonably practicable after the conclusion of the investigation, be informed of the result of the investigation.

102 Adverse comment

The Ombudsman must not, in any opinion or recommendation given under section 98 or section 99, or in any report made or published under section 100 of this Act, make any comment that is adverse to any person unless that person has been given a reasonable opportunity to be heard.

103 Offences

(1) Every person commits an offence and is liable to a fine not exceeding $2,000 who—

(a) without reasonable excuse, obstructs, hinders, or resists the Ombudsman in the exercise of their powers under this Act:

(b) without reasonable excuse, refuses or fails to comply with any requirement of the Ombudsman under this Act:

(c) makes any statement or gives any information to the Ombudsman exercising powers under this Act, knowing that the statement or information is false or misleading.

(2) Any constable may arrest without warrant any person who there is reasonable cause to believe is committing or has committed an offence against this section.

104 Ombudsman and staff to maintain secrecy

(1) The Ombudsman and every person holding any office or appointment under the Ombudsman, must maintain secrecy in respect of all matters that come to their knowledge in the exercise of their functions under this Act, and must not communicate any such matter to any person except for the purpose of carrying out the functions under or giving effect to this part of the Act.

(2) Despite subsection (1), the Ombudsman may disclose any matter that in the opinion of the Ombudsman ought to be disclosed—

(a) for the purposes of carrying out an investigation or other duty of the Ombudsman under this Act; or

(b) in order to establish grounds for the Ombudsman's conclusions and recommendations.

Part 10
Miscellaneous

105 Unauthorised use of Police crest and badge

Section 69 applies to the use of the Cook Islands Police Service crest, badge, and shoulder patch, the design of which is depicted in the First Schedule to this Act.

106 Authorising disposal of firearms detained by Police

Subject to any other order of the Court as to restoration or other disposal, any firearm, airgun, pistol, restricted weapon, imitation firearm, ammunition, or explosive that has been detained under this Act for not less than 12 months may be disposed of in any manner as the Commissioner may direct.

107 Judge may determine title to certain property

(1) This section applies to property if—

(a) it is in the possession of a member of Police; and

(b) it is not property distrained under the warrant of a Registrar of the High Court; and

(c) there is doubt whether a person claiming it, or which of 2 or more persons claiming it, is entitled to possession.

(2) A Judge of the High Court, on the application of a member of Police, or claimant to the property—

(a) may make an order for delivery of the property to any person appearing to the Judge to be the owner or entitled to possession; or

(b) if the owner or person entitled to possession cannot be found, may make any order with respect to possession the Judge thinks fit.

(3) An application under this section must be made by originating application to the High Court in the civil jurisdiction.

(4) If, after the making of any such order, an action is commenced against Police or the Crown for recovery of the property or its value, evidence of the order, and the delivery of the property in accordance with the order—

(a) may be given and must be received by the Court concerned; and

(b) if given, is a complete defence to the action.

(5) However, no such order or delivery affects the right of any persons entitled by law to possession of the property to recover the property.

108 Unclaimed property

(1) Any property that has come into the possession of Police as a consequence of being lost or found, and is not claimed after being held for 3 months or more, may be disposed of in the manner prescribed in General Instructions.

(2) The following must be paid to and form part of the Cook Islands Government Account—

(a) any money which has come into the possession of a member of Police in the execution of duty and remains unclaimed; or

(b) the proceeds of any property disposed of by sale pursuant to General Instructions, after deducting the costs incurred in advertising and conducting the sale, and storing, transporting, testing, or otherwise preparing the goods for sale.

109 Limitation of actions

(1) For the protection of persons acting in the execution of this Act, all actions against any person for anything done in pursuance of this Act must be commenced within one year after the act has been committed, and not otherwise: and notice in writing of every such action and of the cause thereof must be given to the defendant one month at least before the commencement of the action.

(2) The plaintiff in any such action must not recover if tender of sufficient amends is made before the action is brought, or if a sufficient sum of money is paid into Court by or on behalf of the defendant after the action is brought, together with the costs incurred up to that time.

(3) If the verdict is given for the defendant, or the plaintiff is nonsuited or discontinues the action, or if judgment is given against the plaintiff, the defendant must recover full costs as between solicitor and client; and, though a verdict is given for the plaintiff in any such action, the plaintiff must not have costs against the defendant unless the Court before which the trial is held certifies approval of the action and of the verdict obtained thereon.

110 Police Gazette

(1) The Police Gazette must not be produced without the written permission of the Commissioner, nor must any evidence of the contents be given, in any proceedings in any Court.

(2) No civil or criminal proceedings are to be taken in respect of anything contained in the Police Gazette.

(3) Every person who has possession of any copy of any issue of the Police Gazette without lawful authority or excuse (the proof whereof must be on the person charged) commits an offence and is liable to a fine not exceeding $500.

111 Proceedings not to be quashed for want of form

No charge, conviction, order, inquiry, recommendation, appeal, determination, decision, or other act or proceeding under this Act may be quashed or set aside or be deemed void or insufficient for want of form only, or, except upon the ground of lack of jurisdiction, be removed or removable by certiorari or other writ of process whatsoever into the High Court.

112 Fines

All fines recovered under this Act must be paid into the Cook Islands Government Account.

113 Regulations

The Queens Representative may by Order in Executive Council make regulations as may be necessary or expedient for the giving effect to the provisions of this Act and for its due administration.

114 Terms relating to Police in other enactments

(1) Unless the context otherwise requires—

(a) a reference in an existing enactment other than this Act to any of the following terms must be read as a reference to a constable:

(i) a member of Police:

(ii) a member of the Police:

(iii) a member of the Cook Islands Police:

(iv) a Police officer:

(v) an officer of the Police:

(vi) a policeman:

(vii) a sworn member of the Police:

(b) a reference in an enactment other than this Act to a Commissioned Officer of Police (or of the Police) must be read as a reference to a constable who is of or above the level of position of inspector:

(c) a reference in an enactment other than this Act to a non-commissioned officer of Police (or of the Police) must be read as a reference to a constable who is of or above the level of position of sergeant but below the level of position of inspector:

(d) a reference in an enactment other than this Act to a non-sworn member of Police (or of the Police) must be read as a reference to a member of Police who is not a constable.

(2) Any reference in an existing enactment other than this Act to Police Force or Police is deemed to be a reference to the Cook Islands Police Service under section 4.

115 Consequential repeal

The Police Act 1981 is repealed and the Police Regulations 1983 are revoked.

[Section 105]

Schedule 1
Police Crest and Badge



This Act is administered by the Cook Islands Police.

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