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1981, No. 7

An Act to consolidate and amend the law relating to the
establishment and regulation of the Police of the Cook Islands

BE IT ENACTED by the Parliament of the Cook Islands in Session
assembled and by the authority of the same as follows: (26 August 1981)

1. Short title - This Act may be cited as the Police Act 1981.
2. Interpretation - In this Act, unless the context otherwise requires -

"Appeal Board" means the Police Appeal Board established by this Act:

"Commissioner" means the Commissioner of Police appointed under this Act:

"Commissioned Officer" means any member of the Police above the rank of Senior Sergeant:

"Minister" means the Minister in Charge of Police:

"Non-commissioned officer" means a member of the Police above the rank of Senior Constable and below the rank of commissioned officer:

"The Police" means the Police of the Cook Islands; and includes all members of either sex appointed to the Police under this Act.

PART I

APPOINTMENT, PROMOTION, AND RESIGNATION OF MEMBERS OF THE POLICE

3. Commissioner - (1) The High Commissioner with the consent of the Executive Council may from time to time appoint a fit and proper person to be the Commissioner of Police who shall have the general control of the Police.

(2) In the case of the absence from duty of the Commissioner (whether by reason of illness, absence from the Cook Islands, or for any other reason whatever) or in the case of a vacancy in the office of Commissioner (whether by reason of death, resignation, or otherwise) and for so long as any such absence or vacancy continues, the next senior officer as such shall have and may exercise all the powers, duties, and functions of the Commissioner.

4. Superintendent - The Commissioner may appoint a Superintendent for such specified period of time as he thinks fit.

5. Other Commissioned Officers - The Commissioner may from time to time appoint such other commissioned officers as he considers necessary.

6. Non-commissioned officers - The Commissioner may from time to time appoint such non-commissioned officers as he considers necessary.

7. Senior Constables and Constables - (1) The Commissioner may from time to time appoint such constables as he considers necessary.

(2) Every person appointed under this section shall be on probation for a period of 2 years from the date of his appointment. Provided that the Commissioner may, if he thinks fit, extend the period of probation of any constable for a period not exceeding 6 months.

(3) Every constable shall, during the period of his probation, hold office at the will of the Commissioner.

(4) Any appointment under this section shall be deemed to be confirmed if, at the date of the expiry of the period of probation, the appointment has not previously been confirmed or ended.

(5) The Commissioner may from time to time designate as a Senior Constable any constable who is eligible for such promotion.

(6) The Commissioner may from time to time appoint an honorary constable or honorary constables for service at any place where there is not sufficient work to warrant a regular member of the Police being stationed.

8. Temporary members of Police - (1) The Commissioner may from time to time appoint as temporary members of the Police such commissioned officers up to and including the rank of Chief Inspector, non-commissioned officers or constables, as he considers necessary.

(2) Subject to the provisions of this section and to such exceptions and modifications as may be prescribed by regulations made under this Act, the provisions of this Act and of any other enactment with respect to permanent members of the Police shall extend and apply to temporary members appointed under this section.

(3) Every temporary member of the Police under this section shall hold office at the will of the Commissioner.

9. Appeal against recommendations for appointments - (1) Any member of the Police, other than a constable on probation, shall have a right of appeal to the Appeal Board against any recommendation for appointment, whether by way of promotion or otherwise:

Provided that no such member shall have a right of appeal if -

- (a) He was not eligible for the appointment; or
- (b) The recommendation was in respect of a rank equal to or lower than that held by him at the date of the recommendation; or
- (c) The vacancy to which the recommendation relates was notified to the Police in such manner as may be prescribed by regulations under this Act and he was not an applicant for the vacancy in accordance with any such regulations.

(2) Every appeal under this section shall be commenced by a notice of appeal delivered to the Commissioner -

- (a) Within 14 days after the date of publication in the Police Gazette of the notice of the recommendation to which the appeal relates; or
- (b) Within such extended time as the Commissioner may in any case allow.

(3) The Board shall hear and determine the appeal, and, if it allows an appeal, the appellant shall be the person recommended for appointment to the position to which the appeal relates and the recommendation to which the appeal relates shall be deemed to be cancelled.

10. Provision in case of absence from duty - (1) In the case of the absence from duty of any member of the Police other than the Commissioner (whether by reason of illness or appointment to special duties or for any other reason whatever) or in the case of a vacancy (whether by reason of death, resignation, or otherwise), and from time to time while the absence or vacancy continues, or for any other special purpose, the Commissioner may authorise any member of the Police to exercise all the powers and duties, whether under this Act or any other Act, of any rank higher than his own, or may appoint any member of the Police temporarily to any higher rank, whether commissioned or non-commissioned.

(2) Any authority or appointment under this section may be given or made before the occasion arises or while it continues; and no such authority or appointment, and nothing done by any member of the Police acting pursuant to any such authority or appointment, shall be questioned in any proceedings on the ground that the occasion had not arisen or had ceased, or on the ground that the member had not been appointed to any rank to which the authority relates.

(3) The Commissioner may at any time revoke any authority given or any appointment made under this section.

11. Resignation - (1) No member of the Police may resign his office unless he has given to the Commissioner 1 month's notice in writing of his 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 any such notice of intention to resign.

(3) Where in the opinion of the High Commissioner special circumstances require that no member of the Police shall resign without permission, he may, by Warrant under his hand, declare that no member shall resign except on the conditions set out in the Warrant.

(4) Any member who resigns his office otherwise than in accordance with the provisions of this section, or otherwise than 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 shall be liable on conviction to a fine not exceeding \$100, and to forfeit all pay then due or becoming due to him as a member of the Police.

PART II

POLICE SUPERANNUATION AND RETIREMENT

12. Interpretation - In this Part of this Act, unless the context otherwise requires -

"Contributor" means a contributor to the Fund:

"Fund" means the Government Superannuation Fund established by the Government Superannuation Fund Act 1956 of the New Zealand Parliament in force in the Cook Islands and terms and expressions defined in the Superannuation Act 1956 of New Zealand and in force in the Cook Islands shall, when used in this part of the Act, have the meaning so defined.

13. Age of retirement - (1) Subject to the provisions of this section, every member of the Police, whether or not he is a contributor to the Government Superannuation Fund, shall retire from the Police if he has attained the age of 60 years.

(2) Where in the opinion of the Commissioner special circumstances require that any member should remain in the Police for a longer period than that permitted by subsection (1) of this section, he may, by written notice to that member, permit him to remain in the Police for any additional period or periods not amounting in the aggregate to more than 6 months.

(3) Nothing in this section shall prevent 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 he is required to retire in accordance with this section if any such leave accrued during his period of service in the Police.

14. Retirement of medically unfit - Any member of the Police who is certified by two medical practitioners nominated by the Commissioner (and approved, in the case of a member who is a contributor, by the Government Superannuation Board) to be substantially medically unfit (whether the unfitness relates to the physical or mental condition of the member) to perform any

specified duties in the Police which the Commissioner considers suitable for him may be required by the Commissioner by notice in writing to retire from the Police within such time, being not less than 1 month, as may be specified in the notice.

(2) Any member required under this section to retire from the Police shall, on the expiration of the time specified in that behalf in the notice, cease to be a member:

Provided that where an appeal is commenced under subsection (3), of this section and is disallowed, the appellants shall not cease to be a member until he has been notified by the Commissioner of the result of the appeal.

(3) Any member who is required under this section to retire from the Police may appeal against the requirement.

(4) Every appeal shall be commenced by notice of appeal delivered to the Commissioner within 7 days after the receipt of the notice referred to in subsection (1) of this section.

(5) Any appeal under this section shall be determined by three registered medical practitioners of whom one shall be appointed by the Commissioner (and, in the case of a member who is a contributor, approved by the Government Superannuation Board) and one by the appellant and the third by agreement between the medical practitioners already appointed or, failing agreement, by the Secretary of Health. Any decision of a majority of the medical practitioners appointed as aforesaid shall be the decision in the appeal.

(6) Subject to the provisions of subsection (5) of this section the medical practitioners appointed under that subsection after full inquiry may dismiss the appeal or allow the appeal subject to the appellant complying with any conditions specified by them.

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

PART III

REGULATION AND DISCIPLINE OF MEMBERS

15. General Instructions - (1) The Commissioner may from time to time issue general instructions, not inconsistent with the provisions of this Act or regulations made thereunder, and all members of the Police shall obey and be guided by those instructions.

(2) Every general instruction shall remain in force until cancelled by the Commissioner.

(3) A general instruction shall be deemed to have been communicated to a member of the Police when the instruction has been published in the Police Gazette or in any manual of general instructions issued by the Commissioner to members generally, or, in the case of a member of any particular group, when the instruction has been published in any manual of general instructions issued by the Commissioner to the members generally of that group, or, failing any such publication, when the instruction has been brought to the personal notice of the member.

(4) The production at any inquiry or investigation under this Act of a copy of the Police Gazette, or any manual purporting to be issued by the authority of the Commissioner and purporting to contain a copy of any general instruction, shall in the absence of any evidence to the contrary be sufficient evidence of the making, publication, and contents thereof.

16. Members not to engage in politics - Subject to the provisions of sections 6A and 6B of the Electoral Act 1966 no member of the Police, shall, while he remains a member, take part in any election of a member of Parliament or any Island Council, District Council, Village Committee or of a local authority prescribed in that behalf by regulations under this Act, whether as a candidate or in any other manner, otherwise than by voting:

Provided that nothing in this section shall apply to the discharge by any member of the Police of his duty at or concerning any such election.

17. Suspension pending hearing of charge - (1) The Commissioner may suspend from duty without pay any member of the Police who he considers has been guilty of misconduct or neglect of duty until such time as, in respect of the alleged misconduct or neglect, the member has been sentenced or otherwise dealt with by a Court or a decision as to guilt and penalty has been made under section 18 of this Act.

(2) The authority conferred on the Commissioner by subsection (1) of this section may, with the prior consent of the Commissioner in writing, in each case, be exercised by any commissioned officer.

(3) Except where the conduct of the member is the subject of criminal proceedings or where any delay in concluding an inquiry occurs through any circumstances beyond the control of the Commissioner, no period of suspension under this section shall continue for longer than 28 days.

(4) Where the conduct of the member is the subject of criminal proceedings the period of suspension under this section may be extended for such further period, not exceeding 28 days after the date on which the proceedings are finally determined, as the Commissioner considers necessary to enable him to consider whether the member should be dismissed under section 21 of this Act.

(5) Where under this section a member is suspended from duty and no conviction is recorded in any Court and no charge is proved at an inquiry under section 18 of this Act, the member shall be entitled to receive pay in respect of the period of suspension but otherwise he shall not receive pay in respect of that period unless the Commissioner so directs.

18. Inquiries as to breaches of duty - (1) Where misconduct or neglect of duty is alleged against any commissioned officer and the officer does not admit the allegation, the following provisions shall apply:

(a) The Commissioner, if in his opinion an inquiry under this section should be held, may appoint two or more persons, of whom only one shall be a member of the Police and of whom one shall be appointed to act as Chairman at the inquiry to inquire into the charge and to report to him as to whether or not the charge has been proved:

(b) If the persons so appointed report that the charge has been proved, the Commissioner may dismiss the offender from the Police or impose any one or more the following penalties -

- (i) Reduction to any rank, whether commissioned or otherwise:
- (ii) Reduction in seniority by any specified number of years:
- (iii) Reduction in pay to any specified step in the pay scale for a specified period:
- (iv) A fine not exceeding \$300.

(2) Where misconduct or neglect of duty is alleged against a non-commissioned officer, and he does not admit the allegation, the following provisions shall apply:

(a) The Commissioner if in his opinion an inquiry under this section should be held, may appoint any person (whether a member of the Police or not) to inquire into the charge and to report to him as to whether or not the charge has been proved:

(b) If the person so appointed reports that the charge has been proved, the Commissioner may dismiss the offender from the Police or impose any one or more of the following penalties -

- (i) Reduction to any rank, whether non-commissioned or otherwise:
- (ii) Reduction in seniority by an specified number of years:
- (iii) Reduction in pay to any specified step in the pay scale for a specified period:
- (iv) A fine not exceeding \$300.

(3) Where misconduct or neglect of duty is alleged against a constable and he does not admit the allegation, the following

provisions shall apply:

- (a) Any commissioned officer, or any person not a member of the Police appointed in that behalf by the Commissioner may inquire into the charge and report to the Commissioner as to whether or not the charge has been proved, or, if the charge has been established at the inquiry, may, if he thinks it just to do so, discharge the offender on payment of such sums as he thinks just and reasonable towards the costs of the inquiry, or discharge the offender without penalty, or direct that the charge be dismissed and a direction that the charge be dismissed shall have the same effect as if the charge had not been proved:
- (b) If any such officer or person reports that the charge has been proved, the Commissioner may dismiss the offender from the Police or impose any one or more of the following penalties -
 - (i) Reduction in seniority by any specified number of years:
 - (ii) Reduction in pay to any specified step in the pay scale for a specified period:
 - (iii) A fine not exceeding \$300.

(4) Notwithstanding anything in subsection (2) or subsection (3) of this section, in any case to which either of those subsections applies the Commissioner may, if he thinks it desirable to do so, appoint two or more persons of whom only one shall be a member of the Police, and of whom one shall be appointed to act as Chairman of the inquiry, to conduct the inquiry.

(5) Where misconduct or neglect of duty is alleged against a member of the Police below the rank of Commissioner and he admits the charge, he shall be dealt with in the same manner as if he had denied the charge and the charge had been proved in accordance with the foregoing provisions of this section.

(6) Where any charge has been established in accordance with any of the foregoing provisions of this section, the Commissioner may if he thinks it just so to do discharge the offender on payment of such sum as he thinks just and reasonable towards the costs of the inquiry, or discharge the offender without penalty, or direct that the charge be dismissed and a direction that the charge be dismissed shall have the same effect as if the charge had not been proved.

(7) If any charge has not been established in accordance with any of the foregoing provisions of this section, the person or persons inquiring into the charge may, if it seems just to do so, order that the member of the Police against whom the charge has been brought, be paid such sum towards the costs of his defence as appears just and reasonable.

19. Appeal following inquiry into breach of duty - (1) Any member of the Police into whose conduct any inquiry under section 18 of this Act has been held, including a member dealt with pursuant to subsection (5) of that section, may, if he is dissatisfied with the result of the inquiry or with any penalty imposed, appeal to the Appeal Board, except where a fine not exceeding \$50 is imposed.

(2) Every appeal shall be commenced by a notice of appeal delivered to the Commissioner within 7 days after the date on which the result of the inquiry is communicated to the appellant.

(3) Pending the nearing of the appeal any dismissal of the appellant shall remain in abeyance but the Commissioner may suspend the member from duty with or without pay or without such part of his pay as the Commissioner directs.

(4) The Appeal Board shall after full inquiry report thereon to the Minister, in the case of an appeal by a commissioned officer, and in any other case to the Commissioner, making such recommendations as it thinks fit, whether as to the allowing or dismissal of the appeal, the dismissal of the offender from the Police, the penalty to be imposed on the offender, the granting or refusal of pay during any period of suspension resulting, from the charge, or otherwise, and the Minister or, as the case may be, the Commissioner, may thereupon make such order in the matter as he thinks fit, except that he shall not in any case inflict a penalty more severe than that

20. Dismissal - The Commissioner may at any time dismiss from the Police any constable, and he may, dismiss from the Police any commissioned officer below the rank of Superintendent, or any non-commissioned officer, who is for any reason considered, unfit to remain a member of the Police.

21. Appeal against dismissal - (1) Any member who has been dismissed from the Police under section 20 of this Act may appeal against the dismissal to the Appeal Board.

(2) Every appeal shall be commenced by a notice of appeal delivered to the Commissioner within 7 days after the member has received written notice of his dismissal.

(3) Pending the hearing of the appeal the dismissal of the member shall remain in abeyance and he shall be suspended from duty without pay:

Provided that, except where the conduct of the member is the subject of criminal proceedings, or where any delay in the hearing of the appeal occurs through circumstances beyond the control of the Commissioner no period of suspension under this subsection shall continue for longer than 28 days.

(4) The Appeal Board shall after full inquiry report to the Commissioner recommending the allowing or dismissal of the appeal.

(5) Where the Appeal Board recommends that an appeal under this section be allowed it may, in respect of any misconduct or neglect of duty that has been established at the hearing of the appeal, make such recommendations as it thinks fit as to the imposition of any penalty, other than dismissal, authorised by section 18 of this Act appropriate to the rank of the appellant, the granting or refusal of pay during any period of suspension, or otherwise, and the Commissioner may thereupon make such order in the matter as he thinks fit, except that he shall not in any case inflict a penalty more severe than that recommended by the Board.

22. Appeal by Commissioner against finding of disciplinary proceedings - (1) Where an inquiry has been held under section 18 of this Act into the conduct of any member of the Police and the Commissioner is dissatisfied with the finding, or with any part of the finding, of the inquiry as being erroneous in point of law, he may appeal to the Appeal Board against the finding, or that part of the finding, of the inquiry on a question of law only.

(2) Every such appeal shall be commenced by a notice of appeal delivered to the Appeal Board within 21 days after the findings of the inquiry are given. The Commissioner shall serve a copy of the notice on the member of the Police whose conduct was the subject of the inquiry.

(3) The Appeal Board shall hear and determine the question or questions of law arising on any case referred to it under this section and shall -

(a) Confirm the finding of the inquiry in relation to the question or questions of law raised in the appeal; or
(b) Recommend to the Commissioner that the matter be referred back to the person or persons who conducted the original inquiry for the rehearing of the matter in accordance with the Appeal Board's determination of that question or those questions; or
(c) Make such other recommendations to the Commissioner in relation to the case as it thinks appropriate;
and the Commissioner may thereupon direct that no further action be taken or, as the case may require, that the matter be reheard or that effect be otherwise given to the recommendations of the Appeal Board.

(4) Where a case is referred back for rehearing -

(a) The provision of sections 17 to 19 of this Act, so far as they are applicable and with the necessary modifications, shall apply;

(b) The procedure to be followed at the rehearing shall be the same as that laid down by or under this Act for the conduct of inquiries under section 18 of this Act, subject to such modifications as the person or persons rehearing the matter may think necessary or desirable:

Provided that the person or persons rehearing the matter may, but shall not be obliged to, accept any evidence that was presented to the person or persons who conducted the original inquiry without requiring it to be formally presented, heard, or proved again.

- (c) The Minister or, as the case may require, the Commissioner may, if he is satisfied that the person or any of the persons who conducted the original inquiry is, by reason of absence, illness, or other sufficient cause, incapable of rehearing the matter, appoint any other person whom in accordance with the provisions of section 18 of this Act, he could have appointed to conduct the original inquiry.

PART IV

MISCELLANEOUS PROVISIONS AS TO MEMBERS OF THE POLICE

23. Oath to be taken - (1) Every member of the Police shall take the following oath before the High Commissioner or a Judge of the High Court or a commissioned officer of Police:

"I, A.B., do swear that I will well and truly serve our Sovereign Lady the Queen in the Police, without favour or affection, malice or ill-will, until I am legally discharged; that I will see and cause Her Majesty's peace to be kept and preserved; that I will prevent to the best of my power all offences against the peace; and that while I continue to hold the said office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law. So help me God."

(2) Every person who has taken and subscribed the oath as aforesaid shall be taken to have thereby entered into a written agreement with, and shall be bound to serve Her Majesty as a member of the Police, in whatsoever capacity he may, in accordance with the provisions of this Act, be required to serve, and at the current rate of pay of any rank to which he may be appointed or reduced, until legally discharged; and that agreement shall not be set aside, cancelled, or annulled for want of reciprocity; but every such agreement shall be determined by the resignation, discharge, retirement, dismissal, or other removal from office of any such person.

24. Execution of processes - (1) Every member of the Police shall obey and execute all the lawful summonses, warrants, orders, and directions of any Judge or Justice of the Peace of the High Court issued through the Registrar of that Court.

(2) Any warrant, order, or other process of any court or of any Judge or Registrar of the High Court or of any Justice of the Peace directed to any member of the Police may be executed and enforced by any other member of the Police or his assistants; and every member and his assistants shall have the same rights, powers, and authorities for and in the execution of any such process, as if the same had been originally directed to him or them expressly by name.

(3) Where a process has been issued for the arrest of any person and has not been executed, any member of the Police in uniform or any other member on production of his identification or warrant card or other evidence that he is a member of the Police may, without having the process in his possession, arrest the person in respect of whom the process is issued.

25. Protection of members for acts pursuant to process - (1) Where any process has been issued out of any Court, or by any Judge or Justice of the Peace or Registrar of the High Court, no member of the Police doing anything in obedience to any such process shall be responsible for any irregularity in the issuing of the process, or for any want of jurisdiction in the issuing of the same.

(2) On the production of any such process and on proof that it was issued out of a Court, or, as the case may be, that the signature thereto is in the handwriting of the person whose name appears subscribed thereto, and that person is reputed to be and acts as a Judge or Registrar of the High Court or as a Justice of the Peace, and that the acts complained of were done in obedience to the process, the Court trying any action against any member of the Police in respect of any act done in obedience to the process shall find a verdict for that member, and the member shall recover his costs of suit.

26. Member 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 the Police who is to appear in the execution of his duty other than as a witness, may appear by any other member of the Police.

27. Evidence of right to hold office - If any question arises as to the right of any member of the Police to hold or execute his office, common reputation shall be evidence of that right, and it shall not be necessary to have or produce any written appointment or other document or matter whatsoever in proof of that right.

28. Pensions in respect of death or disablement - (1) Subject to the provisions of 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 his service as a member, there may be paid to him and his dependants (in the case of his disablement) and to his dependants (in the case of his 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) For the purposes of determining the appropriate rates of pension to be paid under this section, members of the Police may be graded in such manner as may be prescribed by regulations under this Act.

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

29. Injuries in execution of duty - Any injuries suffered by a member of the Police -

- (a) While on duty or while on a direct journey from his home to report for duty or to his home after duty; or
 - (b) While not on duty in the performance of some act which is within the scope of his ordinary duties; or
 - (c) In consequence of some act performed in the execution of his duty,
- shall be deemed to have arisen out of and in the course of his employment.

30. On termination of office, powers to cease - (1) When a member of the Police ceases to hold and exercise his office, all powers and authorities vested in him as a member of the Police shall immediately cease.

(2) For the purposes of this section, a member of the Police shall be deemed to have ceased to hold and exercise his office during any period when he is on leave if, at the expiration of that leave, he will not return to duty in the Police.

PART VAPPEAL BOARD

31. Appeal Board - (1) For the purposes of this Act there is hereby established a Board to be known as the Police Appeal Board.

(2) The Appeal Board shall consist of the following members:-

(a) A Barrister and Solicitor with 5 years experience appointed by the High Commissioner who shall be Chairman:

(b) The Public Service Commissioner:

(c) One member, who shall be appointed by the Commissioner, and who may be a member of the Police.

(3) The member appointed under paragraph (c) of subsection (2) shall be appointed specifically for any appeal or appeals.

(4) Subject to the provisions of this section, every member of the Appeal Board referred to in paragraph (a) of subsection (2) of this section shall be appointed for a term not exceeding 1 year, but may from time to time be reappointed or may at any time be removed from office by the High Commissioner for disability, neglect of duty, or misconduct, or may at any time resign office by writing addressed to the Minister.

(5) Unless he sooner vacates his office, every such member of the Appeal Board shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.

(6) If any such member of the Appeal Board dies, resigns, or is removed from office, the vacancy created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

(7) No member of the Appeal Board shall sit on any appeal affecting himself; and, except with the consent of the appellant, no member shall sit on any appeal if, in the course of his duties, he has conducted any inquiry or investigation or has made any report regarding any misconduct or neglect of duty which is the subject matter of the appeal.

(8) No member of the Appeal Board who is a member of the Police shall sit on any appeal, if the appellant is the holder of a rank higher than that of the member.

(9) In the event of the incapacity of the Chairman by reason of illness, absence, or any other cause whatsoever, the High Commissioner may appoint any other qualified person to act in his place during the incapacity. Every person so appointed shall, while the incapacity continues, be deemed for all purposes to be the Chairman of the Appeal Board.

(10) Subject to the provisions of this Act and of any regulations made under this Act, the Appeal Board may regulate its procedure in such manner as it thinks fit.

32. Procedure of Appeal Board - (1) The Appeal Board may summon any witness to attend at any hearing under this Act and to produce any documents.

(2) Any person who refuses or fails to comply in any respect with any such summons or who attends any such hearing (whether pursuant to a summons or otherwise) and refuses or fails to be sworn or to give evidence, or to answer such questions as may lawfully be put to him commits an offence and shall be liable on summary conviction to a fine not exceeding \$40.

(3) At the hearing of any appeal the appellant and the Commissioner may appear in person or may be represented by an advocate or advocates and shall be entitled to call and examine witnesses and address the Appeal Board. Any advocate need not be a member of the Police and may be a barrister or solicitor.

(4) So long as any person engaged at any hearing or an appeal under this Act acts bona fide in the discharge of his duties, no action shall lie against him for anything he may report or say in the course of the hearing.

(5) Every witness attending and giving evidence and every advocate appearing at any hearing of an appeal under this Act shall have the same privileges and immunities as witnesses and counsel in Courts of Law.

(6) On any such appeal the Appeal Board may receive such evidence as it thinks fit, whether the evidence would be legally admissible in other proceedings or not.

(7) The decision of two members of the Appeal Board shall be the decision of the Board.

(8) With respect to costs of any hearing of an appeal the Appeal Board may:

(a) Direct that the appellant, or any witness at the hearing, shall be reimbursed in respect of his attendance:

(b) Direct that the expenses (but not costs) of any advocate shall be paid:

(c) Where the Appeal Board is of the opinion that the appeal is frivolous or vexatious and should not have been brought, or that witnesses were unnecessarily nominated by and attended at the request of the appellant, the Appeal Board may direct that the reasonable costs of the appeal or any part thereof shall be paid by the appellant.

(9) Any amount directed to be paid pursuant to paragraph (a) or paragraph (b) of subsection (8) of this section shall be payable out of money appropriated by Parliament for the purpose; and any amount directed to be paid by the appellant shall be recoverable as a debt due to the Crown.

PART VI

OFFENCES

33. Gaining admission to Police by false representations - Every person who by any false or forged certificates or any false representations, obtained admission or readmission into the Police commits an offence and shall be liable to imprisonment for a term not exceeding three months or to a fine not exceeding \$200 or to both.

34. Member failing to return property - (1) If any person who has ceased to hold and exercise office as a member of Police does not forthwith deliver over to the member of the Police in charge of the station to which he was last attached everything supplied to him for the execution of his office (other than that which the Commissioner may by general instruction allow him to retain), and everything in his custody by virtue of that office, he commits an offence and shall be liable to a fine not exceeding \$200.

(2) Any Registrar of the High Court may issue his warrant to any member of the Police to search for and seize to the use of Her Majesty every such thing whatsoever which has not been so delivered over.

(3) For the purposes of this section, a member shall be deemed to have ceased to hold and exercise his office during any period when he is on leave if, at the expiration of that leave, he will not return to duty in the Police.

35. Personation of member - (1) Every person who, not being a member of the Police, by words, conduct, or demeanour pretends that he is a member, or puts on or assumes the dress, uniform, name, designation, or description of a member of the Police (including the word detective) commits an offence and shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$200, or to both.

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

36. Unlawful possession of police property - Every person who, not being a member of the Police, has in his possession any thing whatsoever supplied or to be supplied to a member of the Police, and is not able to account satisfactorily for his possession thereof commits an offence and shall be liable to a fine not exceeding \$100.

37. Failing to give assistance - Any member of the Police when in the lawful execution of his duty may call upon any male person, not being under the age of 18 years, to aid or assist him to apprehend or secure any person or to convey any person in his charge to a police station or other place, when reasonable necessity exists for calling for that assistance; and every such person who fails to aid or assist any member of the Police when so called upon commits an offence and shall be liable to a fine not exceeding \$40.

38. Unlawful dealings with prisoners - (1) Every person who holds or attempts to hold any communication with any prisoner in the custody or charge of any member of the Police, or who delivers or in any manner attempts to deliver or causes to be delivered to any such prisoner any article or thing whatsoever without the permission of that member of the Police or some responsible member of the Police in charge of that member, commits an offence and shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$400, or to both.

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

39. Bribing members of the Police - Every person who,-

(a) Gives or offers or promises to give any member of the Police any bribe, pecuniary or otherwise, or makes any agreement with any member of the Police to induce him in any way to forego his duty; or

(b) Requests or incites or induces any member of the Police, or the members of the 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, -
commits an offence and shall be liable to imprisonment for a term not exceeding 3 years.

PART VIIMISCELLANEOUS

40. Committees of Inquiry - (1) The Minister may from time to time appoint a Committee of Inquiry, consisting of a barrister admitted to practice in the High Court of the Cook Islands or the High Court of New Zealand and one or more members of the Police, for the purpose of investigating and reporting to the Minister on any matter connected with the Police.

(2) The provisions of subsections (1), (2), (4), (5) and (6) of section 32 of this Act shall, with the necessary modifications, apply to any Committee of Inquiry as if it were the Appeal Board.

(3) Subject to the provisions of this section and of regulations under this Act, a Committee of Inquiry may regulate its procedure in such manner as it thinks fit.

41. Delegation of powers by Commissioner - (1) The Commissioner may from time to time, by writing under his hand, either generally or particularly, delegate to such member or members of the Police, of a rank not less than Inspector, as he thinks fit all or any of his powers, authorities, duties and functions under this Act or any regulations made under this Act.

(2) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(3) Subject to subsection (1) of this section, any delegation under this section may be made to a specified member of the Police or to members of the Police of a specified rank or class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(4) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commissioner of Police.

(5) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Commissioner of Police by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of the Commissioner.

(6) The revocation of any such delegation shall not affect in any way anything done under the delegated authority.

42. Particulars for identification of person in custody - (1) If any person is in lawful custody on a charge of having committed an offence, a member of the Police may, and if directed by any of his superiors shall, take or cause to be taken any particulars of that person, including his photograph, fingerprints, palm-prints, and footprints, and may use or cause to be used such reasonable force as may be necessary to secure these particulars.

(2) Notwithstanding anything in subsection (1) of this section, no fingerprints, palm-prints, or footprints shall be taken under this section unless the person in lawful custody is at a police station, or on other premises, or in any vehicle, being used for the time being as a police station.

(3) Any person who, after being cautioned, fails to comply with any demand or direction of a member of the Police acting in the exercise of his powers under this section commits an offence and shall be liable to imprisonment for a term not exceeding 1 month or to a fine not exceeding \$100, or to both.

(4) If the person in respect of whom particulars have been taken under this section is acquitted, the particulars shall be forthwith destroyed:

Provided that this subsection shall not apply if the person is acquitted on account of his insanity or is discharged under Section 112 of the Criminal Procedure Act 1980-81 or Section 407A of the Crimes Act 1969.

43. Judge of High Court may determine title to property -

(1) Where a member of the Police is in possession of any property of any kind other than property distrained under the warrant of a Registrar of the High Court, and it is doubtful whether a person claiming the property, or which of any two or more persons so claiming is entitled to the possession thereof, a Judge of the High Court, on the application of any member of the Police, or of a claimant to the property, may make an order for the delivery of the property to any person appearing to the Judge to be the owner thereof, or entitled to the possession thereof, or, if the owner or person entitled to possession cannot be ascertained, may make such order with respect to possession of the property as he thinks fit.

(2) Any application under this section shall be made by originating application to the High Court.

(3) If after the making of any such order an action is commenced against any member of the Police or the Crown for the recovery of the property or the value thereof, the order and the delivery of the property in pursuance thereof may be given and shall be received in evidence in bar of the action:

Provided that no such order or delivery shall affect the right of any persons entitled by law to possession of the property to recover the same.

44. Unclaimed property - (1) Any goods and chattels which have come into the possession of any member of the Police and which are unclaimed after being held for not less than 3 months, shall, by the direction of the Commissioner be sold by public auction, a notice of the sale -

(a) In the case of a sale to be held on the Island of Rarotonga, having been previously published three times in a newspaper circulating in that island;

(b) In the case of a sale to be held on any other island, having been previously displayed in a conspicuous place at the office of the Chief Administration Officer for that island.

Provided that perishable goods may be sold at any time and in such manner as a Commissioner may direct, or if valueless may be destroyed.

(2) The proceeds of every such sale, after deducting the costs thereof, and any money which has come into the possession of a member of the Police in the execution of his duty and is unclaimed, shall be paid to and form part of the Cook Islands Government Account.

(3) The Commissioner may, if he thinks fit, appoint any person to conduct any such sale by auction.

45. 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 shall be commenced within 1 year after the act has been committed, and not otherwise; and notice in writing of every such action and of the cause thereof shall be given to the defendant 1 month at least before the commencement of the action.

(2) The plaintiff in any such action shall 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 is given against the plaintiff, the defendant shall recover his full costs as between solicitor and client; and, though a verdict is given for the plaintiff in any such action, he shall not have costs against the defendant unless the Court before which the trial is held certifies its approval of the action and of the verdict obtained thereon.

46. Police Gazette - (1) Every person who has in his possession any copy of any issue of the Cook Islands Police Gazette without lawful authority or excuse (the proof whereof shall be on the person charged) commits an offence and shall be liable to a fine not exceeding \$100.

(2) Subject to the provisions of subsection (4) of section 15 of this Act, the Police Gazette shall not, without the permission in writing of the Commissioner, be produced, nor shall any evidence of its contents be given, in any proceedings in any Court.

(3) No civil or criminal proceedings shall be taken in respect of anything contained in the Police Gazette.

47. 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 shall 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.

48. Fines - (1) All fines recovered under this Act shall be paid into the Cook Islands Government Account.

(2) The amount of any fine or other sum ordered to be paid by a member of the Police, pursuant to this Act, may be deducted from any money due or thereafter becoming due from the Crown to that member by way of salary or otherwise.

49. Regulations - (1) The High Commisisoner may from time to time, by Order in Executive Council, make all such regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

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

- (a) Providing for the government, 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 section 5 of 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 the Police, and prescribing the factors to be considered in relation to any promotion.
- (e) Prescribing any matter relating to the conditions of service of the Police.
- (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 appeals and inquiries under this Act (including matters preliminary or incidental thereto) and enabling the taking of evidence on commission for the purposes of any such appeal or inquiry
- (h) Providing for the determination of the amount of rent to be paid by any member of the 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.

(3) Any regulations made under this section shall come into force on a date to be specified therein in that behalf (whether before or after the date on which they are made), and if no such date is specified shall come into force on the date of the making thereof.

(4) All regulations made under this section shall be laid before the Parliament within 28 days after the making thereof if Parliament is then in session, and, if not, shall be laid before the Parliament within 28 days after the commencement of the next ensuing session.

50. Annual Report - (1) The Commissioner shall as soon as practicable after the 31st day of March in each year furnish to the Minister a report on the operation of the Police for the year ending on that date.

(2) A copy of the report shall 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, shall be laid before Parliament within 28 days after the commencement of the next ensuing session.

51. Savings - Without limiting the provisions of the Acts Interpretation Act 1924, as amended and applied to the Cook Islands, it is hereby declared that the repeal of any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

52. Appropriation by Parliament - There shall be paid to the Police such sums of money as may be appropriated by Parliament from time to time for the purposes of the Police.

53. Transitional provision - All persons who immediately before the commencement of this Act were members of the Police under the Public Service Act 1975 shall continue to be members of the Police and to hold the same office as if they had been appointed pursuant to this Act and the provisions of this Act shall apply to them accordingly.

54. Police not to be part of Public Service - The Cook Islands Police shall not form part of the Public Service of the Cook Islands.

55. Consequential repeal - The Police Act 1967 is hereby repealed.

This Act is administered by the Police Department.