

POLICE POWERS AND DUTIES ACT 2008

Arrangement of sections

PART I—PRELIMINARY

1. Short title
2. Purpose of this Act
3. Act to bind all persons
4. Compliance with Act by police officers
5. Performance of duty
6. This Act does not affect certain principles
7. Relationship between this Act and other Acts
8. Definitions

PART II—GENERAL ENFORCEMENT POWERS

Division 1—General Powers and Duties

9. General powers and duties
10. Termination of powers
11. Direction and orders of superior officers

Division 2—Requiring a Person's Name, Address and Date of Birth

12. Requiring a person to state their name and address
13. Requiring a person to state their date of birth

Division 3—Inspecting Licences, Registers, etc.

14. Requiring a person to produce a licence, register, etc.

Division 4—Directing a Person to Move On

15. Directing a person to move on

Division 5—Breaches of the Peace, Riots and Prevention of Offences

16. Dealing with breaches of the peace
17. Preventing riots
18. Preventing offences generally
19. Prevention of particular offences relating to liquor

Division 6—Vehicles and Traffic

20. Stopping vehicles
21. Requiring information about the identity of drivers of vehicles etc.
22. Investigating vehicle contraventions
23. Regulating vehicular and pedestrian traffic
24. Prohibiting a person driving
25. Inspecting vehicles
26. Prohibiting the use of a vehicle
27. Impounding motor vehicles
28. Disposing of motor vehicle if not recovered after impounding ends

Division 7—Helping Enforcement Officers

29. Helping enforcement officers exercise powers under other laws

Division 8—Security Services for Republic Buildings

30. Power relating to entry to Republic buildings

Division 9—Entering Someone Else's Property

31. Purpose of this Division
32. Entering property to investigate a matter
33. Entering property to serve a document
34. Entering property to arrest a person
35. Entering property to prevent offence, injury or violence
36. Entering property on suspicion of death or injury
37. Entering property on suspicion of fire
38. Entering licensed premises, etc.

Division 10—Using Force

39. Using force against individuals
40. Using force against individuals in critical situations
41. Using force to exercise certain powers

Division 11—Investigating Unnatural Deaths

42. Investigating unnatural deaths
43. Requiring information for inquiry into the cause of an unnatural death

PART III—SEARCHING FOR AND SEIZING EVIDENCE

Division 1—Searching Without a Warrant

44. Searching persons without a warrant
45. Searching vehicles without a warrant
46. Searching public places without a warrant

Division 2—Searching With a Warrant

Sub-division 1—Warrant powers

47. What are the warrant powers

Sub-division 2—Search warrants

48. Applying for a search warrant
49. What the search warrant must state
50. Copy of the search warrant must be given to the occupier
51. When the search warrant ends

Sub-division 3—Loss of evidence warrant

- 52. Search to prevent loss of evidence
- 53. Appeal against refusal to issue a loss of evidence warrant

Sub-division 4—Crime scenes

- 54. Gaining access to a crime scene
- 55. Identifying a crime scene
- 56. Preserving evidence at a crime scene

Division 3—General Provisions About Searches of Persons and Vehicles

- 57. General provision about searches of persons
- 58. Taking a person to another place for search
- 59. Removing clothing for search
- 60. General provision about searches of vehicles
- 61. Limit on period of detention for search
- 62. Dealing with persons who obstruct a search

Division 4—Seizing Things

Sub-division 1—Seizing things

- 63. Seizing evidence generally
- 64. Examining seized things
- 65. Receipt for seized things

Sub-division 2—Duties regarding seized things in possession of the police service

- 66. Application of this Sub-division
- 67. Purpose of this Sub-division
- 68. Duties of police officer taking possession of seized things
- 69. Right to inspect seized documents

Sub-division 3—Return or forfeiture of seized things

- 70. Returning seized things
- 71. Magistrate's order for return or forfeiture of seized things
- 72. Commissioner's order for forfeiture of seized things
- 73. Dealing with forfeited things

PART IV—ARREST AND CUSTODY POWERS

Division 1—Arrest Without a Warrant

- 74. Arrest without warrant
- 75. Arrest of person in relation to bail
- 76. Arrest of person in relation to notice to appear or summons
- 77. Arrest of escapees

Division 2—Arrest With a Warrant

- 78. Arrest with a warrant
- 79. Arrest warrant application
- 80. What arrest warrant must state
- 81. Compliance with limitation of proceedings

Division 3—Discontinuing an Arrest

- 82. Effect of release under this Division
- 83. When an arrest may be discontinued—general rule
- 84. When arrest of adult may be discontinued
- 85. When arrest of child may be discontinued
- 86. When arrest for being drunk in a public place may be discontinued

Division 4—Alternative to Arrest

- 87. Purpose of this Division
- 88. Notice to appear
- 89. Notice to appear must be served personally on the person
- 90. After being served, notice to appear must be filed with the court
- 91. Failing to appear as required by a notice to appear

Division 5—Duties After an Arrest

- 92. Information to be given to arrested person
- 93. Parent to be advised of arrest or service of notice to appear
- 94. Duty of police officer after arrest, etc. of person
- 95. Duty of police officer receiving custody of person arrested for an offence
- 96. Duty of officer receiving custody of person arrested under warrant, other than for an offence

Division 6—Searching Persons in Custody

- 97. Police officer may search person in custody

Division 7—Fingerprints and Other Identifying Particulars

- 98. This Division applies to one-year offences
- 99. Taking identifying particulars of a person in custody
- 100. Taking identifying particulars immediately
- 101. Taking identifying particulars later
- 102. Court may order taking of identifying particulars
- 103. Destroying identifying particulars

Division 8—Release from Custody by a Police Officer

- 104. Release upon executing a bond
- 105. Release upon entering into a recognisance

Division 9—Detaining a Person Suspected of Committing a Felony

- 106. Division applies only to felonies
- 107. Right to remain silent not affected
- 108. Initial period of detention for questioning or investigation
- 109. Order extending the detention period
- 110. When a suspect detained may be taken to a place other than a police station
- 111. Removing a suspect from prison

PART V—QUESTIONING PERSONS

Division 1—Preliminary

- 112. When this Part applies to a suspect
- 113. Questioning generally

Division 2—Other Persons may be Present During Questioning

- 114. Right to communicate with friend, relative or lawyer
- 115. Speaking to and presence of friend, relative or lawyer
- 116. Provision of information to friend, relative or lawyer
- 117. Questioning children
- 118. Questioning suspects with impaired capacity
- 119. Questioning visiting foreign nationals
- 120. Questioning persons who do not speak the language
- 121. Questioning intoxicated suspects
- 122. When sections 114 to 119 do not apply

Division 3—Cautioning and Rights of Suspects

- 123. Cautioning suspects of their right to remain silent
- 124. Person's right to remain silent not affected
- 125. Rights of a suspect to be recorded

Division 4—General

- 126. Questioning of suspect after proceedings are started
- 127. List of interpreters

PART VI—IDENTIFYING SUSPECTS

Division 1—Certain Ways of Identifying Suspects

- 128. Certain ways of identifying suspects

Division 2—Identification Using an Identification Parade

- 129. Procedure before an identification parade

Division 3—Identification Using a Photo-board

- 130. Photo-board conditions
- 131. Conducting a photo-board identification

PART VII—MISCELLANEOUS PROVISIONS

Division 1—Identification of Police Officers

- 132. Identity cards
- 133. Supplying police officer's identity details

Division 2—Warrants, etc.

- 134. Serving and enforcing warrants, etc.
- 135. Obtaining warrants and orders by phone, etc.
- 136. Presumption about exercise of powers under warrant or order

Division 3—Damage to Property During Exercise of Powers

- 137. Use of force to enter places that is likely to cause damage
- 138. Police officer to give notice of damage
- 139. Compensation for damage

Division 4—Offences

- 140. Offence to assault or obstruct police officer
- 141. Offence to contravene direction or requirement of police officer

Division 5—Other General Provisions

- 142. Helping courts and tribunals
- 143. Protection of police information
- 144. Lost property
- 145. Availability of this Act
- 146. Approved forms
- 147. Review of Act
- 148. Regulation-making power
- 149. Expanded jurisdiction of magistrates' courts

PART VIII—TRANSITION FROM THE POLICE ORDINANCE TO THIS ACT

- 150. Actions and decisions
- 151. Proceedings for offences

PART IX—CONSEQUENTIAL AMENDMENTS TO OTHER LAWS

- 152. Criminal Procedure Code is amended
- 153. Death and Fire Inquiries Ordinance is amended
- 154. Penal Code is amended

REPUBLIC OF KIRIBATI
(No.16 of 2008)

I assent,

Arute Tong
Beretitenti
23 December, 2008

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

Commencement:
2008

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

PART I—PRELIMINARY

1. Short title

This Act may be cited as the *Police Powers and Duties Act 2008*.

2. Purpose of this Act

The purpose of this Act is—

- (a) to provide the powers that are necessary for effective modern policing and law enforcement; and
- (b) to consolidate and rationalise the powers and duties that police officers have for investigating offences and enforcing the law; and
- (c) to provide consistency in the nature and extent of the powers and duties of police officers; and
- (d) to standardise the way in which the powers and duties of police officers are to be exercised; and
- (e) to ensure fairness to, and protect the rights of, persons against whom police officers exercise powers; and
- (f) to enable the public to better understand the nature and extent of the powers and duties of police officers.

3. Act to bind all persons

This Act binds all persons, including the Republic.

4. Compliance with Act by police officers

- (1) Police officers must comply with this Act when exercising powers and performing duties under it.
- (2) A police officer who contravenes this Act may be dealt with as provided under the law, including for example—
 - (a) under the *Police Service Act 2008* for a breach of discipline; or
 - (b) under the *Penal Code* (Cap.67) for an offence.

5. Performance of duty

A police officer who is performing a function of the police service is performing a duty of a police officer, even if the function could be performed by someone other than a police officer.

6. This Act does not affect certain principles

- (1) This Act does not prevent a police officer from speaking to anyone, or doing anything else that a police officer may lawfully do apart from this Act, when performing the police officer's duties without exercising a power under this Act or using any form of compulsion.
- (2) This Act does not affect the powers that a police officer may lawfully exercise as an individual.
- (3) This Act does not affect the principle that everyone in the community has a social responsibility to help police officers to prevent crime and discover offenders.
- (4) This Act does not affect the common law under which a court in a criminal proceeding may—
 - (a) exclude evidence in the exercise of its discretion; or
 - (b) stay the proceeding in the interests of justice.

7. Relationship between this Act and other Acts

- (1) If another Act confers a power or imposes a duty on a police officer, this Act prevails over that Act to the extent of any inconsistency between the two Acts.
- (2) A police officer may exercise a power in accordance with this Act in order to do something under another Act, even though the other Act specifies the way to exercise the power.
- (3) The object of this section is to allow police officers to rely generally on this Act, as opposed to a number of Acts, for their powers and duties.

8. Definitions

In this Act, unless the context otherwise requires—

‘approved form’ means a form approved for use under this Act by the Commissioner under section 146;

‘child’ means a person who is less than 18 years of age;

‘crime scene’ has the meaning given in section 54(2);

‘driver’ of a vehicle includes the rider of a motorbike, and the person steering an aircraft or vessel;

‘dwelling’ includes a building or other structure, or part of a building or other structure, kept by the owner or occupier as a residence;

‘felony’ has the meaning given in section 4 of the *Penal Code* (Cap.67);

‘fingerprint’ means an image or impression of the friction ridge detail from the palmar surface of a person’s hand, and includes a digital image of that friction ridge detail;

‘identifying particulars’ has the meaning given in section 99(2);

‘night’ means the interval between 9:00pm on one day and 6:00am on the next day;

‘notice to appear’ means a notice issued under section 88;

‘officer in charge’ of a place means—

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

‘person with impaired capacity’ means a person whose capacity to look after or manage his or her own interests is impaired because of either of the following—

- (a) an obvious loss, or partial loss, of the person’s mental functions;
- (b) an obvious disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour;

‘place’ includes an aircraft, vessel or other vehicle;

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

'police service' means the Kiribati Police;

'public place' includes a place that is open to the public, but only while the place is ordinarily open to the public;

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

'time out' includes any time reasonably required—

- (a) to take a person from the place where the person is arrested to the nearest police station; and
- (b) to allow the person to telephone or speak to a friend, relative, lawyer, interpreter or other person; and
- (c) to allow a friend, relative, lawyer, interpreter or other person to arrive at the place where the person is to be questioned; and
- (d) to allow the person to receive medical attention; and
- (e) to allow the person to recover from the effects of intoxication; and
- (f) to allow the person to rest; and
- (g) to allow for the questioning of co-offenders; and
- (h) to allow for an identification parade to be arranged and held; and
- (i) to allow for the performance of a forensic procedure; and
- (j) to allow for witnesses to be interviewed; and
- (k) to allow for investigating police to arrive; and
- (l) to allow for the person to be taken to another place for the investigation or as part of the investigation; and
- (m) to allow for the search of any place, including a crime scene; and
- (n) to decide the appropriate nature and content of a charge against the person and to charge the person and decide whether to release the person on bail or serve on the person a notice to appear or summons;

'transport law' means—

- (a) the *Civil Aviation Act 2004*; or
- (b) section 13 of the *Nippon Causeway Tolls Act 1987* (which deals with offences under the Act); or
- (c) sections 83A, 233 or 285 of the *Penal Code (Cap.67)* (which deal with throwing objects, endangering the safety of travelling persons and unlawful use of vehicles, respectively); or
- (d) the *Shipping Act 1990*; or
- (e) the *Traffic Act 2002*; or
- (f) another law that is prescribed to be a transport law under a regulation;

'vehicle' includes an aircraft and vessel;

'vehicle incident' means—

- (a) an incident involving a vehicle on a road in which—
 - (i) death or injury was caused to a person; or
 - (ii) damage was caused to a vehicle or any other real or personal property; or
 - (iii) death or injury was caused to an animal; or
- (b) an incident involving a boat in which—
 - (i) death or injury was caused to a person; or
 - (ii) damage was caused to a boat or any other real or personal property;

'warrant powers' has the meaning given in section 47.

PART II—GENERAL ENFORCEMENT POWERS

Division 1—General Powers and Duties

9. General powers and duties

- (1) A police officer has and may exercise the powers of a constable at common law or under any other law.
- (2) A police officer who holds, or is acting in, an office in the police service below the rank of Inspector has and must perform the duties of a constable at common law or under any other law.
- (3) This Act does not derogate from the powers, duties and liabilities of a constable at common law or under any other law.

10. Termination of powers

The powers that a person had as a police officer terminate immediately when the person stops being a police officer

11. Direction and orders of superior officers

When performing duties, a police officer is subject to—

- (a) the directions and orders of the Commissioner; and
- (b) the orders of a more senior officer.

Division 2—Requiring a Person's Name, Address and Date of Birth

12. Requiring a person to state their name and address

- (1) A police officer may require a person to state the person's correct name and residential address if—
 - (a) a police officer finds the person committing an offence; or
 - (b) a police officer suspects, on reasonable grounds, that the person has committed an offence; or
 - (c) a police officer suspects, on reasonable grounds, that the person may be able to help in the investigation of—
 - (i) a vehicle incident; or
 - (ii) an alleged felony, because the person was near the place where the alleged felony happened before, when, or soon after the alleged felony happened; or
 - (d) the person is in control of a vehicle that is stationary on a road or has been stopped under section 20; or
 - (e) a police officer is attempting to enforce a court order in relation to a person; or
 - (f) a police officer is attempting to serve a court document on a person; or
 - (g) the person is performing an activity that is required by law to be performed under a licence.
- (2) The police officer may require the person to give evidence of the correctness of the name and address given by the person if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the name or address.
- (3) A person who fails to comply with a police officer's requirement under this section does not commit an offence if—
 - (a) for paragraphs (a) or (b) of subsection (1)—the person is not proved to have committed the offence; or
 - (b) for paragraph (c) of subsection (1)(c)—the person is not proved to have been able to help in the investigation; or
 - (c) for paragraphs (e) or (f) of subsection (1)—the person is not proved to be the person named in the court order or court document; or
 - (d) for paragraph (g) of subsection (1)—the person is not proved to have been performing an activity that is required by law to be performed under a licence.

13. Requiring a person to state their date of birth

- (1) This section applies if—
 - (a) a person is at a place, and the age of the person is relevant to the person's entitlement to be at the place; or
 - (b) a person is engaging in an activity, and the age of the person is relevant to the person's entitlement to engage in the activity.
- (2) A police officer may require a person to state the person's correct date of birth, unless the person has a reasonable excuse.
- (3) It is a reasonable excuse for the person not to comply with the requirement if the person does not know the person's date of birth because the person's date of birth has not been recorded by the Registrar-General of Births, Deaths and Marriages.
- (4) The police officer may require the person to give evidence of the correctness of the stated date of birth if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the date of birth.
- (5) If a police officer asks a person to give evidence of the person's date of birth, and is not satisfied that the person is old enough to be at the place or to engage in the activity, the police officer may direct the person—
 - (a) to immediately leave the place, or the part of the place in which the person's age is relevant, and not re-enter it; or
 - (b) not to engage in the activity.

Division 3—Inspecting Licences, Registers, etc.

14. Requiring a person to produce a licence, register, etc.

- (1) This section applies if a person is required under a law—
 - (a) to hold a licence; or
 - (b) to have the approval of any person; or
 - (c) to keep a register or other record.
- (2) A police officer may require the person to produce any of the following things to a police officer for inspection—
 - (a) the licence;
 - (b) evidence of the approval;
 - (c) the register or other record.
- (3) The person must produce those things for inspection at the place and time that the police officer reasonably requires.

Division 4—Directing a Person to Move On

15. Directing a person to move on

- (1) A police officer may direct a person who is in or near a public place to move on, if a police officer suspects, on reasonable grounds, that—
 - (a) the behaviour of the person is or has been—
 - (i) causing anxiety to a person entering, at or leaving the public place; or
 - (ii) interfering with trade or business at the public place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the public place; or
 - (iii) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the public place; or
 - (iv) disorderly, indecent, offensive, or threatening to someone entering, at or leaving the public place; or
 - (b) the presence of the person is or has been—
 - (i) causing anxiety to a person entering, at or leaving the public place; or
 - (ii) interfering with trade or business at the public place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the public place; or
 - (iii) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the public place.
- (2) The police officer may give the person any other direction that is reasonable in the circumstances.
- (3) However, the police officer must not give a direction that interferes with a person's right of peaceful assembly, unless it is reasonably necessary in the interests of—
 - (a) public safety; or
 - (b) public order; or
 - (c) the protection of the rights and freedoms of other persons.
- (4) The police officer must tell the person the reasons for giving a direction under this section.

Division 5—Breaches of the Peace, Riots and Prevention of Offences

16. Dealing with breaches of the peace

- (1) This section applies if a police officer suspects, on reasonable grounds, that—
 - (a) a breach of the peace is happening or has happened; or
 - (b) there is an imminent likelihood of a breach of the peace; or
 - (c) there is a threatened breach of the peace.
- (2) A police officer may take the steps that the police officer considers are reasonably necessary to prevent—
 - (a) the breach of the peace happening or continuing; or
 - (b) the conduct that is the breach of the peace again happening, even though the conduct might otherwise be lawful.

17. Preventing riots

- (1) A police officer may take the steps that the police officer believes, on reasonable grounds, are necessary to suppress a riot.
- (2) A police officer, who is acting under reasonable orders given by a justice of the peace for suppressing a riot, may suppress a riot.

18. Preventing offences generally

- (1) This section applies if a police officer suspects, on reasonable grounds, that an offence—
 - (a) has been committed; or
 - (b) is being committed; or
 - (c) is about to be committed.
- (2) A police officer may take the steps that the police officer considers are reasonably necessary to prevent the commission of the offence.
- (3) A police officer may take the steps that the police officer considers are reasonably necessary to prevent the continuation or repetition of an offence.

19. Prevention of particular offences relating to liquor

- (1) This section applies if—
 - (a) a police officer suspects, on reasonable grounds, that a person has committed, is committing, or is about to commit an offence against section 72 or section 76 of the *Liquor Ordinance* (Cap.50) (which deal with consumption of liquor in prohibited places, and consumption of admixtures of sour toddy, respectively); and

- (b) the police officer suspects, on reasonable grounds, that an opened container of liquor at the place in the person's possession or under the person's control relates to, or is contributing to, or is likely to contribute to, the commission of the offence by the person.
- (2) The police officer may seize—
- (a) the opened container and its contents; and
 - (b) any unopened container of liquor at the place, and its contents, that the police officer suspects, on reasonable grounds, relates to, or is contributing to, or is likely to contribute to, the commission of an offence against a provision mentioned in subsection (1)(a) at the place by the person or another person.
- (3) A police officer may dispose of anything that is seized in the way that the police officer considers reasonably necessary to prevent the commission, continuation or repetition of the offence.
- (4) In this section—
- 'liquor' has the same meaning as under section 75 of the *Liquor Ordinance* (Cap.50);
- 'opened container' includes a container that has been opened, even if it is closed at the material time, and regardless of whether or not some of its contents have been removed.

Division 6—Vehicles and Traffic

20. Stopping vehicles

- (1) A police officer may require the person who is in control of a vehicle to stop the vehicle—
- (a) for enforcing a transport law; or
 - (b) to check whether the vehicle or person is complying with a transport law.
- (2) A person commits an offence if the person fails to comply with the requirement, unless the person has a reasonable excuse.
- (3) The maximum penalty for an offence under this section is a fine of \$1000.
- (4) It is a reasonable excuse for the person not to comply with the requirement if—
- (a) the person believes, on reasonable grounds, that to immediately comply with the requirement would endanger the person or someone else; and
 - (b) the person complies with the requirement at the first reasonable opportunity.

- (5) To conduct a breathalyser test, the police officer may enter the vehicle and remain in it for the time that is reasonably necessary for that purpose.
- 21. Requiring information about the identity of drivers of vehicles etc.**
- (1) This section applies if—
- (a) a person alleges to a police officer that a contravention of a law that involves a vehicle has been committed; or
 - (b) a police officer suspects, on reasonable grounds, that a contravention of a law that involves a vehicle has been committed.
- (2) A police officer may require any of the following persons to give the police officer information that will identify, or help identify, the person who was in control of the vehicle when the contravention happened—
- (a) the owner of the vehicle;
 - (b) a person in possession of the vehicle;
 - (c) a person in whose name the vehicle is registered;
 - (d) any other person who may reasonably be expected to be able to give the information.
- (3) Also, a police officer may require the driver of the vehicle to give the police officer information about the identity of the owner of the vehicle.
- (4) In order to make a requirement under subsection (2) or (3), a police officer may—
- (a) go onto someone else's property; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer—
 - (i) to make the requirement; and
 - (ii) to allow the person to give the information.
- (5) However, the police officer may use reasonably necessary force to enter the place only if the entry is authorised by a police officer of at least the rank of inspector.

22. Investigating vehicle contraventions

- (1) A police officer may make any reasonably necessary investigation, inspection or test—
- (a) to establish whether or not an offence against a transport law has been committed; or
 - (b) to obtain information about a vehicle, animal or other property that was involved in a vehicle incident; or
 - (c) to obtain information about the cause of a vehicle incident, and the circumstances in which it happened.

- (2) Also, a police officer may make any reasonably necessary investigation to obtain information about a person involved in a vehicle incident.
- (3) A police officer may arrange for someone else to make any reasonably necessary inspection or test for establishing whether an offence against a transport law has been committed.
- (4) In order to exercise a power under subsection (1), (2) or (3), a police officer may—
 - (a) go onto someone else's property; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer to exercise the power.
- (5) However, the police officer may use reasonably necessary force to enter the place only if the entry is authorised by a police officer of at least the rank of inspector.

23. Regulating vehicular and pedestrian traffic

- (1) A police officer may give the driver of a vehicle, or a pedestrian on or about to enter a road, or a passenger in a vehicle, any direction that the police officer reasonably considers is necessary for the safe and effective regulation of traffic on the road.
- (2) A direction under subsection (1) may include a direction to the owner or driver of a parked vehicle to move the vehicle as soon as practicable.

24. Prohibiting a person driving

- (1) This section applies to the person in control of a motor vehicle that is stationary on a road.
- (2) If a police officer suspects, on reasonable grounds, that the person would contravene a transport law by driving the motor vehicle the officer may require the person not to drive the motor vehicle in contravention of that law.
- (3) The requirement must be made by notice in the approved form.
- (4) A person commits an offence if the person fails to comply with the requirement, unless the person has a reasonable excuse.
- (5) The maximum penalty for an offence under this section is a fine of \$1000.
- (6) If the position of the motor vehicle on the road may pose a hazard to other road users, the police officer may cause the motor vehicle to be moved to the nearest safe place that no longer poses a hazard to road users.

25. Inspecting vehicles

- (1) A police officer may inspect or test a vehicle to check whether the vehicle complies with a transport law.

- (2) To enable the police officer to inspect or test the vehicle, the police officer may do anything reasonable to be done for the inspection or test.
- (3) If a police officer suspects, on reasonable grounds, that a vehicle does not comply with a transport law, the police officer may require the owner of the vehicle to have the vehicle inspected at a stated reasonable time and place.
- (4) The requirement—
 - (a) must be made by notice in the approved form; or
 - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.
- (5) A person commits an offence if the person fails to comply with the requirement, unless the person has a reasonable excuse.
- (6) The maximum penalty for an offence under this section is a fine of \$1000.

26. Prohibiting the use of a vehicle

- (1) If a police officer suspects, on reasonable grounds, that a vehicle is unsafe or defective, the police officer may require the owner of the vehicle not to use the vehicle, or permit the vehicle to be used, on a road until—
 - (a) the vehicle is inspected at a stated reasonable place, and found to comply with the *Traffic Act 2002*; or
 - (b) stated reasonable action is taken in relation to the vehicle to ensure that the vehicle complies with the *Traffic Act 2002*.
- (2) The requirement must be made by notice in the approved form.
- (3) A person commits an offence if the person fails to comply with the requirement, unless the person has a reasonable excuse.
- (4) The maximum penalty for an offence under subsection (3) is a fine of \$1000.
- (5) It is a reasonable excuse for the person not to comply with the requirement if—
 - (a) the vehicle's registration is cancelled; and
 - (b) the person gives the police officer written notice of the cancellation of the vehicle's registration within seven days after the cancellation.
- (6) If the driver to whom a notice is given under this section is not the owner of the vehicle, the driver commits an offence if the driver does not immediately give the notice to the owner of the vehicle, unless the driver has a reasonable excuse.
- (7) The maximum penalty for an offence under subsection (6) is a fine of \$500.

27. Impounding motor vehicles

- (1) A police officer may impound a motor vehicle that the police officer suspects, on reasonable grounds, has been involved in an incident in which a person was killed or injured.
- (2) To impound the motor vehicle, a police officer may—
 - (a) if the motor vehicle is moving—stop the motor vehicle, whether or not the motor vehicle is on a road; or
 - (b) if the motor vehicle is not moving—require the driver of the motor vehicle to remain at the place where it is for the time reasonably necessary; or
 - (c) enter the motor vehicle, if that is necessary to impound it; or
 - (d) enter a place, other than the part of the place that is a dwelling, and stay for a reasonable time on the place; or
 - (e) direct the person who has the key needed to move the motor vehicle—
 - (i) to give the key to a police officer; or
 - (ii) if the motor vehicle is in a dwelling—to move the motor vehicle out of the dwelling, and to give the key to a police officer; or
 - (f) do anything else reasonably necessary for impounding the motor vehicle.
- (3) After impounding the motor vehicle, the police officer must move the motor vehicle, or arrange for the motor vehicle to be moved, to a holding yard in the way that the police officer considers appropriate.
- (4) As soon as reasonably practicable after impounding the motor vehicle, the police officer must give written notice of the impounding to—
 - (a) the driver of the motor vehicle; and
 - (b) if the driver is not the owner or not the only owner of the motor vehicle—the owner or each other owner of the motor vehicle.
- (5) The written notice must state—
 - (a) that the motor vehicle is impounded for a stated period, of not more than one month; and
 - (b) information about how the owner of the motor vehicle may recover the motor vehicle; and
 - (c) that, before the motor vehicle may be recovered, the owner may be required to produce satisfactory evidence of the ownership of the motor vehicle; and

- (d) that, if the driver of the motor vehicle when the motor vehicle was impounded was an adult, and the driver is found guilty of the offence for which the motor vehicle was impounded, the court may order the driver to pay the costs of moving and keeping the motor vehicle; and
 - (e) that, if the driver of the motor vehicle when the motor vehicle was impounded was a child, and the driver is found guilty of the offence for which the motor vehicle was impounded, the court may order the child or the child's parent or guardian to pay the costs of moving and keeping the motor vehicle.
- (6) The motor vehicle may be kept for the time that is reasonably necessary to make any reasonably necessary inspection, or test—
 - (a) to determine whether the vehicle was involved in an incident in which a person was killed or injured; and
 - (b) to collect evidence of the commission of any offence arising from the incident.
 - (7) However, that time must not be more than one month after the motor vehicle was impounded unless a police officer obtains an order from a magistrate that allows the motor vehicle to be kept for a longer period.
 - (8) As soon as reasonably practicable after a date is set for the hearing of an application for an order under subsection (7), a police officer must give the driver of the motor vehicle and each owner of the motor vehicle written notice of the date, time and place of the hearing.
 - (9) If the driver or owner is a child, and it is reasonably practicable to do so, written notice must also be given to the child's parent or guardian.

28. Disposing of motor vehicle if not recovered after impounding ends

- (1) If the owner of the motor vehicle does not recover the motor vehicle within two months after the period of impounding ends, the Commissioner may—
 - (a) sell the motor vehicle, and anything in or on the motor vehicle, by public auction; or
 - (b) dispose of the motor vehicle in any way that does not cause an actual, or apparent, conflict of interest in the Commissioner.
- (2) The Commissioner must give notice of the proposed sale or disposal of the motor vehicle—
 - (a) to the owner of the motor vehicle (if known) unless, after making reasonable efforts, the Commissioner can not find the owner; and
 - (b) by an advertisement in a newspaper circulating in the locality where the motor vehicle was impounded.

- (3) If the Commissioner decides to sell the motor vehicle, the proceeds of the sale are to be applied in the following order—
 - (a) in payment of the expenses of the sale;
 - (b) in payment of the costs of moving and keeping the motor vehicle, and of giving notice of impounding the motor vehicle;
 - (c) if the Commissioner knows that there is an amount owing to a person under a security interest for the motor vehicle—in payment of the amount owing to the holder of the security interest;
 - (d) in payment of any balance to the owner.
- (4) Compensation is not recoverable from the Republic for any payment made under this section.

Division 7—Helping Enforcement Officers

29. Helping enforcement officers exercise powers under other laws

- (1) This section applies if a law authorises a person (an 'enforcement officer') to perform inspection, investigation or other enforcement functions under the law.
- (2) With the consent of the Commissioner, a police officer may help an enforcement officer to perform the enforcement officer's functions under the law.
- (3) The enforcement officer must explain to the police officer the powers that the enforcement officer has under the law, before the police officer helps the enforcement officer.
- (4) If the enforcement officer is not present or will not be present when the help is to be given, the police officer may give the help only if the police officer is satisfied that giving the help in the enforcement officer's absence is reasonably necessary in the particular circumstances.
- (5) While helping an enforcement officer, the police officer has the same powers and protection under the law that the enforcement officer has.
- (6) Subsection (5) is in addition to, and does not limit, the powers and protection that a police officer has under this Act or any other law.

Division 8—Security Services for Republic Buildings

30. Power relating to entry to Republic buildings

- (1) A police officer may require an entrant to a building belonging to the Republic to state the entrant's reason for entering the building.

- (2) If the police officer considers, on reasonable grounds, that it is necessary to do so, the police officer may ask the entrant to do one or more of the following—
 - (a) allow the police officer to inspect the entrant's belongings;
 - (b) remove one or more of the outer garments worn by the entrant, as specified by the police officer, and allow the police officer to inspect the garments;
 - (c) remove all articles from the entrant's clothing and allow the police officer to inspect them;
 - (d) open a vehicle or a part of a vehicle, and allow the police officer to inspect the vehicle;
 - (e) remove an article from the vehicle, as specified by the police officer, and allow the police officer to inspect the article;
 - (f) open an article for inspection, and allow the police officer to inspect the article and any contents.
- (3) The police officer may touch a garment that the entrant is wearing only if the police officer is of the same sex as the entrant.
- (4) The police officer may direct the entrant to leave the building immediately, and to take the entrant's belongings out of the building, if the entrant fails—
 - (a) to state the entrant's reasons for entering the building; or
 - (b) to allow a police officer to exercise a power under subsection (2).
- (5) If the entrant fails to leave the building, the police officer may remove the entrant from the building.

Division 9—Entering Someone Else's Property

31. Purpose of this Division

- (1) The purpose of this Division is to allow a police officer who is performing his or her duties to go onto someone else's property (including private premises, in certain circumstances) when it would otherwise be trespassing.
- (2) 'Private premises' are—
 - (a) premises that are not open to the general public to enter; or
 - (b) that part of premises that is not open to the public to enter.

32. Entering property to investigate a matter

- (1) In order to investigate a matter, a police officer may—
 - (a) go onto someone else's property; and

- (b) stay there as long as is reasonably necessary in the circumstances for the police officer—
 - (i) to ask questions of anyone on the property; and
 - (ii) to make any reasonable observations.
- (2) However, the police officer may enter private premises on the property only if—
 - (a) the occupier of the private premises agrees to allow the police officer to enter the private premises; or
 - (b) a warrant or another authority allows the police officer to enter the private premises.

33. Entering property to serve a document

- (1) In order to serve a document, a police officer may—
 - (a) go onto someone else's property; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer to serve the document.
- (2) However, the police officer may enter private premises on the property only if—
 - (a) the occupier of the private premises agrees to allow the police officer to enter the private premises; or
 - (b) a warrant or another authority allows the police officer to enter the private premises.

34. Entering property to arrest a person

- (1) In order to arrest a person (whether with or without a warrant) a police officer may—
 - (a) go onto someone else's property; and
 - (b) search the property; and
 - (c) stay there as long as is reasonably necessary in the circumstances for the police officer to arrest the person.
- (2) However, the police officer may enter and search private premises on the property only if—
 - (a) the occupier of the private premises agrees to allow the police officer to enter the private premises; or
 - (b) a warrant or another authority allows the police officer to enter the private premises; or
 - (c) the police officer suspects, on reasonable grounds, that the person to be arrested is inside the private premises.

35. Entering property to prevent offence, injury or violence

- (1) This section applies if a police officer suspects, on reasonable grounds, that—
 - (a) an act of violence is occurring, or has occurred before the officer's arrival, at a place; or
 - (b) there is an imminent risk of either of the following happening at a place—
 - (i) an injury to a person;
 - (ii) an offence involving damaging property.
- (2) The police officer may—
 - (a) enter the place; and
 - (b) stay there for as long as is reasonably necessary in the circumstances for the police officer—
 - (i) to establish whether the reason for the entry exists; and
 - (ii) to ensure that, in the officer's opinion, an imminent risk of violence, injury or damage does not exist at the place; and
 - (iii) to give or arrange for reasonable help to any person at the place.
- (3) The police officer may detain anyone at the place for as long as is reasonably necessary to establish whether the reason for the entry exists.
- (4) If the police officer is reasonably satisfied that a reason for the entry exists, the police officer may do any of the following—
 - (a) detain a person for a search, or to prevent acts of violence or damage to property;
 - (b) search anyone detained for anything that may be, or has been used to cause the violence, injury or damage;
 - (c) search the place—
 - (i) for anyone who may be subject to an act of violence or at risk of being injured; and
 - (ii) for anything that may be, or has been, used to cause the violence, injury or damage;
 - (d) seize anything found at the place or on a person at the place that may be, or has been used to cause the violence, injury or damage.
- (5) The police officer must, before searching the place, inform the occupier of the place, if present, that the occupier may accompany the police officer while the place is being searched.
- (6) For this section, a place that is a building includes a vehicle at the place.

36. Entering property on suspicion of death or injury

- (1) This section applies if a police officer suspects, on reasonable grounds, that someone inside private premises is dead or in need of urgent medical treatment.
- (2) Even though the police officer does not have the consent of the occupier of the private premises, the police officer may—
 - (a) use the force that is reasonably necessary to break into the private premises; and
 - (b) enter the private premises to find out whether someone in the private premises is dead or in need of urgent medical treatment; and
 - (c) if someone is found dead or in need of urgent medical treatment, stay there for only as long as is reasonably necessary in the circumstances for the police officer to ensure that anything that needs to be done for the person is done.

37. Entering property on suspicion of fire

- (1) This section applies if a police officer suspects, on reasonable grounds, that there is an unsupervised fire inside private premises.
- (2) Even though the police officer does not have the consent of the occupier of the private premises, the police officer may—
 - (a) use the force that is reasonably necessary to break into the private premises; and
 - (b) enter the private premises to find out whether there is an unsupervised fire inside the private premises; and
 - (c) stay there for only as long as is reasonably necessary in the circumstances for the police officer—
 - (i) to rescue any person or property in the private premises from the fire; and
 - (ii) to put out the fire.

38. Entering licensed premises, etc.

- (1) This section applies to a place—
 - (a) that is connected to a licence issued under a law, including for example—
 - (i) a licence to sell liquor; or
 - (ii) a licence to possess arms; or
 - (iii) a licence to sell explosives; or
 - (b) where a register is required to be kept under a law.

- (2) In order to ensure that the law is being complied with, a police officer may, at any reasonable time—
 - (a) enter the place; and
 - (b) stay there as long as is reasonably necessary in the circumstances for the police officer to investigate whether the law is being complied with.

Division 10—Using Force

39. Using force against individuals

- (1) A police officer who is exercising or attempting to exercise a power under this Act or another law against an individual, and anyone helping the police officer, may use reasonably necessary force to exercise the power.
- (2) A police officer may use reasonably necessary force to prevent a person from escaping from lawful custody.
- (3) The force that a police officer may use under this section does not include force that is likely to cause—
 - (a) grievous harm to a person; or
 - (b) a person's death.

40. Using force against individuals in critical situations

- (1) This section applies if a police officer suspects, on reasonable grounds, that a person—
 - (a) has committed, is committing, or is about to commit an offence that is punishable by life imprisonment; or
 - (b) has committed an offence punishable by life imprisonment, and is attempting to escape arrest or has escaped from arrest or custody.
- (2) This section also applies if—
 - (a) a police officer suspects, on reasonable grounds, that a person is doing, or is about to do, something that is likely to cause grievous harm to, or the death of, another person; and
 - (b) the police officer suspects, on reasonable grounds, that the police officer can not prevent the grievous harm or death other than in the way authorised under this section.
- (3) The police officer may use the force reasonably necessary—
 - (a) to prevent the continuation or repetition of the offence, or the commission of another offence that is punishable by life imprisonment; or
 - (b) to apprehend the person; or

- (c) to prevent the escape of a person from arrest or custody; or
 - (d) to prevent the commission of an act mentioned in subsection (2).
- (4) The force that a police officer may use under this section includes force that is likely to cause—
- (a) grievous harm to a person; or
 - (b) a person's death.
- (5) If the police officer believes, on reasonable grounds, that it is necessary to use force likely to cause grievous harm to a person or a person's death, the police officer must, if practicable, first call on the person to stop doing the act.

41. Using force to exercise certain powers

- (1) This section does not apply to the use of force against an individual.
- (2) A police officer, and anyone helping the police officer, may use reasonably necessary force when exercising or attempting to exercise a power under this Act or another law.

Division 11—Investigating Unnatural Deaths

42. Investigating unnatural deaths

- (1) This section applies if a police officer suspects, on reasonable grounds, that a person's death was brought about, or accelerated, by an unnatural cause.
- (2) Except where the deceased person's body cannot be found, the police officer must—
 - (a) arrange for the deceased person's body to be taken to a hospital; and
 - (b) ask a magistrate to make an order under section 8 of the *Death and Fire Inquiries Ordinance* (Cap.24) directing a medical practitioner to examine the deceased person's body and determine the cause of death.
- (3) The police officer may seize anything at—
 - (a) the place where the deceased person's body was found; or
 - (b) if the body has been destroyed or cannot be found—the place where the death apparently occurred,
 that the police officer suspects, on reasonable grounds, might be relevant to a magistrate's inquiry into the cause of the death.
- (4) The police officer may photograph the deceased person's body, or anything else at the place that the police officer suspects, on reasonable grounds, may be relevant to a magistrate's inquiry into the cause of the death.

- (5) The police officer must prepare a report in the form set out in schedule 1 of the *Death and Fire Inquiries Ordinance*.
- (6) The police officer must give the report to a magistrate for the district in which—
 - (a) the death occurred; or
 - (b) the body was found.

43. Requiring information for inquiry into the cause of an unnatural death

- (1) This section applies if—
 - (a) a police officer is helping a magistrate to inquire into the cause of a death; and
 - (b) the officer believes, on reasonable grounds, that a person may be able to give information that is relevant to the inquiry.
- (2) The police officer may require the person to give information that is relevant to the investigation.
- (3) When making the requirement, the police officer must inform the person that—
 - (a) the person may refuse to give the information, if the information would tend to incriminate the person; and
 - (b) the person may seek legal advice before giving the information.

PART III—SEARCHING FOR AND SEIZING EVIDENCE

Division 1—Searching Without a Warrant

44. Searching persons without a warrant

- (1) This section applies if a police officer suspects, on reasonable grounds, that a person has something that—
 - (a) may be a weapon or explosive that the person may not lawfully possess; or
 - (b) may be an unlawful dangerous drug; or
 - (c) may be stolen property; or
 - (d) may have been used, is being used, is intended to be used, or is primarily designed for use—
 - (i) for housebreaking; or
 - (ii) for unlawfully using or stealing a vehicle; or
 - (iii) for administering a dangerous drug; or

- (e) may have been used, is being used, or is intended to be used, to commit an offence that may threaten—
 - (i) the security or management of a prison; or
 - (ii) the security of a prisoner; or
 - (f) may be something that the person intends to use to cause harm to themselves or someone else.
- (2) The police officer, without a warrant, may—
- (a) stop and detain the person; or
 - (b) search the person and anything in the person's possession for a thing mentioned in subsection (1).
- (3) The police officer may seize all or part of a thing—
- (a) that may provide evidence of the commission of an offence; or
 - (b) that the person intends to use to cause harm to themselves or someone else.

45. Searching vehicles without a warrant

- (1) This section applies if a police officer suspects, on reasonable grounds, that—
- (a) there is something in a vehicle that—
 - (i) may be a weapon or explosive that a person may not lawfully possess; or
 - (ii) may be an unlawful dangerous drug; or
 - (iii) may be stolen property; or
 - (iv) may have been used, is being used, is intended to be used, or is primarily designed for use—
 - (A) for housebreaking; or
 - (B) for unlawfully using or stealing a vehicle; or
 - (C) for administering a dangerous drug; or
 - (v) may have been used, is being used, or is intended to be used, to commit an offence that may threaten—
 - (A) the security or management of a prison; or
 - (B) the security of a prisoner; or
 - (vi) may be something that the person intends to use to cause harm to themselves or someone else; or
 - (b) a vehicle is being used unlawfully; or
 - (c) a person in a vehicle may be arrested with a warrant or without a warrant.

- (2) The police officer, without warrant, may—
 - (a) stop the vehicle; or
 - (b) detain the vehicle and anyone in the vehicle; or
 - (c) search the vehicle, and anything in the vehicle, for a thing mentioned in subsection (1)(a).
- (3) Also, if a person in a vehicle is arrested for an offence involving something that the police officer may search for under section 44, a police officer, without a warrant, may—
 - (a) detain the vehicle and anyone in the vehicle; or
 - (b) search the vehicle, and anything in the vehicle, for a thing mentioned in subsection (1)(a).
- (4) If it is impracticable to search for a thing that may be concealed in a vehicle, at the place where the vehicle is stopped, the police officer may—
 - (a) take the vehicle to a place that has appropriate facilities for searching the vehicle; and
 - (b) search the vehicle at that place.
- (5) The police officer may seize all or part of a thing—
 - (a) that may provide evidence of the commission of an offence; or
 - (b) that the person intends to use to cause harm to themselves or someone else.
- (6) Power under this section to search a vehicle includes power to enter the vehicle, stay in the vehicle, and re-enter the vehicle as many times as is necessary to remove something seized under subsection (5) from the vehicle.

46. Searching public places without a warrant

A police officer, or a person acting under the direction of the police officer, may do any of the following things in a public place without a search warrant—

- (a) enter a public place and stay on the public place for the time that is reasonably necessary to do the things mentioned in paragraphs (b) to (e);
- (b) search a public place for anything that may be evidence of the commission of an offence;
- (c) seize a thing found at a public place, which is not in a person's possession, that a police officer suspects, on reasonable grounds, may be evidence of the commission of an offence;
- (d) dig up land at a public place;

- (e) photograph anything at a public place that the police officer suspects, on reasonable grounds, may provide evidence of the commission of an offence.

Division 2—Searching With a Warrant

Sub-division 1—Warrant powers

47. What are the warrant powers

- (1) In this Division, the powers that may be exercised under a warrant (the ‘warrant powers’) are powers—
 - (a) to enter the place stated in the warrant, and to stay on the place for the time that is reasonably necessary to exercise the powers authorised by this section; and
 - (b) to pass over, through, along or under another place to enter the place to which the warrant relates; and
 - (c) to prevent a person from entering the place; and
 - (d) to detain anyone at the place for the time that is reasonably necessary to find out if the person has the evidence sought under the warrant; and
 - (e) if the police officer suspects, on reasonable grounds, that a person on the place has been involved in the commission of the offence to which the warrant relates—to detain the person for the time taken to search the place; and
 - (f) to direct a person to leave the place, or to remove a vehicle or animal from the place; and
 - (g) to remove from the place—
 - (i) a person who fails to comply with a direction to leave the place; or
 - (ii) a vehicle or animal that a person fails to remove from the place; and
 - (h) to search—
 - (i) the place and anything in the place; or
 - (ii) any person in the place for the evidence that is sought under the warrant and that can be concealed on the person; and
 - (i) to open anything in the place that is locked; and
 - (j) to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for the evidence sought under the warrant; and
 - (k) to dig up land to search for the evidence sought under the warrant; and

- (l) to photograph anything that the police officer suspects, on reasonable grounds, may provide the evidence sought under the warrant, even if the thing is not seized under the warrant; and
- (m) to seize anything found in the place, or on a person at the place, that the police officer suspects, on reasonable grounds, may provide the evidence sought under the warrant; and
- (n) to take electricity for use at the place; and
- (o) to direct the occupier of the place or a person apparently in charge of the place to maintain a continuous supply of electricity at the place; and
- (p) to direct a person at the place who has access to documents that are stored on a computer in the place—
 - (i) to give a police officer any password that the police officer needs to be able to access information on the computer; and
 - (ii) to give a police officer access to the computer—
 - (A) to examine the information on the computer to find out whether it may be evidence of the commission of an offence; or
 - (B) to make a copy of any information that may be evidence of the commission of an offence.

(2) In this section—

‘computer’ includes any device on which information may be stored electronically;

‘password’ means any information that a person needs to use to be able to access and read information stored on a computer.

Sub-division 2—Search warrants

48. Applying for a search warrant

- (1) A police officer may apply for a warrant to enter and search a place in order to obtain evidence of the commission of an offence.
- (2) The application must be made to a magistrate.
- (3) The application must be sworn, and state—
 - (a) the applicant’s name, rank and station; and
 - (b) a description of the place to be searched; and
 - (c) if the place is an occupied place—the name of the occupier of the place, if known; and
 - (d) the offence to which the application relates; and

- (e) a description of the nature of the thing sought that is suspected of being evidence of the commission of the offence; and
 - (f) the information or evidence that is being relied on to support a suspicion that evidence of the commission of an offence—
 - (i) is at the place; or
 - (ii) is likely to be taken to the place within the next 72 hours; and
 - (g) for each search warrant issued in the previous year in relation to the place, or to a person suspected of being involved in the commission of the offence to which the application relates—
 - (i) when and where the warrant was issued; and
 - (ii) the type of offence to which the warrant related; and
 - (iii) whether anything was seized under the warrant or whether a proceeding was started after the search; and
 - (h) if authority to execute the warrant at night is being sought, why it is necessary to execute the warrant at night.
- (4) The magistrate may refuse to consider the application until the police officer gives all the information that the magistrate requires about the application, in the way that the magistrate requires.
- (5) The magistrate may issue the warrant only if satisfied that there are reasonable grounds for suspecting that evidence of the commission of an offence—
- (a) is at the place; or
 - (b) is likely to be taken to the place within the next 72 hours.

49. What the search warrant must state

The warrant must state—

- (a) a description of the place that may be entered; and
- (b) brief particulars of the offence to which the warrant relates; and
- (c) what evidence may be seized under the warrant; and
- (d) the hours of the day or night when the place may be entered; and
- (e) the date and time when the warrant ends; and
- (f) that a police officer may exercise the warrant powers defined in section 47 in accordance with the warrant.

50. Copy of the search warrant must be given to the occupier

- (1) If a police officer executes the warrant when the place is occupied, the police officer must give the occupier—
 - (a) a copy of the warrant; or

- (b) a notice that states—
 - (i) the type of powers that a police officer may exercise under the warrant; and
 - (ii) that the most senior police officer who is present during the search must, as soon as reasonably practicable, state the police officer's name, rank and station; and
 - (iii) that the occupier may ask any other police officer who is present during the search for his or her name, rank and station.
- (2) If the occupier is not at the place when the police officer executes the warrant, the police officer must leave a copy of the warrant in a conspicuous position at the place.

51. When the search warrant ends

The warrant ends—

- (a) if the warrant is issued because there are reasonable grounds for suspecting that there is evidence of the commission of an offence at a place –seven days after the warrant is issued; or
- (b) if the warrant is issued because there are reasonable grounds for suspecting that evidence of the commission of an offence is likely to be taken to a place within the next 72 hours—72 hours after the warrant is issued.

Sub-division 3—Loss of evidence warrant

52. Search to prevent loss of evidence

- (1) This section applies if a police officer suspects, on reasonable grounds, that—
 - (a) a thing at or about a place, or in the possession of a person at or about a place, is evidence of the commission of a felony; and
 - (b) the evidence may be concealed or destroyed unless the place is immediately entered and searched.
- (2) A police officer may enter the place and exercise the warrant powers defined in section 47.
- (3) However, as soon as reasonably practicable after exercising the powers, the police officer must apply in writing to a magistrate for a warrant approving the search.
- (4) The application must be sworn, and state—
 - (a) the applicant's name, rank and station; and

- (b) the information or evidence that was relied on, before the search, to support a reasonable suspicion that evidence of the commission of a felony—
 - (i) was at or about the place, or in the possession of a person at or about the place; and
 - (ii) would have been concealed or destroyed unless the place was immediately entered and searched; and
 - (c) the type of felony in relation to which the search was conducted; and
 - (d) the nature of the thing that was reasonably suspected of being evidence of the commission of the felony; and
 - (e) the time, date and place of the search; and
 - (f) a description of any thing seized because of the search; and
 - (g) if known, the name, age and address of each person detained or searched; and
 - (h) information about any proceeding started against a person, before or because of the search, for a felony in relation to which the search was conducted.
- (5) The applicant need not appear before the magistrate when the magistrate is considering the application, unless the magistrate requires it.
- (6) The magistrate may refuse to consider the application until the police officer gives all the information that the magistrate requires about the application, in the way that the magistrate requires.
- (7) The magistrate may issue the warrant only if satisfied that—
- (a) in the circumstances existing before the police officer exercised powers—
 - (i) the police officer had a reasonable suspicion for exercising the powers; and
 - (ii) there was a reasonable likelihood that the evidence would be concealed or destroyed; or
 - (b) having regard to the nature of the evidence found during the search, it is in the public interest to issue the warrant.
- (8) If the magistrate refuses to issue the warrant, the magistrate must order the return or disposal of any thing that was seized because of the search.

53. Appeal against refusal to issue a loss of evidence warrant

- (1) This section applies if a police officer considers the Commissioner should appeal against a decision of a magistrate to order the return or disposal of a thing that was seized because of a search to prevent loss of evidence.

- (2) The police officer must give the Commissioner a report that explains the reasons for appealing the order.
- (3) The report must be accompanied by—
 - (a) a copy of the application for the order authorising the search; and
 - (b) a copy of any transcript of the proceedings; and
 - (c) an affidavit identifying any relevant document, and stating anything else relevant to the appeal.
- (4) The Commissioner may appeal against the order to the High Court within 28 days after the magistrate made the order.
- (5) If the Commissioner appeals, the Commissioner must retain the thing that was seized until the appeal is decided.

Sub-division 4—Crime scenes

54. Gaining access to a crime scene

- (1) This section applies if a police officer suspects, on reasonable grounds, that—
 - (a) a place is a crime scene; and
 - (b) it is necessary to protect the place for the time that is reasonably necessary to search for and gather evidence of the commission of an offence.
- (2) A ‘crime scene’ is a place where—
 - (a) a felony has happened; or
 - (b) there may be evidence, of significant probative value, of the commission of a felony that happened somewhere else.
- (3) The police officer may—
 - (a) enter a place to reach the suspected crime scene; and
 - (b) enter the suspected crime scene; and
 - (c) stay on the suspected crime scene for the time reasonably necessary to decide whether to establish a crime scene.
- (4) What is a reasonable time for subsection (3)(c) will depend on the particular circumstances including—
 - (a) the nature of any information obtained, or any observation made, that suggests the place is a crime scene; and
 - (b) visible evidence that will help decide whether the place is a crime scene; and
 - (c) any preliminary inspection of the place.

- (5) If the police officer decides to establish a crime scene, the police officer may stay on the suspected crime scene for the time reasonably necessary to get the approval of a senior officer for searching for and gathering evidence of the commission of an offence at the crime scene.
- (6) If the senior officer gives approval, a police officer may exercise the warrant powers defined in section 47, in relation to the crime scene.

55. Identifying a crime scene

- (1) This section applies if a police officer—
 - (a) enters a place that is a suspected crime scene, or is lawfully at a place; and
 - (b) decides the place is a crime scene.
- (2) The police officer may establish a crime scene by—
 - (a) identifying what is the crime scene; and
 - (b) deciding the boundaries necessary to protect the crime scene; and
 - (c) marking the boundaries of the crime scene in a way that gives anyone else wanting to enter the place enough notice that the place is a crime scene.

56. Preserving evidence at a crime scene

- (1) The most senior police officer at the crime scene must immediately take the steps that he or she considers reasonably necessary to protect anything at the crime scene from being damaged, interfered with or destroyed, including for example the steps necessary—
 - (a) to ensure people, including police officers, whose presence at the crime scene is not essential do not enter the crime scene; and
 - (b) to prevent unnecessary movement inside the boundaries of the crime scene; and
 - (c) to establish a safe walking area in the crime scene for reducing the risk of damage to any evidence that may be at the crime scene.
- (2) The most senior police officer at the crime scene must ensure that a person does not enter a crime scene unless—
 - (a) the person has a special reason, associated with the investigation, for entering the crime scene, including for example—
 - (i) a police officer removing someone from the crime scene who should not be there; and
 - (ii) a police officer investigating the offence; and
 - (iii) a person who is accompanying a police officer to assist in the investigation or who has special knowledge of the place that is relevant to the investigation; or

- (b) the presence of the person is necessary to preserve life or property at a crime scene; or
 - (c) the person is authorised to enter by the most senior police officer.
- (3) For subsection (2)(c), the responsible officer may authorise the entry subject to stated requirements.
- (4) The most senior police officer at the crime scene must ensure that nothing at the crime scene is unnecessarily touched or moved—
- (a) until all necessary forensic and technical examinations are finished; or
 - (b) unless there is a possibility that evidence could be damaged, interfered with or destroyed (by rain, for example) if it is not moved.
- (5) The most senior police officer at the crime scene must ensure that a record is made of—
- (a) the name of each person who—
 - (i) is present when the crime scene is established; or
 - (ii) enters the crime scene after it is established; and
 - (b) when each person enters the crime scene after it is established; and
 - (c) the purpose of the entry.

Division 3—General Provisions About Searches of Persons and Vehicles

57. General provision about searches of persons

- (1) A police officer searching a person must—
- (a) ensure, as far as reasonably practicable, that the way in which the person is searched causes minimal embarrassment to the person; and
 - (b) take reasonable care to protect the dignity of the person; and
 - (c) unless an immediate and more thorough search of a person is necessary, restrict a search of the person in public to an examination of outer clothing; and
 - (d) if a more thorough search of a person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view.
- (2) Unless an immediate search is necessary, the person conducting the search must be either—
- (a) a police officer of the same sex as the person to be searched; or
 - (b) if there is no police officer of the same sex available to search the person—someone acting at the direction of a police officer and of the same sex as the person to be searched; or
 - (c) a doctor acting at the direction of a police officer.

58. Taking a person to another place for search

- (1) If it is impracticable to search for a thing that may be concealed on a person at the place where the person is, the police officer may take the person to another place that has adequate facilities for conducting the search.
- (2) However, before taking a person to another place for the search, the police officer must consider the following—
 - (a) whether the thing sought may be concealed on the person;
 - (b) whether, for an effective search, the search should be conducted at another place;
 - (c) the need to protect the dignity of the person.

59. Removing clothing for search

- (1) A police officer who is conducting a lawful search of a person under this Act may require a person to remove all items of clothing, or all items of outer clothing, from either the upper or the lower part of the body.
- (2) If reasonably practicable—
 - (a) the police officer must, before conducting the search—
 - (i) tell the person that they will be required to remove clothing during the search; and
 - (ii) tell the person why it is necessary to remove the clothing; and
 - (iii) ask for the person's co-operation; and
 - (b) the person must be given the opportunity to remain partly clothed during the search.
- (3) The search must be conducted in a way that provides reasonable privacy for the person, for example by ensuring that, as far as reasonably practicable, the person cannot be seen by—
 - (a) anyone of the opposite sex; or
 - (b) anyone who does not need to be present.
- (4) Also, the search must be conducted as quickly as reasonably practicable, and the person searched must be allowed to dress as soon as the search is finished.
- (5) The police officer who is conducting the search must not make physical contact with the genital or anal areas of the person searched, but may require the person—
 - (a) to hold his or her arms in the air; or
 - (b) to stand with legs apart and bend forward to enable a visual examination to be made.

- (6) If the police officer seizes clothing because of the search, the police officer must ensure that the person is left with or given reasonably appropriate clothing.

60. General provision about searches of vehicles

- (1) This section deals with the searching of vehicles under this Act.
- (2) Before deciding to take a vehicle to a place with appropriate facilities for searching the vehicle, a police officer must consider whether searching the vehicle somewhere else would be more effective because of the nature and size of a thing sought that may be concealed in the vehicle.
- (3) If a police officer decides to take a vehicle to a place with appropriate facilities for searching it, the police officer must, if the person apparently in possession of the vehicle is known and present—
 - (a) tell the person where the vehicle is to be taken; and
 - (b) ask the person if they want to be present during the search.
- (4) If a police officer searches an unattended vehicle or anything in it, the police officer must leave a notice in a conspicuous place in or on the vehicle that states—
 - (a) that the vehicle or a stated thing in or on it has been searched; and
 - (b) the police officer's name, rank and station.
- (5) After searching an unattended vehicle or anything in it, the police officer must ensure, as far as reasonably practicable, that the vehicle is left secured at least to the same extent as it was before the search.

61. Limit on period of detention for search

A police officer who detains a person or vehicle for a search must not detain the person or vehicle for any longer than is reasonably necessary for the search.

62. Dealing with persons who obstruct a search

- (1) If a person obstructs a police officer who is conducting a lawful search of the person, someone else or a vehicle, a police officer must, if reasonably practicable—
 - (a) warn the person that it is an offence to obstruct a police officer in the performance of the police officer's duties; and
 - (b) give the person a reasonable opportunity to stop obstructing the search.
- (2) It may not be reasonably practicable for a police officer to comply with subsection (1) if, for example—
 - (a) there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer; or

- (b) there is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence; or
- (c) an immediate search is necessary to protect the safety of any person.

Division 4—Seizing Things

Sub-division 1—Seizing things

63. Seizing evidence generally

- (1) This section applies if a police officer—
 - (a) lawfully enters a place or is at a public place; and
 - (b) finds at the place a thing that the police officer suspects, on reasonable grounds, is—
 - (i) evidence of the commission of an offence; or
 - (ii) a thing that poses a risk of serious harm or death to a person.
- (2) The police officer may seize the thing—
 - (a) whether or not as evidence under a warrant; and
 - (b) if the police officer is acting under a warrant, whether or not the offence is one for which the warrant is issued.
- (3) Having seized a thing, the police officer may—
 - (a) move the seized thing from the place; or
 - (b) leave the seized thing at the place, but take reasonable steps to restrict access to it, including for example by—
 - (i) sealing the seized thing, and marking the seized thing to show that access to the seized thing is restricted; or
 - (ii) sealing the entrance to a room where the seized thing is situated, and marking the seized thing to show that access to the seized thing is restricted.
- (4) If the police officer restricts access to the seized thing, a person commits an offence if the person tampers, or attempts to tamper, with the seized thing, or something restricting access to the seized thing, without the approval of a police officer.
- (5) The maximum penalty for an offence under this section is a fine of \$2000.
- (6) The police officer may photograph the seized thing or the place from which the thing was seized.
- (7) The police officer may stay on the place and re-enter the place for the time that is reasonably necessary to remove the seized thing from the place.

64. Examining seized things

- (1) To remove doubt, it is declared that a power to seize a thing under this Act includes—
 - (a) power to examine the seized thing; and
 - (b) power to arrange for someone else to examine the seized thing.
- (2) The power to examine a thing seized includes a power to do something that is reasonably necessary for, or as part of, a scientific or other investigative procedure involving the seized thing, even though doing the thing may damage or destroy the seized thing, including for example—
 - (a) performing an analysis involving the seized thing; or
 - (b) making an appraisal of the seized thing; or
 - (c) inspecting the seized thing; or
 - (d) perusing the seized thing; or
 - (e) scanning the seized thing; or
 - (f) sifting the seized thing.

65. Receipt for seized things

- (1) If a police officer seizes a thing under this Act or a warrant, the police officer must, as soon as is reasonably practicable after seizing the thing—
 - (a) if the person from whom the thing is seized is present—give or cause to be given to the person a receipt for the seized thing; or
 - (b) if the occupier of the premises is not present—leave a receipt for the seized thing in a conspicuous place on the premises.
- (2) The receipt must include the following information—
 - (a) a description of the seized thing;
 - (b) the date and time that the thing was seized;
 - (c) if taken from a person—the name, address and phone number of the person, if known;
 - (d) if taken from an occupied place—the name, address and phone number of the occupier of the place, if known;
 - (e) the name, rank, station and phone number of the police officer who seized the thing;
 - (f) where the seized thing will be taken to;
 - (g) the date that the receipt is issued.
- (3) The receipt may be for a single thing or for all things seized from the person or the place.

- (4) This section does not apply if the police officer believes, on reasonable grounds, that—
- (a) there is no-one apparently in possession of the seized thing; or
 - (b) the seized thing has been abandoned; or
 - (c) the seized thing has no value other than as evidence of the commission of an offence (including blood, saliva, semen, hair, impressions, paint, glass, fibres, fire debris or trace evidence, for example).

Sub-division 2—Duties regarding seized things in possession of the police service

66. Application of this Sub-division

- (1) This Sub-division applies to a thing that is lawfully in the possession of the police service because it was seized by a police officer, whether before or after the commencement of this section.
- (2) However, this Sub-division does not apply to a vehicle that is impounded under section 27.

67. Purpose of this Sub-division

The purpose of this Sub-division is to ensure, as far as practicable, that a seized thing—

- (a) is retained by the police service only for as long as is reasonably necessary in the circumstances; and
- (b) is handled in an efficient, safe and accountable way.

68. Duties of police officer taking possession of seized things

- (1) A police officer who seizes a thing must ensure that the seized thing is given to the officer in charge of the police station where the police officer is stationed, as soon as reasonably practicable, unless—
 - (a) the seized thing is earlier returned or disposed of under this Sub-division; or
 - (b) it is necessary to keep the seized thing for use during questioning or for an investigative procedure involving the seized thing.
- (2) If the police officer keeps a seized thing under subsection (1)(b), the police officer must deliver the seized thing to the officer in charge of the police station where the police officer is stationed, as soon as reasonably practicable after the reason for keeping the seized thing ends.
- (3) Until the seized thing is delivered to the officer in charge, the police officer is responsible for the safekeeping of the seized thing.

- (4) The Commissioner must—
 - (a) ensure that reasonable inquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of a seized thing; and
 - (b) facilitate the lawful disposal or return of a seized thing to its owner or the person who had lawful possession of it before it came into the possession of the police service.
- (5) What are reasonable inquiries and efforts must be decided having regard to the nature, condition and value of the seized thing.
- (6) Subsection (4) does not apply to a seized thing if the Commissioner is satisfied it is inappropriate to return the seized thing to its owner or the person who had possession of it before the seized thing came into the possession of the police service (because it is not lawful for the person to have possession of the seized thing, for example).

69. Right to inspect seized documents

- (1) Unless a magistrate otherwise orders, a police officer who seizes a document must allow a person who would be entitled to the document—
 - (a) to inspect the document at any reasonable time, and from time to time; and
 - (b) to take extracts from or make copies of the document.
- (2) However, the police officer may refuse to comply with subsection (1) if the officer suspects, on reasonable grounds, that it would enable the person to repeat or continue an offence, or to commit another offence.

Sub-division 3—Return or forfeiture of seized things

70. Returning seized things

- (1) Unless a magistrate orders otherwise, a police officer must return a seized thing to its owner, or the person who had lawful possession of the seized thing before it came into the possession of the police service, if the police officer is satisfied—
 - (a) the seized thing is not required to be retained; and
 - (b) it is lawful for the person to have possession of the seized thing.
- (2) If the seized thing is evidence of the commission of an offence and the police officer considers it appropriate, the police officer must take the steps that are reasonably necessary to minimise the need to retain the seized thing as evidence by, as soon as reasonably practicable—
 - (a) arranging for the seized thing to be photographed; or
 - (b) arranging for any necessary test or examination of the seized thing;
or

- (c) gathering any other available secondary evidence in relation to the seized thing.
- (3) Despite subsection (1), the police officer may retain the seized thing for a reasonable time after the thing is seized if the police officer considers, on reasonable grounds, that retaining the seized thing is necessary—
 - (a) to prevent a person using the seized thing to cause harm to themselves or someone else; or
 - (b) to prevent an offence happening.

71. Magistrate's order for return or forfeiture of seized things

A magistrate may order—

- (a) the return of a seized thing; or
- (b) the forfeiture of a seized thing to the Republic.

72. Commissioner's order for forfeiture of seized things

- (1) The Commissioner may order the forfeiture of a seized thing to the Republic if—
 - (a) the Commissioner is satisfied that—
 - (i) it is necessary to retain the seized thing to prevent it being used in the commission of an offence; or
 - (ii) possession of the seized thing is an offence because the possession is not authorised, justified or excused by law; or
 - (b) the Commissioner is satisfied that—
 - (i) the owner of the seized thing can not be found after reasonable inquiries; or
 - (ii) having regard to the nature, condition and value of the seized thing, it is not reasonable to make inquiries about its owner; or
 - (c) the Commissioner is unable, after making reasonable efforts, to return the seized thing to its owner.
- (2) If the owner of the seized thing is known and can be found, the Commissioner must, at least 30 days before making an order for forfeiture, give the owner a written notice that describes the seized thing and states—
 - (a) the reason under subsection (1) why the Commissioner believes the seized thing may be forfeited to the Republic; and
 - (b) that an application may be made to a magistrate under section 71 for an order for the return of the seized thing; and
 - (c) that, if an application is not made to a magistrate within 28 days after the notice is given, the Commissioner may order that the seized thing be forfeited to the Republic.

- (3) If the owner of the seized thing is not known, the notice may be given—
 - (a) by advertisement in a newspaper circulating generally throughout the Republic; or
 - (b) by advertisement on a radio station that transmits in the place where the thing was seized; or
 - (c) on the police service website.
- (4) However, subsections (2) and (3) do not apply if the cost of giving the notice is more than the value of the seized thing.

73. Dealing with forfeited things

- (1) If a magistrate or the Commissioner orders the forfeiture of a seized thing to the Republic, the seized thing becomes the property of the Republic.
- (2) The Commissioner may deal with a forfeited thing in any way that does not cause an actual, or apparent, conflict of interest in the Commissioner.
- (3) Without limiting subsection (2), the Commissioner may—
 - (a) donate a forfeited thing to the police service or another government body; or
 - (b) destroy a forfeited thing.
- (4) If a forfeited thing is sold, it must be sold by auction and the proceeds of the sale are to be paid—
 - (a) first, in meeting the expenses of the sale; and
 - (b) second, in meeting the expenses of the seizure and storage of the forfeited thing, and doing anything necessary to prepare the forfeited thing for sale; and
 - (c) third, to the Consolidated Fund.

PART IV—ARREST AND CUSTODY POWERS

Division 1—Arrest Without a Warrant

74. Arrest without warrant

- (1) A police officer, without a warrant, may arrest an adult who the police officer suspects, on reasonable grounds, has committed or is committing an offence, if it is reasonably necessary for one or more of the following reasons—
 - (a) to prevent the continuation or repetition of an offence, or the commission of another offence;
 - (b) to make inquiries to establish the person's identity;

- (c) to ensure the person's appearance before a court;
 - (d) to obtain or preserve evidence relating to the offence;
 - (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
 - (f) to prevent the fabrication of evidence;
 - (g) to preserve the safety or welfare of any person, including the person arrested;
 - (h) to prevent a person fleeing from a police officer or the location of an offence;
 - (i) because the offence is an offence against section 140 or 141;
 - (j) because of the nature and seriousness of the offence.
- (2) Also, a police officer, without a warrant, may arrest a person who the police officer suspects, on reasonable grounds, has committed or is committing a felony in order to—
- (a) question the person about the offence; or
 - (b) investigate the offence.
- (3) A police officer, without a warrant, may arrest a child if the police officer suspects, on reasonable grounds, that the child is committing or has committed an offence.

75. Arrest of person in relation to bail

- (1) This section applies if a person has been granted bail for an offence, whether or not the person was arrested for the offence.
- (2) A police officer, without a warrant, may arrest the person if the police officer suspects, on reasonable grounds, that—
- (a) the person has left the precincts of the court that granted bail without fulfilling all the conditions that the person must comply with before leaving the precincts of the court; or
 - (b) the police officer suspects, on reasonable grounds, that the person is likely to contravene, is contravening, or has contravened, another condition on which the person was granted bail; or
 - (c) the police officer suspects, on reasonable grounds, that the person is likely to fail to appear before a court to answer a charge against the person for the offence; or
 - (d) the police officer suspects, on reasonable grounds, that the person is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been released on bail; or

- (e) the police officer suspects, on reasonable grounds, that—
 - (i) a surety for the person's appearance is dead; or
 - (ii) for any reason, the security for the person's appearance is no longer adequate; or
 - (f) a surety has given to a police officer written notice stating that the surety wishes to be relieved of the obligation of being a surety for the person because the surety believes that the person is likely to contravene the condition for the person's appearance before a court.
- (3) However, before arresting a child under subsection (2), a police officer must consider whether, in all the circumstances, it would be more appropriate for an application to be made for a variation or revocation of the child's bail.

76. Arrest of person in relation to notice to appear or summons

- (1) This section applies to a person who has been given a notice to appear, or a summons for an offence, whether or not the person has been arrested for the offence.
- (2) A police officer, without a warrant, may arrest the person if the police officer suspects, on reasonable grounds, that the person—
 - (a) is likely to fail to appear before a court to answer a charge against the person for the offence; or
 - (b) is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been given a notice to appear or summons.
- (3) This section does not apply to a child.

77. Arrest of escapees

A police officer, without a warrant, may arrest a person who the police officer suspects, on reasonable grounds, is escaping or has escaped from lawful custody.

Division 2—Arrest With a Warrant

78. Arrest with a warrant

- (1) A police officer acting under a warrant issued under any law may arrest the person who is named in the warrant.
- (2) 'Arrest' includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

79. Arrest warrant application

- (1) A police officer may apply to a magistrate for a warrant to arrest a person for an offence (an 'arrest warrant').

- (2) The police officer may apply for the warrant whether or not a proceeding has been started against the person by notice to appear or summons.
- (3) The application must be sworn, and state the grounds on which the warrant is sought.
- (4) If the application—
 - (a) relates to an offence other than a felony; and
 - (b) is made because the applicant believes, on reasonable grounds, that proceeding or continuing to proceed against the person named in the application by notice to appear or summons would be ineffective, the application must state the belief and the reasons for the belief.
- (5) The magistrate may refuse to consider the application until the police officer gives the magistrate all the information that the magistrate requires about the application, in the way that the magistrate requires.
- (6) The magistrate may issue an arrest warrant only if satisfied there are reasonable grounds for suspecting—
 - (a) that the person has committed the offence; and
 - (b) for an offence other than a felony—that proceedings by way of a notice to appear or summons would be ineffective (including because the person can not currently be located or served with a notice to appear or summons for the offence, for example).

80. What arrest warrant must state

- (1) The arrest warrant must state—
 - (a) the applicant's name, rank and station; and
 - (b) that any police officer may arrest the person named in the warrant; and
 - (c) the offence that the person is alleged to have committed.
- (2) It is sufficient to describe the offence in the words of the law defining it, or in similar words.
- (3) A description of persons or things that would be sufficient in an indictment is sufficient in an arrest warrant.

81. Compliance with limitation of proceedings

For a provision of a law that imposes a limitation of proceedings for the offence by reference to when a complaint was made for the offence, or to when proceedings for the offence are started, a complaint is taken to be made, and the proceedings started, when the warrant is issued.

Division 3—Discontinuing an Arrest

82. Effect of release under this Division

If an arrested person is released under this Division—

- (a) any charge of an offence for which the arrested person is released is discontinued; and
- (b) any proceeding against the person for the offence is discontinued, even though the person may have been charged with having committed the offence.

83. When an arrest may be discontinued—general rule

- (1) It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if—
 - (a) the person is no longer suspected, on reasonable grounds, of committing the offence for which the person was arrested; or
 - (b) the police officer considers there is not enough evidence to bring the person before a court on a charge of the offence.
- (2) However, subsection (1) does not apply if the person—
 - (a) is suspected, on reasonable grounds, of committing another offence, whether or not the other offence arises out of the circumstances of the offence for which the person was arrested; or
 - (b) may be detained for another reason (including because of a breach of a bail condition, for example); or
 - (c) is in custody for another offence.

84. When arrest of adult may be discontinued

- (1) This section applies to an arrested person who is an adult.
- (2) It is the duty of a police officer to release the person at the earliest reasonable opportunity if—
 - (a) the reason for arresting the person no longer exists, or is unlikely to happen again if the person is released; and
 - (b) it is more appropriate to take the person before a court by a notice to appear or summons, and the notice to appear or summons has been served on the person.
- (3) However, subsection (2) does not apply to an adult who is arrested—
 - (a) in order to prevent the person fleeing from a police officer or the location of an offence; or
 - (b) if, because of the nature or seriousness of an offence for which the person is a suspect, it is inappropriate to release the person.

- (4) Also, a police officer must release the person at the earliest reasonable opportunity if—
- (a) the police officer considers, on reasonable grounds, that it is more appropriate for the arrested person to be dealt with other than by charging the person with an offence; and
 - (b) the person and any victim of the offence agree to the person being dealt with in that way.

85. When arrest of child may be discontinued

- (1) This section applies to an arrested person who is a child.
- (2) It is the duty of a police officer to release the child at the earliest reasonable opportunity if—
- (a) the reason for arresting the child no longer exists, or is unlikely to happen again if the child is released; and
 - (b) after considering—
 - (i) the circumstances of the alleged offence; and
 - (ii) the child's previous history known to the police officer,it is more appropriate to deal with the child in a way provided by subsection (3).
- (3) For subsection (2), the police officer may decide it is more appropriate—
- (a) to take no action; or
 - (b) to administer a caution to the child; or
 - (c) to take the child before a court by notice to appear or summons.
- (4) Subsection (2) does not apply to a child who is arrested if, because of the nature or seriousness of an offence for which the child is a suspect, it is inappropriate to release the child.
- (5) Also, subsection (2) does not apply to the arrest of a child by a police officer while the police officer believes, on reasonable grounds, that the child is an adult.
- (6) In deciding whether the police officer had a reasonable belief, a court may have regard to the child's apparent age and the circumstances of the arrest.

86. When arrest for being drunk in a public place may be discontinued

- (1) This section applies if—
- (a) a person is arrested for being drunk in a public place; and
 - (b) a police officer is satisfied that it is more appropriate for the person to be taken to a place, other than a police station, that the police officer considers is a place where the person can receive the

treatment or care that is necessary to enable the person to recover safely from the effects of being drunk (a 'place of safety').

- (2) For example—
 - (a) a hospital may be a place of safety for a person who needs medical attention; and
 - (b) a person's home, or the home of a relative or friend, may be a place of safety for a person who is drunk, if there is no likelihood of violence happening at the place.
- (3) It is the duty of the police officer, at the earliest reasonable opportunity—
 - (a) to take the person to the place of safety; and
 - (b) to release the person at the place of safety.
- (4) However, subsection (3) does not apply if the police officer is satisfied that—
 - (a) a person at the place of safety is unable to provide care for the person; or
 - (b) the person's behaviour may pose a risk of harm to another person at the place of safety.
- (5) A person taken to a place of safety cannot be made to stay there.

Division 4—Alternative to Arrest

87. Purpose of this Division

- (1) The purpose of this Division is to provide an alternative way for a police officer to start or continue a proceeding against a person for an offence that—
 - (a) reduces the need for the custody that is associated with arrest; and
 - (b) does not involve the delay associated with issuing a summons.
- (2) Instead of arresting the person, or issuing a summons on the person, a police officer may give the person a notice to appear before a magistrates' court in relation to the offence (a 'notice to appear').
- (3) To remove any doubt, it is declared that—
 - (a) a requirement in a notice to appear that a person appear before a court in relation to the offence, at a stated time and place, is not a requirement to which section 141 applies; and
 - (b) the *Criminal Procedure Code* (Cap.17) and any other law applies to a notice to appear in the same way as it applies to a summons, subject to the differences mentioned in this Division.

88. Notice to appear

- (1) If a police officer suspects, on reasonable grounds, that a person has committed or is committing an offence, the police officer may give the person a notice to appear.
- (2) The notice to appear must—
 - (a) state the substance of the offence alleged to have been committed; and
 - (b) state the name of the person alleged to have committed the offence; and
 - (c) state whether the person was, at the time of the alleged offence, an adult or a child; and
 - (d) require the person to appear before a magistrates' court in relation to the offence at a stated time and place; and
 - (e) be signed by the police officer serving the notice to appear.
- (3) The place stated in a notice to appear must be a place where the magistrates' court will be sitting at the time stated.
- (4) The time stated in a notice to appear must be a time—
 - (a) for an adult—at least 14 days or, with the person's written agreement, a stated shorter time, after the notice is served; or
 - (b) for a child—at a time fixed by the clerk of a magistrates' court, as soon as practicable after the notice to appear is served.
- (5) In the notice to appear, the statement of the substance of the offence alleged to have been committed need only provide general particulars of the offence, for example—
 - (a) the type of offence; and
 - (b) when and where the offence is alleged to have been committed.
- (6) If two or more matters are joined in one notice to appear—
 - (a) each matter need not be set out in a separate paragraph; and
 - (b) objection can not be taken to the notice to appear because each matter is not set out in a separate paragraph.
- (7) Subsection (5) does not affect the duty of the prosecution to provide proper particulars of an offence in the course of prosecution.
- (8) When a person on whom a notice to appear has been served appears before a court in response to the notice, the court must ensure that the person—
 - (a) is provided promptly with proper particulars of the offence; and
 - (b) is granted any adjournment of the proceeding necessary to consider the proper particulars of the offence.

89. Notice to appear must be served personally on the person

- (1) A notice to appear must be personally served on a person.
- (2) A notice to appear must be served on a child—
 - (a) as discreetly as practicable; and
 - (b) not at or near the child's school or place of employment, unless there is no other place where service may be reasonably made.

90. After being served, notice to appear must be filed with the court

- (1) As soon as reasonably practicable after serving a notice to appear on a person, and before the time when the person is required to appear at a court under the notice, the notice must be filed with the clerk of the court.
- (2) A person must not be ordered to pay filing costs in the proceeding for the offence.

91. Failing to appear as required by a notice to appear

- (1) If a person fails to appear before a court as required by a notice to appear served on the person, the court may—
 - (a) order that a warrant be issued for the arrest of the person to be brought before the court to be dealt with according to law; or
 - (b) hear and decide the matter in the absence of the person.
- (2) However, if a person fails to appear and the court is not satisfied that the person was served as required under this Act, the court must strike out the notice to appear.
- (3) The striking out of a notice to appear does not prevent another proceeding being started for the offence for which the notice to appear was purportedly served.
- (4) If the person appears voluntarily before a court after the warrant is issued, any magistrate may revoke the warrant.
- (5) A court may delay the issue or execution of a warrant for the arrest of a person to allow the person a further opportunity to appear before the court.
- (6) A person who is arrested under a warrant issued under subsection (1)(a) is taken to have been arrested for the offence stated in the notice to appear.
- (7) A document that purports to be a copy of a notice to appear, that is signed by the police officer who served it, and that states the following is evidence of what it states—
 - (a) the date it was served; and
 - (b) when and where it was served.

Division 5—Duties After an Arrest

92. Information to be given to arrested person

- (1) A police officer who arrests a person, whether or not under a warrant, must, as soon as is reasonably practicable after the arrest, inform the person—
 - (a) that the person is under arrest; and
 - (b) of the nature of the offence for which the person is arrested.
- (2) A police officer who arrests a person with a warrant must inform the person that the person is under arrest and of the nature of the warrant.
- (3) A police officer must give to the person, in writing, the name, rank and station of the arresting officer before the person is released from police custody.

93. Parent to be advised of arrest or service of notice to appear

- (1) A police officer who arrests a child must promptly advise a parent or guardian of the child of—
 - (a) the arrest; and
 - (b) the whereabouts of the child.
- (2) A police officer who serves a notice to appear on a child must promptly advise a parent or guardian of the child of the service of the notice to appear.
- (3) Subsections (1) and (2) do not apply in relation to a child if—
 - (a) a parent or guardian can not be found after reasonable inquiry; or
 - (b) a police officer believes, on reasonable grounds, that the child is an adult.
- (4) When deciding whether the police officer had the reasonable belief, a court may have regard to the child's apparent age and the circumstances of the arrest or service of the notice.

94. Duty of police officer after arrest, etc. of person

- (1) If a police officer does any of the following, the police officer must, as soon as reasonably practicable, take the person before a court to be dealt with according to law—
 - (a) arrests a person, whether or not under a warrant;
 - (b) receives into custody a person who is arrested or detained by someone other than a police officer.
- (2) Subsection (1) does not apply if the person—
 - (a) is released under Division 3 of this Part; or

- (b) is being detained as a person suspected of committing a felony, under Division 9 of this Part; or
- (c) is arrested under a warrant that requires the police officer to take the person before another body or to another place; or
- (d) is delivered into the custody of the officer in charge of a police station; or
- (e) is arrested, but is later released without having been charged with the offence for which the person was arrested.

95. Duty of police officer receiving custody of person arrested for an offence

(1) This section applies if—

- (a) a person who has been arrested for an offence, whether or not under a warrant, is delivered into the custody of the officer in charge of a police station; and
- (b) the person is not being detained under Division 9 of this Part; and
- (c) it is not practicable to bring the person before a court promptly.

(2) The officer in charge of the police station, as soon as reasonably practicable, must—

- (a) decide whether or not to grant the person bail; or
- (b) decide whether or not to issue and serve a notice to appear on the person; or
- (c) for a person arrested for being drunk in a public place, decide whether to discontinue the arrest under Division 3 of this Part; or
- (d) take the person before a court to be dealt with according to law.

(3) This section does not apply to a child.

96. Duty of officer receiving custody of person arrested under warrant, other than for an offence

(1) This section applies if—

- (a) a person (including a police officer) arrests a person who is named in a warrant that was issued under another law; and
- (b) the person is delivered into the custody of the officer in charge of a police station.

(2) The officer in charge must, as soon as reasonably practicable, ensure that the warrant is complied with.

Division 6—Searching Persons in Custody

97. Police officer may search person in custody

- (1) A police officer may search and re-search a person if the person—
 - (a) is lawfully arrested; or
 - (b) is in lawful custody for a charge of an offence that has not been decided; or
 - (c) is in custody under a sentence for a period of imprisonment; or
 - (d) is otherwise lawfully detained under another law.
- (2) A police officer may seize from the person anything found during the search that the police officer suspects, on reasonable grounds, might provide evidence of the commission of an offence.
- (3) Also, the police officer may take and retain, while the person is in custody—
 - (a) anything that may endanger anyone's safety, including the person's safety; or
 - (b) anything that may be used for an escape; or
 - (c) anything else that the police officer considers, on reasonable grounds, should be kept in safe custody while the person is in custody.
- (4) If a police officer takes a thing from a person who is taken to a place of safety under section 86, the police officer may give the thing to an adult who is apparently in charge of the place of safety for safe keeping while the person is at the place.
- (5) The person to whom the thing is given must give the police officer a signed receipt in the approved form for the thing.
- (6) If the place of safety is not the home of the person from whom the thing was taken (the 'owner'), the person to whom the thing is given must return the thing to its owner before the owner leaves the place of safety.

Division 7—Fingerprints and Other Identifying Particulars

98. This Division applies to one-year offences

This Division applies to an offence for which the maximum penalty is at least one year's imprisonment (a 'one-year offence').

99. Taking identifying particulars of a person in custody

- (1) If a person is in custody for a one-year offence, the charge of which has not been decided, a police officer may take or photograph all or any of the person's identifying particulars.

- (2) The 'identifying particulars' of a person are any of the following—
- (a) fingerprints;
 - (b) palm prints;
 - (c) footprints;
 - (d) voiceprints;
 - (e) handwriting;
 - (f) a photograph of the person's identifying features, including for example—
 - (i) a photograph of scars or tattoos; or
 - (ii) a photograph of the person;
 - (g) a measurement of any part of the person's body, other than the person's genital or anal area, buttocks, or a female's breasts.
- (3) If the person is to be released after arrest for the offence, a police officer may detain the person for the time that is reasonably necessary to take or photograph all or any of the person's identifying particulars.
- (4) If the offence involves the conduct of a number of persons acting alone or together, a police officer may photograph the person at the scene of the arrest before taking or photographing all or any of the person's identifying particulars.

100. Taking identifying particulars immediately

- (1) This section applies if a police officer decides to start a proceeding against an adult for a one-year offence by a notice to appear or summons.
- (2) Within a reasonable time before, or immediately after, serving the notice to appear or summons, a police officer may detain the person for the time that is reasonably necessary to take or photograph all or any of the person's identifying particulars.

101. Taking identifying particulars later

- (1) This section applies if a police officer—
- (a) decides to start, or continues, a proceeding against an adult for a one-year offence by a notice to appear or summons; and
 - (b) decides that it is not necessary to immediately take the identifying particulars.

- (2) A police officer may, by written notice given to the person, require the person—
 - (a) to report to a police officer at a stated police station, within seven days after the issue of the notice, to enable a police officer to take or photograph all or any of the person's identifying particulars; and
 - (b) to stay at the police station for the time that is reasonably necessary to enable the person's identifying particulars to be taken or photographed.
- (3) The notice—
 - (a) may state the days and times within which the person must attend the police station; and
 - (b) must state—
 - (i) that it is an offence to fail to comply with the notice; and
 - (ii) that, before the identifying particulars are taken, the person must produce satisfactory evidence of his or her identity.
- (4) The notice must be given to the person with the notice to appear or summons.
- (5) If the person attends at a police station as required under the notice, a police officer may take or photograph all or any of the person's identifying particulars.

102. Court may order taking of identifying particulars

- (1) This section applies if, in a proceeding for one-year offence against an adult, a court is satisfied that it is necessary to take or photograph the person's identifying particulars in order to help—
 - (a) identify the person in relation to the offence, or another offence that the person is suspected of having committed; or
 - (b) confirm the person's identity; or
 - (c) find out the person's criminal history; or
 - (d) keep criminal records.
- (2) The court may make either of the following orders—
 - (a) an order that a police officer may detain the person to enable a police officer to take or photograph all or any of the person's identifying particulars;
 - (b) an order—
 - (i) that the person report to a police officer at a stated police station on a stated day or between stated hours within seven days; and

- (ii) that the person stay at the place for the time that is reasonably necessary to enable a police officer to take or photograph all or any of the person's identifying particulars; and
 - (iii) authorising a police officer to detain the person to enable a police officer to take or photograph all or any of the person's identifying particulars, if the person does not comply with subparagraphs (i) and (ii).
- (3) If the person is not already in custody, the time for which the person may be detained under the order is—
- (a) one hour; or
 - (b) a longer reasonably necessary time, having regard to the particular circumstances.
- (4) A person commits an offence if the person contravenes an order made under subsection (2)(b), unless the person has a reasonable excuse.
- (5) The maximum penalty for an offence under this section is two years' imprisonment.
- (6) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

103. Destroying identifying particulars

- (1) If a person is found not guilty of a one-year offence, or is not further proceeded against for the offence, any identifying particulars taken under this Division in relation to the offence must be destroyed within a reasonable time in the presence of a magistrate.
- (2) Subsection (1) does not apply if—
- (a) the person has been proceeded against for a one-year offence, the charge of which has not been decided; or
 - (b) the person has previously been found guilty of another one-year offence, whether before or after the commencement of this section; or
 - (c) the identifying particulars are required for the investigation of another one-year offence that the person is suspected, on reasonable grounds, of having committed; or
 - (d) the person is not proceeded against for the one-year offence because he or she has been found incapable of standing trial because of mental illness.
- (3) If, because of subsection (2)(a), a person's identifying particulars are not destroyed and the person is found not guilty of the other one-year offence, or the charge of that other offence is not proceeded with, the identifying particulars must be destroyed within a reasonable time after the relevant event happens.

- (4) However, the identifying particulars must not be destroyed under subsection (3) if subsection (2) continues to apply to the person.
- (5) In this section, the 'identifying particulars' of a person includes a photograph, photocopy or other reproduction of identifying particulars.

Division 8—Release from Custody by a Police Officer

104. Release upon executing a bond

- (1) This section applies if a person is released from custody upon executing a bond under section 19 of the *Criminal Procedure Code* (Cap.17).
- (2) The bond must be in the approved form.

105. Release upon entering into a recognisance

- (1) This section applies if a person is released from custody upon entering into a recognisance under section 23 of the *Criminal Procedure Code* (Cap.17).
- (2) The recognisance must be in the approved form.

Division 9—Detaining a Person Suspected of Committing a Felony

106. Division applies only to felonies

This Division applies to a person who is suspected of being involved in the commission of a felony (a 'suspect').

107. Right to remain silent not affected

Nothing in this Part affects the right of a suspect to refuse to answer a question, unless the suspect is required to answer the questions by or under another law.

108. Initial period of detention for questioning or investigation

- (1) This section applies only to a suspect who—
 - (a) is lawfully arrested for a felony; or
 - (b) is in lawful custody.
- (2) A police officer may detain a suspect for a reasonable time—
 - (a) to question the suspect about any felony that the suspect is suspected of having committed, whether or not it is the felony for which the suspect is in custody; or
 - (b) to investigate the felony.

- (3) When deciding what is a reasonable time to detain a suspect under subsection (2), the following must be taken into consideration—
- (a) whether the suspect's detention is necessary for the investigation of a felony;
 - (b) the number of felonies under investigation;
 - (c) the seriousness and complexity of a felony under investigation;
 - (d) whether the suspect has indicated a willingness to make a statement or to answer questions;
 - (e) the suspect's age, physical capacity and condition, and mental capacity and condition;
 - (f) for a suspect who was arrested for the felony—any time spent questioning the suspect before the arrest;
 - (g) the need to delay or suspend questioning of the suspect for time out purposes.
- (4) If the suspect decides not to answer questions or not to continue answering questions, continuing the detention period may still be reasonable if—
- (a) it is necessary to carry out further investigations; or
 - (b) the suspect consents to participate in an investigative procedure; or
 - (c) another authority requires the suspect to participate in an investigative procedure.
- (5) Despite subsection (2), the suspect must not be detained under this Division for more than the following period (the 'detention period'), unless that period is extended under this Division—
- (a) 24 hours; or
 - (b) in the case of a suspect who is arrested after the courts close on a Friday afternoon—72 hours.
- (6) During the detention period—
- (a) the suspect may be questioned for not more than four hours; and
 - (b) if the suspect is detained for six hours or more—the suspect must be given reasonably sufficient food and drink.
- (7) The detention period starts when the suspect is—
- (a) arrested for the felony; or
 - (b) taken into police custody under section 111; or
 - (c) enters into the company of a police officer at a prison for the purpose of questioning the suspect.

109. Order extending the detention period

- (1) A police officer may apply to a magistrate for an order extending the detention period.
- (2) The application must be made before the detention period ends.
- (3) The police officer must do the following before the application is made—
 - (a) tell the suspect or the suspect's lawyer of the application; and
 - (b) give the suspect or the suspect's lawyer a copy of the application; and
 - (c) ask the suspect or the suspect's lawyer if he or she—
 - (i) agrees to the application or wants to oppose it; and
 - (ii) wants to make submissions to the magistrate who hears the application.
- (4) The application must be made in a way that allows the suspect or the suspect's lawyer to make submissions about the application.
- (5) The application must be sworn, and state—
 - (a) the applicant's name, rank and station; and
 - (b) the following information about the suspect—
 - (i) the suspect's name, address and date of birth;
 - (ii) whether the suspect is a child, or a person with impaired capacity;
 - (iii) if the suspect is a child or a person with impaired capacity—whether a parent or guardian of the child or person has been advised of the detention of the child or person; and
 - (c) whether, since the questioning or detention began, the suspect has asked to phone or speak to a friend, relative or lawyer and has since spoken to a relative, friend or lawyer; and
 - (d) when the detention period began, how long the suspect has been questioned, and what delays to questioning had happened; and
 - (e) the felony to which the questioning or investigation relates, and information and evidence about the nature and seriousness of the felony; and
 - (f) information or evidence supporting a reasonable suspicion that the suspect has committed the felony mentioned in the application; and
 - (g) what investigations have taken place; and
 - (h) why further detention of the suspect is necessary; and
 - (i) the time sought for time out, and the time sought for questioning.
- (7) The applicant must tell the magistrate whether the suspect or the suspect's lawyer wants to make submissions to the magistrate.

- (8) The suspect or the suspect's lawyer may make submissions to the magistrate about the application.
- (9) A magistrate may make the order if satisfied that—
 - (a) the nature and seriousness of the felony require the extension; and
 - (b) further detention of the suspect is necessary—
 - (i) to preserve or obtain evidence of the felony; or
 - (ii) to complete the investigation into the felony; or
 - (iii) to continue questioning the suspect about the felony; and
 - (c) the investigation is being conducted properly and without unreasonable delay; and
 - (d) the suspect or the suspect's lawyer has been given the opportunity to make submissions about the application.
- (10) The order must state—
 - (a) the time, of not more than four hours, for which the suspect may be questioned; and
 - (b) how much time is to be allowed as time out, which must be at least half of the time for which the suspect may be questioned; and
 - (c) that the suspect may continue to be detained for the total of the periods decided for paragraphs (a) and (b).

110. When a suspect detained may be taken to a place other than a police station

- (1) A police officer may take a suspect to whom this Division applies to a place other than a police station if the police officer considers it is reasonably necessary to facilitate the purpose of the detention.
- (2) For example, a suspect who has been arrested and is being questioned about a felony may be taken—
 - (a) to the scene of the felony to identify the scene or to re-enact the felony; or
 - (b) to a doctor for examination or medical treatment.

111. Removing a suspect from prison

- (1) This section applies to a suspect who is in custody in a prison—
 - (a) for a charge of a felony that has not been decided; or
 - (b) under a sentence for a term of imprisonment.
- (2) A police officer must get the approval of a senior officer before removing the suspect from the prison to the custody of a police officer for—
 - (a) the questioning of the suspect about a felony; or

- (b) the investigation of a felony.
- (3) The senior officer may give the approval only if satisfied that the custody is reasonably necessary for—
 - (a) the questioning of the suspect about the felony; or
 - (b) the investigation of the felony.
- (4) If the senior officer gives the approval, the police officer may remove the suspect from the prison.
- (5) Section 108 applies to the detention in the custody of the police officer.

PART V—QUESTIONING PERSONS

Division 1—Preliminary

112. When this Part applies to a suspect

- (1) This Part applies to a person who is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an offence (the ‘suspect’).
- (2) However, this Part does not apply to a person only if the police officer is exercising—
 - (a) a power conferred under any law to detain the person for a search; or
 - (b) a power conferred under any law to require the person to give information or answer questions.

113. Questioning generally

A police officer who is questioning a suspect must not obtain a confession by threat or promise.

Division 2—Other Persons may be Present During Questioning

114. Right to communicate with friend, relative or lawyer

- (1) Before a police officer starts to question a suspect for an offence, the police officer must inform the suspect that the suspect may phone or speak to—
 - (a) a friend or relative—
 - (i) to inform the friend or relative of the suspect’s whereabouts; and
 - (ii) to ask the friend or relative to be present during questioning.
 - (b) a lawyer—
 - (i) to inform the lawyer of the suspect’s whereabouts; and

- (ii) to ask the lawyer to be present during questioning.
- (2) If the suspect wishes to phone or speak to a friend, relative or lawyer, the police officer must—
 - (a) as soon as practicable, make a phone available to the suspect; and
 - (b) delay the questioning for a reasonable time to allow the suspect to phone or speak to the friend, relative or lawyer.
- (3) If the suspect arranges for a friend, relative or lawyer to be present during questioning, the police officer must delay the questioning for a reasonable time to allow the friend, relative or lawyer to arrive.
- (4) What is a reasonable time to allow a friend, relative or lawyer to arrive will depend on the particular circumstances, including, for example—
 - (a) how far the friend, relative or lawyer has to travel to the place; and
 - (b) the time of day when the friend, relative or lawyer is travelling to the place (including whether the travel is to be made when no public transport is available, for example); and
 - (c) when the friend, relative or lawyer indicated that they would arrive at the place.
- (5) Unless special circumstances exist, a delay of more than two hours may be unreasonable.

115. Speaking to and presence of friend, relative or lawyer

If the suspect asks to speak to a friend, relative or lawyer, the investigating police officer must—

- (a) as soon as practicable, provide reasonable facilities to enable the suspect to speak to the friend, relative or lawyer; and
- (b) allow the suspect to speak to the friend, relative or lawyer in circumstances in which the conversation can not be overheard; and
- (c) allow the friend, relative or lawyer to be present, and give advice to the suspect, during the questioning.

116. Provision of information to friend, relative or lawyer

- (1) This section applies if a friend, relative or lawyer of a suspect asks for information about the suspect's whereabouts.
- (2) If the person asking for the information is not known to the police officer who receives the request, the police officer must ask the person—
 - (a) if he or she is a friend, relative or lawyer of the suspect; and
 - (b) for the person's name and address or, for a lawyer, place of business; and

- (c) if the person makes the request personally—for proof of his or her identity.
- (3) The police officer may also ask any other question that the police officer considers necessary to establish that the person is a friend, relative or lawyer of the suspect.
- (4) A police officer must, if practicable, inform the suspect of the request and, after doing so, give the information to the friend, relative or lawyer who asked for it.
- (5) The police officer is not required to disclose the suspect's whereabouts if—
 - (a) the suspect refuses to agree to giving the information and the refusal is in writing or electronically recorded; or
 - (b) the whereabouts of the suspect are not known to the police officer; or
 - (c) the police officer suspects, on reasonable grounds, that the person who is asking for the information is not a friend, relative or lawyer of the suspect; or
 - (d) the police officer suspects, on reasonable grounds, that disclosing the suspect's whereabouts may jeopardise the investigation of the felony that the suspect is suspected of having committed because—
 - (i) evidence relating to the felony may be concealed, fabricated or destroyed; or
 - (ii) an accomplice or accessory of the suspect may take steps to avoid apprehension.

117. Questioning children

- (1) This section applies if—
 - (a) a police officer wants to question a suspect; and
 - (b) the suspect appears to be a child.
- (2) The police officer must not question the child unless—
 - (a) the police officer has, if practicable, allowed the child to speak to a friend, relative or lawyer chosen by the child, in a place where the conversation will not be overheard; and
 - (b) the friend, relative or lawyer is present while the child is being questioned.
- (3) The police officer must suspend questioning and comply with this section if, during questioning, it becomes apparent that the suspect is a child.

118. Questioning suspects with impaired capacity

- (1) This section applies if—
 - (a) a police officer wants to question a suspect; and

- (b) the suspect appears to be a person with impaired capacity.
- (2) The police officer must not question the suspect unless—
 - (a) the police officer has, if practicable, allowed the suspect to speak to a friend, relative or lawyer, in a place where the conversation will not be overheard; and
 - (b) the friend, relative or lawyer is present while the suspect is being questioned.
- (3) The police officer must suspend questioning and comply with the section if, during questioning, it becomes apparent that the suspect is a person with impaired capacity.

119. Questioning visiting foreign nationals

- (1) This section applies if—
 - (a) a police officer wants to question a suspect; and
 - (b) the suspect appears not to be—
 - (i) a Kiribati citizen; or
 - (ii) a foreign national with a right of residence in Kiribati.
- (2) In order to decide whether the suspect has the right to phone an embassy, high commission or consular office, a police officer may ask the suspect a question, other than a question related to the suspect's involvement in the offence for which the suspect is to be questioned.
- (3) If the police officer suspects, on reasonable grounds, that the suspect has the right to phone an embassy, high commission or consular office, the police officer must inform the suspect of the right in a way substantially complying with the following—
 - 'Before I ask you any questions, I must tell you that you have the right to phone the embassy, high commission or consular office of the country of which you are a citizen.
 - Do you want to phone your embassy, high commission or consular office?'
- (4) If the police officer suspects, on reasonable grounds, that the suspect does not understand the advice, the police officer may ask the suspect to explain the advice in his or her own words.
- (5) If necessary, the police officer must further explain the advice.
- (6) If the suspect wishes to phone the embassy, high commission or consular office, the police officer must—
 - (a) as soon as practicable, make a phone available to the suspect; and
 - (b) delay the questioning for a reasonable time to allow the suspect to phone the embassy, high commission or consular office.

- (7) The police officer must suspend questioning and comply with this section if, during questioning, it becomes apparent that the suspect is not—
 - (a) a Kiribati citizen; or
 - (b) a foreign national with a right of residence in Kiribati.

120. Questioning persons who do not speak the language

- (1) This section applies if—
 - (a) a police officer wants to question a suspect; and
 - (b) the suspect appears to be unable, because of inadequate knowledge or a physical disability, to speak with reasonable fluency in the language spoken by the police officer.
- (2) In order to decide whether to arrange for the presence of an interpreter during questioning of the suspect, the police officer may ask the suspect a question, other than a question related to the suspect's involvement in the offence for which the suspect is to be questioned.
- (3) In particular, the police officer may ask questions that may help the police officer decide whether or not the suspect—
 - (a) is capable of understanding the questions put to the suspect, what is happening to him or her, and his or her rights at law; and
 - (b) is capable of effectively communicating answers to the questions; and
 - (c) is aware of the reason that the questions are being asked.
- (4) If the police officer decides that an interpreter should be present, the police officer must delay the questioning or investigation until the interpreter is present.
- (5) In this section, 'investigation' means the process of using investigative methodologies that involve interaction by a police officer with the suspect (including an examination or the taking of samples from the suspect, for example).
- (6) However, 'investigation' does not include fingerprinting, searching or taking photographs of the suspect.
- (7) The police officer must suspend questioning and comply with this section if, during questioning, it becomes apparent that the suspect is not able to speak with reasonable fluency in the language spoken by the police officer.

121. Questioning intoxicated suspects

- (1) This section applies if—
 - (a) a police officer wants to question a suspect; and
 - (b) the suspect appears to be under the influence of alcohol or a drug.

- (2) The police officer must delay the questioning until the police officer is reasonably satisfied that the influence of the alcohol or drug no longer affects—
 - (a) the suspect's ability to understand his or her rights; and
 - (b) the suspect's ability to decide whether to answer questions.
- (3) The police officer must suspend questioning and comply with this section if, during questioning, it becomes apparent that the suspect is under the influence of alcohol or a drug.

122. When sections 114 to 119 do not apply

- (1) Sections 114 to 119 do not apply if a police officer suspects, on reasonable grounds, that compliance with the sections is likely to result in—
 - (a) an accomplice or accessory of the suspect taking steps to avoid apprehension; or
 - (b) an accomplice or accessory being present during questioning; or
 - (c) evidence being concealed, fabricated or destroyed; or
 - (d) a witness being intimidated.
- (2) Also, a police officer is not required to delay questioning if, having regard to the safety of other people, the police officer suspects, on reasonable grounds, that questioning is so urgent that it should not be delayed.
- (3) This section applies only for as long as the police officer has the reasonable suspicion.

Division 3—Cautioning and Rights of Suspects

123. Cautioning suspects of their right to remain silent

- (1) A police officer must caution a suspect about the suspect's right to remain silent, before the suspect is questioned.
- (2) The caution must be given in, or translated into, a language in which the suspect is able to communicate with reasonable fluency, but need not be given in writing unless the suspect can not hear adequately.
- (3) If the police officer suspects, on reasonable grounds, that the suspect does not understand the caution, the police officer may ask the suspect to explain the meaning of the caution in his or her own words.
- (4) If necessary, the police officer must further explain the caution.
- (5) If questioning is suspended or delayed, the police officer must ensure that the suspect is aware that he or she still has the right to remain silent and, if necessary, again caution the suspect when questioning continues.

- (6) If the police officer cautions a suspect in the absence of someone else who is to be present during the questioning, the caution must be repeated in the other person's presence.
- (7) This section does not apply if another law requires the suspect to answer questions put by, or do things required by, a police officer.

124. Person's right to remain silent not affected

- (1) If a suspect, the suspect's lawyer, or someone whose presence is required during the questioning of a suspect indicates to the police officer who is questioning or intending to question the suspect—
 - (a) if questioning has not started—that the suspect does not want to answer questions; or
 - (b) if questioning has started—that the suspect does not want to answer any further questions,the police officer must not question or continue to question the suspect.
- (2) However, if the suspect later indicates that he or she is prepared to answer questions, a police officer must, before questioning or continuing to question the suspect, ask the suspect—
 - (a) why the suspect has decided to answer questions; and
 - (b) if a police officer or someone else in authority has told the suspect to answer questions.

125. Rights of a suspect to be recorded

A police officer who is required under this division to give a suspect information (including a caution) must make a written record of—

- (a) the giving of the information to the suspect; and
- (b) the suspect's response.

Division 4—General

126. Questioning of suspect after proceedings are started

- (1) Nothing in this Part prevents a suspect, after a proceeding for the offence has been started, from helping a police officer by making a statement or answering questions relating to the matter for which the suspect is charged.
- (2) Also, a police officer may question a suspect to clarify any ambiguity in relation to what was previously said by the suspect.
- (3) If new evidence of the offence becomes available, a police officer may tell the suspect of the evidence and invite the suspect to make a statement.

127. List of interpreters

- (1) The Commissioner must keep, and regularly revise, a list of interpreters.
- (2) The list must specify the languages that each person on the list is able to understand and speak.

PART VI—IDENTIFYING SUSPECTS

Division 1—Certain Ways of Identifying Suspects

128. Certain ways of identifying suspects

- (1) This section applies if a police officer uses any of the following procedures to help gather evidence of the identity of a person (the 'suspect') who is suspected of having committed an offence—
 - (a) an identification parade;
 - (b) a photo-board;
 - (c) a videotape;
 - (d) computer generated images;
 - (e) drawings.
- (2) The way in which the procedure is conducted must allow only one witness to see or hear the procedure at a time.
- (3) After a witness has taken part in the procedure, the witness must, as far as reasonably practicable, be prevented from speaking about the procedure to any other witness until the procedure ends.
- (4) If reasonably practicable, the way in which a witness identifies a person during the procedure must be electronically recorded.
- (5) A police officer must not stop a person being present during a procedure to support the witness, unless—
 - (a) the other person is another witness; or
 - (b) the officer suspects, on reasonable grounds, that the person will influence the witness's decision or disrupt the procedure.
- (6) If the police officer stops someone being present during the procedure to support a witness, the police officer must—
 - (a) give the witness the reasons for stopping the person being present; and
 - (b) advise the witness that he or she may arrange for someone else to be present to support the witness; and
 - (c) if asked, allow someone else to be present.

- (7) This section does not limit the ways that a police officer may identify a suspect.

Division 2—Identification Using an Identification Parade

129. Procedure before an identification parade

- (1) A police officer may ask a suspect to take part in an identification parade.
- (2) The suspect may refuse to take part in the identification parade.
- (3) If the suspect agrees to take part in the identification parade, the police officer must explain the procedure for the identification parade to the suspect, before conducting the identification parade.
- (4) If the police officer suspects, on reasonable grounds, that the suspect does not understand the procedure, the police officer must ask the suspect to explain the procedure in his or her own words.
- (5) If necessary, the police officer must further explain the procedure.
- (6) The explanation must include the police officer telling the suspect the following—
 - (a) the identification parade can not be conducted unless the suspect agrees;
 - (b) the suspect may have a friend, relative or lawyer present at the identification parade if that friend, relative or lawyer can attend within a reasonable time;
 - (c) anyone present must not interfere with the procedure in any way;
 - (d) the suspect may choose a position in the parade and change position in the parade after each witness has viewed the parade;
 - (e) the suspect's identity will not be given to a witness unless—
 - (i) the witness identifies the suspect; and
 - (ii) a proceeding is started against the suspect.

Division 3—Identification Using a Photo-board

130. Photo-board conditions

- (1) A photo-board must include photographs of the suspect, and at least 11 other people of similar physical appearance and wearing similar clothing.
- (2) To avoid directing the attention of the witness to a particular photograph, the police officer must ensure that nothing is marked on any photograph or the backing board on which the photograph is mounted.

131. Conducting a photo-board identification

- (1) A police officer who is showing witnesses a photo-board must show the photo-board to each witness separately.
- (2) Also, the police officer must ask the witness—
 - (a) to carefully view the photo-board; and
 - (b) to state whether the witness recognises anyone whose photograph is on the photo-board.
- (3) The police officer must ask the question in a way that does not suggest the identity of a person whose photograph is on the photo-board.
- (4) If the witness indicates that he or she recognises a person, the police officer must ask the witness to—
 - (a) clearly state the number of the photograph that the witness has identified as being that of the person alleged to be responsible for committing the offence; and
 - (b) write the photograph number and the date when the photo-board was shown to the witness—
 - (i) on the back of the photo-board or the selected photograph; or
 - (ii) on the front of an unmarked photocopy of the photo-board;and
 - (c) sign the photo-board, photograph or photocopy where the person has written on it.

PART VII—MISCELLANEOUS PROVISIONS

Division 1—Identification of Police Officers

132. Identity cards

- (1) The Commissioner must issue an identity card to each police officer.
- (2) The identity card must—
 - (a) contain a recent photograph of the police officer; and
 - (b) contain a copy of the police officer's signature; and
 - (c) identify the person as a police officer; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and for other purposes.
- (4) A person who ceases to be a police officer commits an offence if the person fails to return the person's identity card to the Commissioner within

21 days after ceasing to be a police officer, unless the person has a reasonable excuse.

- (5) The maximum penalty for an offence under this section is a fine of \$500.

133. Supplying police officer's identity details

- (1) This section applies if a police officer exercises a power in relation to a person.
- (2) At the request of the person, the police officer must, as soon as reasonably practicable—
- (a) if the police officer is in uniform—inform the person of the police officer's name, rank and station; or
 - (b) if the police officer is not in uniform—
 - (i) inform the person that he or she is a police officer; and
 - (ii) inform the person of the police officer's name, rank and station; and
 - (iii) produce the police officer's identity card for inspection.
- (3) If the police officer is searching a person, vehicle or place, other than under a search warrant, the police officer must state—
- (a) the purpose of the search; and
 - (b) the reason for seizing any property.

Division 2—Warrants, etc.

134. Serving and enforcing warrants, etc.

- (1) A police officer may serve or enforce a warrant, summons, order or command of any court, judge, or magistrate—
- (a) even though the warrant, summons, order or command is not addressed to the police officer; and
 - (b) despite the requirements of any other law, or rule having the force of law, about who may enforce the warrant, summons, order or command.
- (2) A police officer who serves a warrant, summons, order or command must, if reasonably practicable, write the following on the back of the original warrant, summons, order or command, and sign the document—
- (a) the day and time of service;
 - (b) the name of the person on whom it was served;
 - (c) if supplied—the name of the occupier of the place;
 - (d) the name, rank and station of the police officer.

135. Obtaining warrants and orders by phone, etc.

- (1) A police officer may apply for a warrant or order by phone, fax, radio, email or another similar facility, if the police officer considers it necessary because of—
 - (a) urgent circumstances; or
 - (b) other special circumstances, including, for example, the police officer's remote location.
- (2) Before applying for the warrant or order, the police officer must prepare an application stating the grounds on which the warrant or order is sought.
- (3) If, apart from this section, the application is required to be sworn, the police officer may apply for the warrant or order before the application is sworn.
- (4) If transmission by fax is available, the police officer must transmit a copy of the application to the judge or magistrate who is to decide the application.
- (5) After issuing the warrant or order, the judge or magistrate must immediately fax or email a copy of the warrant or order to the police officer if it is reasonably practicable to do so.
- (6) If it is not reasonably practicable to fax or email a copy of the warrant or order to the police officer—
 - (a) the judge or magistrate must tell the police officer—
 - (i) what the terms of the warrant or order are; and
 - (ii) the day and time when the warrant or order was issued; and
 - (b) the police officer must complete a form of warrant or order (a 'prescribed authority form') and write on it—
 - (i) the name of the judge or magistrate; and
 - (ii) the day and time when the judge or magistrate issued the warrant or order; and
 - (iii) the terms of the warrant or order.
- (7) The warrant or order that was faxed or emailed, or the prescribed authority form properly completed by the police officer, authorises the entry and the exercise of the other powers stated in the warrant or order issued by the judge or magistrate.
- (8) The police officer must send, at the first reasonable opportunity, to the judge or magistrate—
 - (a) the sworn application; and
 - (b) if a copy of the warrant or order was not faxed or emailed to the police officer—the completed prescribed authority form.

- (9) On receiving those documents, the judge or magistrate must attach them to the warrant or order.

136. Presumption about exercise of powers under warrant or order

A court must find that the exercise of a power by a police officer was not authorised by a warrant or order if—

- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a warrant or order; and
- (b) the warrant or order is not produced in evidence; and
- (c) it is not proved by the police officer who is relying on the lawfulness of the exercise of the power that a police officer obtained the warrant or order.

Division 3—Damage to Property During Exercise of Powers

137. Use of force to enter places that is likely to cause damage

- (1) This section applies if a police officer intends to enter a place to arrest or detain someone, or to search a place, or to establish a crime scene.
- (2) The police officer must, if reasonably practicable—
 - (a) ask the occupier of the place to allow the police officer to enter the place; and
 - (b) give the occupier a reasonable opportunity to allow the entry, before the police officer uses force that may cause damage to the place in order to gain entry to the place.
- (3) It may not be reasonably practicable for a police officer to comply with subsection (2) if, for example—
 - (a) there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer; or
 - (b) there is a reasonable expectation that, if warned, the person may immediately dispose of or destroy evidence; or
 - (c) an immediate search is necessary to protect the safety of any person.

138. Police officer to give notice of damage

- (1) This section applies if—
 - (a) a police officer damages any thing when exercising a power under this or another law; or
 - (b) someone who is assisting the police officer damages any thing.

- (2) The police officer must promptly give written notice to the person who appears to be the person who was in possession of the thing—
 - (a) stating the nature of the damage; and
 - (b) if the police officer believes the damage was caused by a latent defect in the thing or circumstances beyond the police officer's or assistant's control—stating the police officer's belief.
- (3) If the owner is not present, the notice must be left in a conspicuous place near the damage.
- (4) This section does not apply—
 - (a) to damage that the police officer believes, on reasonable grounds, is trivial; or
 - (b) if the police officer believes, on reasonable grounds, that—
 - (i) there is no-one apparently in possession of the thing; or
 - (ii) the thing has been abandoned.

139. Compensation for damage

- (1) This section applies if a person suffers loss because their property is damaged when a police officer exercises powers under this Act.
- (2) Compensation is payable by the Republic to the person whose property is damaged.
- (3) However, compensation is not payable to a person if the person is found guilty of the commission of a felony because of the exercise of the powers.
- (4) Also, compensation is not payable for the lawful seizure of a thing under this Act.
- (5) The Minister is to decide the amount of the compensation.
- (6) A person who is dissatisfied with the Minister's decision under subsection (5) may apply to a court, within 28 days, for compensation under this section.
- (7) If the person applies under subsection (6), the court may decide the amount of the compensation.

Division 4—Offences

140. Offence to assault or obstruct police officer

- (1) A person commits an offence if the person assaults or wilfully obstructs—
 - (a) a police officer in the performance of the police officer's duties; or
 - (b) another person assisting the police officer.

- (2) The maximum penalty for an offence under this section is a fine of \$5000 and two years' imprisonment.
- (3) In this section, 'obstruct' includes hinder, resist and attempt to obstruct.

141. Offence to contravene direction or requirement of police officer

- (1) A person commits an offence if the person contravenes a requirement or direction given by a police officer under this Act, including a requirement or direction contained in a notice given by a police officer, unless the person has a reasonable excuse.
- (2) The maximum penalty for an offence under this section is a fine of \$500.
- (3) Unless otherwise expressly provided, it is a reasonable excuse for a person not to comply with a requirement or direction to give information if giving the information would tend to incriminate the person.
- (4) If a person fails to comply with the direction or requirement that was given orally, a police officer must, if practicable, warn the person—
 - (a) that it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse; and
 - (b) that the person may be arrested for the offence.
- (5) The police officer must give the person a further reasonable opportunity to comply with the direction or requirement.

Division 5—Other General Provisions

142. Helping courts and tribunals

- (1) This section applies if, under another law, a court or other deliberative tribunal has power—
 - (a) to lawfully order the apprehension or detention of a person, including under a warrant; or
 - (b) to order the exclusion or removal of a person from the place where the court or tribunal is sitting; or
 - (c) to give any other order or direction for which the help of a police officer may be reasonably necessary.
- (2) A police officer must comply with any lawful direction, request, or order of the court or tribunal and any reasonable request that the judge or other presiding officer may lawfully make.

143. Protection of police information

- (1) This section applies to information that could, if disclosed, reasonably be expected—
 - (a) to prejudice the investigation of an offence or suspected offence; or
 - (b) to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
 - (c) to endanger a person's life or physical safety; or
 - (d) to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
 - (e) to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
 - (f) to facilitate a person's escape from lawful custody.
- (2) In a proceeding, a police officer cannot be required to disclose that information, unless the court is satisfied that disclosure of the information is necessary—
 - (a) for the fair trial of the defendant; or
 - (b) to find out whether the scope of a law enforcement investigation has exceeded the limits imposed by law; or
 - (c) in the public interest.
- (3) Subsection (2) does not affect a provision of another law under which a police officer can not be compelled to disclose information or make statements in relation to the information.

144. Lost property

- (1) This section applies to a thing that is lawfully in the possession of the police service, whether before or after the commencement of this section, because—
 - (a) it was found by someone, other than a police officer, who gave it to a police officer as apparently lost property; or
 - (b) it came into the possession of a police officer in the course of performing the officer's functions, other than by being seized by a police officer.
- (2) The police officer who receives the thing must ensure that the thing is given to the officer in charge of the police station where the police officer is stationed, as soon as reasonably practicable, unless the thing is earlier returned or forfeited under this Act.
- (3) Until the thing is delivered to the officer in charge, the police officer is responsible for the safekeeping of the thing.

- (4) The Commissioner must—
 - (a) ensure that reasonable inquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of the thing; and
 - (b) facilitate the lawful disposal or return of the thing to its owner or the person who had lawful possession of it before it came into the possession of the police service.
- (5) What are reasonable inquiries and efforts, must be decided having regard to the nature, condition and value of the thing.

145. Availability of this Act

The Commissioner must ensure that this Act is available for inspection at any police station by anyone who asks to inspect it.

146. Approved forms

The Commissioner may approve forms for use under this Act.

147. Review of Act

- (1) The Minister must ensure that the operation of this Act is regularly reviewed.
- (2) The first review must start no sooner than six months after the commencement of this section, and be completed within three years.

148. Regulation-making power

- (1) The Beretitenti may make regulations under this Act.
- (2) Without limiting subsection (1), a regulation may make provision about—
 - (a) the duties of police officers; or
 - (b) the way in which a police officer may give directions; or
 - (c) forensic procedures, including the taking and analysis of a person's blood, DNA or urine, for example; or
 - (d) the electronic recording of the questioning of persons; or
 - (e) the keeping of a register to record information about the exercise of powers by police officers, and the release of that information.
- (3) A regulation made for subsection (2)(a) or (2)(b) may include operational guidelines for police officers.
- (4) However, operational guidelines are not part of the regulation.

- (5) A regulation made under this section may prescribe or allow for penalties for offences, being terms of imprisonment not exceeding two years, fines not exceeding \$5000, or both.

149. Expanded jurisdiction of magistrates' courts

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

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

150. Actions and decisions

- (1) This section applies to—
- (a) an action taken under a provision of the repealed *Police Ordinance* (Cap.73), if the action continued to have effect immediately before the commencement of this section; and
 - (b) a decision made under a provision of the repealed *Police Ordinance*, if the decision was in force immediately before the commencement of this section.
- (2) A 'decision' includes an approval, authorisation, certificate, classification, declaration, determination, direction, instrument, order (given orally or in writing), notice, permission, policy, procedure, recommendation, warrant or other decision.
- (3) If there is a corresponding provision of this Act for the provision of the *Police Ordinance*, the action or decision—
- (a) continues in force and effect, according to its terms, but with the changes that are necessary—
 - (i) to make it consistent with this Act; and
 - (ii) to adapt its operation to this Act; and
 - (b) is taken to have been made, or taken, under the corresponding provision of this Act.
- (4) The action or decision may be amended or repealed under this Act.

151. Proceedings for offences

A proceeding for an offence, that was started under the *Police Ordinance*, and was pending at the commencement of this section, may be continued as if this Act had not been enacted.

PART IX—CONSEQUENTIAL AMENDMENTS TO OTHER LAWS

152. *Criminal Procedure Code* is amended

- (1) This section amends the *Criminal Procedure Code* (Cap.17).
- (2) Section 2 of that Code is amended by repealing the definition of 'police officer'.
- (3) Section 78 of that Code is repealed.

153. *Death and Fire Inquiries Ordinance* is amended

- (1) This section amends the *Death and Fire Inquiries Ordinance* (Cap.24).
- (2) Section 2 of that Ordinance is amended by repealing the definition of 'officer in charge of police' and substituting the following definition—
 'officer in charge of police' has the same meaning as the expression
 'officer in charge' in section 5 of the *Police Service Act 2008*;
- (2) Section 3 of that Ordinance is repealed.

154. *Penal Code* is amended

- (1) This section amends the *Penal Code* (Cap.67).
- (2) Paragraph (b) of section 240 of that Code is repealed.

POLICE POWERS AND DUTIES ACT 2008

EXPLANATORY MEMORANDUM

This Act represents, together with the *Police Service Act 2008*, the foundation for significant reform of Kiribati Police. These Act replace the *Police Ordinance (Cap.73)*, which had remained largely unchanged since its passage in 1965. The existing legislation has been unable to meet the demands of a modern police service.

The legislation has a number of objectives, which are to:

- a. consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;
- b. provide powers necessary for effective modern policing and law enforcement;
- c. provide consistency in the nature and extent of the powers and duties of police officers;
- d. standardise the way the power and duties of police officers are to be exercised;
- e. ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under this Bill; and
- f. enable the public to better understand the nature and extent of the powers and duties of police officers.

The Act provides a central reference point for police and the general community, enabling them both to understand the nature and extent of police powers. This consolidation results in the added benefit of consistency both in the extent of police powers and in the respective safeguards.

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

Part II deals with the general enforcement powers of police officers. Section 9 retains the powers, obligations and liabilities of a police officer under the common law. Section 10 makes it clear that an officer's powers come to an end when the person stops being a police officer. Section 11 provides for the application of the chain of command. Section 12 and 13 set out the circumstances under which a police officer can require a person to provide identifying information. Section 14 empowers a police officer to require production of a licence, while section 15 allows an officer to require a person to 'move on' in certain circumstances.

Division 5 of Part II sets out the provisions under which police officers can deal with breaches of the peace, and includes their powers to prevent riots and the commission of other offences. Division 6 details the various powers of police officers in dealing with vehicles and traffic. In Division 7, clause 29 provides for police officers to assist enforcement officers with their responsibilities under other legislation. Division 8 provides for police officers to have general security responsibilities as regards entry to buildings owned by the Republic.

Division 9 of Part II sets out the powers of police officers as regards entry onto private property in various situations. Division 10 provides for the circumstances under

which the use of force by a police officer may be appropriate. Division 11 obliges police officers to investigate unnatural deaths.

Part III sets out in detail the powers of police officers to search places and seize items, whether with or without a warrant. It includes provisions for gaining access to and securing crime scenes. Part IV provides for the arrest, search and detention of suspects, together with the powers to ensure subsequent attendance at court. The questioning of suspects is covered by Part V. The conduct of identification parades and other procedures for identifying suspects is dealt with in Part VI.

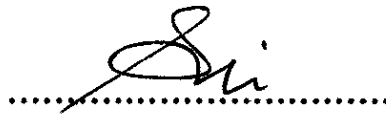
Part VII deals with various miscellaneous matters, including: how police officers identify themselves; the service and enforcement of warrants; when a police officer may damage property in the exercise of the officer's powers; offences for assaulting or obstructing police officers, or failing to comply with an officer's directions; and the making of regulations.

Part VIII provides for various transitional matters in the move from the Ordinance to the new Act, while Part IX makes consequential amendments to three other laws.

Titabu Tabane
Attorney General
30 July 2008

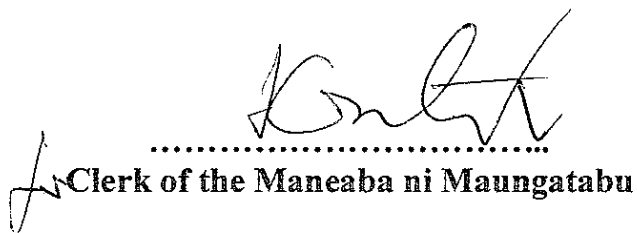
**CERTIFICATE OF THE CLERK OF THE MANEABA NI
MAUNGATABU**

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



Eni Tekanene
Clerk of the Maneaba ni Maungatabu

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



.....
Clerk of the Maneaba ni Maungatabu