



Tuvalu

POLICE SERVICE ACT 2009



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Tuvalu

POLICE SERVICE ACT 2009

Act No. 13 of 2009

AN ACT TO PROVIDE FOR THE ORGANISATION AND DISCIPLINE OF THE TUVALU POLICE AND OF SPECIAL CONSTABLES, AND FOR INCIDENTAL MATTERS

ENACTED BY THE PARLIAMENT OF TUVALU
30th November, 2009

Commencement [3rd December, 2009]

CHAPTER 1 PRELIMINARY

1 Short title

This Act is the Police Service Act 2009.

2 Commencement

This Act commences on the date of publication.

3 Purpose of this Act

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

4 This Act binds the Crown

This Act binds the Crown.

5 Definitions

In this Act, unless the contrary intention appears:

“**administrative staff member**” has the meaning given by section 6.

“**child**” means a person under 18 years.

“**commissioned officer**” means a police officer who holds or is acting in an office in the police service of Inspector or above.

“**Commissioner**” means the Commissioner of Police.

“**Commissioner’s duties**” are set out in section 11.

“**dangerous drug**” has the meaning given in section 2 (Interpretation) of the Dangerous Drugs Act.

“**death in custody**” means the death of a person when the person was:

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

“**dismiss**”, when used in relation to a member of the police service, includes removing the member from the police service.

“**fine unit**” has the meaning given in section 96.

“**foreign integrity-checking agency**” means an agency of another country that has obligations that include an obligation under the laws of that country to assess the integrity of persons employed or engaged by the government of that country.

“**foreign law enforcement agency**” means

- (a) an agency of another country that has obligations under the laws of that country that include law enforcement; or
- (b) a regional body that has functions that relate to law enforcement.

“**industrial award**” means an award of a tribunal under the Industrial Relations Code 1974.

“**member of the police service**” has the meaning given by section 6.

“**Minister**” means the Minister responsible for the police service.

“**non-commissioned officer**” means a police officer who holds or is acting in an office in the police service below the rank of Inspector.

“**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 administrative officer stationed in the district.

“**Penal Code**” means the Penal Code that commenced on 18 October 1965.

“**police officer**” has the meaning given by section 6.

“**police service**” means the Tuvalu Police established in the Constitution.

“**special constable**” means a person who holds an appointment as a special constable under section 20.

“**transport law**” means any law dealing with transport, including:

- (a) section 233 of the Penal Code (Endangering safety of persons travelling by aircraft, vehicle or vessel);
- (b) Aerodromes and Air Navigation Aids Act;
- (c) Civil Aviation Act 1949;
- (d) Harbours Act;
- (e) Lagoon Shipping Act;
- (f) Merchant Shipping Act;
- (g) Traffic Act 1983;
- (h) any other law prescribed by the regulations.

“**vehicle**” includes a vessel.

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

CHAPTER 2 ADMINISTRATION OF THE POLICE SERVICE

PART 2.1 THE POLICE SERVICE

6 Membership of the police service

- (1) The following persons are members of the police service:
 - (a) police officers;
 - (b) police recruits;
 - (c) administrative staff members.
- (2) The following persons are police officers:

- (a) the Commissioner;
 - (b) each person holding an appointment as a commissioned police officer;
 - (c) each person holding an appointment as a non-commissioned police officer.
- (3) A child cannot be appointed as a police officer.
- (4) A person who is employed under the Public Service Act and is assigned to perform duties in the police service is an administrative staff member.
- (5) An administrative staff member is subject to the Commissioner's direction when performing duties in the police service.

7 Mission of the police service

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

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

8 Responsibilities of the police service

- (1) The police service is responsible for:
- (a) preserving peace and good order; and
 - (b) preventing crime; and
 - (c) detecting offenders and bringing offenders to justice; and
 - (d) upholding the law generally; and
 - (e) administering, in a responsible, fair and efficient way and subject to due process of law and the directions of the Commissioner:
 - (i) the Penal Code; and
 - (ii) all other Acts or laws for the time being committed to the responsibility of the police service; and
 - (iii) the powers and duties given to police officers under any Act; and
 - (f) providing essential services in emergencies.
- (2) Subsection (1) does not reduce the responsibility that is appropriately had by the community of Tuvalu, and members of the community of Tuvalu, for:
- (a) the preservation of peace and good order; and
 - (b) the prevention and detection of breaches of the law.
- (3) The members of the police service, when discharging the responsibilities of the police service, are to work together with the community to the extent that is compatible with the efficient and proper discharge of those responsibilities.

9 Values of the police service

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

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

10 Police officers must be familiar with legislation

- (1) Each police officer must take reasonable steps to familiarise himself or herself with the provisions of this Act, the Police Powers and Duties Act 2009, the regulations and the directions that apply to police officers.
- (2) The Commissioner must:
 - (a) direct the attention of all new police officers to the requirements of subsection (1); and
 - (b) ensure that a copy of this Act, the Police Powers and Duties Act 2009, the regulations and the directions are reasonably accessible to each police officer.

PART 2.2 THE COMMISSIONER OF POLICE

11 Commissioner's duties

- (1) The Commissioner is responsible for the control and management of the police service in accordance with the law.

Note The Commissioner is to be appointed and hold office, and may be suspended or removed from office, in accordance with section 159 (Special cases of appointments) of the Constitution.

- (2) Without limiting subsection (1), this includes the following:
 - (a) determination of priorities;
 - (b) determination of the appropriate organisational structure of the police service;
 - (c) designation and redesignation of offices;
 - (d) control of the human, financial and other resources of the police service;
 - (e) recommending for determination by Cabinet:

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

12 Commissioner's powers

- (1) The Commissioner has power to do, or cause to be done, all lawful acts and things that the Commissioner considers to be necessary or convenient for the efficient and proper discharge of the Commissioner's duties.
- (2) The Commissioner may delegate powers to a commissioned officer.

- (3) The Commissioner is not responsible to, and must act independently of, any Minister of the Crown (including any person acting on the instruction of a Minister of the Crown) regarding:
 - (a) the maintenance of order in relation to any individual or group of individuals; and
 - (b) the enforcement of the law in relation to any individual or group of individuals; and
 - (c) the investigation and prosecution of offences; and
 - (d) decisions about individual members of the police service.
- (4) The Commissioner:
 - (a) must give reports and recommendations about the administration of the police service to the Minister, when required to do so by the Minister; and
 - (b) may give the Minister, at any time, the reports and recommendations that the Commissioner considers necessary for the efficient and effective administration of the police service.
- (5) The Minister, after seeking and considering the Commissioner's advice, may give written directions to the Commissioner about:
 - (a) the overall administration of the police service; and
 - (b) the policies and priorities to be pursued in performing the duties of the police service.
- (6) The Commissioner must comply with directions given under subsection (5).
- (7) The Commissioner must keep a record of:
 - (a) all reports and recommendations made to the Minister under subsection (4)(a); and
 - (b) all directions given to the Commissioner under subsection (5).

13 Commissioner's directions

- (1) The Commissioner may give, and cause to be issued to members of the police service, the directions that the Commissioner considers necessary or convenient for the efficient and proper functioning of the police service.
- (2) Without limiting subsection (1), the Commissioner's directions may include a code of ethics that is to be observed in the police service.
- (3) A direction may be general or particular, and may be given orally or in writing.
- (4) A direction is of no effect to the extent that it is inconsistent with this Act or another Act.

- (5) Subject to subsection (4), every member of the police service to whom a direction of the Commissioner is addressed is to comply with the direction in all respects.
- (6) In all proceedings:
 - (a) a document that purports to be certified by the Commissioner to be a true copy of a direction under this section is admissible as evidence of the direction; and
 - (b) a direction under this section is taken to be effectual until the contrary is proven.

14 Commissioner has overall command

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

15 Command at a police station

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

16 Command at incidents

- (1) This section applies to any incident, that calls for action by police, at which police officers are present.
- (2) The following person is responsible for taking action, and for action taken, at the incident:
 - (a) the police officer designated for that purpose in accordance with administrative arrangements established by the Commissioner; or
 - (b) if the police officer mentioned in paragraph (a) is not there — the police officer present who is most senior by rank; or
 - (c) if the police officers mentioned in paragraphs (a) and (b) are not there — the police officer present who is most senior by length of continuous service as a police officer.
- (3) For subsection (2)(c), any service other than as a police officer must not be counted, even though it may count as continuous service under section 91.

17 Commissioner's official stamp

- (1) The Commissioner is to have an official stamp.
- (2) All courts and persons who act judicially are to take judicial notice of:

- (a) the signature of the Commissioner or any person who, at any time, was the Commissioner (a “former Commissioner”); and
 - (b) the fact that the Commissioner has, or a former Commissioner had, an official stamp; and
 - (c) the official stamp of the Commissioner or a former Commissioner;
- if the signature or official stamp appears on a document made for the purposes of judicial proceedings or on a document purporting, or seeming, to have been made for this Act.

PART 2.3 OTHER MEMBERS OF THE POLICE SERVICE

DIVISION 2.3.1 APPOINTMENT

18 Appointing commissioned officers

- (1) This section applies to the appointment of commissioned officers under section 157 of the Constitution.
- (2) The number of commissioned officers to be appointed is to be the number that the Governor-General, acting in accordance with the advice of the Cabinet, tendered after consultation with the Commissioner, determines is necessary for the effectual administration of this Act, and the efficient and proper discharge of the Commissioner’s duties.

19 Appointing non-commissioned officers

- (1) This section applies to the appointment of non-commissioned officers by the Commissioner, under section 157 of the Constitution.
- (2) The number of non-commissioned officers to be appointed is to be the number that the Governor-General, acting in accordance with the advice of the Cabinet, tendered after consultation with the Commissioner, determines is necessary for the effectual administration of this Act, and the efficient and proper discharge of the Commissioner’s duties.

20 Appointing special constables

- (1) The Commissioner, in writing, may appoint persons to be special constables.
- (2) The Commissioner may appoint special constables on the conditions that the Cabinet, acting in accordance with the advice of the Commissioner, thinks appropriate.
- (3) A special constable:

- (a) is not entitled to salary, allowances or other remuneration, except as provided for in the special constable's instrument of appointment; and
 - (b) is not a public officer, or an employee of the Commissioner.
- (4) A special constable may perform paid employment while holding an appointment as a special constable, if the special constable has the written consent of the Commissioner.
- (5) The Commissioner must not withhold consent unreasonably if the type of employment is compatible with the mission, responsibilities and values of the police service.
- (6) While a person holds an appointment as a special constable:
- (a) the person has the duties and powers of a police officer subject to any conditions mentioned in the appointment; and
 - (b) the provisions of this Act and the Police Powers and Duties Act 2009 that apply to police officers, and that may be reasonably applied to special constables, also apply to the person as if the person were a police officer.

21 Appointments to be based on merit of applicants

- (1) This section applies to a decision to appoint a member of the police service, including by promotion.
- (2) The decision must be made by fair and equitable procedures that:
- (a) prevent unjust discrimination, whether in favour of or against a person; and
 - (b) include inviting applications and selecting the applicant who has the greatest merit.
- (3) The merit of an applicant is comprised of:
- (a) the integrity of the applicant; and
 - (b) the diligence and good conduct shown by the applicant in the course of the applicant's career; and
 - (c) the physical and mental fitness of the applicant to perform the duties of the position; and
 - (d) the suitability of the applicant to be engaged by the police service, as determined under Division 2.3.2; and
 - (e) the potential of the applicant to discharge the duties of the position; and
 - (f) the ability of the applicant to fluently speak and write English.
- (4) The potential of an applicant to discharge the duties of the position is to be determined by taking at least the following factors into account:

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

22 Appointment on probation

- (1) An appointment as a police officer of a person who was not a police officer immediately before the appointment is an appointment on probation for:
- (a) 2 years; or
 - (b) a longer period determined by the Commissioner.
- (2) Unless the position of a police officer is advertised as one to which appointment is to be made without a probation period, an appointment of a police officer to a position on promotion is an appointment on probation for:
- (a) 6 months; or
 - (b) a longer period determined by the Commissioner.
- (3) The Commissioner may:
- (a) at any time during the initial probation period, or during any extension of a probation period — terminate the appointment of a person; and
 - (b) at the end of a probation period — confirm the appointment of the person, extend or further extend the probation period, or terminate the appointment of a person.
- (4) If a police officer is on probation as a result of a promotion and the promotion is terminated, the police officer is to be retained in employment as a police officer, at a level of salary not less than the level of salary of the police officer immediately before the appointment that is terminated, until the police officer:
- (a) is appointed to another position in the police service; or
 - (b) is otherwise dealt with under this Act.

23 Appointment on part-time basis

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

24 Appointment excludes other paid employment

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

25 Oath or affirmation of office

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

DIVISION 2.3.2 OPERATIONAL REQUIREMENTS**26 Exercise of powers**

- (1) A person engaged by the police service:
 - (a) is on duty when the officer in charge of a place requires the person to carry out the responsibilities of the police service assigned to the person; and
 - (b) may exercise his or her powers as a police officer at all times; and
 - (c) must exercise his or her powers as a police officer when not on duty if it is reasonable to do so.

Example

It may not be reasonable for an off-duty police officer to intervene in a minor traffic infringement, or if another police officer is already dealing with a matter.

- (2) The Commissioner may give directions about when a person engaged by the police service is or is not on duty.

27 Identity cards

- (1) The Commissioner must issue an identity card to each police officer.
- (2) The identity card must:
 - (a) contain a recent photo 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 or 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 the offence is 40 fine units.
- (6) This section has effect from a date determined by the Commissioner.

28 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 — tell the person the police officer's name, rank and station; or
 - (b) if the police officer is not in uniform:
 - (i) tell the person that he or she is a police officer; and
 - (ii) tell the person 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 2.3.3 SUITABILITY OF PERSONS ENGAGED BY THE POLICE SERVICE

29 Purpose of Division 2.3.3

- (1) The purpose of this Division is to ensure that the Commissioner:
- (a) may gather all the relevant information that the Commissioner needs about a person who is engaged, or who is seeking to be engaged, by the police service; and

- (b) may use this information to assess the person's suitability to be, or to continue to be, engaged by the police service.

Examples of reasons a person may be unsuitable

the person's methods or way of executing his or her duties may not be compatible with the requirements of the police service

there may be insufficient grounds for dismissal, but it may be in the interests of the police service to dispense with the employee's services.

- (2) The following persons are engaged by the police service:
- (a) a police officer;
 - (b) a police recruit;
 - (c) a special constable;
 - (d) an administrative staff member;
 - (e) a person performing functions at a police station under a contract for services;
 - (f) a person working in the police service as a volunteer, or as a student on work experience.

Examples for paragraph (e)

an electrician

a cleaner

a plumber.

- (3) It is the intention of this Division that the information obtained by the Commissioner is to be used only for assessing the person's suitability to be, or to continue to be, engaged by the police service.
- (4) However, the Commissioner may use any of the information, that discloses the commission of an offence or is, or leads to the discovery of, evidence of the commission of an offence, for an investigation into the offence and any proceedings started or facilitated because of the investigation.

30 Relevant information that is to be disclosed

In this Division:

“relevant information” about a person includes information about the following matters, whether they relate to circumstances arising in Tuvalu or overseas:

- (a) offences of which the person has been convicted;
- (b) arrests of the person;
- (c) warrants issued in relation to the person;
- (d) cautions or warnings given to the person;
- (e) orders made against the person;
- (f) whether the person has had a weapons licence suspended or cancelled;

- (g) any alias that the person has used.

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

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

32 Disclosure by persons already engaged by the police service

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

33 Commissioner may request information from other agencies

The Commissioner may ask a foreign integrity-checking agency to give the Commissioner a report that includes relevant information about a person.

34 Prosecutor to notify Commissioner about convictions

- (1) This section applies if:
 - (a) a person is charged with an offence; and
 - (b) the person who is prosecuting the offence (the "prosecutor") is aware that the person is engaged by the police service.
- (2) The prosecutor must give the Commissioner written notice of the following particulars within 7 days after the prosecutor becomes aware of the particulars:
 - (a) the person's name;
 - (b) if the person is convicted of the offence by a court:
 - (i) particulars of the offence;

- (ii) the date of the conviction;
 - (iii) the court that convicted the person;
 - (iv) the sentence imposed by the court;
- (c) if the person is convicted of the offence and appealed the conviction, and the appeal has been finally decided or has otherwise ended:
 - (i) particulars of the offence;
 - (ii) the date on which the appeal was decided or otherwise ended;
 - (iii) if the appeal was decided — the court that decided the appeal;
 - (iv) if the appeal was decided — particulars of the decision.
- (3) This section does not apply if the person was charged with the offence by a police officer.

35 Statutory declaration as to criminal or corrupt conduct

- (1) The Commissioner must require a person who is seeking to be engaged by the police service to provide a statutory declaration that the person has not knowingly engaged in any criminal or corrupt conduct.
- (2) The Commissioner may require a person who is engaged by the police service to provide a statutory declaration that the person has not knowingly engaged in any criminal or corrupt conduct during a specified period.
- (3) A person who fails, refuses or is unable to provide the statutory declaration is not eligible to be, or to continue to be, engaged by the police service.
- (4) The failure, refusal or inability of a person to provide a statutory declaration must not be taken into consideration for any purpose other than the assessment of the person's eligibility to be, or to continue to be, engaged by the police service.
- (5) Subsection (4) applies regardless of section 29.

36 Fingerprinting of applicants

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

- (4) A person who stops being a police officer may request that any fingerprint or handprint taken under this section be destroyed.
- (5) The Commissioner must ensure that the request is complied with as soon as practicable after the request is made.

37 Assessment of suitability

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

38 Person to be advised if he or she is not suitable

- (1) This section applies if, because of information relied on by the Commissioner under this Division, the Commissioner considers that a person may not be suitable to be, or to continue to be, engaged by the police service.
- (2) The Commissioner, before deciding that the person is not suitable, must:
 - (a) give the person written notice of the information that the Commissioner has relied on to form the opinion that the person is not suitable; and
 - (b) allow the person a reasonable opportunity to make written representations to the Commissioner about the information.
- (3) Also, the Commissioner must give his or her written reasons why the person may not be suitable, unless the Commissioner considers that disclosure of the reasons:
 - (a) may prejudice the investigation of a contravention or possible contravention of the law; or
 - (b) may enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
 - (c) may endanger a person's life or physical safety; or
 - (d) may prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or

- (e) may prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
 - (f) may prejudice national security; or
 - (g) is prohibited under another Act.
- (4) If, after considering any written representations made by the person, the Commissioner decides that the person is suitable to be, or to continue to be, engaged by the police service, the Commissioner must:
- (a) notify the person of the decision in writing; and
 - (b) if appropriate, direct that improvements be made, or that action be taken to improve the person's performance.
- (5) If, after considering any written representations made by the person, the Commissioner decides the person is not suitable to be, or to continue to be, engaged by the police service, the Commissioner must give the person a written notice that states:
- (a) that decision; and
 - (b) that the person has a right to appeal against the decision to the Public Service Commission under section 63.
- (6) A serving member of the police service who is to be dismissed under this Division is entitled to 1 month's notice of the proposed dismissal, or 1 month's salary instead of the notice.

39 Confidentiality of relevant information

- (1) This section applies to a person who:
- (a) is, or has been:
 - (i) a person engaged by the police service; or
 - (ii) a member of a selection panel; and
 - (b) in that capacity, acquired relevant information about another person.
- (2) The person commits an offence if the person discloses the information to anyone.
- (3) The maximum penalty for the offence is 200 fine units or imprisonment for 2 years, or both.
- (4) Subsection (2) does not apply to the disclosure of information about a person if:
- (a) the disclosure:
 - (i) is to a police officer, an administrative staff member, or a member of a selection panel, for the purposes of assessing the person's suitability to be, or to continue to be, engaged by the police service; or

- (ii) is with the person's consent; or
 - (iii) is of information that is relevant to an existing investigation of an offence; or
 - (iv) is for a proceeding started because of an existing investigation of an offence; or
 - (v) is information that the person may disclose to a person who is entitled to ask for it under another Act; or
- (b) the information discloses evidence of the commission or suspected commission of an offence, and an investigation is started or facilitated because of the information.
- (5) A person involved in any way in anything done under this Division cannot be compelled to produce to a court any document kept, or to disclose to a court any information obtained, because of doing the thing.
- (6) In this section, a "member of a selection panel" is a member of a panel formed to make a recommendation to the Commissioner about a person's engagement by the police service.

DIVISION 2.3.4 INTEGRITY OF MEMBERS OF THE POLICE SERVICE

40 Purpose of Division 2.3.4

The purpose of this Division is:

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

41 Duty not to be impaired by alcohol or drugs

- (1) This section applies only to:
- (a) police officers; and
 - (b) police recruits; and
 - (c) administrative staff members whose duties include duties performed in a critical area.
- (2) A "critical area" is any of the following areas in which an administrative staff member performs duties:
- (a) an area that is used to store weapons or explosives;
 - (b) an area that is used to store dangerous drugs;
 - (c) a communications centre;

- (d) any other area that is declared in the regulations to be a critical area.
- (3) The physical or mental capacity of a member of the police service mentioned in subsection (1) must not be impaired by alcohol or a drug:
 - (a) when reporting for duty for a rostered shift; or
 - (b) while on duty for a rostered shift; or
 - (c) while on call for duty.
- (4) A “drug” means any substance that may impair a person’s physical or mental capacity to perform his or her duties.
- (5) An authorised testing officer may require a member of the police service mentioned in subsection (1) to submit to a substance test if:
 - (a) an authorised testing officer suspects, on reasonable grounds, that the member is contravening subsection (3); or
 - (b) the member has been involved in:
 - (i) the death of a person in custody; or
 - (ii) an incident at a police station in which a person died or was severely injured; or
 - (iii) an incident in which a police officer who was on duty discharged a firearm in circumstances that caused, or could have caused, injury to a person; or
 - (iv) a pursuit in a vehicle or vessel during which a person died or was severely injured.
- (6) An “authorised testing officer” is a police officer who holds a rank above the rank of the police officer who is to be tested.
- (7) A “substance test” is a test designed to test whether a person’s physical or mental capacity is impaired by alcohol or a drug.

Example of a substance test

a sobriety test.

- (8) A member who fails to submit to a substance test, without reasonable cause, is taken to have contravened subsection (3).

42 What happens if a member is impaired by alcohol or drugs

- (1) This section applies if a substance test shows that a member of the police service mentioned in section 41(1) contravened section 41(3).
- (2) The Commissioner must suspend the member from duty until the member’s physical or mental capacity is no longer impaired by alcohol or a drug.
- (3) Disciplinary control may be exercised over the member under Part 2.4.
- (4) Also, the Commissioner may do any 1 or more of the following:

- (a) counsel the member;
 - (b) direct the member to undergo a course of counselling or rehabilitation that is approved by the Commissioner;
 - (c) direct the member to attend a medical practitioner for a medical examination of the member's fitness to continue his or her normal duties without danger to himself or herself or to someone else;
 - (d) after considering a report of a medical practitioner under paragraph (c), direct the member to perform other duties until the Commissioner considers the member is able to perform his or her normal duties without danger to himself or herself or to someone else.
- (5) If a member fails:
- (a) to attend or complete a course of counselling or rehabilitation as directed under subsection (4)(b); or
 - (b) to attend a medical practitioner as directed under subsection (4)(c);
- disciplinary control may be exercised over the member.
- (6) However, if 2 or more contraventions of this section by a member arise out of the same facts or circumstances, disciplinary control may be exercised over the member for only 1 contravention.
- (7) A member who is directed to perform other duties under subsection (4)(d) is entitled to be paid a salary and allowances at the rate at which the member would be paid if the member were performing normal duties.
- (8) A medical practitioner who prepares a report under subsection (4)(c) is authorised to give the report to the Commissioner.

43 Integrity testing of police officers

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

DIVISION 2.3.5 TRANSFERS

44 Decision to transfer police officers

- (1) The Commissioner may transfer a police officer to any position where the police officer's services are required.
- (2) However, a decision to transfer a police officer must be made by fair and equitable procedures that prevent unjust discrimination, whether in favour of or against a police officer.
- (3) The transfer of a police officer means the appointment of a police officer to a position in which the police officer will hold the same rank and be entitled to at least the same level of salary.
- (4) A police officer who is transferred to a position must accept the transfer, even if the police officer did not apply for the transfer.
- (5) However, if the police officer did not apply for the transfer, the notice informing the police officer of the transfer must also inform the police officer that he or she may appeal against the decision to the Public Service Commission under section 63.
- (6) The Commissioner cannot direct a police officer to attend for duty within 14 days after the police officer was notified of the Commissioner's decision, that is, until after the time allowed for making an appeal to the Public Service Commission against the Commissioner's decision has ended.
- (7) However, subsection (6) does not limit the Commissioner's powers to direct a police officer to attend for duty in circumstances that the Commissioner considers are urgent.

PART 2.4 DISMISSAL AND DISCIPLINARY CONTROL

DIVISION 2.4.1 INTRODUCTION

45 Purpose of Division 2.4.1

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

Example

Disciplinary action could start with verbal counselling and be followed by a first written warning, a final written warning, and then termination.

- (3) A police officer may be penalised for breach of discipline and also dealt with for the commission of an offence for the same act or omission.

DIVISION 2.4.2 DISCIPLINARY PROCESS

46 Breaches of discipline

- (1) A police officer commits a breach of discipline if the police officer, while in Tuvalu or overseas:
- (a) contravenes this Act, the Police Powers and Duties Act 2009 or the regulations; or
 - (b) is careless, lazy or negligent in carrying out his or her duties, without reasonable cause; or
 - (c) acts in a disgraceful or improper way, either on or off duty; or
 - (d) acts in a way that is prejudicial to the good order and discipline of the police service; or
 - (e) fails to deal with a contravention of the law that happens in his or her presence, unless it would not be reasonable in the circumstances because of an imminent risk to the police officer's safety; or
 - (f) is absent from duty without:
 - (i) leave; or
 - (ii) reasonable cause; or
 - (g) is convicted in Tuvalu of an offence, or is convicted overseas of an offence that if committed in Tuvalu would have been an offence; or
 - (h) aids, abets, counsels or procures the commission of a breach of discipline under this subsection.

Example for paragraph (b)

failing to properly supervise his or her subordinates.

Example for paragraph (c)

conducting himself or herself:

- (i) in a way that is likely to bring discredit to the police service; or
- (ii) in a dishonest or unethical way.

Examples for paragraph (d)

disobeying a lawful direction or order made by a superior officer

using abusive, insulting, obscene or threatening language while on duty

consuming alcohol while on duty without the approval of the Commissioner.

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

47 Types of penalties

The following types of penalties may be imposed on a police officer who commits a breach of discipline:

- (a) a caution or reprimand;
- (b) a fine of up to 14 days pay;
- (c) the forfeiture or deferment of a salary increment for up to 1 year;
- (d) a reduction in the police officer's level of salary, within the limits of the salary fixed for the rank held by the police officer;
- (e) a reduction in rank;
- (f) a transfer;
- (g) dismissal.

48 Order to appear before a disciplinary board

- (1) The Commissioner may order a non-commissioned police officer who is accused of a disciplinary breach to appear before a disciplinary board, which will hear and decide proceedings for the disciplinary breach.

Note Commissioned police officers are to be dealt with as members of the Public Service — see Constitution, section 157 (3).

- (2) The order must be in writing and state:
 - (a) the disciplinary breach that is alleged to have been committed by the accused police officer; and
 - (b) the facts on which the disciplinary breach is based; and
 - (c) the time, date and place of the disciplinary board hearing.
- (3) The order must be given to the accused police officer at least 7 days before the disciplinary board hearing is to begin.
- (4) If all reasonable attempts to give the order to the accused police officer have failed, at least 7 days before the disciplinary board hearing is to begin, the order may:
 - (a) be published in a newspaper that is circulating in the area where the accused police officer was last known to live; or
 - (b) be advertised on a radio station that is transmitting in the area where the accused police officer was last known to live.

49 Establishing a disciplinary board

- (1) A disciplinary board is to be established by the written order of the Commissioner.
- (2) A disciplinary board may be:

- (a) a summary board, which may impose only the following penalties:
 - (i) a caution or reprimand;
 - (ii) a fine of up to 14 days pay; or
 - (b) a non-summary board, which may impose any of the penalties provided in section 47.
- (3) A disciplinary board consists of:
- (a) for a summary board — 1 police officer who is higher in rank than the accused police officer; or
 - (b) for a non-summary board — 3 police officers who are not lower in rank or seniority than the accused police officer.
- (4) However, none of the following persons can be appointed as a member of a disciplinary board:
- (a) the investigating officer;
 - (b) the complainant;
 - (c) any of the witnesses to be called in the hearing;
 - (d) any other person who has any interest that may conflict with a fair and impartial hearing of the charges made against the accused police officer.
- (5) The order that establishes a non-summary board must specify which member of the disciplinary board is to be the Chairman of the board.
- (6) A single disciplinary board may be established to hear and decide proceedings against a number of accused police officers, unless the defence of any of the accused police officers may be prejudiced.

50 Proceedings before a disciplinary board

- (1) The proceedings before a disciplinary board must be heard in the presence of the accused police officer unless, in spite of being given notice of the proceedings in accordance with section 48(4), the accused police officer fails to attend before the disciplinary board.
- (2) However, if the accused police officer shows sufficient cause that prevented the accused police officer from attending before the disciplinary board, the accused police officer is entitled to a rehearing.
- (3) The proceedings before the disciplinary board are to be conducted with as little formality and technicality as possible, given the need to properly and fairly consider the complaint made against the accused police officer.
- (4) The disciplinary board may decide all or part of the proceedings from the documents brought before the disciplinary board, without the parties or the witnesses appearing, if:
 - (a) the parties agree; or

- (b) the disciplinary board considers it appropriate in all of the circumstances.
- (5) Subject to subsection (4), the accused police officer may:
- (a) be represented by a person who is not a legal practitioner; and
 - (b) cross-examine witnesses; and
 - (c) make a statement in his or her defence, either orally or in writing.
- (6) The disciplinary board may direct the accused police officer to answer a question even if the answer might tend to incriminate the accused police officer.
- (7) However:
- (a) the answer given by the accused police officer is not admissible in any other proceedings, whether criminal or civil; and
 - (b) any information, document or other evidence that is obtained as a direct or indirect result of the answer given by the accused police officer is not admissible in any criminal or civil proceedings.
- (8) The disciplinary board is not bound by the rules of evidence, but may inform itself in any way it considers appropriate.
- (9) The disciplinary board must keep a written record of the proceedings, in which it records:
- (a) the statements of the accused police officer and all witnesses; and
 - (b) any reports relating to the accused police officer that are tendered at the proceedings.
- (10) If the disciplinary board finds the accused police officer guilty of a breach of discipline, the disciplinary board may consider any breaches of discipline committed by the accused police officer in the past when deciding what penalty to impose on the accused police officer.
- (11) At the end of the proceedings, the disciplinary board must inform the accused police officer:
- (a) of its decision; and
 - (b) that the accused police officer may have the disciplinary board's decision reviewed by the Commissioner under section 52.
- (12) However, if the sentence includes a penalty of a reduction in rank, a transfer or dismissal, the disciplinary board must not inform the accused police officer of its decision unless, and until, the Commissioner has confirmed the decision.

51 Suspension of penalty

- (1) A disciplinary board may suspend the effect of a penalty that the disciplinary board imposed on an accused police officer for a breach of discipline if the accused police officer agrees:
 - (a) to perform community service specified by the disciplinary board; or
 - (b) to undergo a course of counselling or rehabilitation specified by the disciplinary board.
- (2) The disciplinary board must specify a type of community service, or course of counselling or rehabilitation, that is relevant to the breach of discipline.
- (3) If the accused police officer successfully completes the community service or course of counselling or rehabilitation, the penalty is rescinded.
- (4) If the accused police officer fails to successfully complete the community service or course of counselling or rehabilitation, the penalty is to be implemented.

52 Commissioner's review of disciplinary board's decision

- (1) If an accused police officer wants to have the decision of the disciplinary board reviewed by the Commissioner, the accused police officer must tell the disciplinary board within 14 days after being told of the decision.
- (2) If the accused police officer tells the disciplinary board that the accused police officer wants to have the decision reviewed, the disciplinary board's decision is stayed until the review is finalised.
- (3) After reviewing the disciplinary board's decision, the Commissioner may:
 - (a) confirm the decision and the penalty; or
 - (b) confirm the decision but change the penalty; or
 - (c) annul the decision and the penalty; or
 - (d) order a rehearing.
- (4) However, the Commissioner must give the accused police officer an opportunity to be heard before the Commissioner increases the punishment that was imposed by the disciplinary board.
- (5) The Commissioner must give the accused police officer a written notice that states:
 - (a) the Commissioner's decision; and
 - (b) that the accused police officer may appeal against the Commissioner's decision to the Public Service Commission under section 63.

53 Complaints of police misconduct

- (1) The Commissioner must promptly investigate every complaint made about the conduct of a police officer, and give the person who made the complaint a written notice that details:
 - (a) the findings of the investigation; and
 - (b) the action proposed to be taken as a result of those findings.
- (2) However, if during the investigation the Commissioner decides, on reasonable grounds, that the complaint concerns a frivolous matter or was made vexatiously, the Commissioner may:
 - (a) direct that no further action be taken in relation to the complaint; and
 - (b) give the person who made the complaint written notice that the Commissioner considers that the complaint is frivolous or was made vexatiously, and so is taking no further action in relation to the complaint.
- (3) The Commissioner must keep a written record of all written complaints made about the conduct of a police officer, and the action taken in relation to the complaint.
- (4) A person commits an offence if the person makes a complaint knowing the complaint is false.
- (5) The maximum penalty is 100 fine units or imprisonment for 1 year, or both.
- (6) In this section:

“police officer” includes a person who is no longer a police officer but who was a police officer when the misconduct is alleged to have happened.

54 Duty to report offences by other police officers

- (1) This section applies if a police officer knows, or suspects on reasonable grounds, that another police officer has committed an offence against this Act or another Act.
- (2) The police officer must, as soon as is practicable, report the offence to the Commissioner.
- (3) A person commits an offence if the person:
 - (a) prejudices, or threatens to prejudice, the safety or career of another person because that other person or someone else complied with subsection (2); or
 - (b) intimidates or harasses, or threatens to intimidate or harass, another person because that other person or someone else complied with subsection (2); or

- (c) takes any action that is, or is likely to be, to the detriment of another person because that other person or someone else complied with subsection (2).
- (4) The maximum penalty for the offence is 100 fine units.

55 Payment of fines into the Police Fund

- (1) If a police officer is ordered to pay a fine for a breach of discipline, the fine must be paid into a trust account called the “Police Fund”.
- (2) A payment must not be made out of the Police Fund except with the written authority of the Commissioner, and then only for the following purposes:
 - (a) assistance to the spouses and families of:
 - (i) deceased non-commissioned officers; or
 - (ii) non-commissioned officers who are discharged from the police service as medically unfit;
 - (b) contributions to be given at athletic meetings, assault-at-arms, or other similar events, that are organised by or for the benefit of the police service;
 - (c) the purchase of ammunition for weapons practice by police officers;
 - (d) payments to non-commissioned officers as rewards for meritorious acts or service in the execution of duty, if those payments are not met out of public funds;
 - (e) expenditure for the benefit and advancement of authorised recreation and sport and other police activities organised within the police service;
 - (f) another purpose that the Commissioner considers to be for the general welfare of members of the police service.

DIVISION 2.4.3 SUSPENSION AND STANDING DOWN

56 Power to suspend and stand down

- (1) This section applies if:
 - (a) the Commissioner considers, on reasonable grounds, that a member of the police service is liable to disciplinary control under Division 2.4.2; or
 - (b) the Commissioner considers, on reasonable grounds, that the efficient and proper discharge of the Commissioner’s duties might be prejudiced if the employment of a member of the police service is continued; or
 - (c) a member of the police service is charged with an offence; or

- (d) a member of the police service is unfit for reasons of health to such an extent that the member is unfit to carry out his or her duties.
- (2) The Commissioner may:
 - (a) suspend the member from duty; or
 - (b) stand down the member from duty as a police officer, and direct the member to perform other duties that the Commissioner considers appropriate.
- (3) The Commissioner may, at any time, revoke a suspension or standing down that is imposed under subsection (2).

57 Salary and allowances while suspended

- (1) A member of the police service who is suspended from duty under section 56(1)(a), (b) or (c) is entitled to be paid a salary and allowances at the rate that the member would have received had the member not been suspended, unless the Commissioner decides otherwise in a particular case.
- (2) A member of the police service who is suspended from duty under section 56(1)(d) is entitled to be paid a salary and allowances at the rate that the member would have received had the member not been suspended.
- (3) However, the Commissioner cannot reduce the member's salary by more than a half.
- (4) If the suspension is revoked and the member resumes duty, the member is entitled to receive the amount (if any) by which the member's salary and allowances were reduced, unless the Commissioner decides otherwise.

58 Salary and allowances while stood down

A member of the police service who is stood down from duty under this Part is entitled to be paid a salary and allowances at the rate at which the member would have received a salary and allowances had the member not been stood down.

59 Officer relieved of powers and duties while suspended or stood down

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

DIVISION 2.4.4 MEDICAL UNFITNESS

60 Unfitness for duty on medical grounds

- (1) This section applies if the Commissioner suspects, on reasonable grounds, that a police officer is incapable of performing the duties of office, or any other duties as a police officer that the Commissioner might reasonably direct the police officer to perform, because of a physical or mental illness.
- (2) The Commissioner may:
 - (a) nominate a medical practitioner to examine the police officer and to report to the Commissioner on the police officer's physical or mental health; and
 - (b) direct the police officer to submit to the examination.
- (3) The Commissioner may:
 - (a) appoint, in writing, the police officer to a position as an administrative staff member, or to another position in the Public Service with the agreement of the Secretary to Government, on a salary not less than the salary the police officer was being paid immediately before the appointment; and
 - (b) direct the police officer to report for, and perform duty in, that position.
- (4) A police officer who is appointed to a position as an administrative staff member or transferred to another position in the Public Service ceases to be a police officer.
- (5) The Commissioner may call on the police officer to retire within a time (of not less than 14 days) specified in a written notice if the Commissioner considers that the police officer is not sufficiently fit to perform duties as a member of the police service because:
 - (a) of any medical report from a medical practitioner on the physical or mental health of the police officer, including medical reports provided by the police officer; or
 - (b) the police officer fails, without reasonable cause, to comply with the Commissioner's direction to submit to the examination.
- (6) If the police officer does not retire within the time specified, the police officer may be dismissed.
- (7) The notice of dismissal must also inform the police officer of his or her right to appeal against the Commissioner's decision under section 63.

PART 2.5 DISCLOSURE OF INFORMATION**61 Improper disclosure of confidential information**

- (1) A person who is, or who has been, a member of the police service commits an offence if the person discloses confidential information, unless:
 - (a) the disclosure is for the purposes of the police service; or
 - (b) the disclosure is authorised under this or another Act; or
 - (c) the disclosure is made under due process of law; or
 - (d) the information would normally be made available to any member of the public on request.
- (2) “Confidential information” is information that is not generally known to the community, that:
 - (a) has come to the knowledge of, or has been confirmed by, the person through the exercise of a power, or the performance of a duty, of a member of the police service; or
 - (b) has come to the knowledge of the person because of employment in the police service.
- (3) In proceedings for an offence against this section, it is irrelevant that information of the nature of the information disclosed had also come to the defendant’s knowledge otherwise than in a way mentioned in subsection (2).
- (4) The maximum penalty for the offence is 100 fine units or imprisonment for 2 years, or both.

62 Disclosure of information authorised by the Commissioner

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

Example

The Commissioner may authorise the disclosure of information to a foreign law enforcement agency.

- (2) The Commissioner may impose conditions on the disclosure of information.
- (3) A person commits an offence if:
 - (a) the Commissioner disclosed information to the person subject to conditions; and
 - (b) the person contravenes any of the conditions.
- (4) The Commissioner’s power to authorise the disclosure of information under this section is subject to:

- (a) any other Act that prevents or restricts the Commissioner from disclosing the information; and
 - (b) any provision in the regulations about the disclosure of information that is in the possession of the police service.
- (5) The Commissioner must authorise the release of information given by or to a foreign law enforcement agency in accordance with a memorandum of understanding with that agency.
- (6) No one, including the Crown, incurs any liability in law because of a disclosure of information made in accordance with the Commissioner's authorisation.

CHAPTER 3 LEGAL PROCEEDINGS

63 Appeal from certain decisions of the Commissioner

- (1) A member of the police service may appeal to the Public Service Commission against a decision of the Commissioner:
- (a) that a person is not suitable to be engaged by the police service; or
 - (b) to transfer the member; or
 - (c) to dismiss the member; or
 - (d) to exercise disciplinary control over the member.
- (2) The appeal must be made and conducted in accordance with Rule 70 of the Public Service Commission Rules 2000.

64 Service and production of documents

- (1) Any document that an Act requires or authorises to be given to or served on the Commissioner is taken to have been given or served if it is given to the holder of the office nominated by the Commissioner by a notice in the Gazette.
- (2) With the leave of a court or tribunal, a member of the police service may represent the Commissioner in the court or tribunal in order to produce a document or other thing that was required to be produced in response to the document given or served under subsection (1).

65 Proceedings for offences against this Act

- (1) Proceedings for an offence against this Act may be commenced:
- (a) within 2 years after the offence was committed; or

- (b) within 1 year after the offence comes to the complainant's knowledge, but within 5 years after the offence was committed.
- (2) A statement in a complaint that the matter of the complaint came to the knowledge of the complainant on a stated day is evidence of when the matter came to the complainant's knowledge.
- (3) Proceedings for an offence against this Act are to be taken on the complaint of a police officer who is authorised, in writing, by the Commissioner.

66 Statements in complaints

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

67 Representation of police officers in court

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

- (3) Any police officer conducting a prosecution under subsection (2) is subject to the express directions of the Attorney-General.

68 Proof of appointment

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

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

69 Ownership of police property

In any proceedings, the following are taken to be the property of the Commissioner and may be sufficiently described as the property of the Commissioner:

- (a) a place that is declared to be a police station or other police premises under section 93;
- (b) anything, which is not the private property of any person, that the Crown has appropriated to the use of the police service or a member of the police service.

70 Liability for acts under a warrant

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

71 Liability for reports

- (1) It is lawful for a police officer or administrative staff member to express, in a report that is made in good faith in the execution of a duty, matters of opinion,

judgement or recommendation (of the person making the report or someone else), as well as matters of fact.

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

72 Liability for torts

- (1) If a member of the police service or volunteer, who is acting or purporting to act in the execution of a duty as a member of the police service or volunteer, commits a tort, the Crown is jointly liable for the tort.
- (2) The Crown may:
 - (a) pay the whole or part of:
 - (i) an amount under a settlement of a claim that has, or might have, been made in relation to the tort; or
 - (ii) damages (other than punitive damages) and costs awarded against the member of the police service or volunteer in relation to the tort; and
 - (b) pay the whole or part of costs incurred, but not recovered, by the member of the police service or volunteer in the proceedings for the tort; and
 - (c) recover, in a court of competent jurisdiction, a contribution from the member of the police service or volunteer of an amount that the court considers to be just in the circumstances.
- (3) However, the Crown must indemnify the member of the police service or volunteer if:
 - (a) the tort was committed while the member of the police service or volunteer was rendering assistance, directly or indirectly, to a person in a medical emergency; and

- (b) the member of the police service or volunteer was acting honestly and without gross negligence.
- (4) A “medical emergency” is a situation in which a person is suffering or apparently suffering from an illness or injury, in circumstances that the member of the police service or volunteer reasonably considered to be an emergency.
- (5) The Crown’s liability under this section does not extend to a liability to pay punitive damages.

73 Commissioner may provide legal representation

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

CHAPTER 4 OFFENCES

74 Impersonation of a member of the police service

- (1) A person commits an offence if the person claims to be a police officer with intent to mislead.
- (2) The maximum penalty for the offence is 100 fine units.

75 Entertaining etc police officers

- (1) A person commits an offence if the person knowingly:
 - (a) harbours or entertains a police officer in any place; or
 - (b) allows a police officer to linger in any place over which the person has control;

at any time when the police officer is on duty, unless the actual performance of the police officer's duty requires the police officer to be present at the place.

- (2) The maximum penalty for the offence is 100 fine units.

76 Bribery or corruption of members of the police service

- (1) A person commits an offence if the person provides a member of the police service with a benefit or property with a view to:
- (a) the member neglecting the member's duties; or
 - (b) influencing the member in the performance of the member's duties or the exercise of the member's powers; or
 - (c) the member using or taking advantage of the member's position in the police service:
 - (i) to facilitate the commission of an offence; or
 - (ii) to give the person any information, service or advantage, whether or not the person would otherwise be entitled to that information, service or advantage.
- (2) A person "provides" a member of the police service with a benefit or property if the person:
- (a) gives the benefit or property to the member of the police service; or
 - (b) confers the benefit or property on the member of the police service; or
 - (c) procures the benefit or property for the member of the police service; or
 - (d) offers, promises or agrees to do anything mentioned in paragraph (a), (b) or (c).
- (3) A member of the police service commits an offence if the member solicits, agrees to accept, or accepts, from a person a benefit or property with a view to:
- (a) the member neglecting the member's duties; or
 - (b) influencing the member in the performance of the member's duties or the exercise of the member's powers; or
 - (c) the member using or taking advantage of the member's position in the police service:
 - (i) to facilitate the commission of an offence; or
 - (ii) to give the person any information, service or advantage, whether or not the person would otherwise be entitled to that information, service or advantage.
- (4) The maximum penalty for an offence against subsection (1) or (3) is 1 000 fine units or imprisonment for 10 years, or both.

- (5) The liability of a person under this section does not affect the person's liability under the Penal Code for an offence defined in the Penal Code that is constituted by the person's conduct.
- (6) However, the person cannot be dealt with under both this section and the Penal Code in relation to the same conduct.

77 False representations causing police investigations

- (1) A person commits an offence if:
 - (a) the person represents an act has been done, or circumstances exist, that requires investigation by a police officer; and
 - (b) the person knows that the representation is false.
- (2) For subsection (1), the representation may be made:
 - (a) by conduct; or
 - (b) by oral or written statements; or
 - (c) by conduct and oral or written statements.
- (3) The maximum penalty for the offence is 100 fine units.
- (4) However, if statements that are alleged to have been made by a person relate to the conduct of a police officer, the person cannot be convicted of the offence only on the uncorroborated evidence of a police officer.
- (5) If a person is convicted of an offence against this section, the court may order the person to pay to the Crown a reasonable amount for the expenses of, or incidental to, any investigation made by a police officer because of the false representation.
- (6) The court may make that order even if it does not impose a penalty for the offence.
- (7) This section does not apply to a representation relating to an offence, or the circumstances of an offence, if the offence has actually been committed.

78 Trespassing on police property

- (1) A person commits an offence if the person is found on, or having just left, any place that is appropriated to the use of the police service, unless the person has a lawful excuse.
- (2) The maximum penalty for the offence is 100 fine units.
- (3) The burden of proving a lawful excuse lies on a person who claims it.

79 Unlawful possession of police property

- (1) A person commits an offence if the person, without lawful excuse, possesses any of the following things, or supplies them to someone else:
 - (a) a print of a photo or part of a photo taken by a member of the police service;
 - (b) an audio or video recording of a police interview;
 - (c) a transcript of an audio or video recording of a police interview.
- (2) Subsection (1) does not prevent a person supplying, for the purposes of enabling another person to defend a charge, any of those things to:
 - (a) a person who is charged with an offence of which those things are evidence; or
 - (b) the person's lawyer.
- (3) However, a person mentioned in subsection (2)(a) commits an offence if the person does not return those things to the Commissioner after the end of the time allowed for any appeal against a conviction for the offence, unless the property is kept as part of the records of that person's lawyer.
- (4) A person commits an offence if the person, without lawful excuse, possesses:
 - (a) a document of a confidential nature that was brought into existence for the purposes of the police service; or
 - (b) anything appropriated to the use of the police service; or
 - (c) anything on issue to a police officer or to a former police officer.
- (5) The maximum penalty for an offence under this section is 100 fine units.
- (6) The burden of proving a lawful excuse under this section lies on a person who claims it.

80 Prohibited use of words suggesting association with police

- (1) In this section, a "police expression" is any of the following expressions:
 - (a) police;
 - (b) police service;
 - (c) police force;
 - (d) Tuvalu Police;
 - (e) police officer;
 - (f) any expression that resembles any of the expressions mentioned in paragraphs (a) to (e), or that includes words taken from 2 or more of the expressions.
- (2) A body or association of persons, whether incorporated or not, commits an offence if it:

- (a) has a police expression as, or as part of, its name; or
 - (b) uses a police expression in conjunction with its name, in any context.
- (3) A person commits an offence if the person:
- (a) has a police expression as, or as part of, a name under which the person conducts business; or
 - (b) use a police expression in conjunction with a name under which the person conducts business, in any context.
- (4) A person commits an offence if the person, for the purpose of any business, occupation or employment:
- (a) assumes or uses the designation “detective” or another designation that includes the word “detective”; or
 - (b) assumes or uses the designation, rank or description of a police officer, or a class of police officers.
- (5) The maximum penalty for an offence under this section is 100 fine units.
- (6) If a body or association of persons is convicted of an offence against this section, each member of its governing body is also taken to have committed the offence.

81 Striking or otherwise withdrawing service

- (1) A police officer commits an offence if the police officer:
- (a) does any act or makes any omission that, if done or omitted to be done by 2 or more police officers, would constitute a strike within the meaning of the Industrial Relations Code 1974; or
 - (b) withdraws from his or her services as a police officer, unless the withdrawal is authorised by this Act or by the Commissioner.
- (2) The maximum penalty for the offence is 100 fine units.

82 Mutiny and riots

- (1) In this section:
- “**mutiny**” means a gathering of 3 or more persons who are collectively challenging authority under this Act, with intent to subvert authority.
- “**riot**” means a gathering of 3 or more persons with intent to carry out a common purpose, that has begun to act in so tumultuous a way as to disturb the peace.
- (2) A police officer commits an offence if the police officer:
- (a) being aware of an intended mutiny in the police service, does not inform a superior officer of the intended mutiny; or

- (b) being aware of a mutiny in the police service, does not use the police officer's best endeavours to suppress the mutiny; or
 - (c) being present at a gathering that is tending towards a riot or is rioting, does not use the police officer's best endeavours to prevent or suppress the riot.
- (3) The maximum penalty for the offence is 100 fine units or imprisonment for 1 year, or both.

CHAPTER 5 MISCELLANEOUS PROVISIONS

83 War or other states of public emergency

- (1) This section applies if:
- (a) Tuvalu is at war; or
 - (b) a proclamation made under section 35 of the Constitution is in force.
- (2) The Governor-General, acting in accordance with the advice of the Cabinet, may direct the police service, or part of the police service:
- (a) to be employed as a military force; and
 - (b) to comply with the orders of any military authority that the Governor-General specifies.
- (3) However, a direction by the Governor-General does not affect:
- (a) any powers of appointment, dismissal or disciplinary control of members of the police service that are conferred on someone under this Act; and
 - (b) except as far as the Governor-General, acting in accordance with the advice of the Cabinet, may otherwise direct — the command and supervision of the police service vested in the Commissioner under this Act.
- (4) If a police officer's period of service is due to expire while a direction under subsection (2) is in effect, the Minister may direct that the police officer's period of service be extended for as long as the Minister considers necessary in the circumstances.

84 Fires or other emergencies

- (1) On receiving information of a fire or other emergency that requires fire service officers to attend, the Commissioner or the police officer in charge, at the time, of the police station nearest to the fire or other emergency must immediately send as many police officers as are considered necessary to help at the fire or other emergency and to preserve order.

- (2) It is the duty of a police officer who is present at a fire or other emergency to give a fire service officer reasonably necessary help.

85 Service overseas

- (1) The Minister, on the application of the government of another country or an international organisation operating in another country, may order the number of police officers as the Minister considers necessary to serve in the other country.
- (2) However, before the Minister makes the order, the Minister must be satisfied that satisfactory arrangements have been, or will be, made for the inclusion in the law of the other country of a provision that is reciprocal to this section.
- (3) If police officers from the police service of another country are in Tuvalu in response to an application made by the Government to assist Tuvalu Police in a temporary emergency, the following provisions have effect with regard to the police officers:
 - (a) the police officers are to be under the orders of their own officers who are present with them (if any), subject to the command of the Commissioner;
 - (b) the police officers may exercise the powers and perform the duties of police officers of equivalent rank in the Tuvalu Police, and for those purposes are taken to be members of the Tuvalu Police;
 - (c) any contract of service between the government of the other country, or the international organisation, and any of the police officers may be enforced as if it were made between the Crown and the officer;
 - (d) any law that affects the discipline or terms and conditions of service of the police officers while serving in another country are, as far as is possible in the circumstances, to be applied in Tuvalu as if the law were a law of Tuvalu.
- (4) Subsection (3)(d) does not empower a member of the Tuvalu Police to exercise disciplinary control over a police officer from the police service of another country.
- (5) However, if a law of the other country confers jurisdiction on a court to try and to punish an offence by a police officer from the police service of the other country, that jurisdiction may be exercised by a court of comparable jurisdiction in Tuvalu.

86 Performance appraisal

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

- (a) the police officer's performance; and

- (b) appropriate remedial steps to improve the police officer's performance if this is considered appropriate.

Example for paragraph (b)

This could be appropriate after a police officer has been disciplined.

87 Resignation

A police officer may resign by giving the Commissioner written notice of the police officer's intention to resign at least 3 months before the date of the intended resignation, unless the Commissioner approves some shorter period.

88 Ranks of police officers

The ranks of police officers are those prescribed by the regulations.

89 Police associations

- (1) A police officer must not be, or become, a member of a professional association other than a professional organisation that is prescribed in the regulations.
- (2) A "professional organisation" is:
 - (a) a trade union, or a body or association affiliated to a trade union; or
 - (b) a body or association that has as its object, or one of its objects, controlling or influencing conditions of employment in a trade or profession.
- (3) A police officer who contravenes this section may be dismissed from the police service, without the rights to any pension, gratuity or allowance.
- (4) For section 25 of the Constitution, it is the intention of Parliament to make this section:
 - (a) in the interests of public safety and public order; and
 - (b) for the purpose of protecting the rights and freedoms of other persons.

90 Payment during imprisonment or absence without leave

- (1) A member of the police service is not entitled to be paid a salary or allowances during any period when:
 - (a) the member is imprisoned; or
 - (b) the member is absent without leave.
- (2) However, subsection (1) does not apply:
 - (a) to any period when the member is imprisoned, while awaiting trial for an offence, if:

- (i) the member is acquitted or discharged; or
 - (ii) the prosecution does not proceed with the prosecution of the offence; or
- (b) if the Commissioner decides that the member should be paid.

91 Continuous service as a police officer

- (1) In calculating the length of service of a member of the police service, the following periods are not to be considered:
- (a) any period when the member is imprisoned, other than a period of imprisonment while awaiting trial for an offence if:
 - (i) the member was acquitted or discharged; or
 - (ii) the prosecution did not proceed with the prosecution of the offence;
 - (b) any period when the member is absent without leave.
- (2) If the member's service in the police service immediately precedes, or immediately follows, the member's service as a public officer, both periods of service count as continuous service as a member of the police service.

92 Awards

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

- (6) The Commissioner may decide the occasions on which an award may be worn.

93 Police stations

- (1) The Commissioner may, by a notice in the Gazette:
 - (a) declare a place to be a police station or other police premises; or
 - (b) assign a name to a police station.
- (2) In this section, a “place” means a place that the Crown has appropriated to the use of the police service.

94 Uniforms and other police property issued to police officers

- (1) If a police officer sells, gives away, loses by neglect or wilfully damages any property that was issued to the police officer by the Commissioner, the police officer must pay the amount of the loss or damage to the Commissioner.

Example of property
a uniform.

- (2) The amount of the loss or damage may be recovered by stopping a police officer’s salary.
- (3) Subsection (1) applies in addition to any disciplinary control that may be exercised over the police officer.
- (4) When a person stops being a police officer, the person must return all property that was issued to the person as a police officer.
- (5) The person must return the property to the officer in charge of the police station where the person was last stationed within 21 days after ceasing to be a police officer, unless the person has a reasonable excuse.
- (6) The person commits an offence if the person does not return the property in accordance with this section.
- (7) The maximum penalty for the offence is 100 fine units.
- (8) A police officer may apply to a magistrate under the Police Powers and Duties Act 2009 for a warrant to enter a place and search for and seize any property that has not been returned in accordance with this section.

95 Charges for extraordinary police services

- (1) If a member of the police service (whether or not in compliance with any law):

- (a) attends a sporting or entertainment event, at the request of the person conducting or organising the event, for the purposes of maintaining order; or
- (b) provides, at the request of a person, an escort for a vehicle carrying a long or wide load; or
- (c) provides a person with information under section 62, at the person's request;

the Commissioner may demand payment by the person of the amount that is prescribed in the regulations or, if no amount is prescribed in the regulations, of the amount that the Commissioner considers reasonable.

- (2) The regulations may provide for payment of the services mentioned in subsection (1).

96 Fine units

- (1) Fines in this Act are described using a number of fine units, rather than a number of dollars.
- (2) At the commencement of this Act, a fine unit is valued at \$10.00.
- (3) Once only in every year after the commencement of this Act, a regulation may prescribe an increased value for a fine unit.

97 Annual report

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

98 Regulations

- (1) The Minister may make regulations, which are consistent with the Act, prescribing:
 - (a) matters required or permitted by this Act to be prescribed; and
 - (b) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may provide for:
 - (a) the management and control of the affairs of the police service; and
 - (b) appeals about appointments, disciplinary control or related action within the police service; and

- (c) powers and entitlements of members of the police service; and
 - (d) duties, obligations and liabilities of members of the police service.
- (3) The regulations may provide conditions for police officers that vary from the Public Service Commission Rules 2000.
- (4) The regulations may provide for any matter (other than the duties, obligations or liabilities of members of the police service) by referring to:
- (a) determinations or rulings to be made from time to time by the Commissioner; or
 - (b) standards to be set or adopted from time to time by the Commissioner.
- (5) The regulations may provide for offences against the regulations punishable on conviction by:
- (a) fines of not more than 100 fine units; and
 - (b) imprisonment for not more than 2 years.

CHAPTER 6 TRANSITION FROM POLICE ORDINANCE

99 Definition for this Chapter

In this Chapter:

“**Police Ordinance**” means the Police Act that is repealed by this Act.

100 Continuation of appointments

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

101 Continuation of oath or affirmation

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

102 Police stations

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

103 Police Fund

The Police Fund under the Police Ordinance is taken to be the Police Fund under this Act.

104 Actions and decisions

- (1) This section applies to:
 - (a) an action taken under a provision of the Police Ordinance, if the action continued to have effect immediately before the commencement of this Act; and
 - (b) a decision made under a provision of the Police Ordinance, if the decision was in force immediately before the commencement of this Act.
- (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.

105 Proceedings for offences

A proceeding for a breach of discipline, or 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.

106 References to ranks under the Police Ordinance

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

did exist under the Police Ordinance, is taken to be a reference to a police officer holding a corresponding rank under this Act.

107 Reference to the Police Ordinance

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

CHAPTER 7 REPEAL

108 Police Act repealed

The Police Act that commenced on 31 August 1965 is repealed.