

No. 37 of 1998.

***Police Act 1998.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 37 of 1998.

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**ARRANGEMENT OF SECTIONS.**

**PART I – PRELIMINARY.**

1. Compliance with Constitutional requirements.
2. Interpretation.
  - “appointment”
  - “Branch”
  - “classification”
  - “the Commandant”
  - “Commissioner”
  - “Community Auxiliary Police”
  - “date of appointment to the Force”
  - “disciplinary offence”
  - “disciplinary officer”
  - “exempt member”
  - “family”
  - “the Force”
  - “former Force”
  - “the former Act”
  - “furlough”
  - “holiday”
  - “Home Subdistrict”
  - “member”
  - “Official Police Publication”
  - “pay”
  - “Police Promotions Selection Board”
  - “the pre-Independence Act”
  - “probationer”
  - “recreation leave”
  - “Regulations”

“Reserve Constabulary”  
“reservist”  
“service”  
“sexual harassment”  
“Special Constable”  
“Standing Orders”  
“this Act”  
“unattached member”  
“spouse”

3. Application of this Act.
4. Appointment of members of Force.
5. Power of command.
6. Training of prospective members of the Force.

**PART II – COMPOSITION AND ADMINISTRATION OF THE FORCE.**

7. Composition, etc., of Force.
8. Commandant.

**PART III – THE COMMISSIONER OF POLICE.**

9. Appointment of Commissioner.
10. Procedure when conduct of Commissioner called into question.
11. Preservation of rights.
12. Declaration of office.
13. Reports.
14. Powers of Commissioner.
15. Annual report.
16. Vesting of powers of members of the Force.
17. Delegation.

**PART IV – DISCIPLINE.**

*Division 1 – Introductory.*

18. Application of this part.
19. Disciplinary officers.
20. Disciplinary offences.

*Division 2 – Minor Offences.*

21. Dealing with minor offences.
22. Penalties for minor offences.

*Division 3 – Serious Offences.*

23. Dealing with serious offences.
24. Determination of charge.
25. Imposition of penalty where charge sustained.
26. Penalties for serious offences.
27. No right to appeal.

*Division 4 – Miscellaneous.*

28. Suspension.
29. Pay during suspension.
30. Deduction of fines, etc., from pay.
31. Procedure where address of member unknown.

- 32. Member charged with criminal offence.
- 33. Person convicted of criminal offence.
- 34. Re-appointment, etc., of certain convicted persons.

**PART V – REGULAR CONSTABULARY.**

***Division 1 – Preliminary.***

- 35. Interpretation of Part V.
- 36. Exempt members.
- 37. Seniority.

***Division 2 – Establishment.***

- 38. Establishment.

***Division 3 – Qualifications for Ranks.***

- 39. Qualifications.
- 40. Examinations for appointment, promotion, etc.
- 41. Specialists.

***Division 4 – Recruitment and Appointment.***

- 42. Recruitment.
- 43. Appointment of members of Regular Constabulary.
- 44. Re-appointment of members retired on account of mental or bodily infirmity.
- 45. Re-appointment of persons who have resigned from the Force to become candidates at elections.
- 46. Filling of vacancies after advertisement.
- 47. Filling of vacancies from outside the Force.

***Division 5 – Transfers and Promotions.***

- 48. Principles to apply to transfers and promotions.
- 49. Promotions or appointments to rank of Deputy Commissioner.
- 50. Filling of vacancies by promotion.
- 51. Police Promotions Selection Board.

“Board”

“Chairman”

- 52. Functions of the Board.
- 53. Promotions through the Board.
- 54. Permission to decline promotion.

***Division 6 – Demotions and Dismissals.***

- 55. Demotions and dismissals.

***Division 7 – Salaries and Allowances.***

- 56. Salaries.
- 57. Allowances.
- 58. Deductions from pay.
- 59. Increments.

***Division 8 – Recreation Leave.***

- 60. Right to leave.
- 61. Recreation leave.
- 62. Intervals.
- 63. Order of granting recreation leave.
- 64. Extension of time of accrual.
- 65. Pro rata leave, etc.

- 66. When recreation leave to be taken.
- 67. Excess leave.

***Division 9 – Leave Fares.***

- 68. Payment of leave fares.
- 69. Travelling time.

***Division 10 – Other Leave.***

- 70. Compassionate leave.
- 71. Representational leave.
- 72. Sick leave.
- 73. Amount of sick leave, etc.
- 74. Maternity leave.
- 75. Parental leave (adoption).
- 76. Health of member causing a danger to others.
- 77. Leave by reason of infectious disease contacts.
- 78. Illness due to misconduct.
- 79. Injury on duty.
- 80. Leave without pay.
- 81. Leave to attend arbitration proceedings.
- 82. Leave for defence purposes.
- 83. Leave to serve under other Acts.
- 84. Leave to serve with other governments, etc.
- 85. Furlough.
- 86. Payment of fares on furlough.
- 87. Leave to members not eligible for furlough.
- 88. Recognition of certain prior service.
- 89. Resignation or retirement on leave.
- 90. Total period of leave.

***Division 11 – Retirement, etc.***

- 91. Age of retirement.
- 92. Retirement on account of infirmity or incapacity.
- 93. Resignation.

***Division 12 – Pensions.***

- 94. Application.
- 95. Interpretation.
  - “dependant child”
  - “pensioner”
  - “surviving spouse”
- 96. Grant of pensions.
- 97. Amount of pension.
- 98. Survivors’ pensions, etc.
- 99. Assignment, etc., of pension.
- 100. Suspension of pension during further service and resumption thereafter.
- 101. Pensions for members dismissed from the force.
- 102. Pensions to members of former police forces.
- 103. Pensions in special circumstances.
- 104. Imprisonment or insanity of pensioner.

105. Payment of pensions.
106. Advance against pension.
107. Commutation of pension.

***Division 13 – Miscellaneous.***

108. Retrenchment of members.
109. Fares and removal expenses for married members.
110. Acting appointments.
111. Bankrupt members.
112. Attachment of salaries.
113. Holidays.
114. Outside interests.

**PART VI – RESERVE CONSTABULARY.**

115. Strength of Reserve Constabulary.
116. Ranks of the Reserve Constabulary.
117. Appointment and promotion.
118. Conditions of service.
119. Pay and allowances.
120. Dispensing with services.
121. Powers, etc., of reservists.
122. Uniforms, etc.
123. Workers' compensation.

**PART VII – SPECIAL CONSTABLES.**

124. Appointment of Special Constables.
125. Conditions of service.

**PART VIII – COMMUNITY AUXILIARY POLICE.**

126. Appointment of persons to Community Auxiliary Police.
127. Vesting and limitation of powers of members of Community Auxiliary Police.
128. Seniority.
129. Members are volunteers.
130. Dispensing with services of a member of the Community Auxiliary Police.
131. Application of Workers' Compensation Act 1978.
132. Application of other provisions.

**PART IX – EMPLOYMENT CONTRACTS.**

133. Employment contracts.

**PART X – OFFENCES GENERALLY.**

134. Misrepresentation by applicants for appointment.
135. Inducing neglect of duty.
136. Causing disaffection.
137. Unauthorized possession of arms, etc., of Force.
138. Unauthorized wearing of police uniforms, etc.
139. Unlawful supply, etc. of police uniforms.

**PART XII – MISCELLANEOUS.**

140. Powers, duties, rights and liabilities of members of the Force.
141. Protection of members of Force.
142. Secrecy of records.

143. Valour medal.
144. Awards and certificates of commendation and appreciation.
145. Badges.
146. Execution of process of courts.
147. Recovery of fines.
148. Cessation of membership.
149. Charges for certain special services.
150. Unclaimed property.
151. Rewards, etc.
152. Official police publications.
153. Standing Orders.
154. Additional powers of Commissioner.
155. Equal application of Act.
156. Regulations.
157. Repeals and savings.

#### **SCHEDULE 1**



# INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

## *Police Act 1998,*

Being an Act to amend and consolidate the law relating to the regulation of the Royal Papua New Guinea Constabulary.

### PART I. – PRELIMINARY.

#### 1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely–

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of assembly and association conferred by Section 47 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public safety and public order.

#### 2. INTERPRETATION.

(1) In this Act, unless the contrary intention appears–

“**appointment**” includes reappointment;

“**Branch**” means a Branch of the Force;

“**classification**” means the arrangement of members and ranks in classes, and includes the allotment of salaries or salary limits, to members or ranks according to the value of their work;

**“the Commandant”** means the Commandant of the Royal Papua New Guinea Constabulary;

**“Commissioner”** means the Commissioner of Police appointed under Section 9 and in relation to any power or function of the Commissioner of Police includes a person to whom the Commissioner has delegated any function or power in respect of the exercise by that person of that function or power;

**“Community Auxiliary Police”** means the Community Auxiliary Branch of the Force;

**“date of appointment to the Force”** means the date upon which a person becomes a member of the Force;

**“disciplinary offence”** means an offence declared by this Act to be a disciplinary offence;

**“disciplinary officer”** means—

- (a) the Commissioner; or
- (b) a commissioned officer appointed under Section 19 to act as a disciplinary officer;

**“exempt member”** means a member in relation to whom a declaration is in force under Section 36;

**“family”**, in relation to a member, means—

- (a) a spouse; and
- (b) each person who is a natural or legally adopted child of the member and who is not the legally adopted child of any other person and—
  - (i) has not attained the age of 18 years; or
  - (ii) having attained the age of 18 years has not attained the age of 25 years and is engaged in a full time course of studies and is wholly dependent on the member; and
- (c) relatives, including relatives of the spouse of a member, who are wholly dependent on and maintained by the member in such circumstances that, in the opinion of the Commissioner, they should be regarded as forming part of the member’s family, and severally includes each member of a family;

**“the Force”** means the Royal Papua New Guinea Constabulary;

**“former Force”** means—

- (a) the Armed Constabulary established under the pre-Independence Constabulary Ordinance of 1908 of the former Territory of Papua; or

- (b) the Royal Papuan Constabulary established under the pre-Independence *Royal Papuan Constabulary Act* 1939 of the former Territory of Papua; or
- (c) the New Guinea Police Force established under the pre-Independence *Police Force Ordinance* 1922 of the former Territory of New Guinea; or
- (d) the New Guinea Police Force established under the pre-Independence *Police Force Act* 1930 of the former Territory of New Guinea; or
- (e) the Royal Papua New Guinea Constabulary established under the pre-Independence *Royal Papua New Guinea Constabulary Act* 1955; or
- (f) the Royal Papua New Guinea Constabulary established under the pre-Independence *Royal Papua New Guinea Constabulary Act* 1965;

“**the former Act**” means the Police Force Act repealed by this Act;

“**furlough**” means leave of absence described in Section 85;

“**holiday**” means a day appointed by or under Section 113 to be a holiday in the Regular Constabulary Branch of the Force;

“**Home Subdistrict**”, in relation to a member or the spouse of a member, means the Subdistrict within which the principal home or family ties of the member or the spouse, as the case may be, are, in the opinion of the Commissioner, established;

“**member**”, in relation to the Force, means a person who has made and subscribed on oath or affirmation to the service of the Force and whose service has not been terminated or otherwise concluded, and in relation to a Branch means a member of the Force who serves in that Branch;

“**Official Police Publication**” means an Official Police Publication referred to in Section 152;

“**pay**” means standard salary and any prescribed allowances in the nature of salary;

“**Police Promotions Selection Board**” means a Police Promotions Selection Board, constituted under Section 51;

“**the pre-Independence Act**” means the pre-Independence *Royal Papua and New Guinea Constabulary Act* 1965;

“**probationer**” means a member of the Regular Constabulary Branch who is serving a period of probation under Section 43;

“**recreation leave**” means leave of absence for recreation in accordance with Section 61;

**“Regulations”** means any regulations made under or for the purposes of this Act;

**“Reserve Constabulary”** means the Reserve Constabulary Branch of the Force;

**“reservist”** means a member of the Reserve Constabulary;

**“service”** means service in the Police Force;

**“sexual harassment”** has the meaning required by Section 20(2);

**“Special Constable”** means a person who is appointed under Section 124 and whose service has not been terminated or otherwise concluded;

**“Standing Orders”** means Standing Orders issued by the Commissioner under Section 153;

**“this Act”** includes the Regulations;

**“unattached member”** means a member of the Force who is not holding a rank in that Branch;

**“spouse”**, in relation to a person, means the husband or wife of that person and includes a husband or wife of a polygamous marriage occurring before that person first becomes a member of the Force, but does not include a husband or wife of a polygamous marriage by custom occurring after that person first becomes a member of the force.

(2) All periods that were counted as service of a person in the Force established under the pre-Independence Act for any period under the pre-Independence Act shall be counted as service for the equivalent purpose under this Act.

(3) Except to the extent that any provision of this Act otherwise provides, leave granted to a member under this Act forms part of the member’s period of service and does not affect the continuity of the member’s service and leave which does not count as part of a period of service shall, except where otherwise provided, be counted for the purposes of continuity of service.

(4) For the purposes of Paragraph (c) of the definition of “family”, a determination by the Commissioner that a person should not be regarded, for the purposes of this Act, as being part of a member’s family, is final.

### **3. APPLICATION OF THIS ACT.**

This Act applies to and in relation to members of the Force whether inside or outside the country.

### **4. APPOINTMENT OF MEMBERS OF FORCE.**

(1) A person may be appointed to be a member of the Force in accordance with this Act.

(2) No person shall be appointed to be a member of the Force until that person makes and subscribes, in the prescribed manner, the appropriate oath or affirmation in Schedule 1 to this Act.

**5. POWER OF COMMAND.**

Except as is provided for in this Act or by any other enactment no person who is not a member of the Force has any power of command within the Force.

**6. TRAINING OF PROSPECTIVE MEMBERS OF THE FORCE.**

(1) Subject to this section, the Commissioner, instead of requiring a person to become a member of the Force before he is accepted for training, has the discretion to accept for such training a person who is not a member of the Force.

(2) Where a person who is not a member of the Force is accepted for training under this section, the Commissioner may defer his entry into the force until the training is completed to the satisfaction of the Commissioner.

(3) In respect of every person in training under this section, at the expiry of the period referred to in Subsection (2), the Commissioner shall either—

- (a) terminate the training of that person; or
- (b) appoint that person as a member of the Force.

(4) No person who is training under this section shall undertake operational service until he is appointed as a member of the Force.

(5) A person in training under this section may be paid such allowance as the Commissioner determines.

(6) Sections 20 to 27 inclusive apply to a person in training as if he were a member of the Regular Constabulary.

(7) The Commissioner may at any time terminate the training of a person who is not a member of the Force.

**PART II. – COMPOSITION AND ADMINISTRATION OF THE FORCE.**

**7. COMPOSITION, ETC., OF FORCE.**

(1) The Force, which shall continue to be known as the Royal Papua New Guinea Constabulary, and which is the same force as that established by the former Act shall continue to consist, subject to this Act, of the Commandant, the Commissioner of Police, and such other commissioned officers, cadet officers, non-commissioned officers, constables, Reservists, Special Constables and members of the Community Auxiliary Police as have been appointed under the former Act or are appointed under this Act.

(2) The Force is divided into the following branches:–

- (a) the Regular Constabulary Branch;
- (b) the Reserve Constabulary Branch;
- (c) the Community Auxiliary Police;
- (d) Special Constables.

(3) The Force is a State Service under Section 188 of the *Constitution*.

**8. COMMANDANT.**

(1) The Governor-General in person is the Commandant of the Force.

(2) The Commandant has no power of command, control or direction of the Force.

**PART III. – THE COMMISSIONER OF POLICE.****9. APPOINTMENT OF COMMISSIONER.**

(1) The office of the Commissioner of Police established under the former Act is continued under this Act.

(2) The Commissioner is appointed in accordance with Section 193 (*Appointments to certain offices*) of the *Constitution*.

(3) The Commissioner shall be appointed for a term of not less than four years and the other terms and conditions of appointment of the Commissioner are as determined by the Head of State, acting on advice.

(4) The terms of appointment of the Commissioner may be embodied in a contract between the State and the Commissioner.

(5) A contract may provide for the removal from office of the Commissioner by the Head of State acting on advice on any one or more of the following grounds and on no other grounds:–

- (a) conviction of any offence involving dishonesty or for which a term of imprisonment may be imposed;
- (b) failure to comply with any essential term or condition of the appointment;
- (c) negligence or dereliction of duty;
- (d) misconduct;
- (e) incapacity due to infirmity of mind or body;
- (f) failure adequately to perform the duties required of a person holding the rank of Commissioner;
- (g) the resignation or retirement of the Commissioner;
- (h) in the interest of the State.

**10. PROCEDURE WHEN CONDUCT OF COMMISSIONER CALLED INTO QUESTION.**

(1) The Commissioner may be removed from the office of Commissioner by the Head of State, acting on advice, on any of the grounds referred to in Section 9(5).

(2) Where the Commissioner is removed from office under one or more of the grounds referred to in Section 9(5) that removal from office, shall, unless the Head of State otherwise directs, automatically terminate the Commissioner's membership in the Force.

**11. PRESERVATION OF RIGHTS.**

(1) In this section, “existing and accruing rights” means rights (if any), in respect of–

- (a) leave of absence on the ground of illness; and
- (b) furlough, or pay in lieu of furlough (including pay to dependants or personal representatives on the death of the member).

(2) Where a member of the Force is appointed to be the Commissioner, that member's service as Commissioner shall, for the purpose of determining that member's existing and accruing rights, be counted as service in the Force.

(3) Section 83 applies to and in relation to the office of Commissioner as if that office had been specifically referred to in that section.

## **12. DECLARATION OF OFFICE.**

The Commissioner, shall, before entering on the duties of office, make, before the Chief Justice or a Judge, the Declaration of Office.

## **13. REPORTS.**

The Commissioner shall furnish to the National Executive Council through the Minister, reports or recommendations on all matters required to be dealt with by the Minister under this Act or referred to the Commissioner by the Minister.

## **14. POWERS OF COMMISSIONER.**

(1) For the purposes of carrying out the duties and functions of the Commissioner under this Act, the Commissioner may—

- (a) enter any premises occupied or used by the Force; and
- (b) summon any person whose evidence is likely to be material to the determination of any subject of inspection, inquiry or investigation being conducted by the Commissioner; and
- (c) take evidence on oath or affirmation, and for that purpose administer oaths or affirmations; and
- (d) require any person to produce documents in his possession or subject to his control.

(2) A person, who knowingly makes any false or misleading statement in any evidence before the Commissioner, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(3) A member of the Force or an officer of the Public Service, who neglects or fails, without reasonable excuse (proof of which is on that person), to attend in obedience to a summons under Subsection (1), or to be sworn or affirmed or to answer questions or produce documents relevant to the subject of an inspection, inquiry or investigation when required to do so under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K200.00.



(4) A person other than a member of the Force or an officer of the Public Service, who, after payment or tender of reasonable expenses, neglects or fails, without reasonable excuse (proof of which is on that person) to attend in obedience to a summons under Subsection (1) or to be sworn or affirmed or to answer questions or produce documents relevant to the subject of an inspection, inquiry or investigation when required to do so under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(5) This section does not make any person compellable to answer a question that might tend to incriminate that person.

## **15. ANNUAL REPORT.**

(1) The Commissioner shall furnish to the National Executive Council through the Minister, at least once in every year, a report—

- (a) on the condition and efficiency of the Force; and
- (b) on the activities of the Commissioner.

(2) Without limiting the generality of Subsection (1), the report shall set out—

- (a) any changes that have been made in respect of any aspect of the Force since the presentation of the previous report; and
- (b) any further measures that are necessary for—
  - (i) improving the working of the Force; and
  - (ii) ensuring efficiency and economy in the Force or in any branch of it.

(3) In the report, the Commissioner shall draw attention to any breaches or evasions of this Act that have come to the Commissioner's notice.

## **16. VESTING OF POWERS OF MEMBERS OF THE FORCE.**

(1) Where the Commissioner thinks it for any special reason desirable, the Commissioner may, by written notice, vest in a person, or in members of a class of persons, some or all of the powers, functions, duties and responsibilities of a member of the Force under any law.

(2) A person to whom Subsection (1) applies is deemed, in relation to the powers, functions, duties and responsibilities vested in that person under that subsection, to be a member of the Force.

## **17. DELEGATION.**

Subject to the provisions of this Act in relation to any specific power or function, the Commissioner may delegate in writing all or any of the Commissioner's powers and functions under this Act (except this power of delegation).

**PART IV. – DISCIPLINE.*****Division 1.******Introductory.*****18. APPLICATION OF THIS PART.**

This Part applies to—

- (a) members of the Regular Constabulary Branch; and
- (b) members of the Community Auxiliary Police; and
- (c) persons who are not members of the Force but who are undergoing training under Section 6; and
- (d) members of the Reserve Constabulary Branch, while acting or purporting to act as such; and
- (e) Special Constables while acting or purporting to act as such.

**19. DISCIPLINARY OFFICERS.**

(1) The Commissioner may from time to time and at any time appoint commissioned officers to act as disciplinary officers for the purposes of this Part.

(2) Where the Commissioner acts as a disciplinary officer the provisions of this part shall apply with any necessary modifications.

**20. DISCIPLINARY OFFENCES.**

(1) A member of the Force who—

- (a) wilfully disobeys or disregards a Standing or Special Order made or given by the Commissioner, or any lawful order given to the member orally or in writing by a member of the Force who is senior to the member, or whose directions the member is required to obey, or fails to carry out such order as soon as practicable; or
- (b) fails to carry out any specified duty imposed on the member by this Act or any other Act or Regulation; or
- (c) does not promptly and diligently attend to and carry out anything which it is the member's duty to attend to or carry out; or
- (d) is insubordinate or disrespectful either by word, act or demeanour to any member senior in rank; or
- (e) without reasonable excuse, is absent from duty or is late for parade, court or any other duty; or
- (f) while on duty in uniform, smokes in a public place; or
- (g) while on duty chews betel nut; or
- (h) idles or sleeps while on duty; or

- (i) leaves his place of duty, or having left that place of duty for legitimate purposes fails to return without undue delay; or
- (j) while on duty acts offensively towards any member of the public; or
- (k) while on duty, consumes, or receives from any person, any intoxicating liquor or drug, or is incapable of performing his duties by reason of intoxication caused by alcohol or drugs; or
- (l) while on duty is improperly dressed or untidy; or
- (m) when wearing uniform in a public place, is dirty or untidy in his person, clothing or equipment; or
- (n) unreasonably exercises his powers of arrest or search; or
- (o) without good and sufficient cause discharges a firearm; or
- (p) uses unnecessary force on any person in the execution of his duty; or
- (q) behaves towards another member in an oppressive, offensive, abusive or insulting manner; or
- (r) assaults another member or an employee of the Force; or
- (s) makes a false or frivolous complaint against another member; or
- (t) fails to exercise proper supervision over a member under his control; or
- (u) by carelessness or neglect, permits a prisoner to escape; or
- (v) negligently makes a false or misleading or inaccurate written statement, or entry in any official document or record; or
- (w) negligently omits to record or report a fact or incident which is required of the member through Standing or Special Orders, this or any other Acts or Regulations; or
- (x) knowingly makes a false or misleading or inaccurate oral statement relating to his duties; or
- (y) knowingly omits to record or report a fact or incident which is required of the member through Standing or Special Orders, this Act or any other Act or Regulations; or
- (z) knowingly fails to disclose the existence of any relevant evidence which is within his knowledge in relation to a criminal charge; or
- (aa) without good and sufficient cause, destroys or mutilates an official book, document or record, or alters, erases or adds to an entry therein; or
- (ab) without the consent of the Commissioner or a member authorized by the Commissioner, communicates to a person information which has come to his knowledge as a member of the Force, or shows or gives to a person a book or document prepared, used or kept in connection with the work of the Force, or publicly comments on administrative action by, or the administration of the Force, provided that this offence shall not apply to

- information given in good faith by a member in accordance with Standing or Special Orders; or
- (ac) obtains or attempts to obtain the influence or interest of a person for the purpose of advantage or transfer or promotion in the Force; or
  - (ad) in his capacity as a member of the Force and without the consent of the Commissioner, directly or indirectly solicits or receives a fee, gratuity, present, benefit, subscription, reward or testimonial; or
  - (ae) through an intentional act or omission places himself under an obligation to a person which is likely to affect the proper discharge of his duties as a member of the Force; or
  - (af) improperly uses, or attempts to improperly use his appointment as a member of the Force for his advantage or the advantage of any other person; or
  - (ag) being a member of the Regular Constabulary Branch, carries on a trade, business or profession for remuneration, or accepts any remunerative employment outside the Force without the consent of the Commissioner; or
  - (ah) whether as principal or agent enters into a monetary transaction with another member by which interest or other return in money or kind is charged or paid or borrows money from a subordinate; or
  - (ai) without good and sufficient cause fails to carry out a reasonable direction which has a bearing on the member's service to the Force, given by a legally qualified medical practitioner or, while absent from duty on account of sickness or injury commits an act or adopt any conduct calculated to retard his return to duty; or
  - (aj) fails to report promptly to his superior officer the loss of or damage to Force property issued to or used by the member or entrusted to his care; or
  - (ak) without lawful authority uses Government property for a purpose other than the execution of the member's duty; or
  - (al) is unfit to perform his duty by reason of being under the influence of alcohol or a drug; or
  - (am) finds a subordinate unfit to perform his duty on his shift by reason of being under the influence of alcohol or a drug and having authority to suspend such subordinate from duty for that shift or the remainder of that shift fails to do so; or
  - (an) aids or abets an offence against this Act or connives or knowingly aids, abets, counsels or procures the commission of an offence against this Act; or

- (ao) supplies to another member, for use for a purpose not authorized by this Act certificates or testimonials relating to official capacity or performance of official duties; or
- (ap) withholds a complaint or report against a member of the Force; or
- (aq) misappropriates or improperly deals with property which comes into his possession or control by virtue of his office; or
- (ar) fails to account for or fails to make prompt and true return of money or property received by the member in his official capacity; or
- (as) being a member living in official accommodation enters or purports to enter into a polygamous marriage by custom or enters into an extra marital relationship in the nature of marriage; or
- (at) sexually harasses another member; or
- (au) commits a breach of a provision of this Act not otherwise referred to this section; or
- (av) fails to comply with a direction for retraining imposed under Section 25; or
- (aw) does or attempts to do anything in contravention of Section 136; or
- (ax) being a member of the Regular Constabulary Branch registers or campaigns as a candidate for election to the National Parliament, or to a Provincial Assembly, or to a Local-level Government, or displays any political favouritism or support; or
- (ay) commits an act or misconduct which may be a criminal offence, not being a purely indictable offence, under any Act, regulation, or by-law; or
- (az) acts in any manner, whether by word, conduct or omission which is prejudicial to good order and discipline in the Force, or which reflects discredit on the Force,

is guilty of a disciplinary offence and is liable to be dealt with and punished under this Division.

(2) For the purpose of this section, a member is sexually harassed where a person by the use of words (whether written or spoken) of a sexual nature or physical behaviour of a sexual nature—

- (a) subjects the member to behaviour that is embarrassing, unwelcome or offensive to the member and which is either repeated or of such a significant nature that it has a detrimental effect on that member's employment, job performance, or job satisfaction; or
- (b) makes a request of that member for sexual intercourse or sexual contact or other form of sexual activity and the request contains—
  - (i) an implied or overt promise of preferential treatment in that member's employment; or

- (ii) an implied or overt threat of detrimental treatment in that member's employment; or
- (iii) an implied or overt threat about the future employment status of that member.

(3) A member does not commit a disciplinary offence under Subsection (1)(ad) where—

- (a) with the consent of the Commissioner he accepts—
  - (i) a public testimonial, presented on his retiral from the Force or on his removal from the locality in which he has been employed; or
  - (ii) a presentation from fellow members or from an organization within the meaning of industrial organizations in the *Industrial Organizations Act 1962*; or
- (b) being a member of the Community Auxiliary Police, he receives a lawful honorarium or allowance.

### ***Division 2.***

### ***Minor Offences.***

#### **21. DEALING WITH MINOR OFFENCES.**

(1) Where the Commissioner, or a disciplinary officer, has reason to believe that a member of lesser rank has committed a disciplinary offence which, in the opinion of the Commissioner or that officer, could properly be dealt with under this section, the Commissioner or as the case may be, the officer, after advising the member of the nature of the alleged offence, and affording the member an opportunity to peruse and copy any evidentiary material upon which the allegation is to be considered—

- (a) may call on the member for an explanation as to the alleged offence; and
- (b) subject to Subsection (2), being of the opinion after considering the explanation, that the offence has been committed, may impose a penalty specified in Section 22.

(2) When a member is called upon for an explanation of an alleged offence, and that member denies the alleged offence, he may, instead of tendering an explanation, elect in writing to have the matter dealt with as an alleged serious offence and the provisions of Sections 23 to 27 inclusive shall thereupon apply.

#### **22. PENALTIES FOR MINOR OFFENCES.**

(1) Subject to Subsection (2), any of the following penalties may be imposed for a minor offence:—

- (a) a caution;
- (b) a reprimand;

- (c) a fine not exceeding K40.00;
- (d) confinement to barracks for a period not exceeding 14 days and in the case of a Cadet Officer, Constable or Probationary Constable, with or without extra drill as prescribed;
- (e) forfeiture of not more than one week's pay.

(2) Notwithstanding Subsection (1), the penalties specified in Subsection (1)(d) and (e) shall not be imposed on—

- (a) a member of the Reserve Constabulary; or
- (b) a member of the Community Auxiliary Police; or
- (c) a person who is undergoing training under Section 6(2); or
- (d) a Special Constable,

and the penalty specified in Subsection (1)(d) shall not be imposed on a commissioned officer.

(3) Penalties imposed under this section by a disciplinary officer shall be reported to the Commissioner at such intervals as the Commissioner directs.

(4) Where a penalty is imposed under this section by a disciplinary officer, the member affected may within seven days after notification to the member of the penalty, or within such further time as the Commissioner may allow, apply in writing to the Commissioner for a review of the decision.

(5) An application for review under Subsection (4) may be effected by—

- (a) delivery in person to a disciplinary officer; or
- (b) sending the same by ordinary post addressed to the Commissioner; or
- (c) delivery in such other manner as may be approved by the Commissioner,

and is deemed to have been made on the day upon which it is so delivered or posted.

(6) On a review under Subsection (4), the Commissioner may confirm or annul the decision as to the commission of an offence, or may confirm or annul the penalty, and the decision of the Commissioner is final.

(7) The Commissioner may direct that a penalty imposed under Subsection (1)(d) by a specified rank of disciplinary officers shall not be put into execution until confirmed by him.

(8) The power conferred on the Commissioner by this section to confirm a penalty is deemed to include the power to increase or otherwise vary the penalty in any way not inconsistent with this Act.

(9) The power of the Commissioner to delegate under Section 17 is limited for the purposes of Subsections (5) and (6) to a power to delegate to a member of equal or higher rank than that of the disciplinary officer in respect of whose decision the application for review is made.

***Division 3.***  
***Serious Offences.***

**23. DEALING WITH SERIOUS OFFENCES.**

(1) Where there is reason to believe that a member of the Force has committed a disciplinary offence other than an offence that is or is intended to be dealt with as a minor offence, it shall be dealt with as a serious offence.

(2) A member referred to in Subsection (1) may be charged by the Commissioner or by a commissioned officer authorized by the Commissioner to lay charges under Section 19.

(3) On a charge being laid against a member of the Force that member shall—

- (a) be furnished promptly with a copy of the charge, which shall, where a member so desires, be explained to the member by a senior officer; and
- (b) where the member so requests, be furnished with copies of all reports that are to be considered in relation to the charge; and
- (c) be invited—
  - (i) to reply within 14 days, stating whether he admits or denies the truth of the charge; and
  - (ii) to give any explanation that he desires to give in regard to it.

(4) A charge or other documentation is deemed to have been furnished to a member under this section—

- (a) where it has been personally served on the member; or
- (b) where, it being unreasonable because of distance or any other factor to serve the charge or documentation personally, the procedure set out in Section 31 has been followed.

(5) Where a reply is not given by the member within 14 days after personal service in accordance with Subsection (4)(a) or within 28 days after posting in accordance with Subsection 4(b) the member is deemed to have denied the truth of the charge and the matter shall thereupon be dealt with in accordance with Section 24.

**24. DETERMINATION OF CHARGE.**

(1) In any case where Section 23 applies, the Commissioner shall appoint a disciplinary officer to investigate the matter and report to the Commissioner.

(2) Where a disciplinary officer is appointed under Subsection (1) that officer shall be—

- (a) a person other than the person who has charged the member; and
- (b) of superior rank to the member charged.



(3) The disciplinary officer shall consider the reports relating to the charge, the reply and explanation (if any) of the member charged, and subject to Subsection (4), may consider any further reports that the disciplinary officer thinks fit.

(4) Where the disciplinary officer receives a report which was not available to the member charged at the time the member was so charged, or within seven days thereafter, a copy of that report shall be supplied to the member and the member shall have the right to reply to that report.

## **25. IMPOSITION OF PENALTY WHERE CHARGE SUSTAINED.**

(1) After conducting an investigation under Section 24 the disciplinary officer shall furnish to the Commissioner a report advising whether in his opinion the charge has been sustained, and where sustained, what punishment is recommended.

(2) The Commissioner after considering the report referred to Subsection (1), may, where—

(a) the disciplinary officer is of opinion that the charge has been sustained; and

(b) the Commissioner concurs with that opinion,

impose a penalty (whether or not that penalty is recommended by the disciplinary officer) specified in Section 26.

(3) Where—

(a) the disciplinary officer reports that in his opinion the charge has not been sustained; and

(b) after considering the report of the disciplinary officer the Commissioner is of the opinion that the charge has not been sustained,

the Commissioner shall dismiss the charge.

(4) Where the Commissioner does not accept in the first instance that a charge is not sustained, he shall refer the matter to a disciplinary officer not connected with the first recommendation for a review and report, and the recommendation contained in the review will be accepted without further formality.

(5) Where the Commissioner imposes a penalty under Section 26(1), other than a penalty in terms of Paragraph (g) of that subsection, the Commissioner may, in addition to such penalty direct that the offending member complete a course of retraining in accordance with Section 26(2).

(6) A retraining course for the purposes of Section 26(2) shall comprise such course of training and instructions as the Commissioner determines, and may include an examination or examinations.

(7) Where, at the conclusion of such time as the Commissioner may allow, the offending member has satisfactorily completed the retraining course, and passed any examinations connected therewith—

- (a) the penalty in the case of a fine, or forfeiture of pay, may, in the discretion of the Commissioner be remitted in whole or in part, and the proportion so remitted shall be repaid to the offending member; and
- (b) any reduction in rank or salary may be reversed in whole or in part as from the date of satisfactory completion of the retraining course, and the passing of the examination.

## **26. PENALTIES FOR SERIOUS OFFENCES.**

(1) Subject to Subsection (2), any one or more of the following penalties may be imposed under this Division:—

- (a) a fine not exceeding K200.00;
- (b) reduction of the member's salary;
- (c) forfeiture of not more than four weeks' pay;
- (d) reduction of the member to a rank having a lower classification, and to a salary within that classification;
- (e) in addition to or instead of a punishment specified in Paragraph (d), the transfer of the member to other duties;
- (f) in addition to or instead of a punishment specified in Paragraph (d) or (e), the transfer of the member to some other locality;
- (g) dismissal of the member from the Force.

(2) In addition to any penalty imposed under Subsection (1)(a) to (f) inclusive, the Commissioner may also require the member to undergo a course of re-training.

(3) The penalty specified in Subsection (1)(f) shall not be imposed on a member of the Community Auxiliary Police or on a Special Constable.

(4) The Commissioner shall notify a member of a penalty imposed on that member.

(5) Where a penalty is imposed under this section by a disciplinary officer, the member affected may, within seven days of notification to the member under Subsection (4) of the penalty, or within such further time as the Commissioner may allow, apply in writing to the Commissioner for a review of the decision.

(6) An application under Subsection (5) for a review may be effected by—

- (a) delivery in person to a disciplinary officer; or
- (b) sending the application by ordinary post addressed to the Commissioner; or
- (c) delivery in such other manner as may be approved by the Commissioner,

and is deemed to have been made on the day on which it is so delivered or posted.

(7) On a review under Subsection (5), the Commissioner may confirm or annul the penalty and the decision of the Commissioner is final.

(8) The Commissioner may direct that a penalty imposed under Subsection (1) by a specified rank of disciplinary officers shall not be put into execution until confirmed by him.

(9) The power conferred on the Commissioner for this section to confirm a penalty is deemed to include the power to increase or otherwise to vary the penalty in any way not inconsistent with this Act.

(10) The power of the Commissioner to delegate under Section 17 is limited for the purposes of Subsections (6) and (7) to a power to delegate to a member of equal or higher rank than that of the disciplinary officer in respect of whose decision the application for review is made.

## **27. NO RIGHT TO APPEAL.**

The Commissioner's decision in respect to the finding of guilt and in respect to penalty for serious disciplinary charges is final.

### ***Division 4.***

#### ***Miscellaneous.***

## **28. SUSPENSION.**

(1) Where—

(a) a disciplinary offence or suspected disciplinary offence is such; or

(b) the circumstances in which a disciplinary offence or suspected disciplinary offence are committed are such,

that the member of the Force should not continue in the performance of his duty, the Commissioner may suspend the member from duty.

(2) Suspension under Subsection (1) may be effected before, at the time of or after the laying of a charge, and may be lifted by the Commissioner.

(3) Where a charge is not sustained, the suspension shall be lifted immediately on a finding to that effect.

## **29. PAY DURING SUSPENSION.**

(1) Where a member of the Force has been suspended in connection with a charge of a disciplinary offence under this Act, that member is entitled to receive pay during the period of suspension unless he absconds or the Commissioner orders otherwise.

(2) Pay provided to a suspended member shall be at the member's full rate or at such proportion of the full rate as the Commissioner may determine.

**30. DEDUCTION OF FINES, ETC., FROM PAY.**

(1) Where a fine or pecuniary penalty is imposed on a member of the Force under this Act, the amount of the fine or penalty may be deducted from the pay of the member.

(2) A deduction under Subsection (1) shall be made by instalments each not exceeding 25% of the pay payable from time to time to the member.

(3) All fines and penalties imposed and recovered under this Act shall be paid into the Consolidated Revenue Fund.

**31. PROCEDURE WHERE ADDRESS OF MEMBER UNKNOWN.**

(1) Where the address of a member or former member of the Force is unknown a notice, order or communication to or for the member or former member may be served—

- (a) where the member or former member had a postal address, by posting the same to the last known address of the member or former member; or
- (b) by leaving the same at the last known residence of the member or former member; or
- (c) by delivering the same personally to the mother or father or a brother or sister of the member or former member.

(2) Where service cannot reasonably be effected under Subsection (1) a notice, order or communication is deemed to be served where an advertisement calling upon the member or former member to attend at a specified place to receive a document addressed to him is published once in—

- (a) a newspaper circulating in and about the place where the member or former member was last known to reside; or
- (b) the National Gazette.

(3) Where Subsection (2) applies, and the member or former member does not attend at the specified place, the notice, order or communication is deemed to have been served—

- (a) at the expiry of seven days from the publication of the advertisement; or
- (b) at the expiry of such greater period of time as may be specified in the advertisement.

(4) Where service on a member or former member is effected under Subsection (1)(a), the notice, order or communication is deemed to have been served on the member or former member on the day on which it would in the ordinary course of post be expected to be delivered to the address to which it was posted.

(5) Where service on a member is effected under Subsection (1)(b), the notice, order or communication is deemed to have been served on the member or former member on the day on which it was left at the last known residence of the member or former member.

(6) Where service on a member is effected under Subsection (1)(c), the notice, order or communication is deemed to have been served on the member or former member on the day on which it was personally delivered to the mother or father or sister or brother of the member or former member.

**32. MEMBER CHARGED WITH CRIMINAL OFFENCE.**

(1) Where a member of the Force is charged with having committed an offence (other than a disciplinary offence) against this Act or any other enactment, he may be suspended by the Commissioner.

(2) Unless the Commissioner otherwise directs, a member of the Force who is suspended under this section shall not receive any pay from the date on which, or for the period during which, he ceased to perform the duties of his position.

(3) The Commissioner may at any time remove the suspension of a member of the Force who is suspended under this section and shall remove the suspension where the member is acquitted of the charge which led to a suspension under this section, and is not convicted of any alternative offence.

(4) When suspension is removed under Subsection (3), the Commissioner may direct that all or any of the pay which the suspended member lost as a result of the suspension be paid to that member.

**33. PERSON CONVICTED OF CRIMINAL OFFENCE.**

(1) Subject to Section 34, no person who has been convicted in any court of an offence involving dishonesty or for which a term of imprisonment is imposed shall be appointed or reappointed to the Force.

(2) A member who is convicted of an offence involving dishonesty or for which a term of imprisonment is imposed shall be dismissed forthwith from the Force.

**34. RE-APPOINTMENT, ETC., OF CERTAIN CONVICTED PERSONS.**

(1) This section applies where—

- (a) a person has been dismissed from the Force or reduced to a lower rank as a result of having been convicted of a criminal offence; and
- (b) subsequently—
  - (i) the conviction is quashed; or
  - (ii) the person receives a pardon; or
  - (iii) the conviction is otherwise nullified; or
  - (iv) the person is released from prison as a result of an inquiry into the conviction.

(2) A person to whom this section applies may be re-appointed to the Force or re-instated in the Force by the Commissioner—

- (a) in the rank equivalent to the rank which he held immediately before his dismissal or reduction in rank; or
- (b) in the case of a person who has been reduced in salary alone, and subject to Subsection (8)—at the rate of salary to which he was entitled immediately before his reduction in salary.

(3) A person may be re-appointed under this section without being required to undergo any medical examination.

(4) A person may be re-appointed under this section without probation where the Commissioner thinks it desirable to do so.

(5) A person re-appointed under this section is deemed to have continued in the Force as if that person had not been dismissed but had been on leave of absence without pay during the period from the day on which his dismissal became effective to and including the day on which he was re-appointed.

(6) The period referred to in Subsection (5) forms part of the member's period of service for all purposes.

(7) A person re-instated in rank under this section has the same seniority in the rank in which he is re-instated and is entitled to the same salary as if he had not been reduced in rank.

(8) A person re-instated in salary under this section is entitled to the same salary as if he had not been reduced in salary.

**PART V. – REGULAR CONSTABULARY.*****Division 1.******Preliminary.*****35. INTERPRETATION OF PART V.**

In this Part, unless the contrary intention appears, “**member**” means a member of the Regular Constabulary Branch but does not include the Commissioner.

**36. EXEMPT MEMBERS.**

(1) Except as is otherwise specifically provided, the provisions of this Part (other than Sections 37 to 41 inclusive) do not apply to or in relation to a member of the Regular Constabulary Branch or a class of members of that Branch to whom or to which the Commissioner by notice in an Official Police Publication, declares that the provisions of this Part do not apply.

(2) Service as an exempt member of the Regular Constabulary Branch, that is continuous with permanent service in the Force, is deemed to be permanent service in the Force for the purpose of calculating leave of absence that may be granted to a member of the Regular Constabulary Branch for recreation or as furlough, sick leave or leave on the ground of illness.

(3) The Commissioner may determine the rates of payment and the conditions of employment of a member of the Regular Constabulary Branch or a class of members of that Branch, to whom or to which a declaration under Subsection (1) applies.

(4) The powers of the Commissioner under this section may be exercised only after consultation with the Public Services Commission and subject to any directions of the Head of State, acting on advice.

**37. SENIORITY.**

(1) A member of the Regular Constabulary Branch has seniority according to rank.

(2) Subject to Subsections (4) and (5), a member of the Regular Constabulary Branch has seniority over other members of his own rank according to the date of that member’s promotion or appointment to that rank.

(3) Subject to Subsection (4), where the promotions or appointments of two or more members of the Regular Constabulary Branch to the same rank were made on the same date, their relative seniorities are as fixed by the Commissioner.

(4) Members of the Regular Constabulary Branch of the rank of Probationary Constable and members of the rank of Constable who have, on the same occasion, graduated from a training academy or college operated by the Commissioner, on the same occasion, have seniorities in their respective ranks–

(a) over all members who have not so graduated; and

- (b) as between themselves according to the level of their achievement recorded for the purposes of their graduation.

(5) Where two or more members of the rank of Probationary Constable, or two or more members of the rank of Constable have graduated on the same occasion and at the same level from a training academy or college operated by the Commissioner, their relative seniorities in their respective ranks are as fixed by the Commissioner.

***Division 2.***

***Establishment.***

**38. ESTABLISHMENT.**

(1) Subject to this section, the Commissioner, after consultation with the Minister, may, by notice in an Official Police Publication, determine the establishment of each rank in the Regular Constabulary Branch.

(2) For the purposes of a determination under Subsection (1) the Commissioner may treat the ranks of—

- (a) Constable; and
- (b) Probationary Constable,

as a single rank.

(3) A determination under this section does not have effect so as to reduce the establishment of a rank, or a group of ranks, below the number of serving members in that rank or group of ranks at the time of the determination.

***Division 3.***

***Qualifications for Ranks.***

**39. QUALIFICATIONS.**

(1) A person shall not be appointed, promoted or transferred to a rank in the Regular Constabulary Branch unless that person possesses the qualifications determined by the Commissioner.

(2) The Commissioner may provide in an Official Police Publication that for the purposes of qualification for appointment or promotion to specified ranks, a person shall—

- (a) have satisfactorily completed a course of training specified; or
- (b) have passed such practical examination as is specified; or
- (c) have passed such theoretical examination as is specified; or
- (d) have satisfied the requirements of such combinations of Paragraphs (a), (b) and (c), as may be specified; or
- (e) be qualified as a specialist under Section 41; or



- (f) meet any other qualifications, not inconsistent with the principles contained in Section 48.

**40. EXAMINATIONS FOR APPOINTMENT, PROMOTION, ETC.**

(1) For the purpose of ascertaining whether a person possesses the qualifications determined for appointment, promotion or transfer to a rank in the Regular Constabulary Branch the Commissioner may—

- (a) hold, or authorize the holding of; and
- (b) determine conditions for entry for; and
- (c) appoint examiners for the purposes of,

such examinations as the Commissioner thinks proper.

(2) The Commissioner shall, by notice in an Official Police Publication, give adequate notice of an examination under Subsection (1).

**41. SPECIALISTS.**

(1) Where in the opinion of the Commissioner there is a need within the Regular Constabulary Branch for the performance of duties of a particular nature for which specialist qualifications, whether academic or practical, are required or desirable, the Commissioner may from time to time specify by notice in an Official Police Publication—

- (a) the nature of the duties to which this section shall apply; and
- (b) the specialist qualifications required to be held by a person who performs such duties; and
- (c) a minimum rank which is appropriate to be held by a person who is employed in the Regular Constabulary Branch to perform the duties referred to in Paragraph (a) and who holds the qualifications referred to in Paragraph (b).

(2) A member of the Regular Constabulary Branch who is employed in the Force to perform the duties referred to in Subsection (1)(a) and who holds the qualifications referred to in Subsection (1)(b) shall be promoted to the rank specified under Subsection (1)(c) as soon as possible after a vacancy occurs in that rank.

(3) Until a member of the Regular Constabulary Branch who is entitled to promotion under Subsection (2) is promoted, that member—

- (a) is an unattached member having the designation appropriate to a member holding the rank; and
- (b) shall, for the purposes of salary and of transfer to another rank, be deemed to be the holder of such a rank.

(4) The provisions of Section 53 do not apply to a promotion under this section.

*Division 4.**Recruitment and Appointment.***42. RECRUITMENT.**

(1) The Commissioner may, by notice published in an Official Police Publication or elsewhere, invite persons to apply for appointment to the Regular Constabulary Branch.

- (2) The Commissioner shall specify in a notice under Subsection (1)–
- (a) the rank or ranks in respect of which applications for appointments are invited; and
  - (b) the salaries or limits of salaries, that will be applicable on appointment; and
  - (c) where applicable–
    - (i) the age limits for appointment; and
    - (ii) the qualifications required to be possessed for appointment and the period (if any) within which the qualifications or any of them must have been obtained; and
    - (iii) the date on which persons who obtain or have obtained the required qualifications during a period specified for the purposes of Subparagraph (ii) will cease to be qualified for appointment by virtue of those qualifications; and
  - (d) the manner of ascertaining the order in which offers of appointment will be made; and
  - (e) the date by which applications are required to be made; and
  - (f) such other matters (if any), not inconsistent with this Act, as the Commissioner thinks desirable.

(3) A vacancy in the Regular Constabulary Branch shall not be filled from outside the Branch unless the Commissioner certifies that, to the best of the Commissioner's knowledge, there is not a member of the Branch who is–

- (a) available for promotion or transfer to the vacancy; and
- (b) willing to be promoted or transferred on the conditions applicable to the vacancy; and
- (c) is as capable of performing the duties of the rank concerned as the proposed appointee.

**43. APPOINTMENT OF MEMBERS OF REGULAR CONSTABULARY.**

(1) A person shall not be appointed to the Regular Constabulary Branch unless–

- (a) that person provides evidence to the satisfaction of the Commissioner as to his—
  - (i) health and physical fitness; and
  - (ii) possession of qualifications that will enable that person to perform the duties of the rank to which he is to be appointed; and
  - (iii) age; and
  - (iv) good character; and
- (b) it appears to the Commissioner, after the candidate has undergone a psychological assessment, that the candidate does not have a predisposition to dishonesty, alcoholism, drug abuse, neurosis, instability or violence, or other antisocial traits and that the candidate will be able to deal with stress; and
- (c) in any case where Section 39(2) applies to the rank to which the person is to be appointed, such person complies with the requirements of that section.

(2) Except as is otherwise provided in this Act, every appointment to the Force shall be made by the Commissioner.

(3) Where a psychological assessment is required for the purposes of this section, the Commissioner shall cause that assessment to be carried out by a person whom the Commissioner deems to be suitably qualified, but where in any particular case, the Commissioner is of the opinion that no suitably qualified person is reasonably available to carry out a psychological assessment, the Commissioner may dispense with the requirements of Subsection (1)(b).

(4) Except as is otherwise provided in this section, every appointment to the Regular Constabulary Branch is probationary until confirmed.

(5) The period of probation is 18 months, but for any case or class of cases the period may be extended by the Commissioner for a further period not exceeding 18 months.

(6) The following provisions apply in respect of the period of probation:—

- (a) where the Commissioner, after inquiry, is satisfied that a probationer has failed to meet reasonable standards of performance or ability, the Commissioner may dispense with the services in the Force of that probationer;
- (b) whenever inquiry is made in respect of the performance or ability of a probationer under this subsection, the probationer shall be informed in writing of the nature of the failure or failures alleged and may within 14 days or within such further time as the Commissioner may allow, respond in writing to those allegations;
- (c) the Commissioner may in his discretion stand a probationer down during the period of any enquiry under Paragraphs (a) and (b);

- (d) a probationer may be stood down without pay or on a percentage of full pay under Paragraph (c);
- (e) the Commissioner shall not proceed to a decision until after the expiry of the time referred to in Paragraph (b);
- (f) before reaching a decision, the Commissioner shall take into account any response made under Paragraph (b);
- (g) no appeal lies in respect of a decision of the Commissioner under this Subsection;
- (h) the Commissioner may dispense with, or shorten, the period of probation where he thinks it expedient or desirable in the interest of the Force to do so;
- (i) a member may be required to undergo a course of training before confirmation of appointment, and in any such case the period of probation may be extended until the completion of the course of training;
- (j) the Commissioner may, by notice in the National Gazette, declare that the period of attendance at a course of training or a part of a course of training specified in the notice, shall not be taken into account in calculating the period of probation;
- (k) at the expiration of the period of probation the Commissioner may confirm the appointment.

**44. RE-APPOINTMENT OF MEMBERS RETIRED ON ACCOUNT OF MENTAL OR BODILY INFIRMITY.**

(1) This section applies to a person—

- (a) who has been retired from the Force under this Act or the pre-Independence Act or the former Act on account of mental or bodily infirmity; and
- (b) who, after having been so retired, is to be appointed under this Part as a member of the Force by reason of having recovered his health and physical fitness.

(2) A person to whom this section applies shall be appointed—

- (a) subject to Subsection (3), to the Force without probation; and
- (b) to a rank equivalent to or less than the rank held by that person immediately before his retirement as the Commissioner directs.

(3) Subject to Subsection (4) where a person to whom this section applies was, immediately before his retirement, a probationer under Section 33 of the pre-Independence Act or under Section 26 of the former Act or under Section 43 of this Act, that person may be appointed to the Force on probation for such period as the

Commissioner directs, but the period shall not exceed the balance of the period of probation remaining to be served immediately before that person's retirement.

(4) Notwithstanding Subsection (3), where in the case of a person to whom this section applies, the period of probation being served by such person immediately before retirement had not been extended under Section 33 of the pre-Independence Act or under Section 26 of the former Act or under Section 43 of this Act any period of probation under Subsection (3) may be extended by the Commissioner for a further period not exceeding 12 months.

(5) Section 43(6) applies to and in relation to a person referred to in Subsection (4).

(6) The Commissioner may accept the report of the medical examination of a person to whom this section applies made under Section 58 of the *Public Officers Superannuation Fund Act 1990* as evidence of the health and physical fitness of that person for the purposes of Section 43(1)(a)(i).

(7) In the calculation for the purposes of Sections 61, 85 and 87 of the period of service of a person to whom this section applies, that person shall, in addition to the period actually served by that person since he was last appointed to the Force, be deemed to have served for such period, not exceeding the period of his service before retirement, as the Commissioner determines.

#### **45. RE-APPOINTMENT OF PERSONS WHO HAVE RESIGNED FROM THE FORCE TO BECOME CANDIDATES AT ELECTIONS.**

(1) Subject to Subsection (5), where the Commissioner is satisfied that—

- (a) a person who was a member of the Force and who—
  - (i) resigned or retired from the Force in order to become a candidate for election as a member of the Parliament or as a member of a Provincial Assembly; and
  - (ii) was in fact a candidate at the election; and
  - (iii) failed to be elected; and
- (b) the resignation or retirement took effect not earlier than two months before the date on which nominations for the elections closed,

the Commissioner may, subject to Subsection (5), on application by the person within two months after the declaration of the result of the election, re-appoint that person to the Force under this section, in a rank equivalent to the rank held by that person immediately before resignation or retirement.

(2) A person may, where the Commissioner so determines, be re-appointed under this section without being required to undergo any medical examination.

(3) Where the Commissioner thinks it desirable, a person may be re-appointed under this section without probation.

(4) A person re-appointed under this section is deemed to have continued in the Force as if he had not resigned or retired but had been on leave without pay during the period from the day on which his resignation or retirement became effective to and including the day immediately preceding the day on which that person was re-appointed.

(5) Notwithstanding the provisions of Subsection (1)–

- (a) where a person has been re-appointed to the Force on more than one occasion under Subsection (1) and within a period of five years from his previous such re-appointment seeks a further re-appointment; or
- (b) where a former member of the Force has resigned and thereafter has been a Member of the Parliament or of a Provincial Assembly, and seeks re-appointment to the Force,

the Commissioner shall not, except where in the opinion of the Commissioner special circumstances exist, re-appoint such person to the Force.

#### **46. FILLING OF VACANCIES AFTER ADVERTISEMENT.**

(1) Where the Commissioner is of opinion that a vacancy in the Regular Constabulary Branch should be filled and is unable to certify that the vacancy could suitably be filled by the transfer or promotion of a member of the Branch, the Commissioner may direct that applications be invited from both within and outside the Force to fill the vacancy.

(2) Where an application referred to in Subsection (1) is received from a member of the Force and in the opinion of–

- (a) the Commissioner; or
- (b) in the case of a vacancy in the rank of Deputy Commissioner–the Head of State, acting on advice,

the vacancy could suitably be filled by the transfer or promotion of a member of the Force, the Commissioner or the Head of State, acting on advice, as the case may be, shall transfer or promote, in accordance with Division 5, a member to fill the vacancy.

#### **47. FILLING OF VACANCIES FROM OUTSIDE THE FORCE.**

Subject to Section 46(2), where applications are received under that section and in the opinion of–

- (a) the Commissioner; or
- (b) in the case of vacancy in the rank of Deputy Commissioner–the Head of State, acting on advice,

that the vacancy should be filled by an appointment from outside the Force, the Commissioner or the Head of State, acting on advice, as the case may be, may make an appointment from outside the Force.

*Division 5.**Transfers and Promotions.***48. PRINCIPLES TO APPLY TO TRANSFERS AND PROMOTIONS.**

(1) In this section, “**transfer**” of a member to a position means the appointment of a member to a position in which the member will hold the same rank and be entitled to at least the same level of salary.

(2) A decision to transfer or promote a member to a vacancy in the Regular Constabulary Branch shall be made by fair and equitable procedures that—

- (a) include when possible inviting applications and selection on the basis of the merit of applicants; and
- (b) prevent unjust discrimination, whether in favour of or against a person; and
- (c) allow at all times to the Commissioner the discretion to transfer any member to any location where the exigencies of the Service so require.

(3) Where the Commissioner makes an order directing the transfer of a member of the Force to other duties not involving a reduction in pay, the member will comply with the order.

(4) Notwithstanding Subsection (2), where a decision is made to transfer a member or promote a member under Section 41, the provisions of Subsection (2)(a) do not apply.

(5) Notice to a member of a transfer of that member shall be given in writing and allow a reasonable time to him to arrange his personal affairs before the permanent date of the transfer takes effect.

(6) For the purposes of this Part, merit of a member comprises—

- (a) the integrity, diligence and good conduct of the member; and
- (b) the potential of the member to discharge the duties of the position in question; and
- (c) the industry shown by the member in performance of the duties of office in the course of the member’s career; and
- (d) the physical and mental fitness of the member to perform the duties of the position in question.

(7) For the purpose of determining the potential of a member to discharge the duties of a position, the following factors shall be taken into account:—

- (a) the performance of duties of office in the course of the member’s career;
- (b) the range of practical experience of the member in the Force or outside the Force;

- (c) the ability, aptitude, skill, knowledge and experience determined by the Commissioner to be necessary for the proper performance of the duties of the position in question;
- (d) any relevant academic, professional or trade qualifications of the member.

(8) In the selection of a member of the Regular Constabulary Branch for promotion, consideration shall be given to the merit of the persons considered for selection and in the event of equality of merit between two or more members, to the relative seniority of such members.

(9) For the purposes of determining merit, the Commissioner may require a member to submit to a psychological assessment to be carried out by a person whom the Commissioner considers to be suitably qualified.

#### **49. PROMOTIONS OR APPOINTMENTS TO RANK OF DEPUTY COMMISSIONER.**

(1) Promotions or appointments to the rank of Deputy Commissioner shall be made by the Head of State, acting on advice, and are not subject to Section 53.

(2) The conditions of service of the holder of the rank of Deputy Commissioner shall be determined by the Head of State, acting on advice, and may be determined in a contract between the Commissioner and the holder of that post.

(3) Subject to Subsection (5) a person shall be appointed to the rank of Deputy Commissioner for a term not less than three years.

(4) A contract may provide for the application of any or all of the provisions of Part IX.

(5) No contract or condition of employment shall provide for the removal of the appointee from the post of Deputy Commissioner before the expiry of the term of his contract or appointment, except upon one or more of the following grounds:—

- (a) conviction of an offence involving dishonesty or for which a term of imprisonment may be imposed;
- (b) failure to comply with an essential term or condition of the appointment;
- (c) negligence or dereliction of duty;
- (d) misconduct;
- (e) incapacity due to infirmity of mind or body;
- (f) failure adequately to perform the duties required of a person holding the rank to which he is appointed;
- (g) resignation or retirement from the Force;
- (h) in the interests of the State.



(6) Where a Deputy Commissioner is removed from his post under one or more of the grounds referred to in Subsection (5), that removal shall, unless the Commissioner with the consent of the National Executive Council otherwise directs, automatically terminate that person's membership in the Force.

(7) Subject to Subsection (8), where a Deputy Commissioner who is a person who made an election in accordance with Section 7(2) of the *Public Officers Superannuation Fund Act 1990* (whether or not the appointment to the post was made before or after the commencement of this Act) is required by any condition of or pertaining to his appointment to contribute to a superannuation fund operated under the *Public Officers Superannuation Fund Act 1990*, neither that condition nor the participation in that fund extinguishes the entitlement of that person to the benefits provided under Section 109 of the *Police Force Act* (Chapter 65).

(8) Subsection (7) does not apply, or, as the case may be, ceases to apply in any case where adequate benefits are offered to and accepted by the appointee to compensate for the extinguishment of the entitlement.

#### **50. FILLING OF VACANCIES BY PROMOTION.**

(1) Where a vacancy occurs in the Regular Constabulary Branch and in the opinion of—

- (a) the Commissioner; or
- (b) in the case of a vacancy in the rank of Deputy Commissioner—the Head of State, acting on advice,

that the vacancy could suitably be filled by the transfer or promotion of a member, the Commissioner or the Head of State, acting on advice, as the case may be, may in his discretion, transfer or promote, in accordance with this section, a member of that Branch to fill the vacancy.

(2) Before a promotion is made to the rank of Deputy Commissioner, the Commissioner shall, by notice in an Official Police Publication, invite members of the Regular Constabulary Branch to apply for the promotion.

(3) When a promotion is to be made to a rank other than that of Deputy Commissioner, the Commissioner shall—

- (a) refer the matter to the Police Promotions Selection Board; and
- (b) give notice in an Official Police Publication—
  - (i) that it is intended that a meeting of the Board be held on a certain date and at a certain place to consider the matter; and
  - (ii) calling for applications from members who wish to be considered for the promotion, and fixing a time within which such applications will be received by the Commissioner.

#### **51. POLICE PROMOTIONS SELECTION BOARD.**

(1) In this section—

**“Board”** means a Police Promotions Selection Board constituted under Subsection (2) and includes the Chairman and assessors sitting together at a hearing;

**“Chairman”** means the Chairman of the Board appointed under Subsection (2) and includes an acting Chairman appointed under Subsection (6).

(2) For the purposes of this section, there shall be a Police Promotions Selection Board, which shall comprise a permanent Chairman appointed in accordance with Subsection (5) who shall sit with not more than two assessors appointed in accordance with the regulations.

(3) Subject to this section, the Chairman and assessors of a Police Promotions Selection Board are not, while acting as such, subject to direction or control by any person or authority under this Act.

(4) Subject to this section the Chairman and the Assessors of a Police Promotions Selection Board hold office on such terms and conditions as are prescribed.

(5) The Chairman of the Board—

- (a) shall be appointed by the Minister and, subject to Paragraph (c), shall be appointed for a specific time; and
- (b) is eligible for re-appointment; and
- (c) notwithstanding that the term of appointment has expired, continues to hold office until a successor is appointed.

(6) Where for any reason the Chairman is at any time unable to act, the Minister shall appoint an acting Chairman to act in his place for such period and upon such conditions as the Minister may direct.

(7) Sittings of the Police Promotions Selection Board shall occur whenever appointed by the Chairman at the request of the Commissioner.

(8) The Commissioner may from time to time request the Chairman to hold a sitting of the Board and the Chairman shall, as soon as practicable after receiving the request, appoint a time and place for a sitting.

(9) It is the duty of the Commissioner to ensure that at least one sitting of the Board is held in each calendar year.

(10) Whenever the Commissioner requests the Chairman to hold a sitting of the Board the Commissioner shall inform the Chairman of the number of vacancies to be filled and the ranks in which those vacancies occur.

(11) The Chairman shall fix an agenda for each sitting of the Board and may direct that there may be separate hearings within such sitting to consider vacancies in different ranks.

(12) The Chairman shall give at least four week’s notice to the Commissioner of the time and place appointed under Subsection (8) and of the agenda fixed under Subsection (11).

(13) Upon receipt of a notice under Subsection (12), the Commissioner shall give at least three week's notice in an Official Police Publication—

- (a) of the date and place of the sitting of the Board and the vacancies that it will consider; and
- (b) calling for applications from members who wish to be considered for the promotion, and fixing a time (being not less than two weeks after the publication of the notice) within which such applications will be received by the Commissioner.

## **52. FUNCTIONS OF THE BOARD.**

The functions of the Board are to consider applications for promotion to vacancies and to make recommendations to the Commissioner in accordance with Section 53.

## **53. PROMOTIONS THROUGH THE BOARD.**

(1) The Police Promotions Selection Board shall—

- (a) consider all members of the Regular Constabulary Branch who are qualified and apply for promotion to a vacancy; and
- (b) make a recommendation to the Commissioner in accordance with this section as to the filling of each vacancy.

(2) The Commissioner shall give or cause to be given to the Board all files, reports and documents, and any other information, relevant to all members of the Regular Constabulary Branch who are qualified for promotion to the vacancy.

(3) The Police Promotions Selection Board shall make full inquiries, without regard to legal forms or solemnities into the matter of the filling of the vacancy.

(4) On receipt of a recommendation under Subsection 1(b), the Commissioner shall—

- (a) accept the recommendation and take action accordingly; or
- (b) refer the matter, together with his reasons for not accepting the recommendation, back to the Police Promotions Selection Board concerned for reconsideration and a further recommendation.

(5) On receipt of a further recommendation under Subsection (4)(b), the Commissioner shall—

- (a) accept the further recommendation and take action accordingly; or
- (b) refer the matter for decision by the Minister, together with all relevant papers setting out the Board's recommendations and the reasons for his rejection.

(6) The decision of the Minister under Subsection (5)(b) is final and shall be implemented by the Commissioner.

**54. PERMISSION TO DECLINE PROMOTION.**

The Commissioner may permit a member of the Force to decline a promotion without prejudice to any claim that the member might have in relation to promotion at some later date.

***Division 6.******Demotions and Dismissals.*****55. DEMOTIONS AND DISMISSALS.**

(1) Where the Commissioner, after inquiry, is satisfied that a member of the Regular Constabulary Branch, other than a Deputy Commissioner, has failed to meet reasonable standards of performance or ability, the Commissioner may dismiss that member or reduce that member in rank to a rank having a lower classification, and to a salary within that classification.

(2) Whenever inquiry is made in respect of the performance or ability of a member of the Regular Constabulary Branch under this section, that member shall be informed in writing of the nature of the failure or failures alleged and may within 14 days or within such further time as the Commissioner may allow, respond in writing to those allegations.

(3) The Commissioner shall not proceed to a decision until after the expiry of the time referred to in Subsection (2).

(4) Before reaching a decision, the Commissioner shall take into account any response made under Subsection (2).

(5) There shall be paid to a member dismissed under this section, by way of severance pay, such amount, being not less than one month's salary and not more than three months' salary, as the Commissioner may determine.

(6) A member who has been dismissed or demoted under this section may, within seven days of notification to the member of the dismissal or demotion, or within such further time as the Commissioner may allow, apply in writing to the Commissioner for a review of the decision.

(7) An application under Subsection (6) for a review may be effected by—

(a) delivery in person to a disciplinary officer; or

(b) sending the application by ordinary post addressed to the Commissioner; or

(c) delivery in such other manner as may be approved by the Commissioner,

and is deemed to have been made on the day on which it is so delivered or posted.

(8) On a review under Subsection (6), the Commissioner may confirm or annul the dismissal or demotion and the decision of the Commissioner is final.

(9) Pending the hearing of a review against dismissal, the dismissal of the member shall be held in abeyance but the Commissioner may suspend the member from duty.

(10) A suspension from duty under this section shall be on full pay.

(11) Section 101 does not apply to a person dismissed under this section.

***Division 7.***

***Salaries and Allowances.***

**56. SALARIES.**

(1) Members of the Regular Constabulary Branch shall be paid annual salaries in accordance with such fixed amounts or scales as are determined for each rank by the Commissioner, after consultation with the Salaries and Conditions Monitoring Committee, subject to any general directions given by the Head of State, acting on advice.

(2) The salary payable to a member of the Regular Constabulary Branch on appointment to the Force is the salary, within the limits of salary determined under Subsection (1) for the rank to which that member is to be appointed, as the Commissioner determines.

**57. ALLOWANCES.**

(1) Members of the Regular Constabulary Branch shall be paid such allowances, at such rates, in such cases and subject to such conditions as are determined by the Commissioner, after consultation with the Public Service Commission and subject to any general directions of the Head of State, acting on advice.

(2) A determination under Subsection (1) may apply to all or any members of the Branch or to a rank or ranks.

(3) A determination under this section shall be published in an Official Police Publication as soon as practicable after it has been made and does not come into effect before it has been so published.

**58. DEDUCTIONS FROM PAY.**

Deductions may be made from the pay of a member of the Regular Constabulary Branch—

(a) as determined by the Commissioner, in relation to a member of the Branch or a class of members of the Branch, for any service provided by the State; and

(b) as determined by the Commissioner, in respect of any debt due by a member of the Branch on account of any expense incurred by the State in relation to a member or a member of the family of a member.

**59. INCREMENTS.**

(1) Where a scale of rates of salary determined under Section 56 is applicable in relation to a member of the Regular Constabulary Branch, the member shall, subject to this section, be paid increments of salary in accordance with that scale.

(2) A member of the Regular Constabulary Branch is not entitled to receive an increment of salary until he has received salary without the increment for not less than 12 months.

(3) Where, having regard to the conduct, diligence, efficiency and attendance for duty of a member of the Regular Constabulary Branch during the period after which that member is entitled to receive an increment of salary, the Commissioner, or a commissioned officer authorized by the Commissioner for the purpose, is of the opinion that the member should not immediately receive the increment, the Commissioner or the authorized officer, as the case may be, may, by written order, direct that the increment be not paid until the expiration of such period as the Commissioner or the commissioned officer thinks proper, but such deferment will not exceed 12 continuous months without review by the Commissioner.

(4) A member in relation to whom the Commissioner or a commissioned officer has made an order under Subsection (3) may request the Commissioner to reconsider the direction, for reasons stated in the request, and the Commissioner may, after such inquiry as he thinks proper, confirm, annul or vary the order.

***Division 8.******Recreation Leave.*****60. RIGHT TO LEAVE.**

A member of the Regular Constabulary Branch is entitled to recreation leave in accordance with this Division.

**61. RECREATION LEAVE.**

Subject to this Division and to such conditions as are prescribed, the Commissioner may grant to a member of the Regular Constabulary Branch leave of absence for recreation at the rate of 24 days (exclusive of Sundays and public holidays) for each 12 months served.

**62. INTERVALS.**

Subject to Section 64 and to any other provision of this Act, entitlement to recreation leave accrues when the member has completed a period of continuous service of—

- (a) 12 months commencing on the date of his last appointment to the Force;  
or
- (b) 12 months commencing on the date upon which his last entitlement to recreation leave accrued,

as the case may be.

### **63. ORDER OF GRANTING RECREATION LEAVE.**

(1) Where recreation leave is arranged by roster, the officer-in-charge, or another member of the Regular Constabulary Branch appointed by the Commissioner for the purpose, shall, within one month before the date fixed for the commencement of leave of a member of the Regular Constabulary Branch, report to the Commissioner—

- (a) as to the periods of the member's absence from duty for any cause—
  - (i) since his previous entitlement to recreation leave accrued; or
  - (ii) where no previous entitlement to recreation leave has accrued—since the date of his appointment; and
- (b) as to whether the leave can be granted from the proposed date without detriment to the work of the Force.

(2) Where recreation leave is not arranged by roster, an application shall be submitted by the member of the Regular Constabulary Branch wishing to take recreation leave, through the officer-in-charge who shall, within one month before the date from which leave is proposed to be taken, report to the Commissioner—

- (a) as to the periods of the member's absence from duty for any cause—
  - (i) since his previous entitlement to recreation leave accrued; or
  - (ii) where no previous recreation leave has been granted—since the date of his appointment; and
- (b) as to whether the leave can be granted from the proposed date without detriment to the work of the Force.

(3) The Commissioner may direct a member of the Regular Constabulary Branch to take, at such time as is convenient to the working of the Force, recreation leave due whether or not application for leave has been made by the member.

### **64. EXTENSION OF TIME OF ACCRUAL.**

(1) Where at a date upon which a member's entitlement to leave would otherwise accrue, that member has, during the period since the date upon which his previous period of recreation leave accrued, or, where no previous recreation leave has accrued, since the date of his appointment, been absent from duty for more than 10 working days, the date of accrual shall be extended in accordance with Subsection (2).

(2) The extension referred to in Subsection (1) is an extension by one day for every day during which the member has been absent from duty during the period.

(3) Where a member of the Regular Constabulary Branch has, during the period first referred to in Subsection (1), been absent on leave granted under Section 61, 70, 71, 72, 74, 75, 77, 79 or 81, or granted under Section 67(1) subject to

deduction under Section 67(2)(a), the period for which he was so absent from duty is not taken into account for the purposes of Subsection (2).

#### **65. PRO RATA LEAVE, ETC.**

(1) Where a member of the Regular Constabulary Branch ceases to be a member of that Branch otherwise than by death, the Commissioner may authorize the payment of pay in lieu of recreation leave, in respect of recreation leave to which that member was entitled immediately before he ceased to be a member.

(2) Where during a period of recreation leave a member of the Regular Constabulary Branch ceases to be a member of the Branch, the Commissioner may revoke the grant as from the date on which the member ceases to be a member and authorize the payment of pay in lieu of the recreation leave for the residue of the period for which it was granted.

(3) Where—

(a) a member of the Regular Constabulary Branch dies; or

(b) the Commissioner, after consideration of all the circumstances, directs that the death of a member of the Regular Constabulary Branch be presumed,

the Commissioner may authorize payment to the member's dependants of pay in lieu of any period of recreation leave to which the member was entitled immediately before his death.

(4) Except as provided in Subsection (5), for the purposes of this section a member of the Regular Constabulary Branch shall be credited in respect of any period of service in relation to which entitlement to recreation leave had not as yet accrued, with *pro rata* recreation leave, calculated to the nearest completed month of that period of service.

(5) Subsection (4) does not apply to a member of the Regular Constabulary Branch who ceases to be a member of that Branch—

(a) by dismissal for a disciplinary offence, or

(b) because the services of that member are dispensed with under Section 43 whether or not application for leave has been made by the member.

#### **66. WHEN RECREATION LEAVE TO BE TAKEN.**

(1) For the purposes of this section, “**year**”, in relation to any leave, means a period of 12 months commencing on the date the entitlement to that leave accrues.

(2) Whenever practicable, the Commissioner shall, at the request of the member, cause such arrangements to be made as will ensure that each member of the Regular Constabulary Branch may be granted recreation leave in each year.

(3) Unless the Commissioner otherwise directs, recreation leave shall be taken in the year in which it accrues or in the year following the year in which it accrues.



(4) Where in the opinion of the Commissioner the needs of the Force are such that the recreation leave of any member should be deferred the Commissioner may direct that the recreation leave to which that member is entitled shall be deferred for such time as the Commissioner may then or subsequently determine.

(5) Subject to Subsections (7) and (8), where any recreation leave is not taken within two years of the date on which that leave accrued, or within such later time as Subsection (6) requires, the member's entitlement to that leave lapses.

(6) Where recreation leave is deferred by the Commissioner acting under Subsection (4), the period of deferment shall not be taken into account in calculating for the purposes of Subsection (5) the period of two years referred to in that subsection.

(7) Where the Commissioner is satisfied that special circumstances exist the Commissioner may, conditionally or unconditionally by written direction, reinstate any leave entitlement which has lapsed under Subsection (5).

(8) Where Section 68(15) applies to a member, the Commissioner shall reinstate any leave entitlement which has lapsed under Subsection (5), subject to the condition that the leave shall be taken at a time fixed by the Commissioner, being a time at which leave fares are available to be paid.

#### **67. EXCESS LEAVE.**

(1) Where in the opinion of the Commissioner special circumstances exist, and it meets the convenience of the Force so to do, the Commissioner may grant to a member recreation leave in excess of any amount to which he has become entitled.

(2) Where a member is granted or takes recreation leave in excess of his entitlement, that excess leave shall be—

- (a) in due course deducted from the member's recreational leave which next accrues; or
- (b) treated as leave without pay.

#### ***Division 9.***

#### ***Leave Fares.***

#### **68. PAYMENT OF LEAVE FARES.**

(1) Subject to this section, the Commissioner shall authorize payment of the cost of the fares of a member of the Regular Constabulary Branch and of the member's family (if any) travelling on approved recreation leave, for the specific purpose of enabling the member to spend the major portion of the leave in his home Subdistrict or the home Subdistrict of his spouse.

(2) Fares under this section shall be granted to a member of the Regular Constabulary Branch—

- (a) in the case of leave in his home Subdistrict—for travel between the station at which the member was employed immediately before

commencing recreation leave and the administrative headquarters of the member's home Subdistrict, and for return travel to that station or to any new station at which the member is thereupon to serve; and

- (b) in the case of leave in the home Subdistrict of the member's spouse—for travel between the station at which the member was employed immediately before commencing recreation leave and the administrative headquarters of the home Subdistrict of the member's spouse, and for return travel to that station or to any new station at which the member is thereupon to serve, but in no case shall the amount authorized exceed the cost of the fares referred to in Paragraph (a).

(3) Subject to Subsections (4), (7) and (8), entitlements to leave fares accrue to a member of the Regular Constabulary Branch at intervals of two years or thereabouts, the entitlement first accruing on the date upon which the member's second entitlement to recreation leave accrues, and subsequent entitlements accrue upon the date of accrual of each alternate entitlement to recreation leave.

(4) The date ascertained under Subsection (3) in respect to any member is in this section referred to as the relevant date.

(5) A member of the Regular Constabulary Branch who is entitled to leave fares under this section shall make written application in such manner and at such time as the Commissioner directs.

(6) Notwithstanding Subsection (3), the Commissioner has the discretion, on application by a member of the Regular Constabulary Branch, to authorize the granting or payment of leave fares at any time before the relevant date where, because of the death of an immediate member of the member's family or other acceptable grounds, the Commissioner thinks that the application should be granted.

(7) Notwithstanding the period of two years prescribed by Subsection (3) for entitlement to fares, but subject to Subsection (8), the Commissioner has the discretion, on application by a member of the Regular Constabulary Branch, to authorize the payment of fares after the member has served for a continuous period of one year commencing on and from the relevant date.

(8) Where the granting of payment of fares after one year's service is authorized under Subsection (7), the Commissioner shall authorize payment of half the total cost of fares which would have been payable had Subsection (3) applied.

(9) A payment of leave fares under Subsection (6) or (7) shall be in substitution for any entitlement to leave fares which would otherwise have accrued after the expiry of two years from the relevant date.

(10) Subject to Subsection (11), payment of fares under this section shall be made only with respect to travel by the most direct route unless otherwise authorized by the Commissioner for reasons of economy, and travel shall be by public transport (other than by taxi).

(11) Leave fares shall be calculated on the cost of surface transport, unless—

- (a) travel by air is more economical than surface transport; or

- (b) in the reasonably held opinion of the Commissioner no suitable and convenient surface transport is available to the member at the time the member intends to travel.

(12) The State may provide transport, in place of payment of fares, for the whole or any part of the journey to and from the administrative headquarters of the home Subdistrict of a member of the Regular Constabulary Branch or of the home Subdistrict of the member's spouse.

(13) Where leave fares paid under this section are used for any purpose, other than a purpose authorized by this section, the member to whom they are paid commits a disciplinary offence, and shall repay the fares so provided by way of salary deduction, cash payment, or from accumulated entitlements.

(14) Subject to Subsections (6), (7), and (16), and unless the Commissioner otherwise directs, leave fares under this section may be granted only in respect of leave to be taken before the expiry of 12 months from the relevant entitlements.

(15) Subsection (14) does not apply where a member makes application within six months from the relevant date for leave fares to be granted before the expiry of 12 months from the relevant date, and those fares are not granted, or where granted are not paid, before the expiry of 12 months from the relevant date.

(16) Leave fares shall be paid at or about the time they are to be used for the purpose for which they are intended.

(17) A married member of the Regular Constabulary Branch who is the spouse of a member of the Branch or of an officer of the Public Service is entitled to leave fares as a member of the Force but is not entitled to leave fares in his capacity as the spouse of a member of the Force or of an officer of the Public Service.

(18) No member is entitled to leave fares where that member is, at the date upon which the leave fares would otherwise have accrued, stationed in his own home Subdistrict.

## **69. TRAVELLING TIME.**

(1) The Commissioner may grant to a member of the Regular Constabulary Branch in respect of whom the payment of fares has been authorized under Section 68 such travelling time, not exceeding seven days, as he thinks reasonable.

(2) In any special case, the Commissioner may approve such additional travelling time as he thinks proper.

### ***Division 10.***

#### ***Other Leave.***

## **70. COMPASSIONATE LEAVE.**

(1) The Commissioner may grant leave on full pay for a period or periods not exceeding 10 working days in any period of 12 months on any one or more of the following grounds:—

- (a) serious illness or death of a member of the member's family, or of the father or mother of the member or his spouse;
  - (b) any other personal reason which the Commissioner considers to be sufficiently grave.
- (2) The provisions of Section 67 will apply to leave granted under this section.

**71. REPRESENTATIONAL LEAVE.**

(1) For the purposes of this section, "**National Team of Papua New Guinea**" means a team representing Papua New Guinea under the auspices of a national sporting body.

(2) The Commissioner has the discretion to grant to a member representational leave for any of the following purposes:—

- (a) as a participant or official in a National Team of Papua New Guinea at a South Pacific Games, Commonwealth Games or Olympic Games or at any other international sporting contest approved by the Commissioner;
- (b) as a participant or official in a National Team of Papua New Guinea playing against a representative team from another country within or outside Papua New Guinea;
- (c) as a participant or official during training prior to the final selection of a National Team of Papua New Guinea to be selected for any of the purposes referred to in Subsection (1).

(3) Leave granted under this section shall be on full pay and may be granted by the Commissioner for such period as is reasonably required for the purpose for which the leave is granted.

(4) Representational leave shall be deemed to be part of the service of the member and shall not affect the continuity of that member's service.

(5) An application for leave under this provision shall be supported by such evidence as the Commissioner may require.

**72. SICK LEAVE.**

(1) In case of illness, subject to the member providing a certificate issued by a registered medical practitioner stating the period of time that the member will be unfit for duty, the Commissioner may grant to a member of the Regular Constabulary Branch leave of absence, to be designated sick leave, for a period not exceeding 12 months, in accordance with this section and Section 73.

(2) Where a member of the Regular Constabulary Branch who has received sick leave for 12 months is not so far recovered as to be able to resume his duties, the Commissioner may grant to the member further sick leave for a period not exceeding six months.

(3) Unless the Commissioner otherwise determines, no salary or allowance shall be paid to a member during any further period of sick leave granted under Subsection (2).

(4) Where at the expiration of any further leave granted under this section the member is unable to resume his duties, the Commissioner may retire that member from the Force.

(5) Sick leave shall not be reckoned as, or included in, recreation leave or furlough.

### 73. AMOUNT OF SICK LEAVE, ETC.

(1) In this section, “**working week**” means 37¼ working hours.

(2) Sick leave may be granted to a member of the Regular Constabulary Branch in accordance with Section 72 and this section.

(3) The basis for determination of the leave which may be granted shall be ascertained by crediting the member with the following cumulative periods of leave:—

	Leave on full pay (working weeks)	Leave on half pay (working weeks)
On date of appointment	2	2
On completion of 12 months service	2	2
On completion of each additional 12 months service	2	2

(4) In the event of the retirement of a member on the ground of invalidity, the retirement shall not, except with the consent of the member, be effected earlier than the date on which the member’s credit of leave on pay is exhausted, but—

- (a) the continuous period for which a member may be granted sick leave on pay immediately before the retirement shall not exceed 12 months; and
- (b) no further credit of sick leave accrues to a member after the date of the decision to retire that member; and
- (c) a member is not entitled to sick leave extending beyond the day immediately preceding his retirement.

(5) Subject to Subsection (6), where a member falls sick while on recreation leave or furlough and produces at the time a satisfactory medical certificate, the Commissioner may grant that member, at a time convenient to the Force, additional leave equivalent to the period of sickness falling within the scheduled period of leave, and the absence shall, subject to the availability of sick leave credits, be recorded as sick leave.

(6) A member shall not be granted sick leave under Subsection (5) unless the medical certificate indicates—

- (a) that during the currency of the certificate the member would be unfit for duty; and
  - (b) that the unfitness for duty would continue for a greater period than four days.
- (7) Where—
- (a) a member of the Regular Constabulary Branch is granted a period of sick leave such that his credits of sick leave on full pay will not extend to the full period; and
  - (b) the member has credits of sick leave on half pay available, the member may elect, subject to such conditions as are approved by the Commissioner, to convert some or all of the credits of sick leave on half pay to sick leave on full pay to such extent as is necessary to cover all or part of the period of leave.

#### 74. MATERNITY LEAVE.

(1) Maternity leave on full pay for a period not exceeding 12 weeks shall be granted by the Commissioner to a female member who is pregnant or who has recently given birth to a child.

(2) An application for maternity leave shall be accompanied by a certificate, signed by a registered medical practitioner, to the effect that the applicant is pregnant or has recently given birth to a child.

(3) In addition to paid maternity leave granted under Subsection (1), a female member, after the birth of a child, shall be granted upon request, maternity leave without pay for any period or periods, until the expiry of 12 months from the date of birth of the child.

#### 75. PARENTAL LEAVE (ADOPTION).

(1) Where a member (whether alone or jointly with another person) intends to adopt an infant child, he may be granted parental leave for a period not exceeding six weeks from the time the child comes into the care and control of the member for the purposes of the adoption.

(2) Parental leave granted under Subsection (1) shall be without pay in the first instance, but upon production of an order of adoption in favour of the member by a court of competent jurisdiction the member shall be entitled to retrospective payment of full pay for the period of parental leave.

(3) For the purposes of this section, “**infant child**” means a child who has not attained the age of six weeks at the time he comes into the care and control of the member for the purposes of adoption.

(4) In addition to the parental leave granted to a member under Subsection (1), a member may be granted extended parental leave without pay for any period or

periods until the expiry of 12 months from the date of birth of the child but such extended parental leave shall be without pay, retrospective or otherwise.

**76. HEALTH OF MEMBER CAUSING A DANGER TO OTHERS.**

(1) Where the Commissioner has reason to believe that a member of the Regular Constabulary Branch is in such a state of health as to make that member a danger to his fellow members or to the public, the Commissioner may require the member—

- (a) to obtain and furnish a report from a medical practitioner as to his condition; or
- (b) to attend at the expense of the State for examination by a medical practitioner named by the Commissioner.

(2) On receipt of a medical report under Subsection (1), the Commissioner may direct the member to remain absent from his duties for a specified period, or, where that member is already on leave, to continue on leave for a specified period, and that period shall be counted as sick leave.

**77. LEAVE BY REASON OF INFECTIOUS DISEASE CONTACTS.**

(1) On a report by a medical practitioner that, by reason of contact with a person suffering from an infectious disease and through the operation of restrictions imposed by or under any law in respect of the disease, a member of the Regular Constabulary Branch is unable to attend for duty, the Commissioner may grant to the member leave of absence.

(2) Leave of absence granted under this section may be counted as sick leave or, at the option of the member, the whole or any portion of the leave may be deducted from recreation leave.

(3) Leave of absence shall not be granted under this section for a period beyond the earliest date at which, having regard to the restriction imposed by law, it would be practicable for the member to resume duty.

**78. ILLNESS DUE TO MISCONDUCT.**

(1) A member of the Regular Constabulary Branch shall not be granted leave with pay on account of physical disability or ill-health caused by his misconduct, or in a case of absence from duty without sufficient cause.

(2) Where the Commissioner desires to be satisfied as to the cause of a disability or illness of a member of the Regular Constabulary Branch, the Commissioner may—

- (a) require the member to attend for examination by a medical officer of the Public Service at a stated time; or
- (b) make such arrangements as are necessary for the examination of the member by a medical officer.

(3) The member may, if he thinks fit, arrange for the presence of a private medical practitioner at an examination under Subsection (2), where such a course is practicable.

(4) Where the medical report is not favourable to the member, or where the member is not available for examination at the appointed time the cost of the examination, or of the visit of the medical officer, as the case may be, shall be debited to the member.

## 79. INJURY ON DUTY.

(1) Notwithstanding this Act, where a member of the Regular Constabulary Branch sustains physical injury in the execution of his duty and the Commissioner is satisfied that the injury is not attributable to wilful misconduct by the member—

- (a) the Commissioner may grant leave of absence on full pay to the member for a period not exceeding three months; and
- (b) where, at the end of that period, it is shown to the satisfaction of the Commissioner that the injured member is unable to resume duty, he may grant further leave of absence on such conditions as he thinks justified in the circumstances.

(2) The State may pay such transport, medical and hospital expenses *bona fide* incurred in consequence of the injury as the Commissioner thinks reasonable.

(3) Leave granted under this section shall not be counted as sick leave.

(4) This section does not derogate any rights that a member of the Regular Constabulary Branch has under any law relating to compensation to employees of the State for injuries suffered in the course of their employment, but a member is not entitled to receive benefits under this section and that law at the same time.

## 80. LEAVE WITHOUT PAY.

(1) The Commissioner may grant to a member of the Regular Constabulary Branch leave of absence without pay—

- (a) where the leave of absence is for the purpose of enabling the member to pursue a course of study, or to undertake research work which is related to the duties of his position, or of a position for which the study or work will qualify the member, or is otherwise likely to benefit the Force—for a period not exceeding five years, subject to annual review and an assessment of reports provided by the institution or organization supervising the study programme; and
- (b) where the leave of absence is for any other purpose—for a period not exceeding 12 months.

(2) The period during which a member of the Regular Constabulary Branch is absent on leave granted under this section shall, unless otherwise determined by the Commissioner, not be counted for any purpose as part of his period of service.



**81. LEAVE TO ATTEND ARBITRATION PROCEEDINGS.**

(1) The Commissioner may grant leave of absence with pay to not more than two representatives of an organization within the meaning of the *Industrial Organizations Act 1962* for the purpose of attending proceedings under that Act.

(2) The Commissioner may grant leave of absence without pay, for such periods as are prescribed, to representatives of an organization referred to in Subsection (1) for the purpose of the preparation of evidence for submission on behalf of the organization in any proceedings referred to in that subsection.

(3) The periods during which a member is absent on leave under Subsection (2) shall, for such purposes as are prescribed, be counted as part of the member's period of service.

**82. LEAVE FOR DEFENCE PURPOSES.**

(1) The Commissioner may grant leave of absence to a member of the Regular Constabulary Branch—

- (a) to enable the member to engage in such service as is prescribed in the Defence Force, a United Nations Force or any other prescribed force; or
- (b) to enable the member to engage in work or employment that is in the interests of the defence or public safety of Papua New Guinea.

(2) Leave granted under this section is subject to such terms and conditions as are prescribed.

**83. LEAVE TO SERVE UNDER OTHER ACTS.**

(1) Where a member of the Regular Constabulary Branch is appointed to an office provided under an Act other than this Act, the Commissioner may, on application by the member, grant leave of absence without pay for a period not exceeding the period for which the member is necessarily unavailable for employment in the Force in consequence of the appointment.

(2) Unless the Commissioner directs otherwise, the period during which a member of the Regular Constabulary Branch is absent on leave under Subsection (1) shall be counted as part of the member's period of service.

(3) Where a member of the Regular Constabulary Branch is granted leave under this section, the member's position in the Force becomes vacant on the commencement of the period of the leave, and the member is an unattached member during that period.

(4) At the end of a period of leave under this section, an unattached member is, unless he has been dismissed for misconduct or has or is retired under Section 91, entitled to be appointed to a rank in the Force not lower in classification than his former rank, after taking into account any variation in the classification of that rank during the period of the member's leave under this section.

(5) Where there is no vacancy to which a member of the Regular Constabulary Branch may suitably be appointed in accordance with Subsection (4), he continues as an unattached member at a classification determined in accordance with that subsection until a suitable vacancy occurs.

#### **84. LEAVE TO SERVE WITH OTHER GOVERNMENTS, ETC.**

(1) On request by—

- (a) the United Nations; or
- (b) the Government of the United Kingdom, or of Australia or of a State of Australia; or
- (c) the South Pacific Commission; or
- (d) any other prescribed organization, government or authority,

that the services of a member of the Regular Constabulary Branch be made available to it, the Commissioner may, on application by the member, grant him leave of absence without pay for the purpose for a period not exceeding three years.

(2) Unless the Commissioner directs otherwise, the period during which a member of the Regular Constabulary Branch is absent on leave granted under this section shall not be counted as part of his period of service, but does not affect the continuity of his service.

(3) Where, in the opinion of the Commissioner, it is necessary to fill the position of a member of the Regular Constabulary Branch who is granted leave under this section, the Commissioner may declare the member to be an unattached member.

(4) Where a member is an unattached member by virtue of Subsection (3), he is at the end of a period of leave under this section, entitled, unless he has been dismissed for misconduct or has or is retired under Section 91, to be appointed to a rank in the Force not lower in classification than his former rank, after taking into account any variation in the classification of that rank during the period of the member's leave under this section.

(5) Where there is no vacancy to which a member of the Regular Constabulary Branch may suitably be appointed in accordance with Subsection (4), he continues as an unattached member at a classification determined in accordance with that subsection until a suitable vacancy occurs.

#### **85. FURLOUGH.**

(1) Where a member of the Regular Constabulary Branch has served in the Force for at least 15 years, the Commissioner may, from time to time, grant leave of absence as furlough, calculated at the rate of—

- (a) nine days on full pay or, in the discretion of the Commissioner, 18 days on half-pay, in respect of each completed year of continuous service that ended on or before 30 June 1977; and

- (b) 12 days on full pay or, in the discretion of the Commissioner, 24 days on half-pay in respect of each completed year of continuous service that ended on or after 1 July 1977, in respect of which the member has not been granted furlough.

(2) Where a member of the Regular Constabulary Branch who is eligible for furlough in accordance with this section resigns, retires or is retired from the Force, the Commissioner may authorize payment to that member of a sum equivalent to his pay for a period of furlough not exceeding that which that member could have been granted on full pay under this section.

(3) On the death of a member of the Regular Constabulary Branch who was eligible at the time of death for furlough in accordance with this section, or where the Commissioner, after consideration of all the circumstances, directs that the death of a member of the Regular Constabulary Branch who is so eligible be presumed, the Commissioner may authorize payment to the dependents of that member of a sum equivalent to his pay for a period not exceeding the period of furlough that he could have been granted on full pay under this section had he retired or resigned immediately before the date of death, or, where the Commissioner has directed that his death be presumed, immediately before a date determined by the Commissioner.

(4) Notwithstanding this section, the official conduct record of a member of the Regular Constabulary Branch shall be taken into consideration in determining whether the whole or any portion of the furlough or pay provided for in this section may be granted.

## **86. PAYMENT OF FARES ON FURLOUGH.**

(1) Subject to this section, the Commissioner shall authorize payment of the cost of fares of a member of the Regular Constabulary Branch and of the member's family (if any) travelling on approved leave of absence as furlough, for the specific purpose of enabling the member to spend the major portion of the leave as furlough in the member's home Subdistrict or the home Subdistrict of the member's spouse.

(2) Fares under this section shall be granted to a member of the Regular Constabulary Branch—

- (a) in the case of leave in the member's home Subdistrict—for travel between the station at which the member was employed immediately before commencing approved leave as furlough and the administrative headquarters of the member's home Subdistrict, and for return travel to that station or to any new station at which the member is thereupon to serve; or
- (b) in the case of leave in the home Subdistrict of the member's spouse—for travel between the station at which the member was employed immediately before commencing approved leave as furlough and the administrative headquarters of the home Subdistrict of the member's spouse, and for return travel to that station or to any new station at which the member is thereupon to serve, but in no case shall the

amount authorized exceed the cost of the fares referred to in Paragraph (a).

(3) A member of the Regular Constabulary Branch is entitled to the payment of fares under this section on one occasion only.

(4) Unless the Commissioner directs otherwise leave of absence as furlough will be taken in conjunction with approved recreation leave under the provisions of Section 68.

(5) Subject to Subsection (6), payment of fares under this section shall be made only with respect to travel by the most direct route unless otherwise authorized by the Commissioner for reasons of economy, and travel shall be by public transport (other than by taxi).

(6) Fares under this section shall be calculated on the cost of surface transport, unless—

- (a) travel by air is more economical than surface transport; or
- (b) in the reasonably held opinion of the Commissioner no suitable and convenient surface transport is available to the member at the time the member intends to travel.

(7) The State may provide transport, in place of payment of fares, for the whole or any part of the journey to and from the administrative headquarters of the home Subdistrict of a member of the Regular Constabulary Branch or the home Subdistrict of the member's spouse.

(8) Where fares paid under this section are used for any purpose other than a purpose authorized by this section the member to whom the fares are paid commits a disciplinary offence.

(9) Fares under this section shall be paid at or about the time they are to be used for the purpose for which they are intended.

(10) A married member of the Regular Constabulary Branch who is the spouse of a member of the Branch or of an officer of the Public Service is entitled to fares under this section as a member of the Force but is not entitled to leave fares in his capacity as the spouse of a member of the Force or of an officer of the Public Service.

(11) No member is entitled to fares under this section where that member is, at the date upon which the leave fares would otherwise have accrued, stationed in his home Subdistrict.

## **87. LEAVE TO MEMBERS NOT ELIGIBLE FOR FURLOUGH.**

(1) This section relates to retirement in the case of a member of the Regular Constabulary Branch at or over the age of 55 years.

(2) Where a member has served in the Force for not less than four years but less than 15 years, the Commissioner may, in his discretion where the Commissioner thinks fit to do so, grant to the member leave of absence with pay before retirement calculated at the rate of—

- (a) nine days on full pay, or 18 days on half-pay in respect of each completed year of continuous service that ended on or before 30 June 1977; and
- (b) 12 days on full pay, or 24 days on half-pay in respect of each completed year of continuous service that ended on or after 1 July, 1977.

(3) Where a member who is eligible for leave under this section retires or is retired from the Force, the Commissioner may authorize payment to that member on retirement of a sum equivalent to his pay for a period of leave not exceeding that which he could have been granted under this section.

(4) Where a member who has not attained the age specified in Subsection (1) and has completed not less than four year's service but less than 15 year's service, retires or is retired from the Force, and satisfies the Commissioner that the retirement is caused by—

- (a) physical injury sustained in the execution of duty; or
- (b) ill-health that is permanent and is not due to misconduct or to causes within that member's control,

the Commissioner may, notwithstanding this section, authorize payment to him of a sum equivalent to his pay for a period of leave not exceeding that for which he would have been eligible under Subsection (2) if at the date of retirement he had attained the age specified in Subsection (1).

(5) The official conduct record of a member shall be taken into account in determining whether the whole or any portion of the leave or pay provided for in this section may be granted.

(6) Where, before a member has completed not less than four years' service, but before completion of 15 years service and either before or after attaining the age specified in Subsection (1)—

- (a) he dies, or
- (b) the Commissioner, after consideration of all the circumstances, directs that his death be presumed,

the Commissioner may authorize payment to his dependants of a sum equivalent to his salary for the period of leave that he would have received if he had been eligible under Subsection (2) for, and been granted, leave of absence immediately before the date of his death, or, where the Commissioner has directed that the death be presumed, immediately before a date determined by the Commissioner.

## 88. RECOGNITION OF CERTAIN PRIOR SERVICE.

(1) In this section, “**the Government**” includes the former Administration of the Territory of Papua New Guinea or of Papua New Guinea.

(2) This section applies in respect of any service that a member of the Regular Constabulary Branch has had—

- (a) in a former Force; or
- (b) as an Administration Servant under the *Administration Servants Act* 1958 (Adopted); or
- (c) as an employee of the Government to whom Administrative Instruction H.1/1951, issued by the former Public Service Commissioner on 19 October, 1951, applied; or
- (d) as an employee of an instrumentality or authority of the Government on conditions that were, in the opinion of the Commissioner, similar to those of a person referred to in Paragraph (b) or (c); or
- (e) as an employee of an instrumentality or authority of the Government on conditions that were, in the opinion of the Commissioner, similar to those of employees of the Public Service; or
- (f) in any other capacity approved by the Commissioner, generally or in a particular case, as Government service for the purposes of this section, or continuous service in more than one of those categories, being service that is continuous with service to which Section 85 or 87 applies.

(3) Any service of a member of the Regular Constabulary Branch to which this section applies shall be taken into account in calculating entitlements under Section 85 or 87.

#### **89. RESIGNATION OR RETIREMENT ON LEAVE.**

(1) Where a member of the Regular Constabulary Branch gives notice of resignation effective from the end of a period of leave of absence to which he is entitled or which he has been granted, the Commissioner may, in the Commissioner's direction, direct that the resignation be effective from an earlier date, and in that case shall give approval for the payment of salary in lieu of the leave of absence for the period of leave or the residue of the period, as the case may be.

(2) Where a member of the Regular Constabulary Branch gives notice of intention to retire at the end of a period of leave of absence, the Commissioner may, in the Commissioner's discretion, by notice in an Official Police Publication at any time during that period, declare the member to be an unattached member.

#### **90. TOTAL PERIOD OF LEAVE.**

Except as is otherwise specifically provided by this Act or immediately before the retirement of the member, the total period of leave of absence granted to a member of the Regular Constabulary Branch at any one time shall not exceed 12 months, or such longer period as the Commissioner in any particular cases approves.

***Division 11.***  
***Retirement, etc.***

**91. AGE OF RETIREMENT.**

(1) This section applies to all members of the Regular Constabulary Branch except the Commissioner and Deputy Commissioners.

(2) The Commissioner and Deputy Commissioners shall retire in accordance with the terms of their contract or conditions of appointment.

(3) Subject to this section, a member of the Regular Constabulary Branch to whom this section applies who has attained the age of 55 years or before attaining that age has completed 20 years' continuous service is entitled to retire from the Force if he desires to do so, but such a member may, subject to this Act, continue in the Force until he attains the age of 60 years.

(4) A member of the Regular Constabulary Branch to whom this section applies who continues in the Force after he has attained the age or completed the service at which he is entitled to retire—

(a) may be retired from the Force at any time before attaining the age of 60 years; and

(b) subject to Subsection (6), shall retire from the Force on attaining the age of 60 years.

(5) A retirement under Subsection (4)(a) shall be effected by the Commissioner.

(6) Notwithstanding Subsection (4)(b), where in the opinion of the Commissioner special circumstances exist, the Commissioner may permit a member to whom this section applies to remain in the Force for such additional period or periods not amounting to more than five years in the aggregate.

(7) Unless the Commissioner otherwise approves, a member of the Regular Constabulary Branch is not entitled to retire from the Force under this section during a period of suspension.

**92. RETIREMENT ON ACCOUNT OF INFIRMITY OR INCAPACITY.**

(1) Where a member of the Regular Constabulary Branch appears to the Commissioner, after full investigation of the circumstances, to be, by reason of mental or bodily infirmity or for any other reason, unfit to discharge or incapable of discharging the duties of his position efficiently, the Commissioner may retire that member from the Force or transfer that member to other duties of equal or lower rank and salary.

(2) The retirement or transfer of a member of the Regular Constabulary Branch under this section shall not be deemed to be on account of mental or bodily infirmity unless it is so stated in the instrument effecting the retirement.

(3) Without limiting the generality of Subsection (1), where a member has been unfit to carry out his duties for a time or times which in total exceed 400 days in any

continuous period of 37 months ending on the effective date, the member shall, unless the Commissioner otherwise directs, be deemed to be for the purposes of this section incapable of discharging the duties of his position efficiently and the Commissioner shall notify the member accordingly.

(4) The provisions of Subsection (3) shall apply to a member notwithstanding that the lack of fitness of that member may at different times have been due to different causes, and notwithstanding that on the effective date the member is fit to carry out his duties.

(5) For the purpose of this section “**the effective date**”, in relation to a member, means the date upon which the Commissioner notifies the member under Subsection (3) that Subsection (3) applies to that member.

### 93. RESIGNATION.

(1) A member of the Regular Constabulary Branch may resign from the Force—

- (a) with the written consent of the Commissioner or a person authorized in writing for the purpose by the Commissioner; or
- (b) after giving to the Commissioner or a person so authorized three months’ written notice of his intention to resign.

(2) Unless the Commissioner otherwise approves, a period of suspension shall not be taken into account when calculating the period of notice required under Subsection (1)(b).

(3) Unless the Commissioner otherwise approves, a member of the Regular Constabulary Branch, who purports to resign from the Force otherwise than in accordance with Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

## *Division 12.*

### *Pensions.*

### 94. APPLICATION.

The provisions of this Division apply to and in relation to members and retired members of the Regular Constabulary Branch who have made an election in accordance with Section 7(2) of the *Public Officers Superannuation Fund Act 1990*.

### 95. INTERPRETATION.

(1) In this Division—

“**dependant child**” in relation to a deceased member or pensioner means a child of that member or pensioner who was at the date of death of that member or pensioner wholly dependant on and supported by that member or pensioner;



**“pensioner”** means a resigned or retired member of the Regular Constabulary Branch who is in receipt of a pension as defined by Section 94;

**“surviving spouse”** means a person who was a spouse, within the meaning of this Act, of a deceased member of the Regular Constabulary Branch or of a deceased pensioner immediately before the death of that member or pensioner.

(2) For the purposes of eligibility for a pension under this Division—

(a) any period of service by a person as a member of a former Force, being service that is continuous with—

(i) a period of service in the Force; or

(ii) another period of service that is by virtue of this subsection deemed to be service in the Force,

is deemed to be continuous service in the Force; and

(b) the annual salary of a member of a former Force during any period during which he was in receipt of both cash wages and rations is deemed to be the annual amount of the cash wages plus the value, as assessed by the Commissioner, of the rations (other than rations supplied in respect of the dependants of the member).

## 96. GRANT OF PENSIONS.

Subject to these provisions, an annual pension is payable to a member of the Regular Constabulary Branch who resigns, retires or is retired—

(a) after not less than 20 years’ continuous service; or

(b) on the ground of ill-health, certified to by a medical practitioner, after not less than 15 years’ continuous service.

## 97. AMOUNT OF PENSION.

(1) Subject to Subsection (2), the amount of a pension payable under these provisions to a member of the Regular Constabulary Branch is 50% of the average annual salary received by the member during the three years’ continuous service immediately preceding his resignation or retirement.

(2) For the purposes of the calculation of pension, where the annual salary applicable to a rank held by a resigned or retired member of the Regular Constabulary Branch at any time during the three years’ continuous service immediately preceding his resignation or retirement is increased under this Act, whether before or after his resignation or retirement, the increase shall be deemed to have applied during the whole of the member’s service in that rank.

**98. SURVIVORS' PENSIONS, ETC.**

(1) Subject to these provisions, an annual pension is payable to a surviving spouse and dependent children of a serving member of the Regular Constabulary Branch or of a deceased pensioner.

(2) Subject to Subsections (5) and (6), the amount of a pension payable under Subsection (1) to a widow or widower is—

- (a) in the case of a widow or widower of a serving member—50% of the pension that would have been payable to that member had he or she retired immediately before the date of his death, having had 20 years continuous service; or
- (b) in the case of the widow or widower of a deceased pensioner—50% of the pension which was payable under these provisions to the pensioner.

(3) Subject to Subsection (4) the amount of a pension payable under Subsection (1) in respect of a dependent child shall be such amount as may be fixed from time to time by regulations, and until an amount is so fixed is such amount as is determined by the Commissioner, to be paid to the person having lawful custody of that child, in cash or in goods, as decided by the Commissioner.

(4) The pension payable in respect of a dependent child continues so long as that child—

- (a) remains a member of the family of the pensioner; or
- (b) in the event that the pensioner is deceased would have remained a member of the family of the pensioner had that pensioner remained alive.

(5) Where a member of the Regular Constabulary Branch or pensioner dies leaving more than one spouse, the amount of a pension payable under Subsection (2) to each spouse is the amount that would have been payable under Subsection (2) had that spouse been the only spouse, divided by the number of spouses of the member or pensioner who are living at the date of the death of that member or pensioner.

(6) A pension payable to a widow or widower under this section continues until the death or remarriage of that widow or widower.

(7) For the purpose of the calculation of a pension for the purposes of Subsection (2)(a)—

- (a) the three years' continuous service immediately before the death of the member of the Regular Constabulary Branch concerned is deemed to be the three years' continuous service referred to in Section 97; and
- (b) where the member concerned has not had three years' continuous service before his death, the average annual salary during the member's continuous service is deemed to be the average annual salary referred to in Section 97.

(8) Where a pensioner marries or has married after his resignation or retirement, a pension is payable on his death to the widow or widower of that marriage or in respect of a child of that marriage.

#### **99. ASSIGNMENT, ETC., OF PENSION.**

A pension under this Division is not capable of being assigned, charged or in any way dealt with, and any purported assignment, charge or dealing with a pension is void and of no effect.

#### **100. SUSPENSION OF PENSION DURING FURTHER SERVICE AND RESUMPTION THEREAFTER.**

(1) A pension payable to a resigned or retired member of the Regular Constabulary Branch under these provisions is suspended during any further service by that person with—

- (a) the Force; or
- (b) the Government; or
- (c) the Defence Force,

and shall be resumed upon completion of that further service.

(2) Upon the conclusion of any further service referred to in Subsection (1), a suspended pension shall be resumed at the rate that would have been payable to that resigned or retired member had he not undertaken such further service.

(3) Except as is provided for in Subsection (1), a pension payable to a resigned or retired member is not affected by any employment in which the member engages after his resignation or retirement.

#### **101. PENSIONS FOR MEMBERS DISMISSED FROM THE FORCE.**

A pension is not payable to a member of the Regular Constabulary Branch who is dismissed from the Force, unless the Minister in a special case otherwise directs, and in that case the pension shall be of such an amount as the Minister, in the Minister's discretion, thinks proper but not exceeding the amount of pension that would have been payable to that member under these provisions but for his dismissal.

#### **102. PENSIONS TO MEMBERS OF FORMER POLICE FORCES.**

(1) In this section, “**former Force**” does not include the Royal Papua New Guinea Constabulary established under the pre-Independence *Royal Papua New Guinea Constabulary Act 1965*.

(2) A person who was, immediately before 1 December 1973 (being the date of commencement of the *Police Force (Interim Arrangements) Act 1973 (Adopted)*), entitled to a pension under any provision of the pre-Independence *Royal Papua New*

*Guinea Constabulary Act 1965* is entitled to a pension under the equivalent provisions of this Act, and these provisions apply accordingly.

(3) For the purposes of the calculation of a pension payable by virtue of Subsection (2), the person to or in respect of whose services the pension is payable is deemed to have been in receipt of pay at the rate applicable from time to time under this Act to—

- (a) the rank that is, in the opinion of the Commissioner, the equivalent of the rank that such person held; and
- (b) the continuous service that such person had completed, immediately before the termination of such person's services or, where such person died while serving, immediately before such person's death.

(4) Notwithstanding Subsections (2) and (3), where a member of the Regular Constabulary Branch who was a member of a former Force has continuous service—

- (a) of not less than 12 nor more than 15 years before retirement on the ground of ill-health—a pension is payable to or in respect of that member at such rate as bears to the pension that would have been payable had he had 15 years' continuous service the same proportion as the number of the years of continuous service that he had bears to 15; and
- (b) of not less than 15 nor more than 20 years before retirement on grounds other than ill-health—a pension is payable to or in respect of that member at such rate as bears to the pension that would have been payable had he had 20 years' continuous service the same proportion as the number of years of continuous service that he had bears to 20.

### **103. PENSIONS IN SPECIAL CIRCUMSTANCES.**

Where after receiving advice from the Commissioner, the Minister is of the opinion that a pension should, for a special reason, be granted to a person, who is—

- (a) a former member of the Regular Constabulary Branch; or
- (b) a former member of a former Force; or
- (c) a dependant of—
  - (i) a former member of the Regular Constabulary Branch; or
  - (ii) a former member of a former Force, and who is not eligible for a pension under the preceding provisions of these provisions,

the Minister may, in the Minister's discretion, direct that such person be paid an annual pension of such amount as the Minister thinks proper, not exceeding the maximum amount that would have been payable to that person under these provisions had he been eligible for a pension.

**104. IMPRISONMENT OR INSANITY OF PENSIONER.**

(1) Where a former member of the Regular Constabulary Branch or a former Force in receipt of a pension is sentenced to imprisonment or detained as a patient in a mental hospital for a period exceeding one month, the Commissioner may cause the pension or any part of the pension payable to that former member to be suspended or to be paid during the period of imprisonment or detention, in such manner and subject to such conditions as the Commissioner thinks proper, to his spouse, or, if the spouse is dead, for the benefit of such of his children or the children of his deceased spouse as are members of his family.

(2) Where the widow or widower of a member, or of a former member, of the Regular Constabulary Branch or of a former Force is in receipt of a pension and is sentenced to imprisonment or detained as a patient in a mental hospital for a period exceeding one month, the Commissioner may cause the pension or any part of the pension payable to that widow or widower to be suspended or to be paid during the period of imprisonment or detention, in such manner and subject to such conditions as the Commissioner thinks proper, for the benefit of such of the children of the widow or widower or of his or her deceased spouse as are members of the family of that widow or widower.

**105. PAYMENT OF PENSIONS.**

A pension under these provisions shall be paid in monthly instalments.

**106. ADVANCE AGAINST PENSION.**

(1) With the consent of the Commissioner and subject to this section a person may be paid the equivalent of up to three months' pension by way of advance against future pension entitlements.

(2) An advance made under Subsection (1) shall be repaid without interest by not more than six equal monthly deductions, commencing on the pension day next following the date of advance.

(3) In the event of a pensioner dying before an advance is fully repaid, the unpaid balance shall be a debt due to the State from the estate of the deceased pensioner, and may be deducted from any pension thereafter payable to a surviving spouse or spouses (and if more than one spouse survives, in such proportions as the Commissioner shall direct) of the deceased pensioner, or from any other funds payable or to become payable by the State to the estate of the deceased pensioner.

(4) Deductions from pension payments falling due to the widow or widower of a deceased pensioner shall be in such instalments as the Commissioner shall direct, provided that repayment shall be completed within 12 months from the date of the death of the pensioner.

(5) Where a pensioner has received an advance under this section, no further advance may be made to that pensioner until the expiry of 12 months from the date upon which the first mentioned advance was repaid in full.

**107. COMMUTATION OF PENSION.**

(1) A pensioner, or in the case of the surviving spouse of a pensioner who has not made an election in his lifetime, that surviving dependent spouse, may at any time commute any portion, not exceeding 25% of his pension, to a lump sum by giving notice to that effect to the Commissioner, provided however that where the amount of a pension does not exceed K500 per annum, the Commissioner may at the request of the pensioner or surviving spouse and subject to the availability of funds, authorize the commutation of the whole or any part of the pension.

(2) A commutation may be made at any time, but where part of a pension has been commuted, no further part of that pension may be commuted.

(3) The amount of lump sum shall be calculated in accordance with the following table:—

Age of person electing at date of election	Amount of lump sum payable, calculated at the date of election as a multiple of the annual amount of pension (or portion thereof) to be commuted.
45 years or younger	10 times
46 years	9 times
47 years	8 times
48 years	7 times
49 years	6 times
50 years	5 times
51 years	4 times
52 years or older	3 times

(4) Where a person makes an election under Subsection (1) the amount of the pension thereafter payable shall be reduced proportionately to the amount of the pension so commuted and the rights of the pensioner or his surviving spouse in respect of that portion of the pension so commuted shall for all purposes cease and determine.

***Division 13.******Miscellaneous.*****108. RETRENCHMENT OF MEMBERS.**

(1) In this section, “**service in the Force**” includes all periods that would be taken into account in calculating eligibility for furlough.

(2) Where in the opinion of the National Executive Council it is desirable to do so because of an oversupply of persons qualified and available for appointment to the Force either generally or in respect of a rank, the Minister may request that the

Commissioner retire from the Force, generally or in that rank, such number or proportion of members of the Regular Constabulary Branch as the Minister thinks proper.

(3) In complying with a request under Subsection (2), the Commissioner shall make the retirements in such manner and subject to such criteria and conditions as to redundancy payments as may be prescribed.

#### **109. FARES AND REMOVAL EXPENSES FOR MARRIED MEMBERS.**

A married member of the Regular Constabulary Branch who is the spouse of a member of the Branch or of an officer of the Public Service is not entitled to fares or removal expenses both in his capacity as a member of the Branch and in his capacity as the spouse of a member of the Branch or of an officer of the Public Service.

#### **110. ACTING APPOINTMENTS.**

(1) In Subsections (3), (4) and (5), excepting only an appointment to the post of Deputy Commissioner, a reference to an acting appointment shall be read as a reference to an appointment under Subsection (2).

(2) When a member of the Force is absent from duty or unable to perform the duties of his office, or when there is a vacancy in a rank, the Commissioner may, in accordance with Sections 48 to 53 inclusive, appoint another member of the Force to act in the place of the member during his absence or inability, or appoint a member to fill the vacancy temporarily.

(3) Where the term of an acting appointment of a member of the Regular Constabulary Branch to a higher rank is to exceed or is likely to exceed six months, this section applies to the appointment.

(4) Subject to Subsection (5), Section 53, with the necessary modifications, applies to and in relation to an acting appointment referred to in Subsection (3) as if it were a promotion.

(5) Section 53(1) applies only in relation to members of the Regular Constabulary Branch who are available and who occupy a lower rank than the rank to which the acting appointment is to be made.

(6) The duration of an acting appointment shall not exceed 12 months but an acting appointment may be renewed in the same manner as it was made.

#### **111. BANKRUPT MEMBERS.**

A member of the Regular Constabulary Branch who becomes bankrupt or insolvent or whose estate is sequestrated voluntarily or compulsorily for the benefit of his creditors shall—

- (a) immediately give notice to the Commissioner of the fact; and

- (b) furnish, as and when required to do so by the Commissioner, such information relating to the bankruptcy, insolvency or sequestration as the Commissioner requires.

**112. ATTACHMENT OF SALARIES.**

An order for the attachment of the salary, wages or pay of a member of the Regular Constabulary Branch may be made by any court of competent jurisdiction.

**113. HOLIDAYS.**

(1) Subject to this section, the following days are holidays in the Regular Constabulary Branch:—

- (a) New Year's Day; and
- (b) Good Friday and the following Saturday and Monday; and
- (c) the day appointed under the *Public Holidays Act 1953* to commemorate the anniversary of the birthday of the Sovereign; and
- (d) the day or days appointed under the *Public Holidays Act 1953* to commemorate the attainment by Papua New Guinea of Independent Sovereign Nationhood; and
- (e) Christmas Day and the day following; and
- (f) 23 July to be known as Papua New Guinea Remembrance Day.

(2) Whenever a day specified in Subsection (1) (other than the day or a day referred to in Subsection (1)(d)) falls on a Sunday, the following Monday is a holiday.

(3) Whenever Christmas Day falls on a Sunday, the following Monday and Tuesday are holidays.

(4) The Minister may, by notice in an Official Police Publication, appoint a day or part of a day as a holiday throughout the country or in a part of the country specified in the notice.

(5) Where, in the opinion of the Minister, it is expedient that in a particular year a day that would otherwise be a holiday should not be a holiday, the Minister may, by notice in an Official Police Publication published not less than one week before that day, declare that the day shall not, in that year, be a holiday.

(6) The Minister may, by notice under Subsection (5), appoint some other day to be a holiday in place of the day referred to in that subsection.

(7) The Commissioner may require a member of the Regular Constabulary Branch to work in the public interest for the whole or a part of a holiday.

**114. OUTSIDE INTERESTS.**

(1) Except with the permission of the Commissioner, which may at any time be withdrawn, a member of the Regular Constabulary Branch shall not—



- (a) accept or continue to hold an office in or under the Government or any public or municipal corporation; or
- (b) accept or continue to hold or discharge the duties of, or be employed in a paid office in connection with any banking, insurance, agricultural, mining, mercantile or other commercial business, whether carried on by a corporation, a firm or an individual; or
- (c) engage in or undertake any such business as principal or agent; or
- (d) engage in or continue in the private practice of a profession or trade, or enter any employment whether remunerative or not, with any person, company or firm who or which is so engaged; or
- (e) accept or engage in any remunerative employment otherwise than in connection with his duties in the Force.

(2) Subject to the succeeding provisions of this section, Subsection (1) does not prevent a member of the Regular Constabulary Branch from becoming a member or shareholder only of an incorporated company or of a company or society of persons registered under a law of the country or elsewhere, but a member of the Branch shall not take part in the conduct of the business of the company or society otherwise than by the exercise of his right to vote as a member or shareholder.

(3) Except with the written consent of the Commissioner, a member of the Regular Constabulary Branch shall not, personally or by an agent—

- (a) hold shares in a company or society of persons operating in the country; or
- (b) acquire land in the country, other than land on which a building is, or is to be, erected that is to be occupied by that member as a residence or as a dwelling house for occasional use by that member.

(4) Subsection (3) does not operate so as to prevent a member of the Regular Constabulary Branch from acquiring customary land by devolution.

(5) Notwithstanding this section, a member may, with the consent of the Commissioner, (which consent may at any time be withdrawn) act as a director of a co-operative company.

(6) A member aggrieved by a decision by the Commissioner to decline or withdraw any consent under this section may appeal to the Minister.

**PART VI. – RESERVE CONSTABULARY.**

**115. STRENGTH OF RESERVE CONSTABULARY.**

The Reserve Constabulary shall consist of such number of reservists as is fixed by the Minister by notice in an Official Police Publication.

**116. RANKS OF THE RESERVE CONSTABULARY.**

The ranks of reservists and their order to precedence in the Force are as prescribed.

**117. APPOINTMENT AND PROMOTION.**

The Commissioner may appoint or promote a person to such rank in the Reserve Constabulary as the Commissioner thinks proper.

**118. CONDITIONS OF SERVICE.**

The conditions of service of a reservist are as the Commissioner directs or as are prescribed.

**119. PAY AND ALLOWANCES.**

(1) Subject to any general directions of the Head of State, acting on advice, the pay and allowances (if any) of reservists are as determined by the Commissioner, after consultation with the Salaries and Conditions Monitoring Committee.

(2) A determination under Subsection (1) may provide for pay and allowances at different rates for different classes of reservists.

(3) A determination under this section shall be published in an Official Police Publication as soon as practicable after it has been made and does not come into effect before it has been so published.

**120. DISPENSING WITH SERVICES.**

(1) Where the Commissioner, after inquiry, is satisfied that a reservist has failed to meet reasonable standards of performance or ability, the Commissioner may dispense with the services in the Force of that reservist.

(2) Whenever inquiry is made in respect of the performance or ability of a reservist under this section, the reservist shall be informed in writing of the nature of the failure or failures alleged and may within 14 days or within such further time as the Commissioner may allow, respond in writing to those allegations.

(3) The Commissioner shall not proceed to a decision until after the expiry of the time referred to in Subsection (2).

(4) Before reaching a decision, the Commissioner shall take into account any response made under Subsection (2).

(5) No appeal lies in respect of a decision of the Commissioner under this section.

**121. POWERS, ETC., OF RESERVISTS.**

A reservist, when acting as such, has all the powers and functions of a member of the Regular Constabulary Branch.

**122. UNIFORMS, ETC.**

A reservist may be issued with such arms, accoutrements, badges and uniforms, and in such quantities, as the Commissioner may determine.

**123. WORKERS' COMPENSATION.**

(1) For the purposes of the *Workers' Compensation Act 1978* a reservist, when acting as such, is deemed to be an employee of the State and a worker within the meaning of the definition of "worker" in Section 1 of that Act.

(2) Subject to Subsection (3), for the purposes of the *Workers' Compensation Act 1978*, the wages of a reservist are deemed to be his total earnings, including any pay and allowances under this Act.

(3) Section 2 of the *Workers' Compensation Act 1978* applies to the calculation of the wages of a reservist.

**PART VII. – SPECIAL CONSTABLES.**

**124. APPOINTMENT OF SPECIAL CONSTABLES.**

Where the Commissioner, or a Principal Magistrate, or an officer authorized for the purpose by the Commissioner, considers it to be desirable for a special reason, the Commissioner or such Magistrate or authorized officer may appoint such Special Constables as the person appointing them considers necessary.

**125. CONDITIONS OF SERVICE.**

(1) Subject to any general directions of the Head of State, acting on advice, the salary and allowances (if any) of Special Constables are as determined by the Commissioner after consultation with the Salaries and Conditions Monitoring Commission.

(2) For operational purposes only a Special Constable while serving as such is deemed to be a member of the Regular Constabulary Branch, and is subject to the same disciplinary provisions as a member of that Branch.

(3) Every Special Constable holds office as a member of the Force at the pleasure of the Commissioner and the Commissioner may dispense at any time with the services of a Special Constable.

**PART VIII. – COMMUNITY AUXILIARY POLICE.**

**126. APPOINTMENT OF PERSONS TO COMMUNITY AUXILIARY POLICE.**

The Commissioner may appoint suitable persons to be members of the Community Auxiliary Police Branch of the Force to serve within defined geographical areas.

**127. VESTING AND LIMITATION OF POWERS OF MEMBERS OF COMMUNITY AUXILIARY POLICE.**

A member of the Community Auxiliary Police shall have such of the powers of a member of the Regular Constabulary Branch as may be vested in that member by the Commissioner, but the exercise of such powers shall be limited to the geographical area in respect of which that member is appointed.

**128. SENIORITY.**

The seniority of members of the Community Auxiliary Police shall be prescribed by regulations.

**129. MEMBERS ARE VOLUNTEERS.**

(1) Members of the Community Auxiliary Police are volunteers and except as otherwise prescribed in Regulations receive no payment for their services.

(2) Regulations may provide for the resignation from the Force of members of the Community Auxiliary Police.

**130. DISPENSING WITH SERVICES OF A MEMBER OF THE COMMUNITY AUXILIARY POLICE.**

(1) Where the Commissioner, after inquiry, is satisfied that a member of the Community Auxiliary Police has failed to meet reasonable standards of performance or ability, the Commissioner may dispense with the services in the Force of that member.

(2) Whenever inquiry is made in respect of the performance or ability of a member of the Community Auxiliary Police under this section, that member shall be informed in writing of the nature of the failure or failures alleged and may within 14 days or within such further time as the Commissioner may allow, respond in writing to those allegations.

(3) The Commissioner shall not proceed to a decision until after the expiry of the time referred to in Subsection (2).

(4) Before reaching a decision, the Commissioner shall take into account any response made under Subsection (2).

(5) No appeal lies in respect of a decision of the Commissioner under this section.

**131. APPLICATION OF WORKERS' COMPENSATION ACT 1978.**

(1) For the purposes of the *Workers' Compensation Act 1978* a member of the Community Auxiliary Police, when acting as such, is deemed to be an employee of the State and a worker within the meaning of the definition of "worker" in Section 1 of that Act.

(2) Subject to Subsection (3), for the purposes of the *Workers' Compensation Act 1978*, the pay of a member of the Community Auxiliary Police shall be deemed to be the total of honorarium and allowances (if any) lawfully payable to that member pursuant to any arrangement entered into in accordance with regulations.

(3) Section 2 of the *Workers' Compensation Act 1978* applies to the calculation of the pay of a member of the Community Auxiliary Police.

**132. APPLICATION OF OTHER PROVISIONS.**

(1) The following provisions of Part V of this Act shall apply *mutatis mutandis* to members of the Community Auxiliary Police:—

“Sections 37, 38, 42, 43, 44, 45, 55, 58, 70, 76, 77, 78 and 79.”

(2) For the purposes of the application of this Part and Part V, a reference in those Parts to pay, salary or allowances is read as if it were a reference to the honorarium or allowance (if any) paid or payable to a member of the Community Auxiliary Police under this Part out of the funds of the Force.

**PART IX. – EMPLOYMENT CONTRACTS.****133. EMPLOYMENT CONTRACTS.**

(1) In this section “**appointee**” means a person employed under a contract of employment under Subsection (2).

(2) Notwithstanding any other provision in this Act a person promoted or appointed to a commissioned rank in the Regular Constabulary Branch below the rank of Deputy Commissioner may be employed under and hold office in accordance with the terms and conditions of a contract of employment between the Commissioner and that person.

(3) The terms and conditions of a contract of employment shall be such terms and conditions as are approved by the Head of State, acting on advice, provided however that no contract of employment shall provide for the termination of the contract before the expiry of its term except upon one or more of the following grounds:–

- (a) conviction of the appointee of any offence involving dishonesty or for which a term of imprisonment may be imposed;
- (b) failure by the appointee to comply with any essential term or condition of the appointment;
- (c) negligence or dereliction of duty by the appointee;
- (d) misconduct of the appointee;
- (e) incapacity of the appointee due to infirmity of mind or body;
- (f) failure by the appointee adequately to perform the duties required of a person holding the rank to which he is appointed;
- (g) the resignation or retirement of the appointee from the Force;
- (h) in the interests of the State.

(4) The provisions of Part V (except Section 37) shall not apply to an appointee to the extent that they are inconsistent with the terms and conditions of the contract of employment to which that appointee is a party.

(5) Employment under contract under this section constitutes service in the Force for all of the purposes of this Act.

(6) Where an appointee who immediately prior to his appointment was a person to whom Sections 94 to 107 inclusive applied, is required by his contract to contribute to a superannuation fund operated under the *Public Officers Superannuation Fund Act 1990*, neither that contract nor the participation in that fund extinguishes the application of Sections 94 to 107 inclusive to the appointee unless the contract explicitly provides for adequate benefits to compensate the appointee for the extinguishment of his rights under that Division.

(7) Notwithstanding the provisions of this Act, where–

- (a) a contract of employment under Subsection (2) terminates or is terminated and is not subsequently renewed; and
- (b) the appointee under that contract of employment is not re-appointed as a member of the Force under this Act, his appointment as a member of the Force is terminated.

(8) Where a contract under Subsection (2) is renewed the appointee is re-appointed to the Force upon the termination of the contract and his continuity of service is deemed not to have been interrupted.

(9) Sections 4(2), 43(1) and 43(3) do not apply in the case of a person re-appointed to the Force upon the termination of his contract.



**PART X. – OFFENCES GENERALLY.**

**134. MISREPRESENTATION BY APPLICANTS FOR APPOINTMENT.**

A person, who makes a false representation in applying for appointment as a member of the Force, is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

**135. INDUCING NEGLECT OF DUTY.**

A person, who induces or attempts to induce a member of the Force to neglect or omit to perform a duty, is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for three months.

**136. CAUSING DISAFFECTION.**

(1) Subject to Subsection (2), a person, who—

- (a) causes or attempts to cause, or does an act calculated to cause, disaffection among members of the Force; or
- (b) counsels or foments or attempts to counsel or foment a strike (whether or not such strike actually occurs), or who aids, abets or takes part in a strike that interferes with or prevents, or is intended or calculated to interfere with or prevent, the carrying on of any part of the duties or functions of the Force; or
- (c) induces or attempts to induce, or does an act calculated to induce, a member of the Force to withhold or limit his services or to commit a breach of discipline,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding five years.

(2) Subsection (1) does not apply to or in relation to a person who, in good faith—

- (a) points out, or endeavours to point out, errors or defects in, or desirable alterations or improvements to laws, regulations or working conditions governing members of the Force; or
- (b) induces members of the Force to attempt to procure by lawful means the alteration of any of the laws, regulations or working conditions governing members of the Force.

(3) For the purposes of this section the term “**strike**” means the act of any number of members of the Force—

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

- (b) in breaking their conditions of employment; or
- (c) in refusing or failing after such discontinuance to resume or return to their duties; or
- (d) in refusing or failing to accept engagement in any work in which they are usually employed; or
- (e) in reducing their normal output or their normal rate of work,

due to any combination, agreement, common understanding or concerted action, whether express or implied, made or entered into by any members of the Force, but does not include an industrial organization meeting allowed under any law or authorized by the Commissioner.

(4) This section and Section 20(a) apply notwithstanding any provision of the *Industrial Relations Act 1962* or any other law.

**137. UNAUTHORIZED POSSESSION OF ARMS, ETC., OF FORCE.**

A person other than a member of the Force, who, without lawful excuse—

- (a) is in possession of any arms, accoutrements, badge or uniform or part of a uniform of the Force; or
- (b) assumes the description or designation of, or falsely pretends or represents himself to be a member of the Force,

is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

**138. UNAUTHORIZED WEARING OF POLICE UNIFORMS, ETC.**

A person, not being a member of the Force, who—

- (a) wears a uniform of the Force; or
- (b) unlawfully wears a colourable imitation of a uniform of the Force,

is guilty of an offence.

Penalty: A fine not exceeding K500.00, or imprisonment for a term not exceeding three months.

**139. UNLAWFUL SUPPLY, ETC. OF POLICE UNIFORMS.**

A person who unlawfully—

- (a) sells or supplies to another person; or
- (b) employs or induces a person, not being a member of the Force, to wear,

a uniform of the Force, or a colourable imitation of a uniform of the Force is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months.

**PART XII. – MISCELLANEOUS.****140. POWERS, DUTIES, RIGHTS AND LIABILITIES OF MEMBERS OF THE FORCE.**

A member of the Force has the same powers, duties, rights and liabilities as a Constable under the underlying law, except so far as they are modified by or under an Act.

**141. PROTECTION OF MEMBERS OF FORCE.**

Where an action is brought against a member of the Force for an act done in obedience to a warrant or order of a Magistrate or of a commissioned officer of the Force having authority over the member–

- (a) the member is not responsible for–
  - (i) irregularities in the issue of the warrant or order; or
  - (ii) want of jurisdiction in the Magistrate or commissioned officer who issued it; and
- (b) on production of the warrant or order and proof that–
  - (i) the person is reputed to be, and acts as, a Magistrate or commissioned officer of the Force possessing jurisdiction in the case, and, in the case of a commissioned officer, has authority over the member executing the warrant or order; and
  - (ii) the act complained of was done in obedience to the warrant or order,

a verdict shall be returned for the member of the Force concerned and he shall be awarded the costs of suit.

**142. SECRECY OF RECORDS.**

(1) Subject to Subsection (2), notwithstanding any other law, the Commissioner shall not make available to any person, not being a member of the Force or of a Police Promotions Selection Board–

- (a) any official record kept by the Force; or
- (b) any information obtained by a member of the force in his official capacity,

that the Commissioner thinks should be privileged, unless for some special reason the Commissioner thinks it proper to make it available or a court of competent jurisdiction orders that it be made available.

(2) Subsection (1) does not affect the operation of the *Audit Act 1989*.

**143. VALOUR MEDAL.**

(1) The Head of State, acting on advice, may award a medal, to be known as “The Royal Papua New Guinea Constabulary Valour Medal” to a member of the Force (including a member of the Reserve Constabulary, a Special Constable, a member of the Community Auxiliary Police, or a person to whom Section 16 applies) who, in the discharge of his duty, performs an act of conspicuous bravery involving risk to his life, or for conduct of conspicuous merit.

(2) The medal shall be in the prescribed form and shall have the prescribed ribbon.

**144. AWARDS AND CERTIFICATES OF COMMENDATION AND APPRECIATION.**

(1) The Commissioner may issue Awards and Certificates to a member of the Force (including a member of the Reserve Constabulary, a Special Constable, a member of the Community Auxiliary Police, or a person to whom Section 16 applies) for conduct that is of special merit.

(2) An Award or Certificate of Commendation may be for—

(a) bravery; or

(b) meritorious service; or

(c) such other conduct of special merit as may be prescribed.

(3) Awards may be in the form of specially designed ribbons, badges, clasps, stars or other insignia as approved by the Commissioner.

(4) Where the Commissioner is of the opinion that a person performed any act or acts or undertook any services which are of special assistance or value to the Force he may issue to that person a Certificate of Appreciation.

**145. BADGES.**

The prescribed badges or other distinguishing marks or articles may be provided for members of the Force, and a person who wears or has on his person any such badge or other distinguishing mark or article is, until the contrary is proved, deemed to be a member of the Force.

**146. EXECUTION OF PROCESS OF COURTS.**

Subject to any other law, a member shall execute all process and serve all summons and warrants relating to criminal matters and, on behalf of the State, to matters which the State is a party.

**147. RECOVERY OF FINES.**

A fine imposed on a person under any provision of this Act constitutes a debt due from that person to the State and may be recovered—

- (a) by deduction from pay in accordance with Section 30; or
- (b) by the Commissioner by way of civil proceedings in a court of appropriate jurisdiction; or
- (c) by any other method authorized by law,

and upon recovery shall be paid to the Consolidated Revenue Fund.

**148. CESSATION OF MEMBERSHIP.**

When a member of the Force ceases to be a member—

- (a) all authority vested in that person as a member of the Force; and
- (b) all appointments conferred on that person in his capacity as a member of the Force; and
- (c) all offices held by that person in his capacity as a member of the Force,

cease and determine in respect of the whole of the country.

**149. CHARGES FOR CERTAIN SPECIAL SERVICES.**

(1) Subject to Subsection (2), the Commissioner may make a charge on any person or body who requests the services of members of the Force where, in the opinion of the Commissioner, the services supplied are additional to services required to be rendered in the ordinary course of the functions of the Force.

(2) Notwithstanding Subsection (1), no extra charge shall be made where police services are required to deal with an emergency.

**150. UNCLAIMED PROPERTY.**

(1) Where any property that has lawfully come into the possession of a member of the Force by virtue of that member's office—

- (a) remains unclaimed for a period of six months; or
- (b) is a perishable article; or
- (c) is of such a nature that its custody involves unreasonable expense or inconvenience,

the Commissioner may direct that it be sold by public auction.

(2) Where property has been sold under this section, the Minister may direct the payment of a reasonable reward out of the proceeds of the sale to any person, other than a member of the Force, by whom, or as a result of information or assistance voluntarily given by whom, the property came into the possession of a member of the Force.

(3) Subject to Subsection (2), the net proceeds received from the sale of any property under this section shall be paid to the Trust Account in trust for the person entitled to the property.

(4) Notwithstanding this section, where any money or other item of personal property that has not been found by a person and delivered to a member of the Force as such, has remained unclaimed for a period of six months, the Commissioner has the discretion to authorize the return of the money or property to the person who so delivered it.

#### **151. REWARDS, ETC.**

The Minister, acting on the advice of the Commissioner, may grant a reward or gratuity to a member of the Force whom he thinks deserving of it, or in the event of the member's death, to the member's relatives, and money so granted shall be paid out of the Consolidated Revenue Fund.

#### **152. OFFICIAL POLICE PUBLICATIONS.**

(1) Subject to Subsection (2), there shall be an Official Police Publication, which shall be known as the Papua New Guinea Police Gazette, and which shall be published whenever necessary.

(2) Notwithstanding Subsection (1), regulations may provide for a publication other than the Papua New Guinea Police Gazette to be an Official Police Publication either in substitution for, or in addition to the Papua New Guinea Police Gazette.

(3) Where by virtue of Subsection (2) more than one publication is an Official Police Publication, matters required by law to be published in an Official Police Publication shall be published in the Papua New Guinea Police Gazette except where regulations otherwise provide.

(4) There shall be published in the Official Police Publication—

- (a) all regulations made under this Act; and
- (b) all appointments made under this Act; and
- (c) any other matter or thing that is required to be so published by or under this or any other Act, or by direction of the Commissioner.

(5) All courts, Judges and persons acting judicially shall take judicial notice of any act, matter or thing of which publication in an Official Police Publication is directed by or under an Act, when so published.

#### **153. STANDING ORDERS.**

(1) The Commissioner may issue Standing Orders which may comprise orders and general instructions, not inconsistent with this Act or the Regulations providing for any matter prescribed by this Act or the Regulations to be so provided for, or providing for any matter that relates to the organization, discipline, efficiency and training of the Force for any other matter that in the opinion of the Commissioner is necessary or desirable for the efficient management and control of the Force.

(2) Standing Orders issued by the Commissioner under Subsection (1) may be—

- (a) of general application; or

(b) limited to a class or classes of members or to a part of the country.

(3) The power to issue any Standing Order which is expressed or implied in this section exists notwithstanding that the Standing Order is the same or similar to a Regulation which is authorized to be made under Section 156.

(4) Without limiting the generality of any of the foregoing provisions of this section the Commissioner may issue Standing Orders in respect of any or all of the following matters:—

- (a) the division or further division of the Force into divisions, branches, sections or units;
- (b) the examinations and other requirement for, and conditions of appointments to and promotions in the Force;
- (c) the maintenance of good order, and good conduct, discipline, and efficiency of the Force;
- (d) the uniforms, badges, insignia of rank and other items to be supplied to members of the Force and to be worn or used by them and the arms, accoutrements, ammunition, equipment and other articles to be supplied to them;
- (e) transfers of members of the Force from one part of the country to another or from one station to another, or to different duties;
- (f) the records to be kept in respect to members of the Force;
- (g) the custody, disposal and sale of property in the possession or custody of members of the Force.

#### **154. ADDITIONAL POWERS OF COMMISSIONER.**

Where there is no provision, or no sufficient provision, in this Act in respect of any matter or thing that is necessary or desirable to give effect to this Act, the Commissioner may, with the approval of the Head of State acting on advice, specify in what manner or form the want of provision or insufficient provision shall be supplied.

#### **155. EQUAL APPLICATION OF ACT.**

(1) For the purposes of eliminating doubt it is declared that except as is specifically provided to the contrary in this Act the provisions of this Act apply equally to females as to males.

(2) Where a regulation, Standing Order, practice or command contravenes Subsection (1), it is void and of no effect.

(3) Where a member claims that a Standing Order, practice or command contravenes this section the member may in writing request the Commissioner to have the Standing Order, practice or command rectified.



(4) Where the Commissioner, at the expiry of one month from the date of receipt of a request under Subsection (3) has not acceded to that request, the Commissioner is deemed to have made a decision not to do so.

## 156. REGULATIONS.

(1) The Head of State, acting on advice, may from time to time make all such regulations as may appear necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power conferred by Subsection (1), it is hereby declared that regulations may be made under this section with respect to all or any of the following matters:—

- (a) the ranks, classes and grades of members of the Force;
- (b) duties, functions and conditions of service of members of the Force;
- (c) the maintenance of good order, good conduct, discipline and efficiency of the Force;
- (d) the creation of additional disciplinary offences;
- (e) empowering the Commissioner or commissioned officers authorized by him to lay charges against members of the Force;
- (f) the procedures for laying such charges against members of the Force and for requiring members so charged to make an admission or denial of guilt to the Commissioner;
- (g) empowering the Commissioner or other commissioned officers authorized by him to make an order in accordance with the regulations made under this Act, punishing a member of the Force guilty of a breach of regulations whether his guilt is established by an admission made to, or a finding made by, the Commissioner or other commissioned officer authorized by him;
- (h) the leave (subject to the provisions of any applicable industrial award or agreement), retirement, pensions or other matters relating to the welfare of members, which may be granted to members of the Force;
- (i) the insurance of a member or member's family or the goods of a member or his family, including the making of payments towards the costs of insurance effected by that member;
- (j) requiring members as a condition of their employment in the Force to procure and keep in force health insurance in respect of themselves and their families, and providing for the creation of a disciplinary offence for non-compliance with any such condition;
- (k) the provision of subsidies to members towards costs incurred by members in effecting accident or health insurance;

- (l) the payment of honoraria or allowances towards costs incurred by members in effecting accident or health insurance;
- (m) making provision for offences or disciplinary offences for any breach of a regulation, and making provision for a punishment (not exceeding a fine of K500.00 or a term of imprisonment not exceeding three months) to apply in respect of any such offence;
- (n) any other matters not inconsistent with this Act.

**157. REPEALS AND SAVINGS.**

(1) The *Police Force Act* (Chapter No. 65) is repealed.

(2) The repeal of the *Police Force Act* does not affect the validity of anything done under that Act and all Orders, Commands, Decisions and other things given made or done under that Act which were in force immediately before the commencement of this Act continue in force as if given made or done under this Act.

(3) Proceedings commenced under the *Police Force Act* continue as if that Act had not been repealed.

(4) The Police Force Regulation is continued as if made under this Act.

(5) Where in any other enactment there is a reference to the *Police Force Act* (Chapter 65), such reference shall be read as if it were a reference to this Act and a reference to a portion of the *Police Force Act* shall be read as if it were a reference to the corresponding portion of this Act.

**SCHEDULE 1**

Sec. 4

**PART 1 – OATH AND AFFIRMATION OF OFFICE OF MEMBERS OF REGULAR CONSTABULARY.***Oath.*

“I, . . . , do swear that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of member of the Royal Papua New Guinea Constabulary without favour or affection, malice or ill-will, from this day until I am discharged from that office, and that I will seek and cause the peace to be kept and preserved, and will prevent, to the best of my power, all offences against the peace, and that, while I continue to hold that office, I will, to the best of my skill and knowledge, discharge all the duties of it faithfully according to law.

So help me God!”

*Affirmation.*

“I, . . . , do solemnly and sincerely affirm and declare that I will well and truly serve the Independent State of Papua New Guinea and its people in the office of member of the Royal Papua New Guinea Constabulary without favour or affection, malice or ill-will, from this day until I am discharged from that office, and that I will seek and cause the peace to be kept and preserved, and will prevent, to the best of my power, all offences against the peace, and that, while I continue to hold that office, I will, to the best of my skill and knowledge, discharge all the duties of it faithfully according to law.”

**PART 2 – OATH AND AFFIRMATION OF OFFICE OF RESERVISTS.***Oath.*

“I, . . . , do swear that I will well and truly serve the Independent State of Papua New Guinea and its people in the office of Reservist of the Royal Papua New Guinea Constabulary, and that I will seek and cause the peace to be kept and preserved, and that I will prevent, to the best of my power, all offences against the peace whilst I am acting in that office, and that, while I continue to hold that office, I will to the best of my skill and knowledge, discharge all the duties of it faithfully according to law.

So help me God!”

*Affirmation.*

“I, . . . , do solemnly and sincerely promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of Reservist of the Royal Papua New Guinea Constabulary without favour or affection, malice or ill-will, from this day until I am discharged from that office, and that I will seek and cause the peace to be kept and preserved, and that I will prevent to the best of my

power all offences against the peace whilst I am acting in that office and that, while I continue to hold that office, I will, to the best of my skill and knowledge, discharge all the duties of it faithfully according to law.”

### **PART 3 – OATH AND AFFIRMATION OF SPECIAL CONSTABLES.**

#### *Oath.*

“I, . . . , do swear that I will well and truly serve the Independent State of Papua New Guinea and its people in the office of Special Constable of the Royal Papua New Guinea Constabulary without favour or affection, malice or ill-will, from this day until I am discharged from that office, and that I will seek and cause the peace to be kept and preserved, and that I will prevent, to the best of my power, all offences against the peace whilst I am acting in that office, and that, while I continue to hold that office, I will to the best of my skill and knowledge, discharge all the duties of it faithfully according to law.

So held me God!”

#### *Affirmation.*

“I, . . . , do solemnly and sincerely promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of Special Constable of the Royal Papua New Guinea Constabulary without favour or affection, malice or ill-will, from this day until I am discharged from that office, and that I will seek and cause the peace to be kept and preserved, and that I will prevent to the best of my power all offences against the peace whilst I am acting in that office and that, while I continue to hold that office, I will, to that best of my skill and knowledge, discharge all the duties of it faithfully according to law.”

### **PART 4 – OATH AND AFFIRMATION OF COMMUNITY AUXILIARY CONSTABLES.**

#### *Oath.*

“I, . . . , do swear that I will well and truly serve the Independent State of Papua New Guinea and its people in the office of Community Auxiliary Constable of the Royal Papua New Guinea Constabulary without favour or affection, malice or ill-will, from this day until I am discharged from that office, and that I will seek and cause the peace to be kept and preserved, and that I will prevent, to the best of my power, all offences against the peace whilst I am acting in that office, and that, while I continue to hold that office, I will to the best of my skill and knowledge, discharge all the duties of it faithfully according to law.

So help me God!”

#### *Affirmation.*

“I, . . . , do solemnly and sincerely promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of

Community Auxiliary Constable of the Royal Papua New Guinea Constabulary without favour or affection, malice or ill-will, from this day until I am discharged from that office, and that I will seek and cause the peace to be kept and preserved, and that I will prevent to the best of my power all offences against the peace whilst I am acting in that office and that, while I continue to hold that office, I will, to the best of my skill and knowledge, discharge all the duties of it faithfully according to law.”

Office of Legislative Counsel, PNG