



Tonga

TONGA POLICE ACT 2010

Act No. 35 of 2010



TONGA POLICE ACT 2010

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TONGA POLICE ACT 2010

Act No. 35 of 2010

AN ACT TO PROVIDE FOR THE ESTABLISHMENT, ORGANISATION, DISCIPLINE AND POWERS OF TONGA POLICE AND FOR RELATED MATTERS

I assent,
GEORGE TUPOU V,
1st October 2010.

BE IT ENACTED by the King and the Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Tonga Police Act 2010.

2 Commencement

The King in Council may proclaim when this Act or Parts of it shall come into force.

3 Definitions

In this Act, unless the context otherwise requires:

“**administrative staff member**” means a person employed in Tonga Police other than:

- (a) the Commissioner; or
- (b) a police officer;
- “**authorised officer**” means an authorised officer appointed under section 93;
- “**body sample**” includes blood, hair, saliva, urine and any other body tissue or body fluid;
- “**breach of discipline**” has the meaning given by section 55;
- “**child**” means a person who is less than 18 years of age;
- “**Code of Conduct**” means the Code of Conduct determined by the Commissioner under section 30;
- “**Commissioner**” means the Commissioner of Tonga Police appointed under section 11;
- “**Commissioner’s circulars**” mean the circulars issued by the Commissioner under section 21;
- “**Commissioner’s instructions**” mean the instructions issued by the Commissioner under section 21;
- “**Commissioner’s orders**” mean the orders issued by the Commissioner under section 21;
- “**controlled chemical**” has the same meaning as in the Illicit Drugs Control Act 2003;
- “**controlled equipment**” has the same meaning as in the Illicit Drugs Control Act 2003;
- “**court process**” means a summons, warrant, order, direction or other process of a court, of a judicial officer or of a registrar or deputy registrar of a court;
- “**crime scene**” means:
- (a) a place:
- (i) where a serious offence is suspected to have been committed; and
 - (ii) that needs to be protected to enable Tonga Police to search for and gather evidence of the commission of the offence; or
- (b) a place:
- (i) where there may be evidence of the commission of a serious offence that is suspected to have been committed somewhere else; and
 - (ii) that needs to be protected to enable Tonga Police to search for and gather evidence of the commission of the offence;
- “**Deputy Commissioner**” means a police officer who holds the rank of Deputy Commissioner in Tonga Police;

“**employment standards**” means the employment standards determined by the Commissioner under section 28;

“**enactment**” means:

- (a) an Act;
- (b) an Ordinance; or
- (c) regulations or rules made under an Act;

“**identifying particulars**”, for a person, means a photograph, measurement, fingerprint, palm print, footprint, voice print, handwriting or body sample of the person taken under section 118;

“**illicit drug**” has the same meaning as in the Illicit Drugs Control Act 2003;

“**internal investigator**” has the meaning given by section 57;

“**member**”, of Tonga Police, means any of the following:

- (a) the Commissioner;
- (b) a police officer; or
- (c) an administrative staff member;

“**Minister**” means the Minister for Police;

“**person with impaired capacity**” means a person who has an impaired capacity to handle his own interests due to a loss of his mental functions;

“**Police Board**” means the Board established by section 35;

“**police dog**” means a dog that is undergoing or has successfully completed police dog training and is being used for police duties;

“**police dog handler**” means a member of Tonga Police whose duties include dog handling and who is qualified to handle a police dog;

“**Police Employment Committee**” means the Committee established by section 32;

“**police facilities**” means any of the following:

- (a) police stations;
- (b) custodial facilities;
- (c) police equipment; or
- (d) police vehicles;

“**police officer**” means a member of Tonga Police appointed under section 42(2)(a);

“**Police Special Purposes Fund**” means the Fund continued in existence under section 178;

“**promotion standards**” means the promotion standards determined by the Commissioner under section 29;

“**public place**” means a place or any part of a place that is open to, or being used by, the public, whether or not there is a charge for admission, including a road or other thoroughfare, during the period in which it is being used as a public place;

“**responsible officer**” has the meaning given by section 132(2);

“**reviewable decision**” has the meaning given by section 82(1)(a);

“**Senior Executive Committee**” means the following officers in Tonga Police who comprise the senior management team:

- (a) the Commissioner;
- (b) each Deputy Commissioner; and
- (c) each police officer appointed by the Commissioner to be part of the senior management team;

“**senior police officer**” means:

- (a) a police officer who holds a higher rank than sergeant; or
- (b) a police officer in command of a police district;

“**serious offence**” means an offence that is punishable by:

- (a) imprisonment for a period of 3 years or more; or
- (b) a fine of \$2,000 or more;

“**strip search**” means a search of a person, or of articles in the possession of a person, that may include:

- (a) requiring the person to remove all of his clothes; and
- (b) an examination of:
 - (i) the person’s body, other than the person’s body cavities; and
 - (ii) those clothes;

“**supervisor**”, for a member (the subordinate officer), means:

- (a) a member who holds a supervisory position in relation to the subordinate officer; or
- (b) a member who is lawfully acting as a supervisor of the subordinate officer;

“**person of interest**” has the meaning given by section 147;

“**transfer**” has the meaning given by section 48(4);

“**Tonga Police**” means the police service established by section 7; and

“**Tonga Police Band**” means the police band established by section 179(1).

4 Application

This Act shall apply to members of Tonga Police whether they are inside or outside the Kingdom.

5 Act binds the Crown

This Act binds the Crown.

6 Application of Public Service Act 2002

- (1) Notwithstanding anything in the Public Service Act 2002 and subject to subsection (2), the Public Service Act 2002 applies to a member of Tonga Police to the extent that:
 - (a) this Act shall not deal with a matter that is dealt with by the Public Service Act 2002; or
 - (b) a provision of this Act shall not apply to the member.
- (2) The Public Service Act 2002 shall not apply to the Commissioner.

PART 2 - ADMINISTRATION AND GOVERNANCE OF TONGA POLICE

DIVISION 1 - CONSTITUTION AND FUNCTIONS OF TONGA POLICE

7 Establishment and constitution of Tonga Police

- (1) A police service known as Tonga Police is established by this section.
- (2) Tonga Police consists of:
 - (a) the Commissioner;
 - (b) police officers; and
 - (c) administrative staff members.

8 Functions of Tonga Police

- (1) Tonga Police shall have the following functions:
 - (a) to maintain law and order;
 - (b) to preserve the peace;
 - (c) to protect life and property;
 - (d) to prevent and detect crime;
 - (e) to provide community support and reassurance;

- (f) to uphold the laws of Tonga;
 - (g) to undertake the service and execution of court processes;
 - (h) to carry out land and marine search and rescue operations; and
 - (i) any other function conferred by this Act or another enactment.
- (2) Nothing in this Act reduces the responsibility of the members of the community for:
- (a) the preservation of peace and good order; and
 - (b) the prevention and detection of breaches of the law.

9 Guiding principles for performance of functions

- (1) Tonga Police shall perform its functions in a professional manner and with integrity and respect for the law and human rights.
- (2) Tonga Police shall work together with the community to the extent that is compatible with the efficient and proper performance of the functions of Tonga Police.
- (3) Tonga Police shall, if requested to do so and to the extent that is compatible with the efficient and proper performance of the functions of Tonga Police, assist other government agencies to uphold and enforce the laws of the Kingdom.
- (4) In performing its functions, Tonga Police shall, to the extent reasonably practicable and appropriate, adopt a community policing approach by responding to problems at a local village level and using district and national support only when required.

DIVISION 2 - THE COMMISSIONER

10 Appointment process

Having received advice from the Judicial Appointments and Discipline Panel, the King in Privy Council:

- (a) shall appoint the Commissioner;
- (b) shall determine his terms of appointment; and
- (c) in accordance with section 13 may dismiss him.

11 Appointment of Commissioner

- (1) The Commissioner holds office for a period, not exceeding 3 years, specified in the instrument of appointment, but is eligible for re-appointment for one further term only.
- (2) The Commissioner holds office subject to:
 - (a) this Act; and
 - (b) the terms of his appointment.
- (3) The terms of appointment of the Commissioner are not to be reduced during the term of appointment.
- (4) The Commissioner shall have all the powers of a police officer.

12 Oaths

A person who is appointed as Commissioner shall, before commencing to perform his duties take before a magistrate:

- (a) the oath or affirmation of allegiance set out in Schedule I; and
- (b) the official secrets oath set out in the Schedule to the Official Secrets Act.

13 Termination of appointment

The Commissioner cannot be dismissed except for:

- (a) physical or mental incapacity;
- (b) neglect of duty; or
- (c) misconduct.

14 Acting Commissioner

- (1) If there is a vacancy in the office of Commissioner or if the Commissioner is absent from duty or from the Kingdom or is, for any other reason, unable to perform the functions of the Commissioner, the King in Privy Council, having received advice from the Judicial Appointments and Discipline Panel, shall appoint a person to act as Commissioner as soon as practicable after the vacancy, absence or inability occurs.
- (2) The acting Commissioner shall have all the powers, functions, duties and responsibilities of the Commissioner.
- (3) The validity of anything done by a person purporting to act in accordance with this section cannot be called into question only because:
 - (a) there is a defect or irregularity in or in connection with his appointment; or

- (b) the occasion for his so acting had not arisen or had ceased.

15 Delegation of powers, functions and duties

- (1) The Commissioner may delegate to a police officer any of the Commissioner's powers, functions or duties under this Act or any other enactment, except the power under this subsection to delegate.
- (2) In making a delegation, the Commissioner shall have regard to:
 - (a) the power, function or duty being delegated; and
 - (b) the responsibilities of the person to whom the delegation is to be made.
- (3) The delegation:
 - (a) shall be in writing;
 - (b) may be made either generally or as otherwise provided by the instrument of delegation; and
 - (c) shall not prevent the performance or exercise of a power, function or duty by the Commissioner.
- (4) A function, power or duty that is delegated when performed or exercised by the delegate is taken, for all purposes, to have been performed or exercised by the Commissioner.
- (5) The delegate appointed under sub-section (1) is, in the exercise of a delegated power, subject to the directions of the Commissioner.
- (6) The Commissioner may revoke in writing a delegation at any time.
- (7) The Commissioner shall take reasonable steps to ensure that a copy of each delegation is available to members of Tonga Police.

16 Acts of delegate

A person purporting to act under a delegation under section 15 is, in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.

DIVISION 3 - RESPONSIBILITIES OF MINISTER AND COMMISSIONER

17 Responsibilities of Minister

The Minister shall be responsible to Cabinet for:

- (a) the proper administration of this Act; and
- (b) the efficient management of Tonga Police.

18 Directions of Minister

- (1) The Minister may give a written direction to the Commissioner about the:
 - (a) overall administration of Tonga Police; and
 - (b) policies and priorities of Tonga Police for:
 - (i) the prevention of crime;
 - (ii) community safety and public order; and
 - (iii) general law enforcement issues.
- (2) The Commissioner shall comply with a direction under subsection (1).
- (3) The Minister shall not give the Commissioner a direction about the matters mentioned in section 20.
- (4) The Minister shall not give a direction that is unlawful.

19 Commissioner's responsibilities

The Commissioner shall be responsible to the Minister for:

- (a) ensuring that the functions and duties of Tonga Police are carried out;
- (b) the general conduct of Tonga Police;
- (c) the effective, efficient, and economical management of Tonga Police;
- (d) giving advice to the Minister or the Prime Minister about any matter arising under this Act;
- (e) giving effect to any lawful directions from the Minister; and
- (f) giving effect to an order made by the Police Board.

20 Independence of Commissioner

The Commissioner shall act independently of any person, for:

- (a) the maintenance of order in relation to any individual or group of individuals;
- (b) the enforcement of the law in relation to any individual or group of individuals;
- (c) the investigation of crime; and
- (d) decisions about members of Tonga Police.

21 Commissioner's instructions, circulars and orders

- (1) The Commissioner may issue written instructions and circulars to members of Tonga Police that the Commissioner considers necessary or convenient for the efficient and proper functioning of Tonga Police.

- (2) The Commissioner may give oral orders to members of Tonga Police if the Commissioner considers it necessary or convenient for the efficient and proper functioning of Tonga Police.
- (3) An instruction, circular or order may be general or particular.
- (4) An instruction, circular or order is of no effect to the extent that it is inconsistent with this Act or another enactment.
- (5) In all proceedings:
 - (a) a document that purports to be certified by the Commissioner to be a true copy of an instruction or circular under this section is admissible as evidence of the instruction or circular; and
 - (b) an instruction, circular or order under this section is taken to be effective until the contrary is proven.

22 Communication of instructions, circulars and orders

- (1) The Commissioner shall take all reasonable steps to ensure that the Commissioner's instructions, circulars and orders that are of general application are made available, or communicated, to all members of Tonga Police.
- (2) An instruction, circular or order to a particular member shall be given, or communicated, to the member.

23 Special reports

- (1) The Commissioner:
 - (a) shall, subject to subsection (2), give reports and recommendations about any matter affecting the administration of Tonga Police to the Minister or the Prime Minister, if requested to do so by the Minister or the Prime Minister; and
 - (b) may, at any time, give the Minister the reports and recommendations that the Commissioner considers necessary for the efficient and effective administration of Tonga Police.
- (2) The Commissioner is not required to give a report or recommendation under subsection (1)(a) in relation to matters mentioned in section 20.
- (3) If the Commissioner shall not provide a report or recommendation that is requested under subsection (1)(a) because of subsection (2), the Commissioner shall provide the person requesting the report with the reasons for not providing the report or recommendation.
- (4) The reasons shall be provided within 30 days after receiving the request.

DIVISION 4 - COMMAND AND CONTROL OF TONGA POLICE

24 Commissioner shall have overall command

- (1) The Commissioner shall have the command, supervision and control of Tonga Police.
- (2) In addition to any other powers conferred on the Commissioner by this Act, the Commissioner shall have, subject to this Act, power to do all things necessary or convenient to be done for or in connection with the performance of the Commissioner's functions and duties under this Act.

25 Police officers to comply with instructions, circulars and orders

- (1) Every member of Tonga Police shall comply with the Commissioner's instructions, circulars and orders.
- (2) Every police officer shall comply with all lawful commands of a supervisor.
- (3) In the absence of a supervisor, the supervisor's authority and responsibility may be exercised by:
 - (a) the police officer available who is next in rank; or
 - (b) if the next in rank is held by two or more police officers, the longest serving of those police officers.

26 Police officers to act independently

- (1) Subject to subsection (2), a member of Tonga Police, when exercising any power or carrying out any function or duty, shall not act under the direction, command, or control of a person who is not authorised under this Act or any other enactment to direct, command or control the actions of the member.
- (2) Subsection (1) shall not apply to the Commissioner.

27 Commissioner may take charge of policing operations

- (1) The Commissioner may, at any time, take charge of, or appoint a police officer to take charge of, a policing operation.
- (2) The Commissioner may relieve a police officer in charge of a policing operation if the Commissioner considers it necessary for the effective and efficient exercise of the powers, functions or duties of Tonga Police.
- (3) In this section:

“**policing operation**” means a specific policing activity that is not of a permanent character.

PART 3 - EMPLOYMENT IN TONGA POLICE

DIVISION 1 - EMPLOYMENT AND PROMOTION STANDARDS AND CODE OF CONDUCT

28 Employment standards

- (1) The Commissioner may, in writing, determine employment standards for employment in Tonga Police.
- (2) Subject to subsection (3), the Commissioner shall publish the employment standards in the manner the Commissioner considers appropriate.
- (3) Employment standards shall be made available to any member of the public.

29 Promotion standards

- (1) The Commissioner may, in writing, determine promotion standards for a member to be eligible for promotion in Tonga Police.
- (2) Subject to subsection (3), the Commissioner shall publish the promotion standards in the manner the Commissioner considers appropriate.
- (3) Promotion standards shall be made available to all members of Tonga Police.

30 Code of Conduct

- (1) The Commissioner shall, in writing, determine a Code of Conduct for members of Tonga Police.
- (2) Every member of Tonga Police shall conduct himself in accordance with the Code of Conduct.
- (3) The Code of Conduct shall be made available to all members of Tonga Police.

31 Appointments, promotions, transfers to be merit-based

All appointments, including acting appointments, promotions and transfers under this Part shall be based on merit.

DIVISION 2 - POLICE EMPLOYMENT COMMITTEE AND POLICE BOARD

Subdivision 1 - Police Employment Committee

32 Establishment of Police Employment Committee

- (1) A Police Employment Committee is established by this section.
- (2) The functions of the Committee shall be to:
 - (a) appoint persons to be members of Tonga Police;
 - (b) promote members of Tonga Police;
 - (c) transfer members of Tonga Police;
 - (d) determine conditions of employment of members of Tonga Police;
 - (e) take disciplinary action against members of Tonga Police;
 - (f) refer serious breaches of discipline to the Police Board.

33 Appointment of members of Police Employment Committee

The Police Employment Committee consists of the following:

- (a) the Commissioner;
- (b) two police officers appointed by the Minister on the recommendation of the Senior Executive Committee.

34 Meetings of Police Employment Committee

- (1) The Police Employment Committee shall hold such meetings as are necessary for the efficient performance of its functions.
- (2) Meetings of the Committee are to be convened and conducted in accordance with the procedures prescribed by the regulations.

Subdivision 2 - Police Board

35 Establishment of Police Board

- (1) A Police Board is established by this section.
- (2) The functions of the Police Board shall be to:
 - (a) consider serious breaches of discipline referred to the Board by the Police Employment Committee under section 63;

- (b) make orders about the action that should be taken in response to a serious breach of discipline referred to the Board under section 63; and
- (c) terminate the appointment of members of Tonga Police under section 74.

36 Constitution of Police Board

- (1) The Police Board consists of the following members.
 - (a) A Chairman to be nominated and appointed by the Chief Justice of Tonga;
 - (b) A law practitioner, of Senior Counsel status, to be nominated and appointed by the Tonga Law Society; and
 - (c) A Privy Councillor nominated and appointed by the King in Privy Council.
- (2) A member of the Board mentioned in subsection (1)(c) holds office for a period of 12 months commencing on the date of appointment, but is eligible for reappointment.
- (3) A member of the Board shall be paid such allowances in accordance with Government policy.

37 Meetings of Police Board

The Police Board shall hold such meetings as are necessary for the efficient performance of its functions.

38 Procedures at Police Board meetings

- (1) The Board shall determine the procedures to be used in its meetings.
- (2) Subject to section 36(2), the Chairman of the Public Service Commission shall preside at all meetings of the Board.
- (3) At a meeting of the Board, a question is decided by a majority of votes of the Board members.
- (4) The Board shall keep a record of its meetings.

39 Commissioner may provide advice to Police Board

The Commissioner may, if requested to do so by the Police Board, provide advice to the Board in relation to a matter that is relevant to the Board's functions.

40 Tonga Police to provide secretariat service to Police Board

The Tonga Police shall provide the secretariat services to the Police Board to enable the Board to carry out its functions in an efficient and effective manner.

DIVISION 3 - APPOINTMENTS, PROMOTIONS, TRANSFERS AND RELOCATIONS OF MEMBERS**41 Application of Division**

This Division shall not apply to the Commissioner.

42 Police Employment Committee may appoint persons

- (1) The Police Employment Committee may, in accordance with this Division, appoint persons as members of Tonga Police.
- (2) A person may be appointed as:
 - (a) a police officer; or
 - (b) an administrative staff member.

43 Appointment of members and conditions of appointment

- (1) The Police Employment Committee may appoint a member:
 - (a) on an ongoing basis; or
 - (b) for a period specified in the instrument of appointment.
- (2) The conditions of appointment are as the Committee determines in writing.
- (3) A member may be paid a salary increment:
 - (a) only after 12 months service for each increment; and
 - (b) only after a satisfactory performance appraisal from his supervisor for that 12 months service.

44 Appointees to be on probation

- (1) The appointment of a person as a member of Tonga Police is subject to 2 years probation.
- (2) The Police Employment Committee may terminate the person's appointment if the Committee is satisfied that, at any time during the probation period:
 - (a) the person has not performed his duties in a satisfactory manner;
 - (b) the person is not a fit and proper person to be a member of Tonga Police;

- (c) the person has failed in his duties as a member of Tonga Police;
 - (d) the person has committed a breach of discipline; or
 - (e) it is appropriate for any other reason to terminate the appointment.
- (3) Subject to subsection (4) and unless the person's appointment is terminated sooner under subsection (2), the Committee shall, at the end of the probation period:
- (a) confirm the person's appointment by written notice to the person; or
 - (b) terminate the person's appointment.
- (4) If, at the end of the person's probation period, the person is subject to any disciplinary or criminal proceedings, the Committee may defer making a decision under subsection (3) until the completion of those proceedings and any reviews or appeals in relation to those proceedings.

45 Notification of decisions

- (1) If the Police Employment Committee terminates a person's employment under section 44, the Committee shall notify the person, in writing, of the Committee's decisions within 7 days after making the decision.
- (2) The notice shall include:
- (a) the Committee's reasons for making the decision; and
 - (b) a statement that the person may request the Police Board to review the decision under Division 7.

46 Police Employment Committee may appoint temporary employees

- (1) Notwithstanding section 42(2), the Police Employment Committee may employ a person in Tonga Police on an acting, temporary or casual basis or for any period that the Committee considers appropriate if the Committee considers it necessary for the proper performance of the functions of Tonga Police.
- (2) The Committee may terminate the employment of a person employed under subsection (1) at any time and for any reason.
- (3) The conditions of employment of a person employed under subsection (1) are as the Committee determines in writing.
- (4) The Committee shall not employ a person under this section for a continuous period of, or for periods totalling, more than 12 months.
- (5) A person who has been employed under this section shall not be employed for a continuous period of, or for periods totalling, 12 months.

47 Police Employment Committee may promote persons

The Police Employment Committee may, in accordance with this Division, promote a person to a higher level position within Tonga Police whenever a permanent vacancy occurs in the position.

48 Police Employment Committee may transfer members

- (1) Subject to subsections (2) and (3), the Police Employment Committee may transfer a member of Tonga Police to any position in Tonga Police where the member's services are required.
- (2) A decision to transfer a member shall be made by fair and equitable procedures that prevent unjust discrimination, whether in favour of or against a member.
- (3) Before making a decision under this section, the Committee shall consult with the member about the proposed transfer.
- (4) The transfer of a member means the appointment of a member to a position in which the member will hold the same rank or level of position and be entitled to at least the same level of salary.

49 Appointments, promotions and termination of employment to be notified in Gazette

The Commissioner may notify any appointment, promotion or termination of employment made under this Division in the Gazette.

50 Police Employment Committee may temporarily assign, second and relocate members

- (1) The Police Employment Committee may, if it considers it is necessary or appropriate to do so in the interests of Tonga Police:
 - (a) assign a member to a temporary position in Tonga Police;
 - (b) assign a person to a position in Tonga Police;
 - (c) second a member to a position with another employer; or
 - (d) relocate a police officer:
 - (i) on the graduation of the officer from initial recruit training;
 - (ii) within the district in which the officer is stationed, and at the officer's existing level of position, to meet Tonga Police requirements, after considering the officer's circumstances and the merit of all officers who have indicated an interest in the position;

- (iii) on the return of the officer to duty from an overseas assignment, leave without pay, parental leave, or other special leave;
 - (iv) to fill a vacancy in a temporary international assignment, after considering all officers who have indicated an interest in the position;
 - (v) in order to rotate the officer within Tonga; or
 - (vi) for substantial welfare or personal reasons.
- (2) In exercising a power under subsection (1), the Committee shall, to the extent that it is practicable to do so in the circumstances, act in accordance with:
- (a) the Police employment standards and promotion standards; and
 - (b) the requirements of this Division.

51 Acting appointments

- (1) At any time a member of Tonga Police is absent from duty or is, for any reason, unable to perform his duties, or there is a vacancy in relation to a position, the Police Employment Committee may:
- (a) appoint a member temporarily to any higher level of position; or
 - (b) authorise a member to exercise or perform all or any of the powers, functions and duties under this Act or another enactment, of any level of position higher than that member's own level of position.
- (2) An appointment or authorisation under this section may be given or made before the occasion arises or while it continues.
- (3) No appointment or authorisation under this section, and nothing done by a member acting under the appointment or authority, may be questioned in any proceedings on the ground that:
- (a) the occasion for the appointment or authorisation has not arisen or had ceased; or
 - (b) the member had not been appointed to any level of position to which the authority relates.
- (4) The Committee may, at any time, revoke any appointment made or authorisation given under this section.

52 Oaths

A person who is appointed or employed as a member of Tonga Police shall, before exercising any powers as a police officer or an authorised officer:

- (a) take, before the Commissioner, the oath or affirmation of allegiance set out in Schedule I; and

- (b) take, before a magistrate, the official secrets oath set out in the Schedule to the Official Secrets Act.

DIVISION 4 - PERFORMANCE MANAGEMENT AND BREACHES OF DISCIPLINE

Subdivision 1 - Application

53 Application of Division

This Division shall not apply to the Commissioner.

54 Purpose of Division

- (1) The purpose of this Division is to set out the procedure for dealing with complaints alleging breaches of discipline by members of Tonga Police.
- (2) Subdivision 2 applies subject to any regulations under Subdivision 3.

Subdivision 2 - Breaches of discipline

55 Breaches of discipline

A member of Tonga Police commits a breach of discipline if the member:

- (a) contravenes this Act or the regulations;
- (b) fails to comply with the Code of Conduct;
- (c) fails to comply with the Commissioner's instructions, circulars or orders; or
- (d) aids, abets, counsels or procures the commission of something mentioned in paragraph (a),(b) or (c).

56 Making a complaint

- (1) A complaint alleging a breach of discipline may be made by:
- (a) a member of Tonga Police; or
- (b) any member of the public.
- (2) The complaint shall be:
- (a) made in writing; and
- (b) given to the Commissioner as soon as practicable after the alleged occurrence of the breach of discipline.

57 Commissioner shall appoint internal investigator

- (1) Subject to subsection (2), the Commissioner shall, within 3 days after receiving a complaint, appoint a member of Tonga Police as an internal investigator to investigate the complaint and provide a report to the Police Employment Committee.
- (2) If a breach of discipline constitutes a criminal offence, the Commissioner shall delay taking action, or cease taking action, under this Subdivision until any proceedings in relation to the criminal offence have been completed.

58 Investigator to provide report

- (1) The internal investigator shall complete the investigation and provide a written report to the Police Employment Committee within 28 days after being appointed, or any other reasonable period determined by the Commissioner.
- (2) In conducting the investigation, the internal investigator shall provide procedural fairness to the member being investigated.

59 Member to be notified

- (1) The internal investigator shall, in writing, notify the member about the complaint.
- (2) The notice shall:
 - (a) be given to the member within 7 days after the internal investigator is appointed;
 - (b) set out details of the complaint; and
 - (c) allow the member at least 14 days after the date of the notice to provide a written response to the internal investigator about the complaint.

60 Matters to be considered by Police Employment Committee

- (1) The Police Employment Committee shall consider the internal investigator's report as soon as practicable after receiving it.
- (2) Before making a decision about whether or not the member has committed a breach of discipline, the Police Employment Committee shall consider:
 - (a) the report of the internal investigator;
 - (b) any response or explanation provided by the member to a notice under section 59; and
 - (c) any other circumstances the Committee considers relevant.

61 Police Employment Committee may impose penalties

- (1) If the Police Employment Committee decides that the member has committed a breach of discipline, the Committee may do one or more of the following:
 - (a) caution or reprimand the member;
 - (b) require the member to issue an apology;
 - (c) require the member to undertake remedial training;
 - (d) transfer the member;
 - (e) require the member to take such other remedial action that the Committee consider appropriate.
- (2) The Committee may also determine that no action is required in relation to a complaint alleging a breach of discipline.

62 Notification of decisions

- (1) Subject to section 63, the Police Employment Committee shall notify the member in writing of the Committee's decision within 7 days after making the decision.
- (2) The notice shall include the Committee's reasons for making the decision.

63 Serious breaches of discipline to be referred to Police Board

- (1) This section applies if the Police Employment Committee concludes that:
 - (a) a member has committed a breach of discipline;
 - (b) the breach is serious;
 - (c) the penalty that should be imposed on the member for the breach is:
 - (i) reduction in rank or salary;
 - (ii) deferment of a salary increment;
 - (iii) suspension from duty; or
 - (iv) termination of appointment.
- (2) The Committee shall, within 7 days after reaching the conclusion, refer the breach of discipline (together with the internal investigator's report) to the Police Board for consideration.
- (3) The Committee may, in the referral to the Board, include any recommendations the Committee considers appropriate about the actions that should be taken in response to the breach of discipline.
- (4) The Committee shall also give the member written notice that the matter has been referred to the Board.
- (5) The notice shall be given within 7 days after the matter is referred to the Board.

Subdivision 3 - Alternative procedures for minor matters

64 Regulations may prescribe alternative procedures

- (1) The regulations may prescribe an alternative procedure to the procedure in Subdivision 2 to enable supervisors to deal with complaints alleging minor breaches of discipline.
- (2) If the regulations prescribe an alternative procedure, that procedure applies to the complaint instead of the procedure in Subdivision 2.
- (3) The regulations may prescribe which breaches of discipline are minor breaches of discipline.

Subdivision 4 - Powers of Police Board

65 Police Board to consider serious breaches of discipline

- (1) The Police Board shall consider a breach of discipline referred to it under section 63 in relation to a member of Tonga Police.
- (2) After considering the breach of discipline the Board shall, in writing, make an order under section 66(1) setting out the action the Board considers should be taken by or in relation to the member for the breach.
- (3) If the Board considers it necessary or appropriate to do so, the Board may, before it makes an order under section 66(1), request the Commissioner to undertake a further investigation of the breach of discipline.
- (4) The Commissioner shall:
 - (a) arrange for the further investigation to be completed within 28 days after the Board's request; and
 - (b) provide the Board with a written report setting out the results of the further investigation.
- (5) The Board shall consider the results of the further investigation before making an order under section 66(1).

66 Police Board may order actions to be taken

- (1) The Police Board may order one or more of the following actions in relation to a breach of discipline referred to it under section 63:
 - (a) no action;
 - (b) a caution or reprimand;
 - (c) action requiring the member to:
 - (i) issue an apology;

- (ii) undertake remedial training; or
 - (iii) undertake such other remedial action that the Board considers appropriate;
 - (d) the forfeiture or deferment of a salary increment for up to 1 year;
 - (e) a reduction in the member's level of salary, within the limits of the salary fixed for the rank or position held by the member;
 - (f) a reduction in rank or level of position;
 - (g) a transfer;
 - (h) suspension from duty, with or without pay, for a period of not more than 28 days;
 - (i) termination of appointment;
 - (j) any other order that the Board considers appropriate.
- (2) The Board is not required to accept a recommendation from the Police Employment Committee under section 63(3) in relation to any particular course of action.
- (3) If the Board decides not to accept a recommendation from the Committee, the Board shall prepare a statement of reasons for the decision and give the statement to the Committee.

67 Notification of decisions

- (1) The Police Board shall notify the member in writing of the Board's decision within 7 days after making the decision.
- (2) The notice shall include the Board's reasons for making the decision.

68 Commissioner to give effect to orders of Police Board

The Commissioner shall as soon as practicable, but no later than 28 days, after the Police Board makes an order, give effect to the Board's order or otherwise ensure that the order is carried out.

DIVISION 5 - RESIGNATION, RETIREMENT AND TERMINATION

69 Application of Division

This Division shall not apply to the Commissioner.

70 Resignation

- (1) A member of Tonga Police may resign from Tonga Police by giving the Commissioner a signed notice of resignation.
- (2) The notice shall be given to the Commissioner at least 28 days before the proposed date of resignation.
- (3) A resignation is not effective unless it is approved in writing by the Commissioner.
- (4) The Commissioner shall decide whether or not to approve the resignation no later than 28 days after receiving the notice.
- (5) Subject to section 91, the Commissioner shall not unreasonably refuse to accept a resignation.

71 Voluntary retirement age

Notwithstanding section 11(2) of the Pensions Act (Cap. 8), the minimum voluntary retirement age for a police officer is 55 years.

72 Compulsory retirement age

Notwithstanding section 11(3) of the Pensions Act (Cap. 8), the compulsory retirement age for a police officer is 60 years.

73 Performance review on reaching voluntary retirement age

- (1) On reaching the voluntary retirement age, a member of Tonga Police shall undertake a performance review to determine whether the member is able to continue to perform the duties of a member in a satisfactory manner.
- (2) The nature of the performance review shall be determined by the Commissioner.
- (3) If the member fails to undertake the performance review or fails to satisfactorily complete the performance review, his appointment as a member may be terminated by the Police Board under section 74.

74 Termination of appointment

- (1) The Police Board may order the termination of the appointment of a member of Tonga Police:
 - (a) if the member fails to meet any health requirements prescribed in the Police employment standards determined under section 28;
 - (b) if the member fails to undertake, or fails to satisfactorily complete, a performance review under section 73; or

- (c) because of a reduction in the establishment of Tonga Police.
- (2) The Board may also order the termination of a member's appointment if the Police Employment Committee loses confidence in the member's suitability to be a member because of:
 - (a) the member's competence or integrity;
 - (b) the manner in which the member has performed his duties; or
 - (c) the member's conduct, either on duty or off duty.

75 Notice of loss of confidence

If the Police Employment Committee believes on reasonable grounds that it is appropriate that the appointment of a member of Tonga Police be terminated under section 74(2), the Committee shall:

- (a) notify the member in writing that the Committee is considering recommending to the Police Board that the member's appointment be terminated;
- (b) include in the notice an explanation of why the Committee is considering making the recommendation; and
- (c) allow the member within 28 days from the date of receiving the notice to provide a written response to the Committee setting out why the Committee should not make the recommendation.

76 Matters to be considered in relation to loss of confidence

Before deciding whether or not to recommend that the appointment of a member of Tonga Police be terminated under section 74(2) for loss of confidence, the Police Employment Committee shall take into account:

- (a) any reports relating to the member's competence, integrity, performance or conduct;
- (b) any response or explanation provided by the member to a notice under section 75; and
- (c) any other circumstances the Committee considers relevant.

77 Notification of termination decision

- (1) The Police Board shall notify the member in writing of the Board's decision under section 74 within 7 days after making the decision.
- (2) The notice shall:
 - (a) include the Board's reasons for making the decision; and
 - (b) specify the day from which the termination takes effect.

- (3) The day specified shall not be more than 28 days after the date of the Board's decision.
- (4) The Commissioner shall give effect to the Board's decision.

DIVISION 6 - SUSPENSION AND PAYMENTS

78 Application of Division

This Division shall not apply to the Commissioner.

79 Commissioner may suspend member

- (1) The Commissioner may, by notice in writing given to a member of Tonga Police, suspend the member from duty whenever:
 - (a) action under Division 4 or 5 is commenced in relation to the member;
 - (b) a review under Division 7 is in process in relation to the member; or
 - (c) criminal proceedings have been commenced against the member.
- (2) The notice shall:
 - (a) set out the reasons for the suspension; and
 - (b) specify the period of suspension which shall not exceed fourteen days except on special cause shown.

80 Pay while suspended

- (1) Any member who is suspended under this Act shall not be entitled to receive pay while under suspension.
- (2) Any pay that is withheld from a member in accordance with the order shall be repaid to the member if:
 - (a) on review, the member is exonerated of any breach of discipline;
 - (b) on review, the Police Employment Committee's loss of confidence in the member is not substantiated; or
 - (c) the Commissioner believes it is appropriate to do so in the circumstances.

DIVISION 7 - REVIEW OF DECISIONS

Subdivision 1 - Application

81 Application of Division

This Division shall not apply to the Commissioner.

82 Reviewable decisions

- (1) Subject to subsection (2), this Division applies if:
 - (a) the Police Employment Committee makes a decision about a person's:
 - (i) appointment, probation, promotion or transfer under Division 3;
or
 - (ii) breach of discipline under Division 4; and
 - (b) the person is dissatisfied with the decision.
- (2) This Division shall not apply to a decision of the Committee to refer a serious breach of discipline to the Police Board under section 63.

Subdivision 2 - Review by Police Board

83 Review by Police Board

- (1) If the person is dissatisfied with a decision made under section 82(1), the person may request the Police Board to review the decision.
- (2) The request shall:
 - (a) be in writing;
 - (b) identify the decision to be reviewed; and
 - (c) set out the reasons for requesting the review.
- (3) The request shall be given to the Board no later than 28 days after the day the police officer is notified of the decision that is reviewed.

84 Police Board to review decisions

- (1) If the Police Board receives a request that complies with section 83, the Board shall review the decision.
- (2) The Board may:
 - (a) affirm the decision;
 - (b) vary the decision; or

- (c) set aside the decision and make a decision in substitution for the decision set aside.
- (3) The Board shall complete the review within 28 days after receiving the request.

85 Police Board to notify decisions

- (1) The Police Board shall notify the person in writing of the Board's decision under section 84 within 7 days after making the decision.
- (2) The notice shall include the Board's reasons for making the decision.
- (3) The person may appeal the Board's decision within 14 days after it has been notified to him, to the Supreme Court of Tonga, but only on a ground of law or for a breach of the rules of natural justice; but otherwise a decision of the Board is final and not subject to appeal to or review by any Court of Law.

86 Commissioner to give effect to decisions of Police Board

The Commissioner shall as soon as practicable but no later than 28 days after the Board's decision (or the decision of the Supreme Court of Tonga in the event the decision has been taken there on appeal), take such action as is necessary to give effect to the Board's decision made under section 84(2).

DIVISION 8 - MISCELLANEOUS

87 Application of Retirement Fund Act 1998

The Retirement Fund Act 1998 applies to a member of Tonga Police.

88 Compensation for injury or death

- (1) If a police officer is injured or killed in the performance of the officer's duties, the officer, or the officer's family, is entitled to be paid compensation under this section.
- (2) The amount of compensation shall be determined by the Minister, with the consent of Cabinet, after receiving a written recommendation from the Commissioner.
- (3) Compensation shall not be payable under this section if the police officer's negligence, misconduct or other inappropriate action:
 - (a) caused the injury or death; or
 - (b) was a substantial contributing factor to the injury or death.

89 No strikes by members

A member of Tonga Police shall not participate in industrial action.

90 Members not to engage in political activity

- (1) A member of Tonga Police shall not take part in any political organisation or electoral campaign or engage in any other activity that is likely to interfere with the impartial performance of his duties as a member.
- (2) Nothing in this section prevents members of Tonga Police, with the written approval of the Commissioner, from forming, or joining, a staff association the purpose of which is to represent the collective interests of members of Tonga Police.

91 Continuation of appointment during war or other emergency

The Commissioner may, during a state of war, insurrection, hostilities or state of emergency:

- (a) refuse to accept a police officer's resignation;
- (b) refuse to allow a police officer to retire; or
- (c) if a police officer's appointment expires during the state of war, insurrection, hostilities or state of emergency, extend the officer's appointment for not more than 6 months after the end of the state of war, insurrection, hostilities or state of emergency.

PART 4 - POWERS OF TONGA POLICE

DIVISION 1 - POLICING PRINCIPLES

92 Principles to be observed in exercising powers

- (1) This Division establishes the principles that are to be observed by Tonga Police in the performance of policing activities under this Act or any other enactment.
- (2) The principles are as follows:
 - (a) the community is the focus of Tonga Police activities;
 - (b) Tonga Police shall be visible to the community;
 - (c) Tonga Police shall listen to the community and when practicable shall:
 - (i) provide opportunities for community participation in crime prevention;
 - (ii) jointly prioritise activities to address community concerns; and

- (iii) keep the community informed about policing strategies and operations;
- (d) Tonga Police shall identify, and respond to, problems at a local village level and obtain district and national support when required.
- (e) Tonga Police shall, whenever appropriate, form problem-solving partnerships with other government agencies, civil organisations and community groups.

DIVISION 2 AUTHORISED OFFICERS

93 Commissioner may appoint authorised officers

- (1) The Commissioner may, in writing, appoint any person to be an authorised officer to assist Tonga Police in the performance of its functions.
- (2) The instrument of appointment shall specify when such person shall become an authorised officer and when he stops being an authorised officer.
- (3) The Commissioner shall not appoint any person under subsection (1) unless the Commissioner is satisfied that such person is:
 - (a) adequately trained to exercise the powers conferred on authorised officers and to perform the role of an authorised officer; and
 - (b) capable of exercising the powers and performing the role.
- (4) The Commissioner may at any time, in writing, terminate the authorised officer's appointment.

94 Resignation as authorised officer

A member who is appointed as an authorised officer may, at any time, by notice in writing inform the Commissioner that he is no longer able to be an authorised officer, and the Commissioner shall have the discretion to withdraw or continue the appointment.

95 Powers of authorised officers

- (1) The powers of an authorised officer are set out in Schedule II.
- (2) The Commissioner shall specify in the written instrument which powers set out in Schedule II may be exercised by an authorised officer.

DIVISION 3 - GENERAL POWERS OF POLICE OFFICERS

96 Powers of police officers

A police officer may exercise any power conferred on a police officer by this Act or another enactment.

97 When police officers cease to have powers

A police officer ceases to have the powers of a police officer when:

- (a) he resigns or retires;
- (b) his appointment is terminated;
- (c) his appointment ceases to have effect in accordance with the instrument of appointment;
- (d) he is:
 - (i) suspended; or
 - (ii) on pre-retirement or sick leave.

98 Use of police dogs

The Commissioner may, in writing, authorise a police officer to use a police dog to assist the police officer in any policing activity.

99 Forensic powers

- (1) The Commissioner may, in writing, authorise a police officer to conduct a forensic investigation.
- (2) The investigation shall be conducted in accordance with the procedures prescribed by regulations.

DIVISION 4 USE OF FORCE IN EXERCISING POWERS

100 Using force against individuals

- (1) A police officer who is exercising or attempting to exercise a power against an individual under this Act or another enactment may use reasonable and proportionate force to exercise the power.
- (2) The force that a police officer may use under this section shall not include force that is likely to cause death or grievous bodily harm to a person unless it

is necessary to prevent death or serious injury to the police officer or another person.

101 Using force to exercise other powers

- (1) This section shall not apply to the use of force against an individual.
- (2) A police officer may use reasonable and proportionate force when exercising or attempting to exercise other police powers under this Act or another enactment.

DIVISION 5 - POLICE EQUIPMENT AND DEVICES

Subdivision 1 - Definitions

102 Definitions

In this Division;

“**listening device**” means a device capable of being used to overhear, record, monitor or listen to a private conversation or words spoken to or by any person in private conversation;

“**optical surveillance device**” means a device, such as a camera, capable of being used to record visually or observe an activity;

“**restricted equipment**” means the following:

- (a) batons; and
- (b) handcuffs;

“**surveillance device**” means any of the following:

- (a) an optical surveillance device;
- (b) a listening device; or
- (c) any other device prescribed by the regulations for this section.

“**surveillance device warrant**” means a warrant issued under section 111.

“**tactical equipment**” includes the following:

- (a) incapacitating gases;
- (b) stun guns; or
- (c) electrical charge devices.

Subdivision 2 - Possession and use of restricted and tactical equipment

103 Commissioner may authorise possession and use of restricted and tactical equipment

- (1) The Commissioner may, in writing, authorise any person to have in his possession, and to use, whether in a public place or elsewhere:
 - (a) restricted equipment; or
 - (b) tactical equipment.
- (2) The Commissioner shall not authorise a person under subsection (1) unless the Commissioner is satisfied that it is reasonable and necessary for the person to possess and use restricted or tactical equipment.
- (3) An authorisation is subject to any conditions the Commissioner includes in the authorisation.

104 Revocation of authorisation

The Commissioner may revoke an authorisation at any time.

105 Offence to possess tactical equipment

- (1) Any person who, without reasonable excuse:
 - (a) has tactical equipment in his possession; and
 - (b) is not authorised under section 103(1) to have the equipment in his possession,commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to a fine not exceeding \$10,000, or imprisonment for period not exceeding 3 years, or both.

106 Offence to use tactical equipment

- (1) Any person who, without reasonable excuse:
 - (a) uses tactical equipment; and
 - (b) is not authorised under section 103(1) to use the equipment,commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to a fine not exceeding \$10,000, or imprisonment for period not exceeding 3 years, or both.

107 Offence to possess restricted equipment in public place

- (1) Any person who, without reasonable excuse:
 - (a) is in a public place;
 - (b) has restricted equipment in his possession; and
 - (c) is not authorised under section 103(1) to have the equipment in his possession in the public place,commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to a fine not exceeding \$10,000, or imprisonment for period not exceeding 3 years, or both.

108 Offence to use restricted equipment in public place

- (1) Any person who, without reasonable excuse,
 - (a) is in a public place;
 - (b) uses restricted equipment; and
 - (c) is not authorised under section 103(1) to use the equipment in the public place,commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to a fine not exceeding \$5,000, or imprisonment for period not exceeding 2 years, or both.

109 Offence to contravene conditions of authorisation

- (1) Any person who, without reasonable excuse:
 - (a) holds an authorisation under section 103(1);
 - (b) the authorisation is subject to a condition; and
 - (c) the person contravenes the condition,commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to a fine not exceeding \$5,000, or imprisonment for period not exceeding 2 years, or both.

110 Forfeiture of equipment

- (1) If a person is convicted of an offence against section 105, 106, 107, 108 or 109, any restricted or tactical equipment that is involved in the offence is, on conviction, forfeited to the Crown.

- (2) The Commissioner may deal with the forfeited equipment in accordance with section 158.

Subdivision 3 - Use of surveillance devices

111 Warrant to use surveillance devices

- (1) The Commissioner may apply to a magistrate or a judge of the Supreme Court for a warrant to use a surveillance device to obtain evidence if the officer believes on reasonable grounds that a person has committed, is committing or is about to commit a serious offence.
- (2) Without limiting this section, the application may seek the use of a surveillance device in a public place or in a place described by reference to a class of place.

112 Issuing warrants

- (1) The magistrate or judge of the Supreme Court may issue the warrant if satisfied that there are reasonable grounds for the belief founding the application for the warrant.
- (2) In deciding whether a warrant should be issued, the magistrate or judge, being mindful of the highly intrusive nature of a surveillance device warrant, shall have regard to the:
 - (a) nature and gravity of the relevant offence for which the warrant is sought;
 - (b) extent to which the privacy of any person not involved in the offence is likely to be affected;
 - (c) existence of alternative ways of obtaining the evidence or information sought to be obtained and the extent to which those ways may help or prejudice the investigation; and
 - (d) evidentiary or intelligence value of any information sought to be obtained.

Subdivision 4 - Electronic screening devices and police facilities

113 Electronic screening devices

- (1) The Commissioner may, in writing, authorise a police officer to use an electronic screening device if the Commissioner believes it is necessary to use the device in the interests of:
 - (a) public safety; or
 - (b) national security.

- (2) The authorisation may be subject to any conditions the Commissioner consider appropriate.
- (3) The Commissioner may revoke the authorisation at any time.

114 Use of police facilities

Unless otherwise authorised in writing by the Commissioner, police facilities shall be used only for the purpose of carrying out the functions of Tonga Police.

DIVISION 6 - POWERS OF ARREST

Subdivision 1 - Arrest without warrant

115 Arrest without warrant

- (1) A police officer, without a warrant, may arrest a person whom the police officer believes, on reasonable grounds:
 - (a) is committing an offence;
 - (b) is about to commit an offence; or
 - (c) has committed an offence.
- (2) The police officer may, without warrant, enter any property, vessel or vehicle to make an arrest.
- (3) The police officer shall inform the person:
 - (a) that he is under arrest; and
 - (b) of the nature of the offence for which the person is arrested.

116 Procedure after arrest

- (1) A person who is arrested under section 115 shall be brought before a magistrate, or if there is no magistrate in the district, before the officer in charge of the police station, to be charged as soon as practicable after being arrested and no later than 24 hours after being arrested.
- (2) A police officer may, before bringing the arrested person before a magistrate, ask the person any questions the officer thinks are appropriate in order to determine whether or not the person should be brought before a magistrate.
- (3) If the person is not brought before a magistrate or the officer in charge of the police station, and charged, in accordance with subsection (1), the person shall be released unless ordered otherwise under the Bail Act by a magistrate, or if there is no magistrate in the district by the officer in charge of the police station.

Subdivision 2 - Arrest with warrant

117 Arrest with warrant

- (1) A police officer acting under a warrant issued under any enactment may, in accordance with the warrant, arrest the person who is named in the warrant.
- (2) The police officer may arrest the person even if the officer does not have the warrant in his possession at the time of the arrest.
- (3) The police officer shall inform the person:
 - (a) that he is under arrest; and
 - (b) of the nature of the offence for which the person is arrested.

Subdivision 3 - Identification of persons arrested and detained

118 Power to take identifying particulars

- (1) This section applies if a person is in lawful custody for any offence, whether or not the person has been convicted of the offence.
- (2) A police officer may do any of the following:
 - (a) take a photograph of the person;
 - (b) take a photograph of a scar or a tattoo on the person or any other identifying feature of the person;
 - (c) measure the person's height or weight;
 - (d) take the person's:
 - (i) fingerprints;
 - (ii) palm prints;
 - (iii) footprints; or
 - (iv) voiceprint; or
 - (e) take a sample of the person's handwriting.
- (3) The police officer may, with the approval of a senior police officer, also request a doctor or nurse to take a body sample from the person.
- (4) Before approving the request under subsection (3), the senior police officer shall consider the following:
 - (a) whether the person is under arrest;
 - (b) whether there are reasonable grounds to believe that the person has committed an offence;
 - (c) whether taking the body sample is likely to produce evidence that may confirm or disprove that the person committed the offence;

- (d) whether taking the body sample is otherwise justified in the circumstances.
- (5) Subject to subsection (6), the doctor or nurse shall not take the body sample unless the senior police officer has approved the request under subsection (3) and the following apply:
 - (a) if the person is at least 18 years old, the person consents to the taking of the body sample; or
 - (b) if the person is less than 18 years old and at least 7 years old, the person's parent, guardian or lawyer consents to the taking of the body sample.
- (6) Consent is not required from a person under subsection (5)(a), or from a person's parent, guardian or lawyer under subsection (5)(b), if:
 - (a) the person is charged with a serious offence; and
 - (b) a magistrate, on application by the senior police officer, has issued an order requiring the person to provide the body sample.

119 Material to be destroyed if person acquitted

- (1) If a person is found not guilty of an offence, any identifying particulars of the person shall be destroyed as soon as practicable after the finding.
- (2) Subsection (1) shall not apply if:
 - (a) the person has been charged with another offence and the proceedings in relation to the charge have not been finalised;
 - (b) the person has previously been found guilty of another offence, whether before or after the commencement of this section;
 - (c) the identifying particulars are required for the investigation of another offence that the person is suspected, on reasonable grounds, of having committed; or
 - (d) the person is not proceeded against for the original offence because he has been found incapable of standing trial because of mental illness.
- (3) If, because of subsection (2)(a), the person's identifying particulars are not destroyed and the person is found not guilty of the other offence, or the proceedings for the other offence are discontinued, the identifying particulars shall be destroyed within a reasonable time after the finding or discontinuance.
- (4) The identifying particulars shall not be destroyed under subsection (3) if subsection (2) continues to apply to the person.

120 Storage of material

- (1) This section applies if identifying particulars are not required to be destroyed under section 119.
- (2) The identifying particulars shall be kept in a storage system that:
 - (a) is approved by the Commissioner; and
 - (b) is in a secure place.
- (3) The identifying particulars may be accessed only by persons who are authorised in writing by the Commissioner to have access to the particulars.
- (4) A person who accesses identifying particulars in accordance with an authorisation under subsection (3) may access the identifying particulars only for the following purposes:
 - (a) to administer the storage system;
 - (b) to assist in matching the identifying particulars with the particulars:
 - (i) of missing persons or deceased persons;
 - (ii) of persons suspected of having committed an offence;
 - (iii) of persons convicted of an offence; or
 - (iv) obtained at a crime scene;
 - (c) purposes related to coronial inquests;
 - (d) to assist in the investigation of an offence;
 - (e) any purpose that is permitted under another enactment; or
 - (f) any purpose that is prescribed by regulations for this paragraph.
- (5) The Commissioner may issue an approval or an authorisation under this section.
- (6) The approval or authorisation may be:
 - (a) subject to any conditions the Commissioner considers appropriate; and
 - (b) revoked at any time by the Commissioner.

121 Offence to use identifying particulars improperly

- (1) Any person who:
 - (a) uses or accesses identifying particulars; and
 - (b) the use or access is not permitted under this Subdivision or another enactment,
commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to a fine not exceeding \$5,000, or imprisonment for a term not exceeding 2 years, or both.

DIVISION 7 - SEARCH AND SEIZURE POWERS

Subdivision 1 - Search and seizure without warrant

122 Search of persons without warrant

- (1) This section applies if a police officer is satisfied, on reasonable grounds, that:
 - (a) a person has any of the objects mentioned in subsection (2) in his possession; and
 - (b) it would be impracticable, unreasonable or not in the interests of justice if the officer was required to apply for a warrant in order to search the person for the objects.
- (2) The following are the objects for the purposes of subsection (1):
 - (a) a prohibited explosive or weapon;
 - (b) an illicit drug;
 - (c) a controlled chemical or controlled equipment;
 - (d) stolen property;
 - (e) an object that may have been used, is being used or is intended to be used in the commission of a serious offence;
 - (f) an object that may be used by the person to cause harm to himself or to another person; or
 - (g) any other object which is prohibited or restricted under any other enactment.
- (3) The police officer may:
 - (a) stop and detain the person;
 - (b) search the person and anything in the person's possession for an object mentioned in subsection (2); and
 - (c) seize any object or part of an object that the police officer believes on reasonable grounds is an object mentioned in subsection (2).
- (4) Tonga Police may keep any object obtained as a result of a search under this section only for as long as is reasonably necessary, but for no more than 60 days, unless a magistrate, on application by a police officer, has issued an order authorising the object to be kept for a longer period.
- (5) A police officer may apply to the Magistrates' Court for an order for subsection (4).
- (6) Any police officer who has exercised the powers under this section shall provide a report in writing to the Commissioner within 24 hours, covering the details of the search, the objects found, any offences detected and any other relevant matter.

123 Search of places, vehicles, vessels and aircraft without warrant

- (1) This section applies if a police officer is satisfied, on reasonable grounds, that:
 - (a) a serious offence has been committed, is being committed or is about to be committed in any place, premises, vehicle, vessel or aircraft; and
 - (b) it would be impracticable, unreasonable or not in the interests of justice if the officer was required to apply for a warrant in order to conduct a search in relation to the offence.
- (2) The police officer may, without warrant, do any of the following:
 - (a) enter the place or premises;
 - (b) stop and detain the vehicle, vessel or aircraft;
 - (c) board or enter the vehicle, vessel or aircraft;
 - (d) search the place, premises, vehicle, vessel or aircraft;
 - (e) seize any thing, including the vehicle, vessel or aircraft, or part of a thing, that the police officer believes on reasonable grounds:
 - (i) to be relevant to the offence or any other offence; or
 - (ii) needs to be seized to prevent its concealment, loss or destruction, or its use in committing or continuing to commit an offence;
 - (f) seize any thing or part of a thing that the police officer believes on reasonable grounds is:
 - (i) a prohibited explosive or weapon;
 - (ii) a prohibited drug or other substance; or
 - (iii) stolen property.
- (3) Tonga Police may keep any object that was seized as a result of a search under this section only for as long as is reasonably necessary, but for no more than 60 days, unless a magistrate, on application by a police officer, has issued an order authorising the thing to be kept for a longer period.
- (4) A police officer may apply to the Magistrates' Court for an order for subsection (3).
- (5) Any police officer who has exercised the powers under this section shall provide a report in writing to the Commissioner within 24 hours, covering the details of the search, the objects found, any offences detected and any other relevant matter.

Subdivision 2 - Search and seizure with warrant

124 Applications for search warrants

If a police officer is satisfied on reasonable grounds that an offence or a serious offence has been committed, is being committed or is likely to be committed in any house, premises, vehicle, vessel or aircraft, the police officer may apply for a search warrant to search the house, premises, vehicle, vessel or aircraft and to seize any thing set out in the warrant.

DIVISION 8 - PUBLIC ORDER POWERS

125 Directing a person to move on

- (1) A police officer may direct a person who is in or near a public place to move on if the police officer suspects, on reasonable grounds, that:
 - (a) the behaviour or presence of the person is:
 - (i) causing anxiety to a person in the public place;
 - (ii) interfering with trade or business in the public place; or
 - (iii) disrupting the peaceable and orderly conduct of any event at the public place; or
 - (b) the behaviour of the person is disorderly, indecent, offensive, or threatening to a person in the public place.
- (2) The police officer may give the person any other direction that is reasonable in the circumstances.
- (3) However, the police officer shall not give a direction that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of:
 - (a) public safety;
 - (b) public order; or
 - (c) the protection of the rights and freedoms of other persons.
- (4) The police officer shall tell the person the reasons for giving a direction under this section.
- (5) Any person who:
 - (a) is given a direction under subsection (1) or (2); and
 - (b) does not comply with the direction,commits an offence.

- (6) Any person who commits an offence under subsection (5) shall be liable upon conviction to a fine not exceeding \$500 or a term of imprisonment not exceeding 6 months, or both.

126 Power to remove and exclude persons

- (1) A police officer may remove or exclude a person from any public or private premises if:
- (a) the premises are a crime scene and it is necessary for the police officer to secure the crime scene; or
 - (b) it is necessary to do so to ensure the safety of any person.
- (2) In order to exercise the power under subsection (1), the police officer may do any of the following:
- (a) enter the premises;
 - (b) use reasonable force to remove or exclude a person from the premises;
 - (c) barricade the premises or the area around the premises;
 - (d) erect barriers around the premises;
 - (e) erect signs on or near the premises;
 - (f) anything else that the police officer reasonably thinks is necessary to achieve the objectives of subsection (1)(a) or (b).

127 Temporary closure, or restriction or prohibition on use of public roads and pathways

- (1) The Commissioner may, if he believes it is necessary to do so in the public interest:
- (a) temporarily close any public road or public pathway; or
 - (b) restrict or prohibit the use of the road or pathway.
- (2) A police officer may issue a direction to a person about a public road or public pathway that has been closed or the use of which has been restricted or prohibited.
- (3) Except in cases of urgency, a police officer shall ensure that a sign indicating that the road or pathway is closed is displayed in a conspicuous place on the road or pathway.

128 Application to use closed or restricted road or pathway

- (1) A person may apply to the Commissioner for permission to use a public road or public pathway that is closed, or the use of which is restricted or prohibited, under section 127.

- (2) The application may be made orally or in writing.
- (3) The Commissioner may:
 - (a) grant the permission;
 - (b) grant the permission subject to any conditions the Commissioner considers necessary in the public interest; or
 - (c) refuse to grant the permission.

129 Offences in relation to closed or restricted roads

- (1) Any person who, without reasonable excuse and without the permission of the Commissioner:
 - (a) uses any public road or pathway which is closed under section 127(1)(a); or
 - (b) contravenes any prohibition or restriction under section 127(1)(b), commits an offence.
- (2) Any person who, without reasonable excuse, fails to comply with:
 - (a) any condition of a permit granted under section 128(3)(b); or
 - (b) any direction given under section 127(2), commits an offence.
- (3) Any person who commits an offence under subsection (1) and (2) shall be liable upon conviction to a fine not exceeding \$250, or imprisonment for a term not exceeding 3 months, or both.

130 Use of roads for assemblies and processions

- (1) Any person who uses a public road to conduct any assembly or procession commits an offence unless the use of the road for that purpose has been approved by the Commissioner.
- (2) A person may, in writing, apply to the Commissioner for an approval under subsection (1).
- (3) The application shall be in the form prescribed by the regulations.
- (4) The Commissioner may:
 - (a) grant the approval;
 - (b) grant the approval subject to any conditions the Commissioner considers necessary in the public interest; or
 - (c) refuse to grant the approval.
- (5) Any person who obstructs an assembly or procession that is approved by the Commissioner commits an offence.

- (6) A police officer may take such action as is reasonably necessary to prevent any obstruction of an assembly or procession that is approved by the Commissioner.
- (7) Any person who commits an offence under subsection (1) or (5) shall be liable upon conviction to a fine not exceeding a fine of \$250, or imprisonment for a term not exceeding 3 months, or both.

DIVISION 9 - POWERS IN RELATION TO CRIME SCENES

131 Access to crime scene

A police officer may enter any place that the police officer reasonably suspects is a crime scene and stay on the place for the time reasonably necessary to decide whether or not to establish a crime scene at the place.

132 Initial establishment of crime scene

- (1) A police officer may establish a crime scene at a place if the police officer:
 - (a) lawfully enters a place that may be a crime scene, or is lawfully at a place; and
 - (b) decides the place is a crime scene.
- (2) If another police officer assumes control of the crime scene, that police officer becomes the responsible officer.
- (3) The responsible officer may establish the crime scene in any way that gives anyone wanting to enter the place enough notice that the place is a crime scene.

133 Application for search warrant

As soon as reasonably practicable after the responsible officer establishes the crime scene, a police officer shall apply for a search warrant to search for, and seize, any evidence found at the crime scene.

134 Deciding limits of crime scene

The responsible officer at a crime scene shall:

- (a) identify what is the crime scene;
- (b) decide the boundaries necessary to protect the crime scene; and
- (c) mark the limits of the crime scene in a way that sufficiently identifies it to the public as a crime scene.

135 Restricting access to crime scene

- (1) The responsible officer at a crime scene shall, as soon as practicable, take the steps he considers to be reasonably necessary to protect anything at the crime scene from being damaged, interfered with or destroyed, including steps necessary to:
 - (a) ensure people, including police officers, whose presence at the crime scene is not essential do not enter the crime scene;
 - (b) prevent unnecessary movement inside the boundaries of the crime scene; and
 - (c) establish a safe walking area in the crime scene for reducing the risk of damage to any evidence that may be at the crime scene.
- (2) A person, other than the responsible officer, shall not enter the crime scene unless the:
 - (a) person has a special reason, associated with the investigation, for entering the crime scene;
 - (b) person is a police officer who is asked to enter the crime scene by the responsible officer or an investigating police officer;
 - (c) person is authorised to be there by the responsible officer; or
 - (d) presence of the person is necessary to preserve life or property at the crime scene.

136 Preserving evidence at crime scene

The responsible officer at a crime scene shall ensure that nothing in the crime scene is unnecessarily touched or moved:

- (a) until all necessary forensic and technical examinations are finished; or
- (b) unless there is a possibility that the thing could be damaged, interfered with or destroyed if it is not moved.

137 Powers of direction at crime scene

The responsible officer or a police officer acting under the direction of the responsible officer may, at a crime scene, do any of the following:

- (a) direct a person to leave the crime scene or remove a vehicle, animal, object, or vessel from the crime scene;
- (b) remove or cause to be removed from the crime scene:
 - (i) a person who fails to comply with a direction to leave the crime scene; or
 - (ii) a vehicle, animal, object or vessel that a person fails to remove from the crime scene;

- (c) direct a person not to enter the crime scene;
- (d) prevent a person from entering the crime scene;
- (e) prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person; or
- (f) direct the occupier of the place that is the crime scene or a person apparently in charge of the place to maintain a continuous supply of electricity at the place.

138 Offences at crime scene

- (1) Any person who, at a crime scene:
 - (a) tampers with the crime scene in any way;
 - (b) tampers with any evidence, or potential evidence, at the crime scene in any way;
 - (c) hinders or obstructs a police officer from securing the crime scene; or
 - (d) refuses to comply with a direction under section 137,commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to pay a fine not exceeding \$500, or imprisonment for a period not exceeding 6 months, or both.

DIVISION 10 - PRODUCTION OF LICENCES AND CRIMINAL RECORD CHECKS

139 Power to require production of authorities

- (1) This section applies to a person who is required to hold or have an authority under an enactment.
- (2) A police officer may ask the person to produce the authority to the police officer for inspection.
- (3) The person shall produce the authority to the police officer for inspection when asked to do so.
- (4) If the person does not have the authority available for production when asked to produce it, the person shall produce it for inspection, within 7 days after the date of the request, at a police station or other place nominated by the police officer.
- (5) A person commits an offence if:
 - (a) the person is required to hold an authority under an enactment;

- (b) the person is asked to produce the authority for inspection by a police officer; and
 - (c) the person does not produce the authority for inspection as required under subsection (3) or (4).
- (6) Any person who commits an offence under subsection (5) shall be liable upon conviction to pay a fine not exceeding \$1,000, or imprisonment for a period not exceeding 18 months, or both.
- (7) In this section:
- “**authority**” means a licence, permit, permission, approval, authority, register or other record required under an enactment.

140 Criminal record checks

- (1) A police officer may conduct a check of a person’s criminal record.
- (2) The check may be conducted only if the:
 - (a) person has requested, or consented to, the check; or
 - (b) check is conducted by a senior police officer in the course of, or for the purpose of, conducting an investigation into an offence.
- (3) The check shall be conducted in accordance with the procedures prescribed by regulations.
- (4) The regulations may prescribe fees to be paid to Tonga Police for a criminal record check requested by a person.

PART 5 - SAFEGUARDS AND RESPONSIBILITIES

DIVISION 1 - SAFEGUARDS IN RELATION TO POLICE IDENTITY

141 Police to provide identity information if requested

Subject to section 142, if a police officer is exercising a power in relation to a person, the police officer shall, if requested by the person, give the person the following information:

- (a) evidence that the police officer is a police officer (unless the police officer is in uniform);
- (b) the police officer’s name; and
- (c) the reason for the exercise of the power.

142 Police to provide identity information without being requested

- (1) When exercising a power mentioned in subsection (2), a police officer shall, without being requested to do so, give the person who is subject to the exercise of the power the following information:
 - (a) evidence that the police officer is a police officer, unless the police officer is in uniform;
 - (b) the police officer's name; and
 - (c) the reason for the exercise of the power.
- (2) This section applies to the exercise of the following powers, whether or not conferred by or under this Act and whether or not exercised under a warrant a power to:
 - (a) search or arrest a person;
 - (b) board a vehicle, vessel or aircraft;
 - (c) search a vehicle, vessel or aircraft;
 - (d) enter premises (not being a public place);
 - (e) search premises (not being a public place);
 - (f) seize any property;
 - (g) stop or detain a person or a vehicle, vessel or aircraft;
 - (h) establish a crime scene at premises (not being a public place); and
 - (i) give a direction to a person.

DIVISION 2 - SAFEGUARDS ABOUT SEARCHES**143 General provision about searches of persons**

- (1) A police officer searching a person shall:
 - (a) ensure, to the extent reasonably practicable, that the way in which the person is searched causes minimal embarrassment to the person;
 - (b) take reasonable care to protect the dignity of the person;
 - (c) restrict a search of the person in public to an examination of outer clothing; and
 - (d) if a strip search is necessary, conduct the search out of public view.
- (2) The person conducting the search shall be:
 - (a) a police officer of the same sex as the person to be searched; or
 - (b) if there is no police officer of the same sex available to search the person, someone acting at the direction of a police officer and of the same sex as the person to be searched.

144 Searches of children and person with impaired capacity

A police officer shall not, whether under section 143 or otherwise, conduct a search of a child or of a person who has impaired intellectual functioning, except in the presence of:

- (a) a parent or guardian of the child or the person; or
- (b) if paragraph (a) is not acceptable to the child or person or it is not reasonably practicable for the parent or guardian to be present during the search, another person, other than a police officer, who is capable of representing the interests of the child or person.

145 Limit on period of detention for search

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

146 Dealing with persons who obstruct a search

- (1) If a person obstructs a police officer who is conducting a lawful search of the person, another person, premises, a vehicle, vessel or aircraft or anything in the premises or vehicle, vessel or aircraft, a police officer shall, if reasonably practicable:
 - (a) warn the person that it is an offence to obstruct a police officer in the performance of the police officer's duties; and
 - (b) give the person a reasonable opportunity to stop obstructing the search.
- (2) Any person who obstructs a police officer in the circumstances mentioned in subsection (1) commits an offence.
- (3) Any person who commits an offence under subsection (2) shall be liable upon conviction to pay a fine not exceeding \$250, or a term of imprisonment for a period not exceeding 3 months, or both.

DIVISION 3 - SAFEGUARDS ABOUT QUESTIONING**147 When this Division applies**

This Division applies to any person who is in the company of a police officer for the purpose of being questioned about his knowledge, involvement or participation in the commission of an alleged offence.

148 Cautioning a person of his right to remain silent

- (1) A police officer shall caution the person about his right to remain silent if:
 - (a) the police officer has sufficient evidence to charge the person at the time he commences questioning; or
 - (b) during the questioning the police officer believes on reasonable grounds that there is sufficient evidence to charge the person being questioned with any offence.
- (2) If questioning is suspended or delayed, the police officer shall ensure that the person is aware that he still has the right to remain silent and, again caution the person when questioning recommences.
- (3) This section shall not apply if another enactment requires the person to answer questions put by, or do things required by, a police officer.

149 Right to communicate with relative, friend or law practitioner

- (1) Unless subsection (2) applies, before a police officer starts to question a person who has been charged with an offence, the police officer shall inform that person that he may telephone or speak to a relative, friend or law practitioner.
- (2) The police officer may refuse to allow a person who has been charged to speak with any of the following persons:
 - (a) a person who is also suspected of being involved in the commission of the offence; or
 - (b) a person whom the police officer reasonably believes may jeopardise the investigation of the offence if permitted to communicate with the person.

150 Person's right to remain silent not affected

A police officer shall not question or continue to question a person if that person, his lawyer or someone whose presence is required during the questioning of that person indicates to the police officer that the person does not want to answer questions or any further questions.

151 Questioning children

- (1) This section applies if a police officer wants to question a child.
- (2) The police officer shall not question the child unless:
 - (a) the police officer has, if practicable, allowed the child to speak to a relative, friend or law practitioner chosen by the child, in a place where the conversation will not be overheard; and

- (b) the relative, friend or law practitioner is present while the child is being questioned.
- (3) The police officer shall suspend questioning under this Division and comply with this section if, during questioning, it becomes apparent that the person is a child.

152 Questioning person with impaired capacity

- (1) This section applies if a police officer wants to question a person who appears to have an impaired capacity.
- (2) The police officer shall not question a person unless:
 - (a) the police officer has, if practicable, allowed the person to speak to a relative, friend or law practitioner, in a place where the conversation will not be overheard; and
 - (b) the relative, friend or law practitioner is present while the person is being questioned.
- (3) The police officer shall suspend questioning under this Division and comply with this section if, during questioning, it becomes apparent that the person is a person with impaired capacity.

153 Questioning intoxicated persons

- (1) This section applies if a police officer wants to question a person who appears to be under the influence of alcohol or a drug.
- (2) The police officer shall delay the questioning until the police officer is reasonably satisfied that the influence of the alcohol or drug no longer affects the person's ability to:
 - (a) understand his rights; and
 - (b) decide whether to answer questions.
- (3) The police officer shall suspend questioning under this Division and comply with this section if, during questioning, it becomes apparent that the person is under the influence of alcohol or a drug.
- (4) This section shall have effect subject to any enactment relating to alcohol breath testing.

PART 6 - DEALING WITH PROPERTY

DIVISION 1 - PROPERTY IN POLICE CUSTODY

154 Application of this Division

Subject to sections 122 and 123, this Division applies to the following:

- (a) an object that is lawfully in the possession of Tonga Police because it was seized by a police officer, whether before or after the commencement of this section; and
- (b) unclaimed property.

155 Duties of police officer taking possession of seized objects

- (1) A police officer who seizes an object shall ensure that the seized object is given to the officer in charge of the police station where the police officer is stationed, as soon as reasonably practicable.
- (2) Until the seized object is delivered to the officer in charge, the police officer is responsible for the safekeeping of the seized object.
- (3) The Commissioner shall:
 - (a) ensure that reasonable inquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of a seized object; and
 - (b) facilitate the lawful disposal or return of a seized object to its owner or the person who had lawful possession of it before it came into the possession of Tonga Police.
- (4) Subsection (3) shall not apply to a seized object if the Commissioner is satisfied it is inappropriate to return the seized object to its owner or the person who had possession of it before the seized object came into the possession of Tonga Police.

156 Receipt for seized objects

- (1) If a police officer seizes an object under an enactment or warrant, the police officer shall, as soon as is reasonably practicable after seizing the object:
 - (a) if the person from whom the seized object is present, give or cause to be given to the person a receipt for the seized object; or
 - (b) if the object is seized at occupied premises and the occupier of the premises is not present, leave a receipt for the seized object in a conspicuous place on the premises.

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

157 Commissioner's order for forfeiture of seized objects

- (1) The Commissioner may, in writing, order the forfeiture of a seized object to the Crown if:
- (a) the Commissioner is satisfied that:
 - (i) it is necessary to retain the seized object to prevent it being used in the commission of an offence;
 - (ii) possession of the seized object is an offence because the possession is not authorised, justified or excused by law;
 - (iii) the owner of the seized object cannot be found after reasonable inquiries; or
 - (iv) having regard to the nature, condition and value of the seized object, it is not reasonable to make inquiries about its owner; or
 - (b) the Commissioner is unable, after making reasonable efforts, to return the seized object to its owner.
- (2) If the owner of the seized object is known and can be found, the Commissioner shall, at least 28 days before making an order for forfeiture, give the owner a written notice that describes the seized object and the owner's options in relation to the object.

158 Dealing with forfeited object

- (1) If the Commissioner orders the forfeiture of a seized object to the Crown, the seized object becomes the property of the Crown.
- (2) The Commissioner may deal with a forfeited object in any way that does not cause an actual, or apparent, conflict of interest for the Commissioner.
- (3) Without limiting subsection (2), the Commissioner may:
- (a) donate the forfeited object to Tonga Police or another government body;
 - (b) destroy the forfeited object; or
 - (c) sell the forfeited object.
- (4) If the forfeited object is sold, it shall be sold by public auction.

- (5) The proceeds of the auction are to be paid in the following order:
 - (a) in payment of the expenses of the sale;
 - (b) in payment of the expenses of the seizure and storage of the forfeited object, and doing anything necessary to prepare the forfeited object for sale; or
 - (c) to the Police Special Purposes Fund.

159 Unclaimed property

- (1) A police officer shall take all unclaimed property to a police station.
- (2) Subject to subsections (3) and (4), if the property is not claimed within 3 months after being taken to the police station, it shall be sold by public auction or by public notice in accordance with the Commissioner's direction.
- (3) Perishable property may be sold, destroyed or otherwise disposed of at any time and in any manner the Commissioner directs.
- (4) Property, whether perishable or not, that has no monetary value, or only negligible monetary value, may be destroyed.
- (5) The proceeds from the auction are to be paid in the following order:
 - (a) in payment of the expenses of the sale;
 - (b) in payment of the expenses of the storage of the unclaimed property, and doing anything necessary to prepare the unclaimed property for sale; or
 - (c) to the Police Special Purposes Fund.
- (6) In this section:

“**unclaimed property**” means any property that comes into the possession of a police officer as a result of the property being lost or found.

160 Magistrate may determine title to certain property

- (1) This section applies to property if:
 - (a) it is in the possession of a member of Tonga Police;
 - (b) it is not property that is held under the warrant of a judicial officer; and
 - (c) there is doubt whether a person claiming it, or which of two or more persons claiming it, is entitled to its possession.
- (2) A police officer or a person claiming the property may apply to a magistrate to determine title in the property.
- (3) On application under subsection (2), the magistrate may:
 - (a) make an order for delivery of the property to any person appearing to the magistrate to be its owner, or entitled to its possession; or

- (b) if the owner or person entitled to possession cannot be found, make any order about its possession the magistrate thinks fit.
- (4) If, after the making of an order under subsection (3) about any property, an action is commenced against a member of Tonga Police or the Crown for the recovery of the property or its value, evidence of the order, and the delivery of the property in accordance with the order:
 - (a) may be given, and shall be received, by the court concerned; and
 - (b) if given, is a complete defence to the action.
- (5) No such order or delivery affects the right of any persons entitled by law to possession of the property to recover the property.

DIVISION 2 - DAMAGE TO PROPERTY

161 Use of force, to enter places, likely to cause damage

- (1) This section applies if a police officer intends to enter a place to arrest or detain someone, or to search a place, or to establish a crime scene.
- (2) The police officer shall, if reasonably practicable, do the following things before the police officer uses force that may cause damage to the place in order to gain entry to the place:
 - (a) ask the occupier of the place to allow the police officer to enter the place; and
 - (b) give the occupier a reasonable opportunity to allow the entry.

162 Police officer to give notice of damage

- (1) This section applies if:
 - (a) a police officer damages any object when exercising a power under this Act or another enactment; or
 - (b) someone who is assisting the police officer damages any object.
- (2) The police officer shall promptly give written notice to the person who appears to be the person who was in possession of the object:
 - (a) stating the nature of the damage; and
 - (b) if the police officer believes the damage was caused by a latent defect in the object or circumstances beyond the police officer's or assistant's control, stating the police officer's belief.
- (3) If the owner is not present, the notice shall be left in a conspicuous place near the damage.
- (4) This section shall not apply:

- (a) to damage that the police officer believes, on reasonable grounds, is trivial; or
- (b) if the police officer believes, on reasonable grounds, that:
 - (i) there is no one apparently in possession of the object; or
 - (ii) the object has been abandoned.

163 Compensation for damage

- (1) This section applies if a person suffers loss because his property is damaged when a police officer exercises powers under this Act or another enactment.
- (2) Compensation is payable by the Crown to the person whose property is damaged.
- (3) Compensation is not payable for the lawful seizure of a thing under this Act or another enactment.
- (4) The amount of the compensation shall be determined by a Court on application by the person.

PART 7 - OFFENCES

164 Members of police not to demand or accept bribes

- (1) A person commits an offence if the person:
 - (a) is:
 - (i) a member of Tonga Police; or
 - (ii) performing a function on behalf of Tonga Police; and
 - (b) accepts any money or other benefit as an inducement to do or refrain from doing any act in the execution of the person's duty as a member or in the performance of the person's function on behalf of Tonga Police.
- (2) A person commits an offence if the person:
 - (a) is:
 - (i) a member of Tonga Police; or
 - (ii) performing a function on behalf of Tonga Police; and
 - (b) demands any money or other benefit as an inducement to do or refrain from doing any act in the execution of the person's duty as a member or in the performance of the person's function on behalf of Tonga Police.
- (3) Any person who commits an offence under subsection (1) or (2) shall be liable upon conviction to pay a fine not exceeding \$25,000, or imprisonment for a period not exceeding 7 years, or both.

165 Bribery of members of Tonga Police

- (1) A person commits an offence if the person gives, or offers to give, to any member of Tonga Police, or to a person performing functions on behalf of Tonga Police, any money or other benefit as an inducement to do or refrain from doing any act in the execution of the police officer's duty as a member or in the performance of the person's function on behalf of Tonga Police.
- (2) A person commits an offence if the person arranges for another person to give, or to offer to give, to any member of Tonga Police, or to a person performing functions on behalf of Tonga Police, any money or other benefit as an inducement to do or refrain from doing any act in the execution of the police officer's duty as a member or in the performance of the person's function on behalf of Tonga Police.
- (3) Any person who commits an offence under subsection (1) or (2) shall be liable upon conviction to pay a fine not exceeding \$25,000, or imprisonment for a period not exceeding 7 years, or both.

166 Activities suggesting association with Tonga Police

- (1) A person commits an offence if the person, without lawful excuse, carries on an activity, or acts, in a manner that is likely to lead a person to believe that the activity or action is endorsed or authorised by Tonga Police.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to pay a fine not exceeding \$15,000, or imprisonment for a period not exceeding 5 years, or both.

167 Unlawful possession of police property

- (1) Any person who, without lawful excuse, has in his possession any police property, including a confidential police document, commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to pay a fine not exceeding \$10,000, or imprisonment for a period not exceeding 3 years, or both.

- (3) In this section:

“confidential police document” means a police report, notice, circular or any other document (in whatever form) that:

- (a) is prepared by a member of Tonga Police; and
- (b) contains information the disclosure of which would be likely to prejudice the maintenance of the law, including the prevention, detection and investigation of offences.

“police property” means property that is owned by Tonga Police or is lawfully in the possession of Tonga Police.

168 Unlawful dealings with prisoners

- (1) A person commits an offence if the person, without the permission of a member of Tonga Police:
 - (a) has any restricted communication with a prisoner in the custody or charge of a member of Tonga Police; or
 - (b) delivers anything, or causes it to be delivered, to the prisoner.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to pay a fine not exceeding \$5,000, or imprisonment for a period not exceeding 2 years, or both.
- (3) In this section:

“restricted communication”, for a prisoner, means:

 - (a) any communication that may prejudice:
 - (i) the maintenance of the law;
 - (ii) the safe custody of the prisoner;
 - (iii) the safety of any other person; or
 - (iv) the security of any prison; or
 - (b) any communication that takes place after the member of Tonga Police, in whose custody or charge the prisoner is, has forbidden that communication or directed that it cease.

169 Escaping from police custody

- (1) A person commits an offence if:
 - (a) the person is in the lawful custody of a police officer; and
 - (b) the person escapes from the police officer’s custody.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to pay a fine not exceeding \$2,000, or imprisonment for a period not exceeding 12 months, or both.

170 Killing or injuring police dogs

- (1) Any person who, intentionally kills, maims, wounds or otherwise injures a police dog without lawful authority or reasonable excuse, commits an offence.
- (2) Any person who commits an offence under subsection (1) shall be liable upon conviction to pay a fine not exceeding \$10,000, or imprisonment for a period not exceeding 3 years, or both.

PART 8 - MISCELLANEOUS

171 Identity cards

- (1) The Commissioner shall issue an identity card to each police officer and each authorised officer.
- (2) The identity card shall contain:
 - (a) a recent photo of the officer;
 - (b) the officer's name; and
 - (c) the officer's identity number.
- (3) A police officer shall wear his identity card in a visible manner at all times when on duty.
- (4) An authorised officer shall wear his identity card in a visible manner at all times when exercising the powers of an authorised officer.

172 Return of identity cards

- (1) A person shall return his identity card to the Commissioner if the person:
 - (a) stops being a police officer or authorised officer;
 - (b) goes on leave of any kind for longer than 12 months;
 - (c) is suspended from duty; or
 - (d) ceases to be able to exercise the powers of a police officer or authorised officer.
- (2) The identity card shall be returned to the Commissioner as soon as practicable after the occurrence of the relevant event mentioned in subsection (1).

173 Evidentiary provisions

- (1) In any proceedings, the Commissioner may certify that at a specified time or during a specified period:
 - (a) a particular uniform was a police uniform;
 - (b) a particular item of uniform was an item of police uniform;
 - (c) a particular crest, badge, emblem, design, logogram or other distinguishing article was a police article;
 - (d) a dog named in the certificate was a police dog; or
 - (e) a person named in the certificate was a police dog handler.
- (2) In any proceedings, the Commissioner's certificate is, in the absence of proof to the contrary, sufficient evidence of the matters certified.

174 Protection of police officers acting in good faith

A police officer or authorised officer shall not be liable in any proceedings for damage or injury caused by the exercise of his powers, duties or responsibilities in good faith.

175 Overseas operations

- (1) The Commissioner may authorise a police officer to engage in an overseas operation.
- (2) If a police officer does or omits to do an act in an overseas operation, and the act or omission would, if it occurred in the Kingdom, constitute an offence, the act or omission is taken to have taken place within the Kingdom, unless:
 - (a) the police officer is subject to the criminal jurisdiction of the place in which the act or omission took place; and
 - (b) the authorities in the place:
 - (i) are not subject to any obligation to cede jurisdiction to the authorities of the Kingdom in respect of the act or omission; and
 - (ii) bring criminal proceedings against the police officer in the place.
- (3) No information may be laid against a police officer over whom jurisdiction is claimed under subsection (2) without the consent of the Minister.
- (4) However:
 - (a) the police officer may be arrested without warrant within or outside Tonga; or
 - (b) a warrant for the police officer's arrest may be issued in the Kingdom and executed within or outside the Kingdom, and the police officer:
 - (i) may be detained in custody within or outside the Kingdom; or
 - (ii) if the police officer is in, or has been taken to, the Kingdom, he may be remanded in custody or on bail;even though the consent of the Minister has not been obtained.
- (5) No further proceedings may be taken against the police officer mentioned in subsection (4)(b) until the consent has been obtained.
- (6) If a police officer does or omits to do an act in an overseas operation, and the act or omission would, if it occurred in Tonga, be a breach of the Code of Conduct, the police officer may be dealt with as if the act or omission had occurred in the Kingdom.
- (7) In this section:

“**overseas operation**” means an operation outside Kingdom that is authorised by the Government for the purpose of:

 - (a) peacekeeping;

- (b) the maintenance or restoration of law and order or functioning government institutions; or
- (c) any other activity for which the Government agrees to provide assistance, whether or not in conjunction with personnel from one or more countries.

176 Standing appropriation

Money for salaries, allowances and other expenditure payable or incurred under or in the administration of this Act is:

- (a) payable out of the Treasury; and
- (b) appropriated by the Legislative Assembly accordingly.

177 Independent functions not to be audited or reviewed

Neither the Auditor-General nor the Commissioner for Public Relations may carry out any audit or review of the performance of Tonga Police in relation to matters mentioned in section 20 unless the audit or review is authorised by an enactment.

178 Police Special Purposes Fund

- (1) The fund called the Police Reward Fund that was established under section 58 of the Police Act (Cap 35) continues in existence with the new name of the Police Special Purposes Fund.
- (2) The following money shall be paid into the Police Special Purpose Fund:
 - (a) all money received by Tonga Police in relation to services provided by Tonga Police or a member of Tonga Police;
 - (b) any money approved by Cabinet for payment into the Fund;
 - (c) fees received for services provided by the Tonga Police Band; and
 - (d) money received from the sale of unclaimed goods and forfeited property, in accordance with this Act.
- (3) No payment may be made from the Fund except with the approval of the Commissioner.
- (4) The Commissioner may approve payment from the Fund for any of the following purposes:
 - (a) to assist police officers and the spouses and families of police officers who are:
 - (i) injured in the performance of their duties; or
 - (ii) discharged from service on medical grounds;

- (b) to assist the spouses and families of police officers who are killed in the performance of their duties;
 - (c) as a contribution towards prizes at athletic, sporting or similar events organised by or for the benefit of Tonga Police;
 - (d) to reward police officers for meritorious acts of service in the performance of their duties;
 - (e) to pay for recreational and sporting activities organised within Tonga Police;
 - (f) any other purpose the Commissioner considers to be for the general welfare of police officers.
- (5) The Commissioner shall not make a payment for a purpose in subsection (4)(a) unless the Commissioner is satisfied that the recipient of the payment is in genuine distress.

179 Tonga Police Band

- (1) The Tonga Police Band is established by this section.
- (2) The Tonga Police Band is to consist of members of Tonga Police.
- (3) The Tonga Police Band may charge fees for services it provides.

180 Regulations

- (1) The Minister, with the approval of Cabinet, may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may make provision for any of the following:
 - (a) matters, not otherwise dealt with by this Act, relating to the appointment, engagement, employment and discipline of members of Tonga Police;
 - (b) matters, not otherwise dealt with by this Act, relating to the way police officers are to exercise their powers or perform their functions and duties;
 - (c) penalties not exceeding a fine of \$2,000, or imprisonment for 2 years, or both, for offences against the regulations;
 - (d) the fees that may be charged for services provided by Tonga Police;
 - (e) the Tonga Police crest;
 - (f) the Tonga Police flag;

- (g) the Tonga Police insignia;
- (h) Tonga Police service medals and related accessories; and
- (h) transitional matters arising out of the abolition of the Tonga Police Force and its replacement with Tonga Police, or otherwise arising out of the enactment of this Act.

PART 9 - TRANSITIONAL AND SAVING

181 Repeal of Police Act

The Police Act (Cap. 35) is repealed as follows:

- (a) Parts I and II, except section 7, are repealed when Part 1 of this Act commences;
- (b) section 7 is repealed when Division 5 of Part 4 of this Act commences;
- (c) Part III is repealed when Part 3 of this Act commences;
- (d) Part IV (except section 19) is repealed when Part 4 of this Act commences;
- (e) section 19 is repealed when Part 3 of this Act commences;
- (f) Part V is repealed when Part 3 of this Act commences;
- (g) Part VI is repealed when Part 8 of this Act commences;
- (h) Part VII is repealed when Part 7 of this Act commences; and
- (i) Parts VIII and IX are repealed when Part 9 of this Act commences.

182 Commissioner

- (1) This section applies to a person who held office as the Commander of the Tonga Police Force under the Police Act (Cap 35) immediately before the commencement of this section.
- (2) On the coming into force of Part II of this Act the said Commander is deemed to have been duly appointed under and in terms of this Act, subject to the conditions on which he held office as Commander of the Tonga Police Force under the Police Act (Cap. 35) immediately prior to this Act coming into effect.
- (3) Nothing in this section prevents the conditions being varied, after the commencement of this section, in accordance with this Act.
- (4) The person holds office as Commissioner subject to this Act.

183 Police officers

- (1) This section applies if, immediately before the commencement of this section, a person was enlisted to serve in the Tonga Police Force, under section 11 of the Police Act (Cap 35).
- (2) On the commencement of this section, the person is taken to have been appointed as a police officer in Tonga Police under section 42(2)(a) of this Act:
 - (a) until the end of the term of the original engagement; and
 - (b) on the conditions of the original engagement that are consistent with this Act; and
 - (c) at the same rank as under the Police Act (Cap 35).
- (3) Nothing in this section prevents the terms and conditions being varied, after the commencement of this section, in accordance with this Act.

184 Special police officers

- (1) This section applies if, immediately before the commencement of this section, a person was appointed as a special police officer in the Tonga Police Force under section 65 of the Police Act (Cap 35).
- (2) On the commencement of this section, the person is taken to have been appointed as a police officer in Tonga Police under section 42(2)(a) of this Act:
 - (a) until the end of the original engagement;
 - (b) on the conditions of the original engagement that are consistent with this Act; and
 - (c) at the same rank as under the Police Act (Cap 35).
- (3) Nothing in this section prevents the conditions being varied, after the commencement of this section, in accordance with this Act.

185 Continuation of oaths

A person mentioned in section 182, 183 or 184 of this Act who made an oath or affirmation under section 13 of the Police Act (Cap. 35), is taken to have made and subscribed:

- (a) for the Commissioner, an oath or affirmation of allegiance to Tonga Police under section 12(a) of this Act and the official secrets oath as required by section 12(b) of this Act; and
- (b) in any other case, an oath or affirmation of allegiance to Tonga Police under section 52(a) of this Act and the official secrets oath as required by section 52(b) of this Act.

186 Other staff

- (1) This section applies to a person who, immediately before the commencement of this section, was employed in the Tonga Police Force other than as a police officer under the Police Act (Cap. 35).
- (2) On the commencement of this section, the person is taken to have been appointed as an administrative staff member in Tonga Police under section 42(2)(b) of this Act:
 - (a) until the end of the original engagement; and
 - (b) on the conditions of the original engagement that are consistent with this Act; and
 - (c) in the same capacity and at the same level as the person was employed in the Tonga Police Force.
- (3) Nothing in this section prevents the terms and conditions being varied, after the commencement of this section, in accordance with this Act.

187 Proceedings for breach of discipline or offence

- (1) A proceeding for a breach of discipline or an offence that was commenced under the Police Act (Cap 35) and was pending at the commencement of this section may be continued as if this Act had not been enacted.
- (2) An interdiction of a police officer under sections 39 or 40 of the Police Act (Cap 35) that was in force immediately before the commencement of this section continues in force after the commencement of this section according to its terms but may be varied, amended or revoked by the Commissioner as if it were a suspension under section 79 of this Act.
- (3) In this section, a reference to a proceeding includes a reference to any review or appeal in relation to the proceeding.

188 Actions and instruments

- (1) This section applies to:
 - (a) any act done, step taken or decision made under a provision of the Police Act (Cap. 35), if the act, step or decision continued to have effect immediately before the commencement of this section; and
 - (b) an instrument made under a provision of the Police Act (Cap. 35), if the instrument was in force immediately before the commencement of this section.
- (2) If there is a corresponding provision of this Act for the provision of the Police Act (Cap. 35), the act, step, decision or instrument:
 - (a) continues to have effect, according to its terms, but with the changes that are necessary:

- (i) to make it consistent with this Act; and
 - (ii) to adapt its operation to this Act; and
- (b) is taken to have been done, taken or made under the corresponding provision of this Act.
- (3) The act, step, decision or instrument may be varied, amended or revoked under this Act.
- (4) In this section:
“**instrument**” includes an approval, authorisation, certificate, classification, declaration, delegation, determination, direction, identity card, order (given orally or in writing), notice, permission, policy, procedure, proclamation, recommendation, warrant or other instrument (other than regulations).

189 Continuation of regulations

Regulations made under section 73 of the Police Act (Cap 35) that were in effect immediately before the commencement of this section:

- (a) continue to have effect on and after the commencement of this section as if they had been made by the Minister, with the approval of Cabinet, under section 180 of this Act; and
- (b) have effect only to the extent that they are not inconsistent with this Act; and
- (c) may be varied, amended or repealed by regulations under section 180 of this Act.

190 Transfer of assets and liabilities

Any assets and liabilities of the Tonga Police Force become the assets and liabilities of Tonga Police on the commencement of this section.

191 Pending proceedings

If, immediately before the commencement of this section, any proceeding for an offence against the Police Act (Cap 35) were pending or existing in any court or tribunal, those proceedings are to continue as if the Police Act (Cap 35) had not been repealed.

192 Police facilities

Places or things that, immediately before the commencement of this section, were police facilities continue to be police facilities under this Act.

193 References to Tonga Police Force

A reference in any enactment or document to the Tonga Police Force, a member of the Tonga Police Force or a member of the Police Force, is taken to be a reference to Tonga Police or a member of Tonga Police.

194 References to Police Act (Cap 35)

If the context permits, a reference to the Police Act (Cap. 35) in an enactment or document is taken to be a reference to this Act.

Passed by the Legislative Assembly this 14th day of September 2010.

SCHEDULE I

POLICE OFFICER’S OATH

(Sections 12 & 52)

I.....solemnly swear before God that I will be truly loyal to his Majesty King George Tupou V the rightful King of Tonga and I will keep righteously and perfectly the Constitution of Tonga and all Laws and Regulations which are currently or to be enforced in the future as matter of police and conduct to the Tonga Police and I swear/affirm that I will not resign from Tonga Police unless in accordance with governing Laws and Regulations thereof.

.....
Witness

.....
Signature

Sworn/Affirmed before me on the.....day of the month of.....20.....

.....
Magistrate/Police Commissioner

SCHEDULE II**POWERS THAT MAY BE EXERCISED BY AUTHORISED OFFICERS**

(section 95)

Item	Enactment	Provision
1	Arms and Ammunition Act	Sections 6, 10, 11(1), 14, 15 and 17
2	Bailiffs Act 2000	Section 21
3	Bazaars and Concerts Ac	Section 2
4	Birds and Fish Preservation Act	Section 8
5	Boxing Matches (Regulation) Act	Sections 3 and 7
6	Business Licences Act 2002	Section 17
7	Cinematograph Act	Sections 3 and 4
8	Cinema Theatre Rules	Rule 15
9	Dances Act	Sections 2(1) and (2) and 3
10	Dogs Act	Section 8(2)
11	Explosives Act	Section 4
12	Explosives Regulations	Regulation 6
13	Intoxicating Liquor Act	Sections 3, 14(1), 21, 24(2), 29(2), 29(3), 83(1), 85, 87 and 92
14	Magistrates' Courts Act	Section 17
15	Methylated Spirits Act 2001	Section 3(2)
16	Pounds and Animals Act	Sections 18 and 23(1), (2) and (3)
17	Raffles Act	Section 3
18	Rhinoceros Beetle Act	Sections 5 and 6
19	Town Regulations Act	Sections 8 and 10(1) and (2)
20	Traffic Act	Sections 3(2), 7(1) and 39(1)
21	Waste Management Act 2005	Sections 25(1)