



# **The Kiribati Gazettes**

## **Acts of 2017**

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The Kiribati Gazette is an official publication of the Government of Kiribati. Published on a monthly basis through the Communications Unit of the Office of Te Beretitenti, the Kiribati Gazette contains publications of Instruments, Acts, Notices and Proclamations (public and official announcements) from the Government of Kiribati



REPUBLIC OF KIRIBATI

(No. 15 of 2017)

I assent

Beretitenti

22/12/2017

AN ACT  
entitled

**AN ACT TO AUTHORISE APPROPRIATION OF MONIES OUT OF THE CONSOLIDATED  
FUND FOR RECURRENT EXPENDITURE FOR THE SERVICE OF THE YEAR ENDING 31  
DECEMBER 2018**

Commencement

2018

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

**Short Title and commencement**

1. This Act may be cited as the Appropriation Act 2018 and shall come into operation on 1 January 2018.

**Authorisation of issue of \$188,238,626 from the Consolidated Fund**

2. The issue from the Consolidated Fund is hereby authorized of a sum of **\$188,238,626** to be applied for recurrent expenditure to the service of the year ending 31 December 2018.

**Appropriation**

3. The sum specified in section 2 shall be appropriated for the supply of the Heads of Expenditure specified in Column 1 of the Schedule annexed to this Act in the sums respectively specified in relation thereto in Column 2 of the Schedule.

**Transfer of Functions**

4. Where after the commencement of this Act and before 1 January 2018 a function is transferred from one Ministry to another the authority conferred by section 2 and 3 to issue and apply monies out of the Consolidated Fund extends to the issue and application of monies in respect of that function by that other Ministry.

# SCHEDULE

Column 1		Column 2
Head of Expenditure		Expenditure Authorised \$
09	Office of Te Beretitenti	2,217,595
10	Public Service Office	1,077,688
11	Judiciary	1,988,621
12	Kiribati Police Service	8,696,990
13	Public Service Commission	266,479
14	Ministry of Foreign Affairs and Immigration	2,775,749
15	Ministry of Internal Affairs	2,913,033
16	Ministry of Environment, Lands and Agricultural Development	3,769,869
17	Maneaba ni Maungatabu	2,891,504
18	Ministry of Commerce, Industry and Cooperatives	2,031,811
19	Kiribati National Audit Office	822,271
20	Office of the Attorney General	812,423
21	Ministry of Fisheries and Marine Resource Development	3,610,385
22	Ministry of Health and Medical Services	22,837,376
23	Ministry of Education	26,149,050
24	Ministry of Information, Communication, Transport and Tourism Development	3,925,824
25	Ministry of Finance and Economic Development	3,165,050
26	Ministry of Women, Youth, Sport and Social Affairs	1,802,166
27	Ministry of Infrastructure and Sustainable Energy	3,428,148
28	Ministry of Employment and Human Resources	5,429,162
29	Ministry of Line and Phoenix Island Development	4,111,275
37	Ministry of Justice	2,955,838
38	Leadership Commission	380,799
	Debt Servicing	-
	Subsidies, grants and other commitments.	30,918,924
<b>Total</b>		<b>138,978,029</b>
<b>ADD TRANSFERS AND FINANCING</b>		
345	Contributions to the Development Fund	49,260,597
347	Contributions to the RERF	-
<b>Grand Total</b>		<b>188,238,626</b>

## **THE APPROPRIATION ACT 2018**

### **EXPLANATORY MEMORANDUM**

1. This Act charges upon the Consolidated Fund a sum for which is required for recurrent expenditure for the year ending 31 December 2018.
2. The Schedule to the Act specifies the Heads of Expenditure for which the sum, in the aggregate, is appropriated and in the case of each one of the heads of expenditure, the particular amount, out of the total, appropriated to it.
3. The Heads of Expenditure specified in the Schedule are those which are contained in the Estimates for the financial year ending on 31 December 2018.
4. The Act is presented to the Maneaba ni Maungatabu in accordance with the requirements of section 109(1) and (2) of the Constitution.

Hon Dr. Teuea Toatu  
Minister For Finance and Economic Development  
5<sup>th</sup> December 2017



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

This printed impression of the Appropriation Act 2018 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 18<sup>th</sup> December 2017 and is found by me to be a true and correctly printed copy of the said Bill.

.....  
**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

**CERTIFICATE OF THE SPEAKER OF THE MANEABA NI MAUNGATABU**

I certify that the above Act was on the 18<sup>th</sup> December 2017 passed by the Maneaba ni Maungatabu on a Certificate of Urgency under section 68(3)(a) of the Constitution.

.....  
**Hon. Tebuai Uai**  
**Speaker of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 22 day  
of December 2017.

.....  
**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**



REPUBLIC OF KIRIBATI  
(No. of 2017)

I assent,

Beretitenti

23/2/2018

AN ACT TO AMEND THE EMPLOYMENT AND INDUSTRIAL RELATIONS CODE (EIRC)  
2015

Commencement:

23/2/2018

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

**1. Short Title**

This Act may be cited as the Employment and Industrial Relations Code (Amendment) Act, 2017.

**2. Meaning of 'principal Act'**

In this Act 'principal Act' means the *Employment and Industrial Relations Code (EIRC) 2015*.

**3. Amendment of section 8**

Section 8 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

"s8(1) The Minister may appoint such labour inspectors as are necessary or expedient for the purposes of this Code, who shall be public servants."

**4. Amendment of section 9**

Section 9 of the principal Act is amended as follows:-

(a) in subsection (3) by inserting a new subsection 9(3)(f) immediately after subsection 9(3)(e) as follows:-

"9(3)(f) remove any child from a situation where the inspector has reasonable grounds to believe that the child is engaged in hazardous work or a worst form of child labour or is likely to be seriously harmed".

(b) in subsection (3) by inserting a further subsection 9(3)(g) immediately after a new subsection 9(3)(f) as follows:-

"9(3)(g) issue a fixed penalty notice in the prescribed form".

**5. Amendment of section 10**

Section 10 of the principal Act is amended by repealing subsection (3) and substituting it as follows:-

"10(3) An employer may, in extenuating circumstances, apply to the Commissioner for an extension of the date, of no more than 28 days, specified for compliance with the demand notice".

**6. Amendment of section 11**

Section 11 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

"11(1) An employer may, within 28 days of the demand notice being issued, apply to the Registrar to have the demand notice reviewed, provided that the demand notice has not been issued in relation to a fixed penalty offence listed in Schedule 6 of this Code."

**7. Amendment of section 12**

Section 12 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

"12(1) Any person aggrieved by an order of the Registrar under section 11, may appeal the decision or order to the High Court provided that the demand notice has not been issued in relation to a fixed penalty offence listed in Schedule 6 of this Code."

**8. Insertion of new section 13A**

Section 13A is inserted immediately after section 13 as follows:-

"13A Fixed Penalty Notice

13A(1) Offences that are fixed penalty offences and the penalties which can be issued in fixed penalty notices are set out in Schedule 6;

(2) In the event that a labour inspector forms the opinion, on reasonable grounds, that an employer has committed a fixed penalty offence listed in Schedule 6, the labour inspector may issue a fixed penalty notice containing a fixed penalty in accordance with this section;

(3) The fixed penalty notice must be issued in the form prescribed by regulations;

(4) The fixed penalty must be paid within 28 days of the fixed penalty notice being issued. An employer who is served with a fixed penalty notice and disputes the offence contained in the notice or fails to pay the penalty in full within 28 days may be prosecuted for the fixed penalty offence. If convicted of a breach of a fixed penalty offence, the general penalty prescribed in section 152 of the Code will apply;

(5) If any person has committed a fixed penalty and has been penalised under this section for more than 3 times an employer may be prosecuted and the general penalty prescribed in section 152 of the Code will apply."

**9. Amendment of section 15**

Section 15 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

"15(1) The Minister may appoint the Registrar, who shall be a public servant."



**10. Amendment of section 32**

Section 32(5) of the principal Act is amended by inserting the word "heard" before the word "on" and after the word "be". This section shall read as follows, "The Registrar shall be entitled to be *heard* on any appeal under this section".

**11. Amendment of section 40**

Section 40 of the principal Act is amended as follows:-

- (a) in subsection (1)(e) by repealing the words "one of whom shall be appointed by the Minister as Vice Chairman of the Board".
- (b) inserting a new subsection (3) after subsection (2) as follows, "The Minister must appoint a Vice Chairman from amongst the employee's and the employer's representative who shall take it in turn".

**12. Amendment of section 115**

Section 115 of the principal Act is amended as follows:-

- (a) in subsection (2) by repealing it and substituting it as follows:-  
"115(2) Subject to subsection (3), the minimum age for employment applies to all types of work that is not considered hazardous work or a worst form of child labour, including, work as a self employed person and work as an apprentice".
- (b) in subsection (3) by repealing it and substituting it as follows:-  
"115(3) The minimum age for employment does not apply to work performed in schools, as part of an authorised programme of education or community services, church, youth activities to work carried out by a child in a family undertaking, family setting or family business provided that such work:-
  - (a) is unlikely to harm the health, safety and development of the child;
  - (b) shall not prejudice the child's attendance at school;
  - (c) shall not prejudice the child's ability to benefit from schooling;
  - (d) complies with the prescribed requirements for light work;
  - (e) is in the best interest of the child."

**13. Amendment of section 116**

Section 116 of the principal Act is amended by repealing subsection (1) and substituting it as follows:-

- "116(1) A child aged 12 or 13 may be employed or engaged to perform light work that:
  - (a) is unlikely to be harmful to the health, safety and development of the child;
  - (b) shall not prejudice the child's attendance at school;
  - (c) shall not prejudice the child's ability to benefit from schooling;
  - (d) complies with the prescribed requirements for light work; and
  - (e) is in the best interest of the child."

**14. Amendment of section 118**

Section 118 of the principal Act is amended as follows:-

- (a) in subsection (1)(b) by inserting immediately after the word "children" the words "domestically and internationally".
- (b) in subsection (1)(g) by inserting immediately after the word "performances" the following

words, "distributing and possessing child pornography and financially benefiting from the use of children in prostitution".

**15. Amendment of section 124**

Section 124(1) of the principal Act is amended by repealing the words "28 days" and substituting it with the words "6 months".

**16. Amendment of section 127**

Section 127 of the principal Act is amended by repealing the whole section and substituting it as follows:-

**"127 Referral for conciliation-**

- 127 (1) The Registrar may refer a matter to an independent conciliator for conciliation.
- (2) The Minister in accordance with the advice of Cabinet may appoint such conciliators as are necessary or expedient for the purposes of the Code.
- (3) A conciliator shall conciliate a matter referred to him or her, including the cause and circumstances of the dispute by communicating with the parties and shall endeavour to bring about a settlement, and then shall report the outcome to the Registrar.
- (4) In discharging his or her functions, a conciliator shall do so in a timely fashion as is reasonably practicable in the circumstances, and in any case, shall no more than:
- (a) one month from the date the matter is referred to the conciliator by the Registrar; and
  - (b) a shorter timeframe as may be specified by the Registrar.
- (5) The terms of every settlement of a dispute under this section shall:
- (a) be in writing;
  - (b) signed by the parties to the dispute;
  - (c) certified by the Conciliator as a true and accurate record of the settlement; and
  - (d) a copy shall be lodged with the Registrar".

**17. Amendment of section 128**

Section 128 of the principal Act is amended in subsection(1) by repealing it and substituting it as follows:-

"128(1) The Registrar may refer an employment dispute to an independent arbitrator that he or she shall select from a pool of arbitrators who are appointed by the Minister after taking into account recommendations from the Decent Work Advisory Board".

**18. Amendment of section 129**

Section 129 of the principal Act is amended by repealing it and substituting it as follows:-

"129 Every referral of a trade dispute to a particular conciliator or arbitrator made by the Registrar in accordance with this Part shall be final and shall not be questioned by any party to the employment dispute in question."



**19. Amendment of section 139**

Section 139 of the principal Act is amended by inserting a new subsection(6) immediately after subsection(5) as follows:-

"139(6) For the avoidance of doubt this section does not prevent a strike or lockout taking place of less than 50 employees that is lawful under this Part".

**20. Amendment of section 154**

Section 154 of the principal Act is amended as follows:-

- (a) in subsection (1) by repealing the words "Beretitenti" and substituting it with the word "Minister".
- (b) in subsection (2) by repealing the words "Beretitenti" and substituting it with the word "Minister".
- (b) in subsection (2) by inserting new subsections of 154(2)(e), (f), (g) and (h) after subsection 154(2)(d) as follows:-

"Section 154 Regulations under this Code

154(2) Without any prejudice to the generality of subsection (1), the Minister, acting in accordance with the advice of the Cabinet may make regulations with respect to:

- (e) wages and salaries criteria and guidelines for workplaces;
- (f) the records, registers, books, systems, information, accounts and other documents to be kept by employer's in respect of employees including working children;
- (g) the conditions of work and hours of work for children including the prohibition, restriction or regulation of certain occupations or activities;
- (h) penalties and enforcement mechanisms including powers of the labour inspectors to prosecute and issue fixed penalties."

**21. Insertion of a new section 157**

Section 157 is inserted immediately after section 156 of the principal Act as follows:-

"157 Transitional Provision-

157(1) Any proceedings commenced prior to this Act that relate to the Employment Ordinance 1977, Trade Union and Employer Organisations Code 1998 or the Industrial Relations Code 1998, as the case may be shall continue as if those Acts remain in force.

(2) Any organisation registered under the Trade Union and Employer Organisations Code shall continue to be registered on the commencement of this Act and for the avoidance of doubt:

- (a) officers appointed under the Trade Union and Employer Organisations Code shall be deemed valid;
- (b) rules relating to any trade union or employer organisation made under the Trade Union and Employer Organisations Code shall be deemed to be valid.
- (c) employer deductions of union fees shall continue unaffected on the commencement of this Act.

## 22. Insertion of Schedule

The principal Act is amended by inserting the following Schedule at the end thereof:-

### "SCHEDULE 6 (Section 13A)

#### FIXED PENALTY OFFENCE

Section	Offence	Individual	Company
S.78(4)	Failure to pay wages	\$200	\$1000
s.79(5)	Failure to pay authorised deductions from wages owed to an employee	\$200	\$1000
s.80	Failure to provide statement of wages and particulars	\$200	\$1000
s.81	Failure to keep employment records	\$200	\$1000
s.82	Failure to pay employees in case of insolvency or bankruptcy	\$200	\$1000
s.83	Breach of limitation of hours of work in a day and a week	\$200	\$1000
s.84	Failure to provide daily and weekly rest period	\$200	\$1000
s.85	Failure to provide meal and tea breaks	\$200	\$1000
s.86	Failure to provide nursing breaks	\$200	\$1000
s.88	Breach of s.88 relating to night work	\$200	\$1000
s.91	Failure to pay for annual leave	\$200	\$1000
s.92	Failure to pay for work on public holidays	\$200	\$1000
s.93	Failure to pay for sick leave	\$200	\$1000
s.94	Failure to pay for compassionate leave	\$200	\$1000
s.95	Failure to pay for maternity leave	\$200	\$1000
s.98(5)	Failure to provided reasons for termination of employment	\$200	\$1000
s.119	Failure to keep a register of child employees	\$200	\$1000".



## EXPLANATORY MEMORANDUM

This is the first amendment to the Employment and Industrial Relations Act 2015 ("EIRC") after its coming into force. Having operated for more than a year stakeholders and Government have realized that more work is required from the Government to implement obligations under the ILO Conventions Kiribati had ratified. The purpose of the amendments is to effect the enforcement mechanisms in the EIRC which is lacking and to eliminate the worst form of labour to children and to allow children who can be employed the benefits of wages and salaries.

Kiribati ratified the ILO's *Minimum Age Convention 1973* and *Worst Forms of Child Labour Convention 1999* ("Conventions") in 2009. Article 1 of the Worst Forms of Child Labour 1999 imposes an obligation on the member country to take effective measures to secure the prohibition and elimination of the worst form of child labour. The worst forms of child labour includes work which by its nature or the circumstances in which it carried out is likely to harm the health, safety or morals of children (Article 3(d)). Section 117 of the EIRC spells out that hazardous work cannot be carried out by a child under the age of 18 and section 118 outlines the worst forms of child labour. The minimum age of employment in Kiribati is 14 years and children could perform light duties but there is no wages provided.

Section 12 amends section 115 by taking into account the outcome of the tripartite consultation where the minimum age of 14 is not applicable to family settings and business provided that the work given to them complies with the Conventions ratified. The amendments takes the context of our country of engaging children under the age of 14 in domestic work.

Section 154 of the EIRC is amended by inserting subsection 2 to provide for a condition for employing a child and providing wages and salaries. Conditions applied should be in line with the convention and children employed should not be given hazardous work. This will assist children who wish to work part time during school breaks to earn some money and to occupy their free time by doing something worthwhile.

The other purpose is to impose enforcement mechanisms which is more or less related to the powers of labour inspectors and the process of appointing a conciliator and arbitrator. The powers of appointments have all been reverted to the Minister. In some appointments he can do it alone, for others he did it with the advice of Cabinet and some with the recommendations of the Decent Work Advisory Board. This is to make the appointment more efficient and easier and not to add more load to the Beretitenti with a mere appointment of a conciliator. There are other minor amendments the purpose of which is also to implement the obligations stated in ILO.

Currently, labour inspectors can issue demand notices requiring remedial action. The employer is given 28 days to comply with the demand notice and if they fail then they can apply to the Commissioner for extension of time. At section 10(3) it allows for the extension but there is no period given for compliance, the amendment has fixed this and allows compliance for another 28 days. If the employer still fails then the matter is taken to the Office of the Attorney-General for prosecution.

The amendments to the EIRC include powers for labour inspectors to issue fixed penalty fines and to prosecute. Section 4 of the amendment Act amends section 9 by allowing the labour inspector to issue a fixed penalty notice. It is intended that fixed penalty offences are for less serious/strict liability

offences. More serious offences should be prosecuted and the employer should have a chance to make submissions.

Section 11 amends section 40 of the principal Act by giving the role of a Vice Chairman to representatives from the employees and employers on a rotation basis. Section 15 amends section 124(1) by extending the period of reporting to the Registrar from 28 days to 6 months to allow more time to collect documents and information relating to the termination.

Section 16 amends the whole of section 127 by making it more simpler and instead of the Registrar appointing the Conciliator the power is now vested with the Minister in accordance with the advice of Cabinet. The functions are clearer and flow to the previous provision.

Section 17 amends section 128 by taking the appointment of arbitrators from the Registrar to the Minister with the recommendation from the Decent Work Advisory Board. In this way it allows for the Board to have a say in the appointment, is more transparent and avoid conflict of interest.

The draft regulations provide that where an employer who disputes a fixed penalty notice and does not pay the fine within 28 days, the matter will proceed to a hearing in the High Court and if convicted, the fine prescribed in section 152 will apply, rather than the smaller fixed penalties prescribed in Schedule 6.

The new provisions relating to fixed penalty notices aim to penalise and deter employers from breaching the EIRC. Currently there are no deterrents and employers can repeatedly breach the legislation, knowing that prosecution and conviction will most likely take years.

Employers should be given an opportunity to remedy a breach (via a demand notice) but for employers who repeatedly offend or who are not deterred by demand notices, the review/appeal provisions in sections 11 and 12 of the EIRC could defeat the purpose of the fixed penalty notice (an immediate penalty and deterrent) and cause undue delays. Recommended amendments to sections 11 and 12 of the EIRC provide that a demand notice cannot be appealed to the Registrar or High Court where the offence relates to a fixed penalty offence. If the employer disputes the fixed penalty offence and does not pay the fine, the offence will be prosecuted in the High Court and the employer will have the opportunity to make submissions and dispute the offence and fine.

The insertion of section 157 is to allow for proceedings prior to the Act to remain in force as well as those organisation registered before will continue to be registered. Finally the insertion of the Schedule is to give effect to the penalty notice mentioned earlier.



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

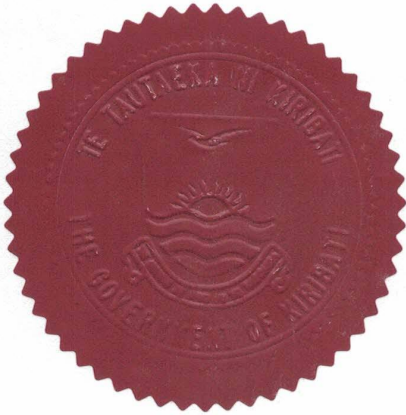
This printed impression of the Penal Code (amendment) and Criminal Procedure Code (amendment) Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 4th December 2017 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 23 day of February 2018.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**





**REPUBLIC OF KIRIBATI**  
(No. of 2017)

**AN ACT**  
entitled

I assent,

Beretitenti

23/2/18

**AN ACT TO AMEND THE PENAL CODE IN RELATION TO SEXUAL OFFENCES  
WHICH ALSO INCORPORATE CONSEQUENTIAL AMENDMENTS TO THE  
CRIMINAL PROCEDURE CODE.**

Commencement:

23/2/2018

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

**1. Short title**

This Act may be cited as the Penal Code (Amendment) and the Criminal Procedure Code (amendment) Act 2017.

**2. Definition of 'principal Act'**

In this Act 'principal Act' means the Penal Code (Cap 67).

**3. Repeal of sections 128 to 130; new sections 127A, 128, 129 and 130**

Sections 128, 129 and 130 of the principal Act are repealed and replaced by the following new sections -

**"Interpretation of Part XVI**

**127A.** In this Part -

"building" includes a tent or temporary structure;

"engaged in a private act" in relation to a person means -

(a) the person is in a state of undress, using the toilet, showering, bathing, engaged in a sexual act of a kind not ordinarily done in a public place, or engaged in any other like activity; and

(b) the circumstances are such that a reasonable person would expect to be afforded privacy;

"filming" by a person of another person means that the first person causes one or more images (whether still or moving) of the other person to be recorded or transmitted for the purpose of enabling the first person or someone else to observe the images (whether during the filming or later);

"genitals" includes surgically constructed or altered genitals;

"sexual intercourse" means any of the following -

(a) the penetration, to any extent, of any part of a person's genitals by any part of the body of another person;

(b) the penetration, to any extent, of the anus of a person by any part of the body of another person;

(c) the penetration, to any extent, of any part of a person's genitals by an object, carried out by another person;

(d) the penetration, to any extent, by any part of a person's genitals of an object, carried out by another person;

(e) the penetration, to any extent, of the anus of a person by an object, carried out by another person;

(f) a person's mouth or tongue touching another person's genitalia or anus; or

(g) the continuation of an activity mentioned in any of paragraphs (a) to (f);

"sexual self-penetration" means the penetration, to any extent, by a person of that person's genitals or anus by any part of the body of that person or by any object;

"unlawful", in relation to an activity, means without the consent, or an honest and reasonable belief in the consent, of a person involved in the activity, other than for a genuine medical or law enforcement purpose.

### **Meaning of consent in offences against this Part**

**128.** (1) For the purposes of this Part, a person consents to an activity only if the person freely and voluntarily agrees to the activity.

(2) A person does not consent in the following circumstances -

(a) merely because the person does not protest or physically resist the activity;

(b) if the person consents because the person-

(i) is subjected to force or the threat of force or an act of terror, whether the force is applied or the threat is made or the terrorisation carried out toward that person or someone else;

(ii) is fearful of any force that may be applied to the person or someone else;

(iii) is subjected to a non-violent threat;

(iv) is unlawfully detained;

(v) is substantially affected by alcohol or any other drug;

(vi) is unconscious or asleep;

(vii) is under a mistaken belief about the identity of the person with whom the activity happens; or

(viii) is under a mistaken belief about the nature or purpose of the activity;

(c) if the person-

(i) is under the age of 15 years old; or

(ii) has a cognitive incapacity to consent (including any mental or physical impairment that affects the person's ability to consent, or refuse to consent, to the activity).

(3) Subsection (2) does not limit the circumstances in which a person may be taken not to consent to the activity.

(4) In this section -

"non-violent threat" includes an express or implied representation by a person that he or she, or someone else, may do any of the following-

(a) commit an offence that -

(i) is punishable by imprisonment; but

(ii) does not involve the application of force;

(b) make an accusation or disclosure that may or may not be true about any living or dead person which could seriously damage the reputation of that person;

(c) make improper use of a power or authority arising from-

(i) an occupation or vocation held by the person; or

(ii) a commercial relationship involving the person.

#### **Unlawful sexual intercourse**

**129.** (1) Any person who engages in unlawful sexual intercourse is guilty of a felony and is liable to imprisonment for life.

(2) Any person who causes another person to engage in-

(a) unlawful sexual intercourse with a third person; or

(b) sexual self-penetration,

is guilty of a felony and is liable to imprisonment for life.

(3) Any person who assaults another person with the intention to engage in unlawful sexual intercourse with the other person is guilty of a felony and is liable to imprisonment for 7 years.

#### **Attempt**

**130.** Any person who attempts to commit unlawful sexual intercourse is guilty of a felony and is liable to imprisonment for 7 years. "

#### **4. Repeal of sections 133 to 135; new sections 133, 133A, 134, 135, 135A, 135B, 135C and 135D**

Sections 133, 134 and 135 of the principal Act are repealed and replaced by the following new sections -

##### **"Indecent assault**

**133.** Any person who unlawfully and indecently assaults another person is guilty of a felony and is liable to imprisonment for 7 years.

##### **Indecent behaviour**

**133A.** Any person who engages in indecent behaviour -

(a) at a place accessible to the public, whether or not on payment of a charge; or



(b) at a place other than a place accessible to the public, if the person intends to insult or offend another person,

is guilty of a misdemeanour and is liable to imprisonment for 1 year.

**Sexual intercourse, indecent assault or indecent behaviour involving a person under the age of 13**

**134.** (1) Any person who engages in sexual intercourse with a person under the age of 13 is guilty of a felony and is liable to imprisonment for life.

(2) Any person who attempts to engage in sexual intercourse with a person under the age of 13 is guilty of a felony and is liable to imprisonment for 12 years.

(3) Any person who indecently assaults a person under the age of 13 is guilty of a felony and is liable to imprisonment for 12 years.

(4) Any person who engages in indecent behaviour on, or in the presence of, a person under the age of 13 is guilty of a felony and is liable to imprisonment for 7 years.

(5) It is not a defence to a prosecution for an offence against this section that-

(a) the other person consented; or

(b) the accused believed that the other person was 13 years old or older.

**Sexual intercourse, indecent assault or indecent behaviour involving a person under the age of 15**

**135.** (1) Any person who engages in sexual intercourse with a person under the age of 15 is guilty of a felony and is liable to imprisonment for life.

(2) Any person who attempts to engage in sexual intercourse with a person under the age of 15 is guilty of a felony and is liable to imprisonment for 10 years.

(3) Any person who indecently assaults a person under the age of 15 is guilty of a felony and is liable to imprisonment for 10 years.

(4) Any person who engages in indecent behaviour on, or in the presence of, a person under the age of 15 is guilty of a felony and is liable to imprisonment for 5 years.

(5) Subject to subsections (6) and (7), it is not a defence to a prosecution for an offence against this section that the other person consented.



(6) It is a defence to a prosecution for an offence against this section that at the time of the alleged offence -

- (a) the accused was not more than 2 years older than the other person; and
- (b) the other person wished to consent to the sexual intercourse, indecent assault or act of indecency.

(7) It is also a defence to a prosecution for an offence against this section that -

- (a) the accused -
  - (i) took reasonable steps to determine the age of the other person; and
  - (ii) honestly believed on reasonable grounds that the other person was 15 years old or older; and
- (b) the other person wished to consent to the sexual intercourse, indecent assault or act of indecency.

(8) Subsections (6) and (7) do not apply if the accused was a person in a position of trust towards the other person as defined by section 155A.

### **Peeping**

**135A.** Any person who intentionally observes another person engaged in a private act without the other person's consent to being so observed is guilty of a felony and is liable to imprisonment for 3 years.

### **Filming person engaged in private act**

**135B.** Any person who intentionally films another person engaged in a private act without the other person's consent to such filming is guilty of a felony and is liable to imprisonment for 3 years.

### **Filming genitalia, anal area or breasts of another person**

**135C.** Any person who intentionally films another person's genitalia or anal area or, if the other person is female, breasts -

- (a) without the other person's consent to such filming; and
- (b) in circumstances in which a reasonable person would expect that the other person's genitalia, anal area or breasts would not be filmed,

is guilty of a felony and is liable to imprisonment for 3 years.

### **Installing device to allow peeping**

**135D.** Any person who -

- (a) installs or operates a device; or
- (b) constructs or adapts a building, vehicle, or vessel,

for the purpose of observing or filming, or assisting the observation or filming of another person, with intent to engage in, or enable someone else to engage in, conduct that would be an offence against any of sections 135A, 135B or 135C, is guilty of a felony and is liable to imprisonment for 3 years."

### **5. Repeal of sections 156 to 159; new sections 155A, 156 and 156A**

Sections 156, 157, 158 and 159 of the principal Act are repealed and replaced by the following new sections -

#### **"Sexual intercourse, indecent assault or indecent behaviour by person in a position of trust**

**155A.** (1) Any person who -

- (a) is in a position of trust in relation to another person under the age of 18; and
- (b) engages in sexual intercourse with the other person,

is guilty of a felony and is liable to imprisonment for life.

(2) Any person who -

- (a) is in a position of trust in relation to another person under the age of 18; and
- (b) attempts to engage in sexual intercourse with the other person,

is guilty of a felony and is liable to imprisonment for 10 years.

(3) Any person who -

- (a) is in a position of trust in relation to another person under the age of 18; and
- (b) indecently assaults the other person,

is guilty of a felony and is liable to imprisonment for 10 years.

(4) Any person who -

(a) is in a position of trust in relation to another person under the age of 18; and

(b) engages in indecent behaviour on, or in the presence of, the other person,

is guilty of a felony and is liable to imprisonment for 5 years.

(5) It is not a defence to a prosecution for an offence against this section that the other person consented.

(6) For the purpose of this section, a person is in a position of trust in relation to another person if the first person holds a position of trust or authority in relation to the other person, or the other person is dependent in any way on the first person.

(7) Without limiting subsection (6), a person is in a position of trust in relation to another person if the first person is any of the following in relation to the other person -

(a) a parent, grandparent, great grandparent, foster parent, step-parent or adoptive parent;

(b) a sibling, half-sibling or step-sibling;

(c) an uncle or aunt;

(d) a cousin;

(e) a current or former custodian, guardian or carer;

(f) a custom doctor or healer, or medical practitioner;

(g) a teacher;

(h) a sporting coach;

(i) a counsellor;

(j) a leader of religion or community;

(k) a legal practitioner;

(l) an employer;

(m) if the other person is in the care, custody or control of the police - a police officer;

(n) if the other person is in a prison - a prison officer in the prison.

(8) A person is also in a position of trust in relation to another person if the person -

(a) has responsibility for, or a significant role in, the other person's upbringing and is part of his or her extended family; or

(b) has care, custody or control of the other person and allows him or her to live with the person's family as a member of the family.

(9) In subsection (7), in relation to a person -

"aunt" includes a half-sister or step-sister of one of the person's parents, step-parents, foster parents or guardians;

"foster parent" includes a former foster parent;

"step-parent" includes a former step-parent;

"uncle" includes a half-brother or step-brother of one of the person's parents, step-parents, foster parents or guardians.

#### **Consensual sexual intercourse with family member**

**156.** (1) Any person who -

(a) is aged 18 years or older; and

(b) engages in sexual intercourse with a family member of the person,

is guilty of a felony and is liable to imprisonment for 7 years.

(2) It is not a defence to a prosecution for an offence against this section that the other person consented.

(3) A person does not commit an offence under this section if the person did not consent to the sexual intercourse.

(4) In this section, the term "family member" of a person means any of the following -

(a) a sister or half-sister;

(b) a brother or half-brother;

(c) a parent or adoptive parent;



- (d) a grandparent or great grandparent;
- (e) a child or adopted child;
- (f) a grandchild or great grandchild;
- (g) an uncle or aunt;
- (h) a niece or nephew.

#### **Removal from guardianship**

**156A.** (1) If a person is convicted of an offence under this Part against a person over whom the offender has guardianship, the court may-

- (a) order the removal of the victim from the guardianship of the offender; and
- (b) appoint as guardian any other person the court considers appropriate.

(2) The court may at any time vary an order made under this section."

#### **6. Amendment of section 160**

Section 160 of the principal Act is amended –

- (a) by repealing the words "woman or girl" wherever they appear and substituting "person";
- (b) by repealing the word "she" and substituting "the person";
- (c) in the section heading, by replacing the word "female" by the word "person".

#### **7. Repeal of section 161**

Section 161 of the principal Act is repealed.

#### **8. Amendment of section 287(3)**

Section 287(3) of the principal Act is amended by repealing the word "rape" wherever it appears and substituting "unlawful sexual intercourse".

#### **9. Consequential amendments to the Criminal Procedure Code**

Sections 164, 165, 166 and 167 of the Criminal Procedure Code are repealed and replaced by the following sections -



**"Person charged with unlawful sexual intercourse may be convicted of another offence**

**164.** If a person is charged with unlawful sexual intercourse and the court is of opinion that the person is not guilty of that offence, but is guilty of an offence under any of sections 133, 133A, 134, 135, 137 or 156 of the Penal Code, the person may be convicted of that other offence although the person was not charged with it.

**Person charged with consensual sexual intercourse with family member may be convicted of another offence**

**165.** If a person is charged with an offence under section 156 of the Penal Code and the court is of opinion that the person is not guilty of that offence but is guilty of an offence under any of sections 134, 135 and 155A of the Penal Code, the person may be convicted of that other offence although the person was not charged with it.

**Person charged with sexual intercourse, indecent assault or indecent behaviour involving a person under the age of 15 may be convicted of another offence**

**166.** If a person is charged with sexual intercourse, indecent assault or indecent behaviour involving a person under the age of 15 and the court is of opinion that the person is not guilty of that offence but is guilty of an offence under any of sections 133, 133A, 134 or 137 of the Penal Code, the person may be convicted of that other offence although the person was not charged with it.

**Person charged with sexual intercourse, indecent assault or indecent behaviour involving a person under the age of 13 may be convicted of another offence**

**167.** If a person is charged with sexual intercourse, indecent assault or indecent behaviour involving a person under the age of 13 and the court is of opinion that the person is not guilty of that offence but is guilty of an offence under any of sections 133, 133A 135 or 137 of the Penal Code, the person may be convicted of that offence although the person was not charged with it. "

**10. Application of this Act and repealed sections of the principal Act**

- (1) This Act applies to conduct that takes place on or after the commencement of this Act.
- (2) Despite the repeal of sections of the principal Act by this Act, the repealed sections continue to apply –
  - (a) to conduct that took place before the commencement of this Act and that could be prosecuted under those sections; and
  - (b) to any proceedings or action taken, or any requirement or procedure imposed in relation to such conduct before or after that commencement.

## PENAL CODE (AMENDMENT) ACT 2016

### EXPLANATORY MEMORANDUM

1. The purpose of this Act is to amend the principal Act to modernise the rape offences, incest offences and related provisions.
2. Changes to the principal Act are required to ensure that the rape offences, incest offences and related provisions comprehensively criminalise conduct using a clear and fair approach. The provisions in this Act have been developed in accordance with best practice legislation in comparable Pacific jurisdictions, and take into account evolving legal jurisprudence.
3. The provisions in this Act will also complement the operation of the *Te Rau N Te Mweenga Act 2014*, which includes a broad definition of 'sexual assault' in section 4, that forms part of the domestic violence offence in section 33.
4. Sections 1 and 2 provide a short title for the Act, and define 'principal Act' to mean the Penal Code (Cap 67).
5. Section 3 repeals sections 128 (Definition of rape), 129 (Punishment of rape) and 130 (Attempt), and replaces them with the following new sections:
  - 127A (Interpretation of Part XVI)
  - 128 (Meaning of consent in offences against this Part)
  - 129 (Unlawful sexual intercourse), and
  - 130 (Attempt).
6. New section 127A (Interpretation of Part XVI) of the principal Act defines a range of terms relevant to the new and amended offences in the principal Act, including 'building', 'engaged in a private act', 'filming', 'genitals', 'sexual self-penetration' and 'unlawful'. Of particular note is the definition of 'sexual intercourse', which provides a modern and broad definition of the term that is gender-neutral, and broadens the traditional concept of penile penetration of the vagina to include penetration of other body parts and objects, as well as penetration by other body parts and objects. This ensures that a wider range of conduct will now be covered by the sexual offences.
7. New section 128 (Meaning of consent in offences against this Part) of the principal Act provides clarity as to the meaning of consent for the purpose of sexual offences in the principal Act. This section introduces the concept that a person consents to conduct only if the person freely and voluntarily agrees. The section also provides a range of situations in which a person is not taken to have consented to conduct, including if the person is subjected to force, substantially affected by alcohol, unconscious, under 15 years old, or affected by a cognitive incapacity to consent (such as a mental or physical impairment). This section also provides that a person does not consent merely because they do not protest or physically resist the activity. This section will assist prosecutors to more easily demonstrate where consent has not taken place.



8. New sections 129 (Unlawful sexual intercourse) and 130 (Attempt) of the principal Act replace the existing offences of rape and attempted rape. The offence of 'unlawful sexual intercourse' is much broader than the existing rape offence. Firstly, as 'sexual intercourse' has been defined more broadly (see discussion under paragraph 6), a wider range of conduct is covered by the offence. Secondly, the offence is now gender-neutral and could, for example, be committed by a woman against a man. Thirdly, the offence now specifies clearly that rape within marriage is an offence, as consistent with modern legal jurisprudence. To reflect the broader range of conduct that is covered by the new offence, the phrase 'unlawful sexual intercourse' has been used in place of the existing term of 'rape'.

9. Section 4 repeals sections 133 (Indecent assaults on females), 134 (Defilement of a girl under 13 years of age) and 135 (Defilement of a girl between 13 and 15 years of age, or of idiot or imbecile), and replaces them with the following new sections:

- 133 (Indecent assault)
- 133A (Indecent behaviour)
- 134 (Sexual intercourse, indecent assault or indecent behaviour involving a person under 13)
- 135 (Sexual intercourse, indecent assault or indecent behaviour involving a person under 15)
- 135A (Peeping)
- 135B (Filming person engaged in private act)
- 135C (Filming genitalia, anal area or breasts of another person), and
- 135D (Installing device to allow peeping).

10. New sections 133 (Indecent assault) and 133A (Indecent behaviour) of the principal Act replace existing section 133 (Indecent assaults on females). The language of these provisions has been modernised, and made gender-neutral, which means that these offences could now, for example, be committed by women against men. The provisions are also complemented by new specific provisions to cover 'peeping' conduct (see paragraph 12).

11. New sections 134 (Sexual intercourse, indecent assault or indecent behaviour involving a person under 13) and 135 (Sexual intercourse, indecent assault or indecent behaviour involving a person under 15) of the principal Act replace the existing defilement offences. These offences have also been made gender-neutral to protect boys as well as girls, and have been amended for consistency with the other new sexual offences.

12. New sections 135A (Peeping), 135B (Filming person engaged in private act), 135C (Filming genitalia, anal area or breasts of another person) and 135D (Installing device to allow peeping) of the principal Act criminalise conduct that observes other people's private acts or private parts without their consent. This conduct was previously criminalised under section 133 (Indecent assaults on females). However, the new offences apply to a broader range of conduct.

13. Section 5 repeals sections 156 (Incest), 157 (Test of relationship) and 158 (Sexual intercourse with certain collaterals), and replaces them with the following new sections:

- 155A (Sexual intercourse, indecent assault or indecent behaviour by person in a position of trust)
- 156 (Consensual sexual intercourse with family member), and
- 156A (Removal from guardianship).

14. New section 155A (Sexual intercourse, indecent assault or indecent behaviour by person in a position of trust) is a new offence designed to protect vulnerable young people from abuse by those in positions of authority. As such, where a person is aged between 15 and 18 years old, they are now deemed unable to consent to sexual conduct with a person who is in a position of trust over them. This is because any consent they do give will be negated by the position of trust the offender is in. As such, a person who engages in sexual conduct with a person over whom they are in a position of trust will be guilty of an offence under this section. Examples of people in positions of trust are listed in the provision and include a young person's parents, uncles, aunts and other relatives with a significant role in their upbringing, or a young person's teacher, religious leader, employer or sporting coach.

15. New section 156 (Consensual sexual intercourse with family member) replaces the existing sections 156 (Incest), 157 (Test of relationship) and 158 (Sexual intercourse with certain collaterals). Incest in Kiribati culture includes a wide range of family relationships. Conduct that may broadly be considered incest in Kiribati culture is covered under several different sections of the criminal law, including the child sex offences. The 'Consensual sexual intercourse with family member' offence will only cover consensual sexual intercourse by a person aged 18 years or older with a family member, and as such the word 'incest' has been removed from the name of the offence to avoid confusion with the customary meaning of the word. The existing separate offences for men and women have been combined into a single offence, and in order to reflect the broad view of incest in Kiribati culture, the 'consensual sexual intercourse with family member' offence now covers sexual intercourse with an adoptive parent, cousin, uncle, aunt, niece or nephew; relationships that are not covered by the existing incest offence.

16. New section 156A (Removal from guardianship) maintains the existing power of the court, which is currently given in subsection 156(4), to remove a young person from the guardianship of a person who has committed a sexual offence against them.

17. Section 6 provides as follows:-

By repealing the words "woman or girl" wherever they appear and substituting "person";

(b) by repealing the "she" and substituting "the person";

(c) in the section heading, by repealing the word "female" by the word "person"

18. Section 7 repeals section 161 (Definition of sexual intercourse), which is now covered in section 127A (Interpretation).



19. Sections 8 and 9 provide for necessary consequential amendments to the principal Act and the Criminal Procedure Code, namely, replacing references to terms that have now been replaced in the sexual offences provisions in the principal Act (such as 'rape') with the new terminology.

20. Section 10 states that this Act will apply to conduct that takes place on or after the commencement day. It preserves any offences committed before that day, and any proceedings arising out of such offences.

.....  
Hon. Natan Teewe (MP)  
Minister for Justice  
19/07/17

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

This printed impression of the Employment and Industrial Relations Code (amendment) Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 5th December 2017 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 23 day of February 2018.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**



REPUBLIC OF KIRIBATI  
(No. 11 of 2017)

I assent,

Beretitenti  
22/12/2017

AN ACT TO AMEND THE PUBLIC FINANCE (CONTROL AND AUDIT)  
ORDINANCE (CAP 79)

Commencement:  
2017

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

**1. Short title**

This Act may be cited as the Public Finance (Control and Audit) (Amendment) Act, 2017.

**2. Meaning of 'Principle Act'**

This Act may be cited as the Public Finance (Control and Audit) (Amendment) Ordinance Cap 79.

**3. Amendment of Section 9**

Section 9 of the principle Act as amended is further amended as follows:-

- (a) In subsection (2) by inserting a new subsection 2(d) after subsection 2(c) as follows :-  
"9(2) (d) which could not have reasonable been expected to have been planned for in the prior appropriation"; and
- (b) In subsection (2) at the end of the last paragraph by repealing the words "\$1,000,000" and substituting the words "one point Five (1.5) per cent of the Appropriation Act currently in force"



## **PUBLIC FINANCE (CONTROL AND AUDIT) AMENDMENT ACT 1995**

### **EXPLANATORY MEMORANDUM**

- The principal object of this Act is to increase the amount of an advance that may be made from the Consolidated Fund from the existing \$1,000,000 to a one point five per cent (1.5%) of the Appropriation Act currently in force. The latter amount is more realistic in terms of financial commitments of the Government.
- The contingency funding was last increase in 1995 (when it was increased to \$1,000,000).
- The change from a nominal figure to a percentage also ensure that the size of the contingency funding grows in line with the size of the total appropriation, making future amendments to the Act less likely to be driven by inflationary pressures.

Hon Dr Teuea Toatu  
Ministry for Finance and Economic Development  
5 July 2016

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

This printed impression of the Public Finance (Control and Audit) (Amendment) Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 4th December 2017 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this 01 day of  
January 2018.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

**REPUBLIC OF KIRIBATI**  
**(No 8 of 2017)**



I assent.

Beretitenti  
4/10/2017

**AN ACT**

**Entitled**

**AN ACT TO AMEND THE PUBLIC SERVICE COMMISSION ACT 1983**

**MADE** by the Maneaba ni Maungatabu and assented to by Te Beretitenti.

**Short title**

1. This Act may be cited as the Public Service Commission (Amendment) Act 2017.

**Amendment of Section 6**

2. Section 6(2) of the Public Service Commission Act is repealed and substituted by the following: -

"6 (2). The Public Service Commission shall require any public officer to attend and give evidence or make representation before it on any matter which it is empowered to consider in the exercise of its functions under the Public Service Commission Act, the Constitution and the National Condition of Service, and to call for the production of official documents relating to such matter."



### **Explanatory Memorandum**

The Act has the object of removing the immunity of the Public Service Commission from legal challenges against its decisions and advices as provided in section 6 of the original 1983 Act and of improving its adherence to natural justice when exercising its disciplinary function

Teburoro Tito

Member for South Tarawa

13/03/17

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

This printed impression of the Public Service Commission (Amendment) Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 18th August 2017 and is found by me to be a true and correctly printed copy of the said Bill.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**

Published by exhibition at the Maneaba ni Maungatabu this <sup>11<sup>th</sup></sup> ..... day of  
October ..... 2017.

**Eni Tekanene**  
**Clerk of the Maneaba ni Maungatabu**