



The Kiribati Gazettes

Acts of 2017

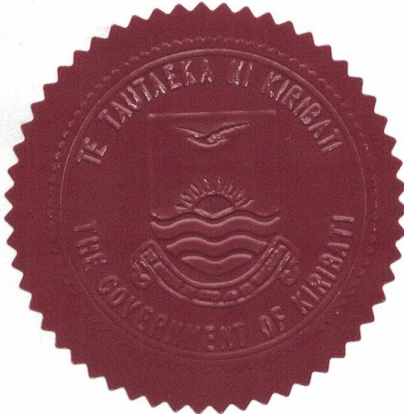
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The Kiribati Gazette is an official publication of the Government of Kiribati. Published on a monthly basis through the Communications Unit of the Office of Te Beretitenti, the Kiribati Gazette contains publications of Instruments, Acts, Notices and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

REPUBLIC OF KIRIBATI

(No. __ of 2017)



I assent,

Beretitenti

11/10/ 2017

AN ACT

entitled

**AN ACT TO PROVIDE FOR AND REGULATE EARLY CHILDHOOD CARE AND
EDUCATION SERVICES IN KIRIBATI; AND FOR CONNECTED PURPOSES.**

Commencement 2017

MADE by the Maneaba ni Maungatabu and assented by the Beretitenti

PART 1—PRELIMINARY

1. Short title

This Act may be cited as the Early Childhood Care and Education Act 2017

2. Purpose

The purposes of this Act are-

- (1) to provide a framework for the regulation of the provision and operation of early childhood care and education to children from 3 years old to under 6 years old;
- (2) to establish a registration and compliance mechanism relating to the provision of early childhood care and education services;
- (3) to set out requirements for the provision and operation of early childhood care and education services;
- (4) to facilitate and support the early childhood care and education programs and services implemented at the national and local government levels.

3. Definitions

In this Act, unless the context otherwise requires—

“approved ECCE service” means an early childhood care and education service that is approved to provide day care and preschool service to a child;

"approved premise" means a place other than a hospital or residence at which an ECCE or preschool service operates or is to operate, an office of the service or each part of the place used or accessed for the provision of the service;

"approved preschool service" means a preschool that is approved to provide early childhood education to a child;

"approved provider" means a provider who holds an approval to provide ECCE or preschool service to a child;

"approved teacher" means a teacher who holds an approval to provide preschool service only or as part of an ECCE service to a child;

"associated equipment and infrastructure" means any tool, vehicle and infrastructure used whether as part of the daily operation of the service or used on occasion only, by an ECCE or preschool provider;

"certificate" means a certificate issued under section 16;

"child" means a person who has attained 3 years old but is under 6 years old;

"child-minder" means a person or a principal provider and any person who is engaged or employed by a principal provider, to provide day care service as part of an ECCE service;

"clearance documents" includes a police clearance, medical clearance, any letter or statement from a church leader, community leader, member of parliament or island councilor, proving a person as a fit and proper person with good standing in the church, community or village, and any other documents prescribed as a clearance document;

"compliance notice" means a compliance notice stating any condition and requirement prescribed or issued as the Director thinks fit, for an ECCE or preschool provider to comply with;

"corporal punishment" means a physical punishment inflicted on a child's body by smacking, canning, beating or any other action that will cause physical pain or discomfort to a child;

"court" means the Magistrates' Court or the High Court as applicable and where the circumstances may fit;

"Director" means the Director of a Ministry responsible for early childhood care and education;

"ECCE" means Early Childhood Care and Education;

"ECCE inspector" means a person of the Ministry appointed as an ECCE inspector under section 54;

"family" in relation to a child, means –

(i) a parent, grandparent, step-parent, brother, sister, uncle, aunt or cousin of the child, whether by birth or adoption;

(ii) the primary care-giver of the child;

(iii) any other person with whom the child has developed a psychological or emotional attachment, which significantly resembles a family relationship;

“Minister” means the Minister of a Ministry responsible for early childhood care and education;

“Ministry” means a Ministry responsible for early childhood care and education;

“parent” means-

(i) the father of the child, whether by birth or adoption;

(ii) the mother of the child, whether by birth or adoption;

(iii) a guardian or person to whom custody of a child has been granted by a court or by an agreement;

(iv) a caregiver who acts or carries out responsibilities of a father or mother;

“prescribed” means prescribed by Regulation made by the Minister under section 63;

“principal provider” means a principal provider of a body corporate ECCE or preschool service;

“register” means a register stated under section 17;

“residence” means the habitable areas of a dwelling;

“review panel” means a review panel set up under section 37;

“schedule” means a schedule under this Act specifying the minimum standard qualification for preschool teachers and the minimum standard requirements for premises and associated equipment and infrastructure, as the Minister may by order, from time to time amends;

“Secretary” means the Secretary of a Ministry responsible for early childhood care and education;

“staff member” in relation to a body corporate ECCE or preschool service, means a person, other than a child-minder and preschool teacher, engaged or employed to work in or as part of an ECCE or preschool service;

“teacher” means a person or a principal provider and any person who is engaged or employed by a principal provider, to provide preschool service in a preschool or as part of an ECCE service.

4. Objects and guiding principles

(1) Any function under this Act must be exercised having regards to the objects and guiding principles of early childhood care and education services.

(2) The objects of this Act are to –

(a) ensure the safety, health and wellbeing of children;

(b) improve the educational and developmental outcomes for children;

- (c) promote the physical, social and emotional needs of children;
 - (d) respect children's identity, dignity and stimulates their curiosity;
 - (e) promote quality and continuous improvement in the provision of early childhood care and education services for the benefit of children; and
 - (f) improve knowledge and access to information about early childhood care and education services.
- (3) The guiding principles of this Act are –
- (a) that the rights and best interests of a child are paramount;
 - (b) that children are successful, competent and capable learners;
 - (c) that any early childhood care and education services are delivered free from discrimination on the basis of religion, race, gender, color or disability of a child;
 - (d) that the role of parents and families in respect of education and care, are respected and supported;
 - (e) that quality service and best practice is expected in the provision of early childhood education and care services.

PART II- PROCEDURES

Division 1 – APPLICATION

5. ECCE Service

Any ECCE service provider must apply to the Director for approval to provide and operate, ECCE services to a child.

6. The application must be in the prescribed form and include the prescribed fee.

7. Individual and body corporate ECCE service provider

(1) For an individual ECCE service provider, the application form must include-

- (a) clearance documents,
- (b) proof of the qualification of a teacher providing the preschool part of the service in accordance with the minimum standard qualification under the schedule of this Act, and
- (c) any other information, prescribed or issued as the Director thinks fit.

(2) For a body corporate ECCE service provider, a principal ECCE provider must submit the application form and –

- (a) discloses the names of any child-minder, teacher and staff involved,
- (b) proof of the qualification of each teacher providing the preschool part of the service in accordance with the minimum standard qualification under the schedule of this Act,

- (c) includes clearance documents for each child-minder, teacher and staff involved, and
- (d) includes any other information, prescribed or issued as the Director thinks fit.

8. Preschool Service

Any preschool service provider must apply to the Director for approval to provide and operate, preschool services to a child.

9. The application must be in the prescribed form and include the prescribed fee.

10. Individual and body corporate preschool service provider

(1) For an individual preschool service provider, the application form must include-

- (a) clearance documents,
- (b) proof of the qualification of the teacher or preschool service provider, in accordance with the minimum standard qualification under the schedule of this Act,
- (c) any other information, prescribed or issued as the Director thinks fit.

(2) For a body corporate preschool service provider, a head teacher who is a principal preschool provider, must submit the application form and –

- (a) discloses the names of any teacher and staff involved,
- (b) includes clearance documents for each teacher and staff involved,
- (c) proof of the qualification of each teacher in accordance with the minimum standard qualification under the schedule of this Act,
- (d) includes any other information, prescribed or issued as the Director thinks fit.

11. Premises.

(1) Any application for approval under sections 5 and 8, must include an application for approval of a premise or premises from which the service operates or is to operate.

(2) An application for approval of premises must be in a prescribed form and discloses -

- (a) the location or address of the premise,
- (b) the description of the premise,
- (c) the status of ownership of the premise,
- (d) proof of the standard of the premise in accordance with the minimum standard requirement under the schedule of this Act, and
- (e) any other information prescribed or issued as the Director thinks fit.

12. Associated Equipment and Infrastructure.

- (1) Any associated equipment and infrastructure that is or will be part of the daily operation of an ECCE or preschool service, must be disclosed in the application made under section 11, and
- (2) any other associated equipment and infrastructure must be disclosed to the Director within a reasonable time prior to an occasion when the approved provider requires the use of such equipment or infrastructure for that occasion, as part of an ECCE or preschool service.
- (3) The disclosure under subsections (1) and (2) of this section must be provided with proof of the standard of the equipment and infrastructure in accordance with the minimum standard requirements under the schedule of this Act.

Division 2 – APPROVAL

13. Approved Application

The Director may grant approval to any application under Division 1, if satisfied that-

- (1) in the case of providers, an applicant –
 - (a) complies with the prescribed formalities,
 - (b) who is an individual provider, complies with all the minimum qualifications under the schedule and any other requirements prescribed or issued as the Director thinks fit, or
 - (c) who is a principal provider and any child-minder, teacher and staff involved, complies with the minimum qualifications under the schedule and any other requirements prescribed or issued as the Director thinks fit,
- (2) in the case of premises, an applicant–
 - (a) complies with the prescribed formalities,
 - (b) complies with the minimum standard requirements,
 - (c) provides the information and requirement prescribed or issued as the Director thinks fit.
- (3) Subject to section 14, the decision for approval must be issued within 30 working days or any other reasonable period required for the process and completion of the decision, to an applicant concerned.

14. Conditional approval

- (1) The Director may grant an approval subject to conditions which an applicant must comply with, prior to the operation of the service.
- (2) Where an approval is granted under subsection (1), the Director must issue a compliance notice if satisfied that-
 - (a) the proposed service needs to meet the minimum standard qualification under the schedule or any other prescribed requirements,

(b) the proposed premise needs to meet the minimum standard requirements under the schedule or any other standards prescribed or issued as the Director thinks fit,

(c) the proposed associated equipment and infrastructure that is or will be part of the daily operation of the service, needs to meet the minimum standard requirements under the schedule or any other standard prescribed or issued as the Director thinks fit.

(3) An applicant is permitted a compliance period of 30 working days for services in South Tarawa or 60 working days for any other applicants, or any other permitted period granted by the Director otherwise the applicant will be refused under section 22.

(4) The Director may grant an approval if satisfied that the applicant has complied with the compliance notice issued under subsection (2).

15. Offences

(1) Any service provider who operates an ECCE or preschool service without an approval, commits an offence and shall be liable to a fine not exceeding \$5000 or to imprisonment for a period not exceeding 12 months, or both.

(2) Any service provider, whether approved or not, who provides and operates an ECCE or preschool service at a premise that is not an approved premise, commits an offence and shall be liable to a fine not exceeding \$2000 or to imprisonment for a period not exceeding 6 months, or both.

16. Certificate of approval

(1) The approvals given under sections 13 or 14 for providers and premises, must be issued in a single certificate, in the prescribed form, and

(2) the approved provider must display such certificate for viewing at the approved premises.

(3) A duplicate of the certificate may be issued upon payment of a prescribed fee where the Director is satisfied that the original was lost or damaged, except where the issued certificate is amended by regulation during the validity period of the approval in which case, a new certificate must be issued to the approved provider without any fee.

17. A register of certificate

A register of certificates for approved providers and approved premises must be kept at the Ministry.

18. Transfer of approval

Any approval whether for a service provider or premise, is not transferrable to any other provider or premise.

19. Expiry of Approval.

An approval expires three years after the date of issue, unless extension is granted or permitted in writing, on reasonable grounds, by the Director.

20. Confidentiality

(1) Any documents and information acquired whether by Regulation or requirement of the Director, by the Ministry in the process of application and any other sections in this Act, are confidential except where disclosure is—

- (a) necessary for the performance of functions under this Act, or
- (b) by consent of the approved provider or person identified in the information, or
- (c) by order of the court.

(2) Disclosure of a list of the names of approved providers and approved premises is not a breach of confidentiality under this Act.

21. Subject to section 20 any person who discloses documents and information acquired by the Ministry, commits an offence and shall be liable to a fine not exceeding \$1000 or imprisonment for a period not exceeding 6 months, or both.

Division 3 - REFUSAL

22. Refused Application

The Director may refuse an application if satisfied, on reasonable grounds that—

(1) an applicant, as an individual service provider and everyone involved in the case of body corporate service providers, does not comply with —

- (a) sections 5 to 7 in the case of ECCE service,
- (b) sections 8 to 10 in the case of preschool service,
- (c) sections 11 and 12, or
- (d) a compliance notice issued under section 14.

(2) the prescribed or required documents and information, are not produced, complete or true,

(3) the application and prescribed or required document and information, are not submitted within 14 working days for services in South Tarawa or 28 working days for any other applicants or any other permitted period granted by the Director, or

(4) any other reasons that the Director may think fit to refuse the application.

23. Director's Refusal

(1) The Director must—

- (a) issue a refusal in writing to an applicant, and
- (b) states all the grounds for the refusal.

(2) The decision for refusal must be issued within 30 working days or any other reasonable period required for the process and completion of the decision by the Director, to an applicant concerned.

Division 4 – SUSPENSION, VARIATION AND REVOCATION

24. Suspension

(1) The Director may suspend the provision and operation of a service if satisfied, on reasonable grounds that the approved provider-

(a) has or is likely to deviate from the qualification and requirements on which the approval granted under section 13 or 14 was issued,

(b) has or is likely to deviate from its duties under this Act, or

(c) any other reasons that the Director may think fit to suspend the service.

(2) A direction for suspension must be issued by the Director in writing, stating-

(a) the grounds for suspension,

(b) a period of the suspension,

(c) where it fits, a compliance notice.

25. Where a direction was issued with a compliance notice under section 24(2)(c), the suspended provider is permitted a compliance period of 30 working days for services in South Tarawa or 60 working days for any other applicants, or any other permitted period granted by the Director otherwise the provider will be revoked under section 33.

26.(1) The suspension period as stated in the Director's direction under section 24 is extended under section 25 and expires when the Director is satisfied that the approved provider has complied with the compliance notice issued under section 24(2)(c).

(2) Upon expiry of the suspension period, an approved provider may continue the provision and operation of its services and the validity period continues immediately after the expiry date of the suspension.

27. Variation

An approval may be varied by direction of the Director or upon application of an approved provider.

28. Variation by the Director

(1) The Director may vary the approved service, if satisfied upon reasonable grounds, that-

(a) the approved provider is providing or operating a service that is different from the approved service,

(b) the premise where the approved provider operates, is different from the approved premise, or

(c) any associated equipment and infrastructure under section 12(1) or 12(2) is different from the disclosed and approved equipment and infrastructure.

(2) The variation under subsection (1) must be issued in a written direction by the Director.

(3) The approved provider who was issued with a direction for variation is permitted a variation period of 30 working days for services in South Tarawa or 60 working days for any other applicants or any other permitted period granted by the Director.

29. Non-compliance with the direction for variation

(1) The Director must issue a compliance notice where the approved provider fails to comply with a direction for variation under section 28(2) or a variation period under section 28(3).

(2) The compliance notice under this section, will-

(a) suspend the approved service,

(b) issue new conditions where the Director thinks fit to facilitate compliance of the direction, and

(c) issue a period of suspension.

(3) In this section, the approved provider is permitted a compliance period of 14 working days for services in South Tarawa or 28 working days for any other services or any other permitted period granted by the Director.

(4) The approved provider may continue the provision and operation of its approved service during the periods of variation and compliance of a direction for variation, or any other permitted periods granted by the Director, unless the approved provider is suspended for non-compliance of the direction.

30. Variation upon application of an approved provider.

(1) The Director may vary the approved service upon application of an approved provider.

(2) An application to vary-

(a) must be made in the prescribed form, and

(b) include the prescribed fee.

(3) The Director may-

(a) refuse the application for variation if satisfied that the proposed variation is in effect a new application, or

(b) issue a written direction for additional variation where the Director thinks fit.

31. The approved provider who was issued with a direction for additional variation is permitted a variation period of 30 working days for services in South Tarawa or 60 working days for any other services or any other permitted period granted by the Director.

32. Non-compliance with a direction for additional variation

(1) The Director must issue a compliance notice where the approved provider fails to comply with a direction for additional variation under section 30(3)(b).

(2) The compliance notice under this section, will-

(a) suspend the approved service,

(b) issue new conditions where the Director thinks fit to facilitate compliance of the direction, and

(c) issue a period of suspension.

(3) In this section, the approved provider is permitted a compliance period of 14 working days for services in South Tarawa or 28 working days for any other services or any other permitted period granted by the Director.

(4) The approved provider may continue the operation and provision of its approved service during the periods of variation and compliance of a direction for additional variation periods, or any other periods granted by the Director, unless the approved provider is suspended for non-compliance of the direction.

33. Revocation

(1) The Director may revoke the approved service and premise if satisfied that the approved provider-

(a) breaches, fails or refuses to observe without reasonable cause, his or her duties under this Act,

(b) fails to comply without reasonable cause, with any compliance notice issued by the Director under this Act,

(c) commits an offence under sections 48 and 58 to 61,

(d) commits any offence under any other Acts, that threatens the health, safety and welfare of a child.

(2) The Director must issue a notice for revocation to the approved provider.

(3) The revoked provider must cease its provision and operation of services to a child immediately after the date of the issue of the notice for revocation under this section.

34. Surrender of certificate

(1) A certificate must be surrendered to the Director, where the approved provider, in the duration of the approval -

- (a) ceases to provide or operate the approved service, or
 - (b) is suspended under section 24 or
 - (c) varied under sections 28 or 30, or
 - (d) revoked under section 33.
- (2) The Director must –
- (a) in the case of suspension, return the original certificate and approval immediately to the provider upon the expiry of the suspension period,
 - (b) in the case of variation, return the original certificate and approval immediately to the provider after the variation is complete.

Division 5 – REVIEWS AND APPEALS

35. Application for review

Any aggrieved person or provider may apply for review of the Director's decision in respect of divisions 1 to 4 and 6 of part II of this Act.

36. An application for review must be-

- (1) in the prescribed form and include any information which the applicant believes relevant to support the application,
- (2) made within the period of 14 working days for applicants in South Tarawa or 28 days for any other applicants, after the date of the issue of the Director's decision concerned,
- (3) addressed to the Minister with a written notice copied to the Director.

37. A review panel

- (1) A review panel is set up under this Act to consider any application for review received under section 35.
- (2) The review panel must consist of –
 - (a) the Secretary of the Ministry as chair,
 - (b) a Secretary of a Ministry responsible for children and social welfare as member,
 - (c) a Secretary of a Ministry responsible for health and medical services as member,
 - (d) the Attorney-General as member, and
 - (e) any other Secretary of any other Ministry that is relevant to the issue of early childhood education and care.
- (3) Apart from the chair, any Secretary or the Attorney-General, may delegate another officer within their Ministry or Office as the case may be, to sit in the review panel.

38. Procedure of the Review panel

(1) The panel must-

- (a) receive applications for review from the Minister,
- (b) issue an instruction for the Director to supply a written report and produce documents and any information concerning the application,
- (c) require documents or oral submission from relevant persons where the panel thinks fit for the facilitation of the review, and
- (d) advise the Minister on the outcome of the review.

(2) Subject to the objects and principles of this Act, the panel may determine its own procedure for the performance of its duties under subsection (1).

39. Power of the Minister to confirm or vary the Director's decision.

(1) Upon receiving an application for review, the Minister must convene the review panel and handover the application to the review panel.

(2) The Minister may vary or confirm the decision upon the advice of the review panel.

(3) Where the decision is varied by the Minister,

- (a) a new approval must be issued by certificate to the applicant, and
 - (b) the Minister must issue a written direction to the Director to issue the new certificate.
- (4) Any person aggrieved by the decision of the Minister under this Act, may make an appeal to the court, within 30 working days or any other period granted with leave of the court.

40. Review period

The review panel must carry out the review within –

- (1) 14 working days of the date of receipt of the application for review by the Minister, or
- (2) any other period that the review panel thinks fit for the review to process or complete.

Division 6 –DEEMED PROVIDER AND PREMISE

41. Approval for deemed provider and premise

(1) Any person who, immediately before the commencement of this Act, was providing an ECCE or preschool service to a child is deemed to be an approved provider under this Act.

(2) Any premise, other than a hospital or residence, where a person deemed to be an approved provider under subsection (1) operates, is deemed to be an approved premise under this Act.

42. The period of approval of a deemed provider and premise

Following the commencement of this Act-

(1) a deemed provider must-

(a) be allowed to continue providing and operating an ECCE or preschool service to a child and uses the premise and associated equipment and infrastructure where the service operates, for 12 months,

(b) make a new application for approval to provide and operate an ECCE or preschool service to a child, within 2 months.

(2) Non-compliance with the application period under subsection (1) renders the deemed service expired on the date immediately after the expiry of 12 months.

(3) Where a deemed operator has applied for registration in accordance with this Act on or before the last date for application, and the application is granted under this Act, the deemed registration expires on the date on which the application is so granted.

(4) Where a deemed operator has applied for registration in accordance with this Act on or before the last date for application, but the application is refused, the deemed registration expires on the date immediately after the expiry of 12 months.

43. Suspension, variation or revocation of a deemed provider.

A deemed provider may be suspended, varied or revoked by the Director, within the period that they provide and operate an ECCE or preschool service as a deemed service provider, in accordance with this Act.

PART III – DUTIES

Division 1 – Duties of parents

44. Any parent must-

(1) immediately notify an ECCE provider or preschool teacher if aware that a child has contagious disease or food allergy,

(2) complies with an advice of an ECCE provider or preschool teacher if the provider advises that the parent's child is ill and need to remain at home until the child recovers,

(3) report to the ECCE provider or preschool teacher if the child is sick and cannot attend the service and produce a medical certificate to prove the need for the child's absence.

45. Any parent who does not comply with section 44(1) and (2) commits an offence and shall be liable to a fine not exceeding \$500.

Division 2 – Duties of approved provider.

46. Any approved provider must-

- (1) comply with all the qualification, requirements or conditions prescribed or issued as the Director thinks fit;
- (2) provide an equal and fair ECCE or preschool service to every child that enrolled or attends the service,
- (3) ensure that the approved premises and associated equipment and infrastructure meet the standard prescribed or issued as the Director thinks fit;
- (4) keep the prescribed records for the prescribed period of provision and operation of the service in the prescribed form and disclosed them for inspection where required;
- (5) issue prescribed reports or information returns in the prescribed form when required;
- (6) apply for variation if there is substantial change to the approved service, premise or associated equipment and infrastructure,
- (7) comply with the objects and principles of this Act,
- (8) comply with any other prescribed duties.

47. A child living with disabilities

Any approved provider may be permitted to refuse service to a child with disability in the case where the approved provider, after taking any necessary steps to find means of accommodating the special needs of the child in the service, the approved provider, premise or associated equipment and infrastructure cannot reasonably cater for the special needs of the child.

48. Disciplinary and punishment by the approved provider

- (1) Any approved provider must not-
 - (a) disrespect, degrade, exploit, intimidate, or emotionally or physically harm or neglect a child who enrolls or attends the approved service,
 - (b) harass or use corporal punishment to discipline or punish a child who enrolls or attends the approved service.
- (2) Non-compliance with subsection (1) is a ground for revocation of the approved service.
- (3) Any ECCE, preschool provider or staff engaged or employed in the service, who harasses or uses corporal punishment to a child commits an offence and shall be liable to a fine not exceeding \$1000.

49. School committees

Anybody corporate ECCE or preschool provider must set up a school committee in accordance with the prescribed regulations for the membership, functions, rules of procedures and any other matter concerning the committee.

Division 3 – Other general duties and powers

50. The Director

The Director must develop a national early childhood education standard that may include-

- (1) a program for ECCE and preschool services in respect of the provision and operation of early childhood education activities,
- (2) an annual calendar setting out the days on which ECCE and preschool services must provide and operate early childhood education services,
- (3) an assessment and reporting strategy on the performance of early childhood education activities,
- (4) a monitoring and evaluation program,
- (5) any other standard that may be prescribed or required to improve the provision and operation of early childhood education at the national and local government levels.

51. Any duties of the Director under divisions 1 to 4 and 6 of part II of this Act may be delegated to an officer of the Ministry when the Director-

- (1) is on official leave or absence,
- (2) has a conflict of interest in the application or any other matters concerning the provider or service,
- (3) any other circumstances that renders the Director's involvement in the matter unnecessary or improper.

52. The Secretary

The Secretary must-

- (1) provide coordination role to the Director,
- (2) confirm the delegation of the Director's duties to any officer of the Ministry,
- (3) convey any advice of the review panel issued under section 38 to the Minister,
- (4) approve a national early childhood education standard developed under section 50,
- (5) any other duties required within the objects and principles of this Act.

53. The Minister

The Minister has the powers to-

- (1) appoint an ECCE inspector under section 54,
- (2) subject to the advice of the review panel; confirm or vary the Director's decision issued under divisions 1 to 4 and 6 of part II of this Act,
- (3) by order, amends the schedule specifying the minimum standard qualification for preschool teachers and the minimum standard requirements for premises, and
- (4) make regulations on any matters required under this Act.

54. ECCE Inspectors

The Minister may-

- (1) subject to section 99 of the Constitution and section 2 of the Public Service Commission (Functions) Act 1983, appoint such persons as ECCE inspectors as he or she considers necessary for the proper carrying out of the provisions of this Act, or
- (2) designate any other suitably qualified officers in the Ministry as ECCE inspectors.

55. An ECCE inspector must-

- (1) interviews or dialogues with approved providers on matters concerning the operation and provision of ECCE or preschool services to a child,
- (2) enters and inspects approved premises to review the standard and conditions of the approved premises,
- (3) monitors the progress and development of approved providers and premises including deemed approved providers and premises,
- (4) reviews and monitors any approved provider's compliance with any compliance notice or direction issued under this Act,
- (5) issues written reports acquired during the inspector's duties under subsections (1) to (4),
- (6) carry out any other duties prescribed or issued by the Director or Secretary for the performance of the inspector's duties under this Act.

56. Police assistance

The Director or ECCE inspector exercising authority to inspect the approved provider or premise or any other authority under this Act may, where necessary, call for assistance of a police officer.

57. Advisory council on early childhood education

- (1) An advisory council on early childhood education is established under this Act to advise the Minister on policy issues and matters concerning ECCE or preschool services under this Act or any other matters referred to it by the Minister.

(2) Regulations may subject to the objects and principles of this Act, provide for-

- (a) the terms of reference of the Advisory council,
- (b) the composition of the Advisory council,
- (c) the appointment of members,
- (d) the terms of office of members,
- (e) the rules of procedures,
- (f) the establishment of sub-committees,
- (g) the payment of sitting allowances to members of the Advisory council or any sub-committee established.

PART IV – MISCELLANEOUS

General Offences

58. Offences on approved premises

- (1) Any person who behaves in an offensive or disorderly manner on any approved premises commits an offence and shall be liable to a fine at the minimum of \$500 but not exceeding \$1000.
- (2) Any person who is directed to leave the premises by an approved provider or a police officer, and fails to leave the premises as directed, commits an offence and shall be liable to a fine at the minimum of \$500 but not exceeding \$1000.
- (3) Any person who is not an approved provider, staff or parent and family of a child enrolled in an ECCE or preschool service, who trespasses on an approved premise of the service concerned, commits an offence and shall be liable to fine at the minimum of \$100 but not exceeding \$500.
- (4) Any person who sells a product containing alcohol, tobacco, kouben, kava or any other prescribed item or substance on an approved premise, commits an offence and shall be liable to a fine at the minimum of \$500 but not exceeding \$1000.

59. Misleading information

Any person who gives any required information or documents knowing such to be misleading, false or deceptive, commits an offence and shall be liable to a fine not exceeding \$2000 or imprisonment for a period not exceeding 12 months, or both.

60. Failure to give information

Any person who fails or refuses to give information prescribed or required under this Act, commits an offence and shall be liable to a fine at the minimum of \$500 but not exceeding \$1000.

61. Obstruction of officials

Any person who obstruct the Director, ECCE inspector or any other officer in the execution of his or her duties under this Act, commits an offence and shall be liable to a fine not exceeding \$1000 or imprisonment for a period not exceeding 6 months, or both.

Offences and Proceedings

62. Liability of an individual and the body corporate provider

Where a body corporate or principal provider is guilty of an offence under this Act, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any ECCE provider, child-minder, teacher or staff, that individual ECCE provider, child-minder, teacher, staff as well as the principal provider, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Regulations

63. The Minister, acting in accordance with the advice of the Cabinet may-

(1) make regulations prescribing matters that require prescribing under this Act or that are necessary to give effect to the objects and principles of this Act,

(2) without limiting subsection (1), make regulations to prescribe –

(a) any additional or improved qualifications standards and criteria for an ECCE provider and a teacher in respect of the provision and operation of preschool service,

(b) any additional or improved standards requirements and criteria for an approved premise and associated equipment and infrastructure for ECCE and preschool services,

(c) any additional duties of approved service providers,

(d) the rules for the operation of a scheme to provide support for children in financial need in accordance with the prescribed compulsory preschool education,

(e) the eligibility criteria or requirements for admission to an ECCE or preschool service,

(f) the rules for the conduct of any examination at an ECCE or preschool service; and

(g) the criteria for the award of any certificate to a child upon completion of a specified preschool educational standard, provided that completion of this standard is not a prerequisite for enrolment or attendance at a preschool service.

(3) make transitional regulations for matters that are-

(a) necessary to achieve the transition from the situation prior to, and the situation after, the commencement of this Act, and

(b) required or necessary to give effect to the transition towards complying with the objects and principles of this Act.

(4) A transitional regulation under subsection (3) may-

(a) have retrospective operation to a date not earlier than the commencement of this Act and expires 12 months after the commencement date of that regulation, and

(b) to the extent, a transitional regulation has retrospective operation, it must not operate to the disadvantage of a person (other than the Republic) by detrimentally affecting the person's rights or imposing liabilities on the person.

SCHEDULE

(Part II)

1. Minimum Standard Qualification for preschool teachers

- (a) a certificate from any accredited institution or recognized church or community preschool teacher training, or an experience in teaching at a preschool level, for at least 3 years,
- (b) a certificate showing a qualification or knowledge of basic first aid skills.

2. Minimum Standard Requirements for premise and associated equipment and infrastructure

- (a) The premise must be complete with toilet and washing facilities to provide clean and hygienic sanitation for children,
- (b) The premise vicinity and associated equipment and infrastructure must be smoke and alcohol free,
- (c) The structural design and size for any classroom, restroom or other program space must be big enough for children to learn and move about in,
- (d) Where a premise consists of an open building or mwaneaba and located close to the sea or public road; the premise must be fenced and gated to prevent children from moving out of sight and sound from the service provider or staff,
- (e) Where a premise consists of a closed building, the structural design must not interfere with teacher's ability to observe children. Where there is a playground, service providers and staff members must be able to supervise the children and prevent them from moving out of sight and sound from the service provider or staff,
- (f) Associated equipment and infrastructure must –
 - (i) for the premises, have basic fire extinguisher equipment and first aid kits ready,
 - (ii) for teaching aids, be made of wood or rubber,
 - (iii) for playing equipment or tools such as sandpits, swings or slides, be at an appropriate height, level and size for children,
 - (iv) for transport, be accessible or reachable and safe for the transportation of children, to and from the service or to any other destination that they require transportation to,
 - (v) for services providing meals to children, have a license to cater and provide meals from a ministry responsible for health. The service's kitchen must be clean all the time and any cook or staff in charge of preparation of the meals must have a medical clearance to be fit and healthy to perform his or her duties.

EARLY CHILDHOOD CARE AND EDUCATION ACT 2017

EXPLANATORY MEMORANDUM

This Act sets up a framework for the regulation of Early Childhood Care and Education (ECCE) and preschool services to children of 3 to under 6 years old; establishes a registration and compliance mechanism for the provision and the requirements for the operation of the services and facilitates and supports the ECCE and preschool programs and services at the national and local government levels.

There are 4 parts of this Act; Part I (preliminary), Part II (procedures), Part III (Duties) and Part IV (Miscellaneous).

Part I sets out the procedures for application, approval, refusal and suspension, variation and revocation of ECCE and preschool services. The application procedure sets out how service providers could make and submit their application, The approval procedure sets out how the application would be considered and approved by providing the minimum standard qualification for preschool teachers and the minimum standard requirements for premises and associated equipment and infrastructure and any other requirements that may be prescribed or imposed where it fits; in order for a service provider to be granted approval to provide and operate the service to children. The refusal procedure follows the approval procedure by reinforcing the qualifications, requirements and conditions that an applicant need to satisfy and comply before it could be given an approval to commence its operation. As a fourth, the suspension, variation or revocation procedure set out the situation when an approved ECCE or preschool service provider could be temporarily or permanently, depending on their circumstances; ceased of their approval during the period of operation of the service, in respect of the premises or associated equipment and infrastructure that they have been granted approval for. A Director is highlighted as the key person to give decision in respect of the application, approval, refusal, suspension, variation and revocation but there is provision for reviews of his/her decision later in the Act. This part recognizes that a service provider may be an individual or a body corporate and the procedures reflects the different status and capacity of these different service providers. This part also gives recognition and approval to existing ECCE and preschool providers and their premise, equipment and infrastructure as deemed providers and premises. As current service providers; they are allowed to operate within 12 months after the commencement of this Act but are required to apply for a new approval to operate within 2 months after the commencement.

Part III sets out the duties of parents, approved service providers and any other general duties of the Director as well as the Secretary, the Minister and other appointed officers (ECCE inspector) and established bodies (Review Panel, Advisory Council and School Committees). This part also recognizes the need of police assistance in carrying out inspection of service providers and their premises, equipment and infrastructure where service providers resist or prevent the Director or inspectors from inspecting them or their services and vicinities. This part provides specific penalties for breach or failure to perform duties. For parents, they commit an offence if they do not notify the service provider of their child's contagious disease or food allergy and if they do not comply with the service provider's advice to keep their sick child at home. For service providers, they must not discriminate children and they must enroll children with disabilities

where their capacity as well as their premises, equipment and infrastructure is able to accommodate the special needs of children with disabilities. Although the Director is the frontline officer, his/her duties may be delegated to another officer in the Ministry when he/she is absent or his/her involvement is a conflict of interest or it is improper. The Secretary has a coordination role in the implementation of the Act and also chairs the Review Panel, which is set up to hear and consider grievances against the Director's decision on the application, approval, refusal, suspension, variation or suspension processes (Part II). The Minister has the overarching role of issuing the decision for review in accordance with the recommendation of the review panel, the appointment of ECCE inspectors and the making of regulations required under this Act. The highest review avenue in the circumstance where there is grievances against the Minister's decision; is provided as an appeal to the Magistrate or High Court as both courts has a jurisdiction in this Act.

Part IV sets out the general offences of misleading information, failure to give information and obstruction of officials. These offences are directed at the service providers and premises, equipment and infrastructure and this Act addresses these offences by imposing penalties to the service provider concerned as an individual as well as a body corporate. This part outlines the general context for the regulation that the Minister has a power to make; in accordance with Cabinet's advice. These regulations are for the provision and regulation of ECCE and preschool services and the transitional periods required for deemed providers and premises and any other situation that exist immediately before the commencement of this Act.

HON. ALEXANDER TEABO
MINISTER OF EDUCATION

LEGAL REPORT

I hereby certify that none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act

TETIRO MAATE SEMILOTA
ATTORNEY-GENERAL

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

This printed impression of the Early Childhood Care and Education Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 14th 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 16 day of October 2017.

Eni Tekanene
Clerk of the Maneaba ni Maungatabu



REPUBLIC OF KIRIBATI

(No.5 of 2017)

I assent,

Beretitenti

11/10/2017

AN ACT
entitled

AN ACT TO AMEND THE FISHERIES ACT 2010 AS AMENDED

Commencement:
2017

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

Short title

1. This Act may be cited as the Fisheries (Amendment) Act 2017.

Amendment of section 3

Section 3 of the Fisheries Act 2010 as amended (the "Principal Act") is amended by inserting the following definitions:

"Director of Fisheries" means or refers to the Director of Coastal Fisheries, Director of Licensing and Compliance, and Director of Seafood Verification.

"Illegal fishing" means activities:

- (a) conducted by national or foreign vessels in waters under the jurisdiction of Kiribati, without the permission of Kiribati, or in contravention of its laws and regulations;
- (b) conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or
- (c) conducted by vessels in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

"Unreported fishing" means fishing activities:

- (a) which have not been reported, or have been misreported, to the relevant national authority, in contravention of Kiribati laws and regulations; or
- (b) undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been

misreported, in contravention of the reporting procedures of that organization.

“Unregulated fishing” means fishing activities:

- (a) conducted in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or
- (b) conducted in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

“International conservation and management measures” means:

measures to conserve or manage fish that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea, the FAO Compliance Agreement and the United Nations Fish Stocks Agreement either by global, regional or sub-regional organisations, or by treaties or arrangements to which Kiribati is a Party, or is a cooperating noncontracting party, or is otherwise bound by their provisions.

“Serious fishing violation” means:

- (a) fishing without a valid licence, authorisation or permit issued by Kiribati,
- (b) fishing without a valid licence, authorization or permit issued by the flag State;
- (c) fishing conducted by vessels without nationality or by those flying the flag of a State not part to the relevant organisation, or operated under the flag of two States;
- (d) failing to maintain accurate records of catch and catch-related data as required by Kiribati,
- (e) failing to provide vessel monitoring system reporting;
- (f) serious misreporting of catch contrary to the catch reporting requirements of such organization or arrangement;
- (g) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of a quota established by Kiribati;
- (h) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;
- (i) using prohibited fishing gear;
- (j) falsifying or concealing the markings, identity or registration of a fishing vessel;
- (k) concealing, tampering with or disposing of evidence relating to an investigation;
- (l) multiple violations which together constitute a serious disregard of conservation and management measures; or
- (m) violations against an authorised officer or observer
- (n) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement;

Amendment of section 4

3. Section 4 of the Principal Act is amended by repealing it and substituting the following:

"4 Management of fisheries

- (1) The fundamental objective of this Act is to promote long-term conservation, management and sustainable use of the marine living resources of Kiribati for the people of Kiribati.
- (2) The Minister is responsible for the management, conservation and development of all fisheries within the jurisdiction of Kiribati to ensure that the fisheries resources of Kiribati are managed for the benefit of I-Kiribati.
- (3) The Minister, may declare, from time to time, either a total allowable catch or total allowable effort, or both, for fisheries in Kiribati waters, and in doing so, may declare total allowable catches or efforts with respect to particular fisheries or particular areas.

- (4) The Minister, as appropriate, when performing functions or exercising powers under this Act, shall:

(a) adopt measures to ensure the long-term sustainability of fisheries resources and promote the objective of their optimum utilisation; and

(b) ensure fishing shall be commensurate with the sustainable use of fishery resources taking into account the impacts on non-targeted and associated or dependent species and the general obligation to protect and preserve the marine environment; and

(c) based on the best scientific information available and designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, or any other approved reference points, as qualified by relevant environmental, social and economic factors, and taking into account fishing patterns, the interdependence of stocks and species interaction; and

(d) prevent or eliminate overfishing and excess fishing capacity; and

(e) ensure that data on fisheries, including information relating to the ecosystems, social and economic systems in which fisheries occur, shall be collected, verified, reported and shared in a timely and appropriate manner; and

(f) ensure that effective enforcement of, and compliance with, conservation and management measures shall be pursued to protect biodiversity; and

(g) ensure that pollution and waste originating from fisheries operations, discards, by-catch, lost or abandoned gear and impacts on other species and marine ecosystems shall be minimised or eliminated where possible; and

(h) to improve the welfare and livelihood of fishers and the fishing community; and

(i) apply the precautionary approach and an ecosystem approach in accordance with subsection (5).

- (5) (a) Despite the provisions of any other Act, any person or agency having responsibilities under this Act, or whose functions or powers may relate to any matter or thing involving the utilisation of fisheries resources, is to apply the precautionary principle when discharging his or her responsibilities and functions, or exercising his or her powers.
- (b) A lack of full scientific certainty regarding the extent of adverse effects of a threat or damage to fisheries resources existing in Kiribati is not to be used to prevent or avoid a decision being made to minimise the potential adverse effects or risks of that threat or damage.
- (6) Subject to section 99 of the Constitution, the Minister may appoint a Director of Fisheries and any other fisheries officers and licensing officers the Minister considers necessary for this Act."

Amendment of Section 7

5. Section 7 of the Principal Act is amended by inserting a new section 7A and 7B.

"7A Giving effect to scheduled treaty

Each scheduled treaty listed in the Schedule shall have the force of law in Kiribati and on all fishing vessels registered or licensed in Kiribati.

7B Giving effect to international conservation and management measures

- (1) The Minister shall publish in the Gazette a list of the global, regional or sub-regional organizations or arrangements to which Kiribati is a party or a cooperating noncontracting party.
- (2) The provisions of this Act concerning the application of conservation and management measures adopted by a regional fisheries management organisation or arrangement to which Kiribati is a member do not apply to the internal waters, archipelagic waters and territorial sea of Kiribati as defined pursuant to the Marine Zones Declaration Act 2011, without the express consent of the Minister after consultation with Cabinet.
- (3) The Minister shall publish in the Gazette the international conservation and management measures which shall have the force of law in Kiribati and on all fishing vessels registered or licensed in Kiribati and in doing so the Notice may specify that only a certain part or parts of an international conservation and management measure shall have such effect.
- (4) The Minister may for the purpose of giving effect to any treaty entered into by Kiribati or any international conservation and management measure or arrangement to which Kiribati is a party or is a cooperating non contracting party, by notice published in the Gazette attach such conditions to a licence as the Minister may consider necessary or expedient for this purpose.
- (5) Where any vessel is used in contravention of this Act, any regulations under this Act, a fisheries management plan approved by the Minister, or the provisions of an international conservation and management measure notified in the Gazette under this section, the fishing master, master, owner and charterer shall each commit an offence and shall each be liable on conviction to a penalty not exceeding \$3,000,000.

- (6) The Minister shall publish in the Gazette no less than every six months a list of all licence conditions and the vessels to which they apply including any conditions that have been imposed on individual licences pursuant to this section."

Amendment of section 8

6. Section 8 of the Principal Act is amended by repealing section 8(6) and substituting the following:

"8(6) If the vessel is used in contravention of this section:

- (a) the fishing master and the master of the vessel are each liable on conviction:

- (i) for a contravention of subsection (2) to a fine not exceeding \$3,000,000 and in default to imprisonment for 10 years; or
- (ii) for a contravention of subsection (3) or (4) to a fine not exceeding \$750,000 and in default to imprisonment for 3 years;
- (iii) for a contravention of subsection (5) to a fine not exceeding \$500,000 and in default to imprisonment for 3 years;

- (b) the owner and charterer of the vessel are each liable on conviction:

- (i) for a contravention of subsection (2) to a fine not exceeding \$3,000,000 and in default to imprisonment for 10 years;
- (ii) for a contravention of subsection (3) or (4) to a fine not exceeding \$1,500,000 and in default to imprisonment for 5 years.
- (iii) for a contravention of subsection (5) to a fine not exceeding \$1,000,000 and in default to imprisonment for 3 years."

Amendment of section 11

7. Section 11 of the Principal Act is amended by repealing section 11(4) and substituting the following:

"11(4) A person who operates or causes or allows to be operated a local fishing vessel in Kiribati waters without a licence under this section, or not in accordance with the conditions of a licence, is liable on conviction to a fine not exceeding \$1,500,000 and to imprisonment for 5 years."

Amendment of section 12

8. Section 12 of the Principal Act is amended by repealing section 12(5) and substituting the following:

"12(5) If the foreign fishing vessel is used in contravention of a condition of the licence:

- (a) the fishing master and the master of the vessel are each liable on conviction to a fine not exceeding \$750,000; or

- (b) the owner and any charterer of the vessel are each liable on conviction to a fine not exceeding \$3,000,000."

Amendment of section 14A

9. Section 14A of the Principal Act is amended by repealing section 14A (3) and substituting the following:

“14A(3) A person who contravenes subsection (1)(b) or (1)(c) commits an offence and shall be liable to a fine not exceeding \$3,000,000 or to imprisonment for 10 years, or to both such fine and imprisonment.”

Amendment of section 14C

10. Section 14C of the Principal Act is amended by repealing subsection (3) and substituting the following:

“The regulations may prescribe for anything that needs to be prescribed under subsections (1) and (2)”.

Amendment of section 15

11. Section 15 of the Principal Act is amended by repealing section 15(4) and substituting the following:

“15(4) A person who operates or causes or allows to be operated a vessel registered in Kiribati outside Kiribati waters without an authorisation under this section, or not in accordance with the conditions of an authorisation, is liable on conviction to a fine of \$1,500,000 and to imprisonment for 5 years.”

Amendment of section 15A

12. Section 15A of the Principal Act is amended by repealing section 15A(6) and substituting the following:

“15A(6) The owner or operator of any Kiribati fishing vessel who provides false, inaccurate or misleading information under this section is liable on conviction to a fine of \$50,000.”

Amendment of section 16

13. Section 16 of the Principal Act is amended by repealing section 16(5) and substituting the following:

“16(5) If the fishing vessel is used in contravention of a condition of the authorisation:

(a) the fishing master and the master of the vessel are each liable on conviction to a fine of \$1,500,000 and imprisonment for 5 years; or

(b) the owner and any charterer of the vessel are each liable on conviction to a fine of \$3,000,000 and to imprisonment for 10 years.”

Amendment of section 19

14. Section 19 of the Principal Act is amended by repealing section 19(5) and 19(6) substituting the following:

“19(5) If any fishing vessel is used in contravention of this section, the master, owner and charterer are each guilty of an offence punishable on conviction to a fine not exceeding \$3,000,000.

19(6) A person who contravenes subsection (2) or subsection (4) is guilty of an offence punishable on conviction to a fine not exceeding \$300,000."

Amendment of section 20

15. Section 20 of the Principal Act is amended by repealing section 20(2) and substituting the following:

"20(2) If a vessel mentioned in subsection (1) enters a Kiribati port, the master, owner and charterer are each guilty of an offence punishable on conviction to a fine not exceeding \$300,000."

Amendment of section 21

16. Section 21 of the Principal Act is amended by inserting a new section 21(A) as follows;

"21(A) Port Entry

- (1) The Minister may prohibit entry to a port of Kiribati to a vessel which has been identified as being engaged in or supporting fishing in contravention of any international conservation and management measure or in contravention of the laws of Kiribati or of another State unless it can be established that the catch on board has been taken in a manner consistent with the relevant conservation and management measures or of the laws of another State.
- (2) The Minister may grant conditional entry to a fishing vessel for the purpose of inspecting it where he has reasonable grounds for believing that the vessel has been engaged in or supporting fishing in contravention of any international conservation and management measures or in contravention of the laws of Kiribati or of another State.
- (3) A prohibition under subsections (1) and (2) may apply to an individual vessel or to a fleet of vessels.
- (4) The Minister may refuse entry or permit only conditional entry to a port of Kiribati to a fishing vessel which he has reasonable grounds to believe is without nationality, or has operated under the flags of two States and has used them according to convenience.
- (5) The Minister may revoke authority to enter or remain in port or may require a vessel to be detained in port under such conditions as are approved where he later has reasonable grounds to believe that the vessel has been fishing in contravention of international conservation and management measures or in contravention of the laws of Kiribati or of another State or is without nationality, or has operated under the flags of two States and has used them according to convenience.
- (6) Where the Minister has refused entry or conditional entry and later is satisfied that the basis on which refusal to enter a port should be reversed, he may do so on such conditions as he thinks fit.
- (7) References to ports in this section include offshore terminals and other installations for transhipping, refuelling or resupplying vessels.

- (8) A person who fails to comply with a decision or order of the Minister made in accordance with this Part commits an offence and is liable to a fine not exceeding \$3,000,000.
- (9) Where a vessel has been denied entry to a port in Kiribati under this Part, the Minister shall communicate that information to the flag State of the vessel and to any regional fisheries management organization of which the flag State is a member, or otherwise in accordance with an applicable conservation and management measure.
- (10) Nothing in this Act affects the entry of vessels to port in accordance with international law for reasons of force majeure or distress, or prevents a port State from permitting entry into port to a vessel exclusively for the purpose of rendering assistance to persons, ships or aircraft in danger or distress."

Amendment of section 27

17. Section 27 of the Principal Act is amended as follows:

"(1) by repealing section 27(4) and substituting the following:

Section 27(4) Notwithstanding subsection (3A) and (3B), a person who contravenes this section is guilty of an offence punishable on conviction to a fine not exceeding \$1,500,000 and imprisonment for 5 years.

(2) by inserting a new section 27(A) as follows;

27(A) In determining the level of penalty in a particular case in respect of an offence under this Act, consideration may be given to the need to ensure that any penalty imposed should be adequate in severity to discourage further offences, and where possible should deprive the offenders of the benefits accruing from their unlawful activity."

Amendment of section 28

18. Section 28 of the Principal Act is amended by repealing it and substituting the following:

Section 28 Destroying or disposing of evidence

"A person who, being on board any vessel being pursued or about to be boarded by an authorised officer, throws overboard or destroys any fish, fishing gear, explosive, poison, noxious substance or any other thing whatsoever, with intent to avoid the seizure of the fish, fishing gear, explosive, poison, noxious substance or thing, or the detection of an offence against this Act, is liable on conviction to a fine not exceeding \$300,000 and to imprisonment for 1 year."

Amendment of section 28A

19. Section 28A of the Principal Act is amended by repealing section 28A(3) and substituting the following:

"28A (3) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine of \$1,500,000."

Amendment of section 36(11)

20. Section 36(11) of the Principal Act is amended by repealing it and substituting the following:

“36(11) A person who contravenes subsection (10) is guilty of an offence punishable on conviction by a fine not exceeding \$750,000.”

Amendment of section 40

21. Section 40 is amended at subsection (1) by deleting the word “foreign” after the word “a” and before the word “fishing”.

Amendment of section 40A

22. Section 40A is amended at subsection (1) by deleting the word “foreign” after the word “a” and before the word “fishing”.

Amendment of Section 45

23. Section 45 is amended at subsection (2) (y) by repealing it and substituting the following:

“45(2) (y) provision of penalties for contraventions of the regulations of terms of imprisonment of 5 years and fines of \$1,500,000”.

FISHERIES (AMENDMENT) ACT 2017

EXPLANATORY MEMORANDUM

This Act amends the Fisheries Act 2010 as amended by the Fisheries Amendment Act 2015, (hereinafter, the Principal Act). The amendments seek to address issues raised by the European Commission in considering the possibility of identifying Kiribati as a possible non-cooperating third country in the fight against Illegal, Unreported and Unregulated fishing.

The principal objective of this Act is to ensure that Kiribati addresses these issues by defining Illegal, Unreported and Unregulated fishing (IUU), serious fishing violations and raise the penalty provisions threefold for serious offences to deter future offenders. In addition, the Act seeks to incorporate Kiribati's responsibilities pursuant to international law.

Section 3 of the Principal Act is amended to include the definition of Illegal, Unreported and Unregulated (IUU) fishing and serious fishing violation. This is to ensure that Kiribati has proper sanctions to deter IUU. The Director of Fisheries is also defined under this section to reflect the current changes to the office structure.

Section 4 of the Principal Act is amended to comply with international and regional rules applying to the conservation and management of fishing resources, in accordance with Article 62 of the United Nations Convention on Law of the Sea (UNCLOS), Article 5 of the United Nations Fish Stocks Agreement (UNFSA) and Article 5 of the Western Central Pacific Fisheries Convention (WCPFC).

Section 7 of the Principal Act is amended to address the EU's concern that Kiribati implements Article 31(6) of the IUU regulations by being transparent and sharing information regarding vessels operating in its EEZ. At the same time, Kiribati raises sovereignty of its territorial sea, internal waters and archipelagic waters and takes the view that conservation obligations apply in these waters only if Kiribati chooses.

Section 8 of the Principal Act is amended to raise the penalty level threefold for any violation by unlicensed foreign fishing vessels. This would act as a deterrence to future offenders.

Section 11 of the Principal Act is amended to raise the penalty level threefold for any violation by local fishing vessels to act as a deterrence to future offenders.

Section 12 of the Principal Act is amended to raise the penalty level threefold for any violation by foreign fishing vessels to act as a deterrence to future offenders.

Section 14A of the Principal Act is amended to raise the penalty level threefold for fishing in a marine protected area or reserve or in an area designated as a prohibited area to deter future offenders.

Section 14C of the Principal Act is amended to be consistent with the power of the Beretitenti to make regulations.

Section 15 of the Principal Act is amended to raise the penalty level threefold for any violation by a Kiribati flagged vessel outside Kiribati waters.

Section 15A of the Principal Act is amended to raise the penalty level for owners or operators of any Kiribati fishing vessel who provide false, inaccurate or misleading information to the Director.

Section 16 of the Principal Act is amended to raise the penalty level threefold for any violations by a fishing vessel holding an authorisation to operate a fishing vessel for scientific investigations.

Section 19 of the Principal Act is amended to raise the penalty level threefold for any violations relating to driftnet fishing.

Section 20 of the Principal Act is amended to raise the penalty level threefold should any driftnet vessel enter port.

Section 21 of the Principal Act raises the penalty level threefold for any person using destructive fishing methods.

Section 27 of the Principal Act raises the penalty level threefold for any violations relating to an authorised officer and observer.

Section 28 of the Principal Act raises the penalty level threefold for any violations involving the destruction or disposing of evidence.

Section 36 of the Principal Act raises the penalty level threefold for any violations involving damaging, destroying or rendering inoperative an observer device or intentionally inputting information into an observer device that is not officially required.

Section 40 of the Principal Act empowers the Minister and the Attorney-General to impose administrative penalty as an alternative to criminal proceedings on all fishing vessels, not only foreign fishing.

Section 40A of the Principal Act allows the Fisheries Administrative Penalty Committee (FAPCOM) to recommend administrative penalty to the Minister and Attorney-General on the contravention of the Act by any fishing vessel.

Section 45(1)(y) of the Principal Act increases the fine on a breach of any regulations to a fine of \$1,500,000 and 5 years imprisonment.

**TETABO NAKARA
HONOURABLE MINISTER**

LEGAL REPORT

I hereby certify my opinion that none of the provisions of the above Act conflict with the Constitution and that the Beretitenti may properly assent to the Act.

**MRS TETIRO MAATE SEMILOTA
ATTORNEY-GENERAL
6 March 2017**

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

This printed impression of the Fisheries (Amendment) Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 14th 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 11 day of
October 2017.

Eni Tekanene
Clerk of the Maneaba ni Maungatabu



REPUBLIC OF KIRIBATI

**THE KIRIBATI AUDIT ACT 2017
(SECTION 2)**

NOTICE OF COMMENCEMENT DATE

IN EXERCISE of the powers conferred upon me by section 2 of the Kiribati Audit Act 2017, I hereby appoint the 12th day of October, 2017 to be the date on which the Act comes into force.

Dated 3rd day of November 2017

HONOURABLE DR TEUEA TOATU
Minister of Finance and Economic Development

Published by exhibition at the Office of the Beretitenti this 3rd day of November 2017

TESSIE ERIA LAMBOURNE
Secretary to Cabinet



REPUBLIC OF KIRIBATI
(No. of 2017)

I assent

Beretitenti
18/5/2017

An ACT
Entitled

An ACT TO AMEND THE COMMUNICATION ACT 2013 AND FOR MATTERS
CONNECTED THEREWITH

Commencement
2016

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

Short Title

1. This Act may be cited as the *Communication (Amendment) Act 2016*

Meaning of 'principal Act'

2. In this Act 'principal Act' means the *Communication Act 2013*.

Amendment of section 2

3. Section 2 of the principal Act is amended by:
 - a) inserting after the definition of "associated company" the definition of "bill and keep" as follows:

"bill and keep" means an interconnection pricing methodology for the exchange of traffic between peer networks under which either party makes any payment based on traffic flows to the other party;
 - b) inserting in the definition of "communications facility" the phrase 'or cabinet' between the words 'building' and 'including'.
 - c) inserting after the definition of "inspector" the definition of "ITU" as follows:

"ITU" means the International Telecommunication Union;
 - d) inserting after the definition of "user" the definition of "wholesale service" as follows:

“wholesale service” means a communication service provided by a person who holds a license issued under section 32 to a second person who holds a license issued under section 32, which the second person uses to provide a communication service to an end-user.

Amendment of section 6

4. Section 6 of the principal Act is amended as follows:

- a) at subsection (1), by deleting the word ‘fixed’ and repealing the number ‘5’ and substituting the number “4”
- b) at subsection (3), by repealing the words ‘other than as Chairman’
- c) at subsection (4), by
 - i. inserting in paragraph (a) after the word ‘incapacity’ the phrase “to the extent that such physical incapacity would impair that person’s fulfilment of responsibilities as a member of the Commission”
 - ii. inserting after paragraph (f) the following new paragraph:

“(g) is persistently absent from the meetings of the Commission without reasonable excuse”.

Amendment of section 7

5. Section 7 of the principal Act is repealed and substituting the following:

“7. (1) The Commission shall pay to each of its members, in respect of his office as such, remuneration and/or allowances as prescribed by law and in the absence of any law as determined by the Minister and approved by Cabinet.

(2) In determining the remuneration and allowances to be paid under subsection (1), different provisions may be made as regards the Chairman and the other members but not as between the other members.”

Amendment of section 9

6. Section 9 of the principal Act is amended in the first line of subsection (1) by inserting the word “greater” between the words ‘such’ and ‘number’ and also inserting the number “11” after the word ‘section’.

Amendment of section 16

7. Section 16(1) of the principal Act is amended by inserting the phrase “when he sees fit” between the words ‘Minister’ and ‘shall’.

Amendment of section 18

8. Section 18(4) (d) of the principal Act is amended by inserting the phrase “or when required,” between the words ‘year,’ and ‘submit’.

Amendment of section 21

9. Section 21 of the principal Act is amended as follows:
- a) at subsection (5) (d), by repealing the number 7 and substituting the number (30)
 - b) at subsection (7), by inserting before the word ‘sensitive’ the phrase “Notwithstanding the provisions in any contract”

Amendment of section 26

10. Section 26 of the principal Act is amended by repealing the number ‘20’ in the first lines of subsection (3) and (4) and substituting the number “30” respectively.

Amendment of section 31

11. Section 31 of the principal Act is amended as follows:
- a) at subsection (1) (c), by inserting the words “if any” between the words ‘fees’ and ‘to’.
 - b) at subsection (2), by repealing the phrase ‘including promoting sustainable and workably competitive communications markets’.

Amendment of section 32

12. Section 32(7) of the principal Act is amended by repealing it and substituting the following:
- “32. (7) (a) A licensee must comply with the provisions of the Foreign Investment Act 1985 before operating a communications network or operating a communication services.
- (b) For the purpose of this subsection, and despite any provisions of the Foreign Investment Act 1985 to the contrary, a licensee registered prior the commencement of this provision must be issued with a permit forthwith under the Foreign Investment Act.”

Amendment of section 34

13. Section 34 of the principal Act is amended as follows:

- a) At subsection (1), by inserting the phrase “Having regards to the International Radio Regulation published by the ITU,” in the first line before the words ‘The Commission’,
- b) by repealing the whole of paragraph (f) and substituting the following:

(f) the application fees, if any, to be paid to the Commission.

Amendment of section 40

14. Section 40 of the principal Act is amended as follows:

- a) at subsection (1) (a), by deleting the words ‘economically and’ and the phrase ‘where interconnection would not affect the security, performance or efficiency of the first licensee’s network’.
- b) by inserting a new subsection (3) after subsection (2) as follows:

“(3) The Commission shall publish copies of all interconnection and access agreement.”

Amendment of section 42.

15. Section 42 of the principal Act is amended as follows:

- a) at subsection (1), by inserting after paragraph (d) the new paragraph as follows:

“(e) the manner in which the cost of interconnection links should be borne or shared between the parties”
- b) at subsection (4), by inserting the phrase “and the bill and keep methodology” after the word ‘cost’.

Amendment of section 45

16. Section 45 (2) of the principal Act is amended by inserting the phrase “or require amendment of” between the words ‘reject’ and ‘the reference offer’.

17. Section 45 (4) of the principal Act is amended by inserting number “28” after the word ‘section’.

18. Section 45 (5) of the principal Act is amended by deleting the word 'section' and substituting the phrase "subsection 2 above".

Amendment of section 47

19. Section 47 of the principal Act is amended as follows:

- a) by repealing the title and substituting it with "Sharing of Communication facilities"
- b) at subsection (4), by inserting at the beginning of paragraph (a) the phrase "design characteristics of the communication facility so that, to"
- c) at subsection (4)(b), by repealing the phrase "design characteristics of the communication facility so that to" between the word 'such' and 'person'
- d) at subsection (5), by inserting after the word 'arbitrator' the phrase "or determine the terms for sharing the communication facility"
- e) by inserting after subsection (5) the following new subsections:

"(6) If a person makes a request to share an existing communication facility of a licensee, and if such sharing is practical and feasible, taking into consideration the foreseeable needs of the licensee, the parties shall negotiate in good faith commercial terms for the maintenance, ownership and ongoing use of the communication facility by the licensee and the person requesting sharing.

(7) If the parties are unable to agree the commercial terms described in subsection (6) within 14 days, or if the licensee claims that sharing is not practical and feasible in the light of its reasonably foreseeable needs, the Commission may, on written request by either party to the negotiations, and by written notice to each party –

 - a) direct the parties to take specified action to reach agreement (such as to engage an arbitrator);
 - b) determine the terms for sharing the communication facility; or
 - c) disallow the person's request.

The parties shall comply with such direction."

Amendment of section 48

20. Section 48(2)(a) of the principal Act is amended by deleting the word 'cost' between the words 'below' and 'for' and substituting the phrase "variable cost (or such other cost standard as is established by the Commission)"

Amendment of section 51

21. Section 51 of the principal Act is amended by inserting the following new subsection after subsection (3):

"(4) Notwithstanding the requirement of subsection (1) and (2) a licensee may make special price offers for any communications service without further notification, provided that:-

- a) the service and its price have already been notified and published in accordance with subsection (1) and (2);
- b) the special price offer is of limited duration; and
- c) the price for the service under the special price offer is less than that published under subsection (1) and (2)."

Amendment of section 60

22. Section 60(1) of the principal Act is amended by inserting a new subsection after subsection (d) as follows:

"(e) submit regular reports to the Commission showing actual performance for the key performance indicators."

Amendment of section 64

23. Section 64 of the principal Act is amended as follows:

- a) at subsection (1)(a), by inserting the phrase "made in accordance with the requirement of the ITU" after the word 'services'.
- b) at subsection (1)(b), by inserting the phrase "including short codes" after the word 'numbers'.
- c) after subsection (1)(d) a new subsection is inserted as follows:

"(e) international co-ordination and notification of numbering changes".

Amendment of section 104

24. Section 104 of the principal Act is amended as follows:

- a. by renumbering the existing "section 104 (1)" as "section 104", and

- b. by adding before the definition of “computer” the following;

“child pornography” means material that;

- a) depicts or presents a minor engaged in sexually explicit conduct;
- b) depicts or presents a person appearing to be a minor engaged in sexually explicit conduct; or
- c) realistically represents a minor appearing to be a child engaged in sexually explicit conduct

this includes, but not limited to, any visual (images, animations or videos), audio or text material.

- c. by inserting after the definition of “data” the following;

“device” means any hardware or equipment which performs one or more specific functions and operates on any form or combination of electrical energy and includes but not limited to:

- a) components of electronic systems such as computer, graphic cards, mobile phones, memory, chips;
- b) storage component such as hard drives, memory cards, compact discs, tapes;
- c) input devices such as keyboards, mouse, track pad, scanner, digital cameras; and
- d) output devices such as printer and screens.

- d. by repealing the definition of ‘distribute’

- e. by adding after the definition of ‘function’ the following:

“hinder” in relation to a computer includes but not limited to;

- a) cutting the electricity supply to a computer;
- b) causing electromagnetic interference to a computer;
- c) corrupting a computer by any means; and
- d) inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing data.

- f. By repealing the whole of part(b) of the definition of 'obscene matter' and substituting the following;

(b) includes child pornography.

- g. by repealing the whole part of subsections (2), (3), (4), (5), (6), (7) and (8).

Amendment of section 107

25. Section 107 of the principal Act is amended by repealing the whole of the section and substituting the following:

107. Any person who knowingly and without authority, access the whole or any part of a computer commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

New section 107A

26. After section 107 of the principal Act the following section is inserted:

Unauthorised access to or obtaining of data

107A. Any person who knowingly and without authority access or obtains, for himself or for another, data which are not meant for him and which are specially protected against unauthorised access commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Amendment of section 108

27. Section 108 of the principal Act is amended by repealing the whole of subsection (1) and substituting the following:

108. (1) Any person who commits an offence as defined by section 107 and section 107A with intent to commit a subsequent offence to which this section applies commits an offence and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 10 years or to both.

Amendment of section 109

28. Section 109 of the principal Act is amended by repealing the whole provision and substituting the following:

109. Any person who knowingly and without authority, does any of the following acts:

- a) damages or deteriorates computer data;
- b) deletes computer data;
- c) alter computer data;
- d) renders computer data meaningless, useless or ineffective;
- e) obstructs, interrupts or interferes with the lawful use of computer data;
- f) obstructs, interrupts or interferes with any person in the lawful use of computer data;
- g) denies access to computer data to any person authorised to access it

commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Amendment of section 110

29. Section 110 of the principal Act is amended by repealing the whole of subsection (1) and (2) and substituting the following:

“Unauthorised use of computer service

110. Any person who knowingly and without authority secure access to any computer for the purpose of obtaining, directly or indirectly, any computer service commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.”

New section 110A, 110B, 110C, and 110D.

30. After section 110 of the principal Act the following new sections are inserted as follows:

“Unauthorised interception.

110A. Any person who knowingly and without authority intercepts by technical means;

- a) any non-public transmission to, from or within a computer; or
- b) electromagnetic emissions from a computer

commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.”

Unauthorised computer interference

110B. Any person who knowingly and without authority hinders without authority any computer by inputting, transmitting, damaging, deleting, deteriorating, altering or suppressing data commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Computer-related forgery

110C. Any person who knowingly and without authority inputs, alters, deletes or suppresses data, resulting in inauthentic data, with the intent that it be considered or acted upon for legal purposes as if it were authentic commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Computer-related fraud

110D. Any person who knowingly and without authority inputs, alters, deletes or suppresses data or interferes with the functioning of a computer with fraudulent or dishonest intent to procure an economic benefit for the person or another person without authority commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Amendment of section 111

31. Section 111 of the principal Act is amended by repealing the whole section and substituting the following:

Unauthorised devices

111. Any person who knowingly and without authority produces, sells, procures for use, imports, export, distributes or otherwise makes available:

- a) a device or program designed or adapted primarily for the purpose of committing an offence under this Part; or
- b) a password, access code or similar data by which a computer may be accessed

with the intent that it be used to commit an offence under this Part commits an offence and is liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding one year or to both.

Amendment of section 112

32. Section 112 of the principal Act is amended as follows:

- a) by renumbering the existing 'section 112' as "section 112 (1)"; and
- b) by inserting the phrase "for commercial purposes" between the word 'person' and 'by' and
- c) by adding a new section 112(2) as follows –

(2) For purposes of subsection (1) the term "commercial purposes" excludes fair use for academic or research purposes.

Amendment of section 114

33. Section 114 of the principal Act is amended

- a) by inserting after the word 'knowingly' the phrase "and without authority", and
- b) by adding a new paragraph after paragraph (e) as follows –

f) obtain access, through information and communication technologies, to child pornography.

Amendment of section 115

34. Section 115 of the principal Act is amended by inserting the phrase “for which no penalty is expressly provided” between the word ‘Part’ and the word ‘shall’.

Amendment of section 119

35. Section 119 of the principal Act is amended as follows:

- a) by renumbering the existing ‘section 119’ as “section 119 (1)”, and
- b) by adding a new section 119 (2) as follows :

“119 (2). Part XIV of the Act applies to an act done or an omission made –

- a) in the territory of the Republic of Kiribati; or
- b) on a ship or aircraft registered in the Republic of Kiribati; or
- c) by a national of the Republic of Kiribati outside the territory of the Republic of Kiribati if the person’s conduct would also constitute an offence under a law of the country where the offence was committed; or
- d) by a national of the Republic of Kiribati outside the jurisdiction of any country.”

COMMUNICATION (AMENDMENT) ACT 2017

EXPLANATORY MEMORANDUM

The Communications Act 2012 that was passed in 2013 is the basis for the creation of the Communication Commission of Kiribati (CCK) which aimed to provide neutral regulatory role in the Telecommunication industry, ensure effective competition among licensees, protection of consumers and regulation of prices.

After two years of implementation of the principal Act, perceptible shortfalls were realised by the CCK and other concerned stakeholders leading to the need for urgent improvements to be made to the principal Act.

In summary the content of this Act are as follows:-

Section 3 amends section 2 to incorporate new definitions of words already existing in the principal Act or are being imported through these amendments.

Section 4 amends section 6(1) by reducing the number of years of appointment of the Commissioners of the CCK from five to four and removing the word 'fixed', so that the appointment is consistent with other Government entities. It also amends section 6(3) by removing the words "other than as Chairman" to ensure consistence with other laws in particular the SOE Act. This section also amends section 6(4)(a) by expressly defining physical incapacity to mean the incapacity that would impair a person's fulfilment of responsibilities under the Act. A new paragraph is also inserted to deal with the persistent absent of members of the CCK from their meetings without reasonable excuse.

Section 5 repeals section 7 and substituting a new but similar section that divides the original section into two subsections to make it simpler and clearer.

Section 6 amends section 9(1) by allowing the Commission to increase their quorum when the need arises. It also amends by inserting the incomplete reference to the section at the end of the paragraph.

Section 7 amends section 16(1) by giving a discretion to the Minister to do a consultation with the CCK, the licensees and other interested parties before recommending general policies to Cabinet. The original clause expresses a mandatory need for this consultation.

Section 8 amends section 18(4)(d) by softening the compulsory requirement of report submission on the part of the Commission to the Minister. The report would only be submitted to the Minister when required. This is in regards to the performance and efficiency of the communications sector.

Section 9 amends section 21(5)(d) by extending the period of the notice to be given to the sender of the information, from 7 to 30 days from the date of receipt. It also amends

subsection (7) by expressly stating that the definition of sensitive information in this section, which does not include the terms of an interconnection and access agreement including prices for interconnection and access services, remains unaffected even if the provisions in any contracts state otherwise.

Section 10 amends section 26(3) and (4) by extending the period of 20 to 30 days in which the Commission would consider the application for reconsideration and to notify the applicant of its decision, and in the absence of this reply within the 30 days, the Commission would be deemed to have reaffirmed that decision.

Section 11 amends section 31(1)(c) by inserting an optional phrase for the fixing of application fees, which means that there could be application fees or no fees at all.

Section 12 amends section 32(7) by allowing the application of a Foreign Investment Act 1985 to foreign communication businesses wishing to operate in Kiribati.

Section 13 amends section 34 by requiring the Commission to consider the International Radio Regulation published by ITU when exercising their power to make radiocommunications rules. It also corrects the type of fee payable under subsection (f) from licence to application and also allows an optional phrase for the fixing of this fee.

Section 14 amends section 40(1)(a) by deleting the word 'economically' as it is not directly relevant to the negotiation of interconnection and access agreement. A new subsection (3) gives a mandatory requirement for the publication of all interconnection and access agreements by the Commission.

Section 15 inserts a new paragraph (e) at section 42(1) that specifies that cost of interconnection links must be borne and shared between the parties. Section 42(4) is also amended by extending the scope of consideration to include the bill and keep methodology when the Commission is specifying interconnection and access prices or pricing principles.

Section 16 to 18 amend section 45(2) by expanding the Commission's option to require the applicant to amend the reference offer when considering proposals for new investments. It also inserted a missing reference at subsection (4) in relation to the power of the Commission to hear applications for a rehearing. Subsection (5) is also amended by correcting a reference made therein to a subsection instead of a section.

Section 19 amends section 47 by substituting its title with 'Sharing of Communication Facilities'. Subsection (4)(a) is also amended by including the requirement that the design characteristics of the communication facility must be negotiated in good faith between a licensee who proposes to construct such facility and the persons who have expressed their interest for its use. In the event that no agreement is reached between the parties for the design characteristics and commercial terms, the amendment to subsection 5 empowers the Commission to determine such terms of agreement for the sharing of the communication facility. A new subsection is also inserted after subsection 5 to cater for the sharing of existing communication facility.

Section 20 amends section 48(2)(a) by deleting the word 'cost' to extend it to variable cost or such other cost standard as is established by the Commission.

Section 21 amends section 51 by inserting a new subsection after subsection (3) to allow the licensee to make special price offers without further notification but to comply with certain prescribed conditions.

Section 22 inserts a new subsection (e) after section 60(1)(d) that requires licensees to submit a regular report to the Commission in relation to their actual performance using their key performance indicators.

Section 23 amends section 64 by inserting a new phrase in subsection (1)(a) to specify the requirement that rules for numbering plans must be made in accordance with the requirement of ITU. Subsection (1)(b) requires that there should also be rules regarding short codes, together with rules for the assignment and use of numbers. A new subsection (e) is also inserted to cater for international co-ordination and notification of numbering changes.

Section 24 amends section 104 by renumbering the existing 104(1) as 104. New definitions such as child pornography, device, hinder are inserted while some are deleted or changed. The amendment also repeals subsections (2) – (8) as they are no longer relevant.

Section 25 inserts a new section to replace section 107 that reworded the original section by limiting the scope of application to include only offences of unauthorised access to all or any part of the computer. The original section also dealt with unauthorised access to programs and data held in a computer.

Section 26 inserts a new section (s.107A) that deals with an offence of unauthorised access or obtaining of data.

Section 27 repeals section 108(1) and substitutes a new section that deals with committing an offence as defined in s.107 and 107A with the intent to commit a subsequent offence. The amendment reflects a heavy penalty of \$50,000 or 10 years imprisonment or both.

Section 28 inserts a new section 109 to replace the original section. The new section deals with offences relating to unlawful activities affecting or in connection with computer data.

Section 29 repeals subsections (1) and (2) of section 110 and substitutes a new section that deals with an offence that are related to unauthorised use of computer service.

Section 30 inserts new sections of 110A, 110B, 110C and 110D. The new sections deal with offences relating to Unauthorised interception, Unauthorised computer interference, Computer related forgery and Computer related fraud.

Section 31 repeals section 111 and substitutes a new section that deals with offences relating to the production, selling, procuring for use, importation, exportation, distribution or otherwise making available unauthorised devices.

Section 32 amends section 112 by renumbering the existing section as 112(1), by inserting a phrase "for commercial purposes" to specify that an offence of copyright infringements must be for commercial purposes and by adding a new subsection 112(2) that defines 'commercial purposes' to exclude fair use for academic or research purposes.

Section 33 amends section 114 by expanding the requirement of an offence of child pornography to include 'without authority' when one produces, offers, distributes, procures, and possesses child pornography. It also amends by inserting a new subsection (f) to deal with offences that are related to acts of obtaining access, through information and communication technologies, to child pornography.

Section 34 amends section 115 by specifying that the penalty stated in that section covers offences under Part XIV for which no penalty is expressly provided.

Section 35 amends section 119 by renumbering the existing section as 119(1) and by adding a new subsection (2) that defines the jurisdictional scope of application of offences under Part XIV, which includes acts done or omissions made in the territory of the Republic of Kiribati, on ships or aircrafts registered in Kiribati, by a national of Kiribati outside the jurisdiction of Kiribati or any other country.

TETIRO MAATE SEMILOTA
Attorney General

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

This printed impression of the Communication (amendment) Act 2017 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 13th April 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 18 day of May 2017.

Eni Tekanene

Clerk of the Maneaba ni Maungatabu