



# **Kiribati Immigration Act 2019**

# Kiribati Immigration Act 2019

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REPUBLIC OF KIRIBATI  
(No. 10 of 2019)

I assent,

  
Beretitenti  
10 / 10 / 2019

A BILL  
(entitled)

AN ACT TO PROVIDE FOR IMMIGRATION AND OTHER CONNECTED  
PURPOSES

Commencement:  
/ / /2019

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

1 Short Title

This Act is the Kiribati Immigration Act **2019**.

2 Commencement

This Act commences on a date to be appointed by the Minister by notice.

Part 1  
Preliminary provisions

3 Purpose

The purpose of this Act is to manage immigration in a way that—

- (a) allows for immigration to Kiribati in a way that ensures that Kiribati has the skills and labour it needs;
- (b) contributes to the security of the Kiribati border;
- (c) upholds those international obligations of Kiribati that are related to immigration;
- (d) balances the rights of individuals with the duty of the Government to manage immigration in the national interest.

4 Interpretation

In this Act, unless the context otherwise requires,—

“**absolute discretion**” has the meaning given to it in **section 5**

“**administrative error**” in relation to the granting of a visa or entry permission, occurs where—

- (a) the visa or entry permission is mistakenly granted to a Kiribati citizen or to an excluded person; or
- (b) the person granting the visa or entry permission intended to grant a different visa or entry permission to the type that was granted; or
- (c) the visa or entry permission was granted for a period exceeding the period permitted by the regulations or immigration procedures; or
- (d) the visa or entry permission is granted in contravention of a special direction or immigration procedures (unless the Minister or an immigration officer deliberately granted it as an exception)

**“airport”** means an area on land or water (including any buildings, installations, and equipment) intended to be used either wholly or in part for the arrival, departure and surface movement of aircraft, and which is designated an airport under section 7 of the Airport Act 2019.

**“appeal on humanitarian grounds”** means an appeal to the Minister against liability to deportation on the grounds set out in **section 95**

**“appeal on the facts”** means an appeal to the Minister against liability to deportation on a ground set out in **section 94**

**“biometric information”** in relation to a person, means information that comprises—

- (a) one or more of the following kinds of personal information:
  - (i) a photograph of all or any part of the person’s head and shoulders;
  - (ii) impressions of the person’s fingerprints;
  - (iii) a scan of the person’s irises; and
- (b) a record, whether physical or electronic, of the personal information that is capable of being used for biometric matching

**“border requirement”** means a requirement, responsibility, or obligation under **sections 71 and 72**

**“carrier”** in relation to a craft,—

- (a) means the owner or charterer of the craft; and
- (b) if the owner or charterer is not in Kiribati, includes the agent in Kiribati of the owner or charterer; and
- (c) if there is no agent in Kiribati, includes the person in charge of the craft

**“certificate of identity”**

- (a) means a document (other than a passport) issued by the Government of any country to any person for the purposes of facilitating that person’s entry into or exit from any country, being a document that—
  - (i) purports to establish the identity but not the nationality of that person; and
  - (ii) confers on that person a right to enter the country whose Government has issued the document; and
- (b) includes—
  - (i) any emergency travel document or refugee travel document issued by the Government of Kiribati; and



- (ii) any travel document issued by any international organisation for the time being specified by the Minister for the purpose of this definition

**“compulsory education”** means education that is—

- (a) provided at any school in Kiribati, whether state or private; and
- (b) required to be provided under section 7 of the Education Act 2013

**“conditions”** includes conditions precedent as well as conditions subsequent (whether imposed by an immigration officer, or the Minister)

**course of study—**

- (a) means—
  - (i) any course of tuition or instruction for people entitled to free enrolment and education in Kiribati;
  - (ii) any other course of tuition or instruction conducted by any school, college, institute, university, or other body or person, and leading to any educational or vocational qualification; and
- (b) does not include any course of tuition or instruction excluded, or excluded for a particular purpose, from this definition by immigration procedures

**“craft”** means any form of aircraft, ship, or other vehicle or vessel capable of being or intended to be used to transport any person or goods, or both, by air or water or over or under water to or from Kiribati or to any country outside Kiribati

**“crew”** in relation to a craft means—

- (a) every person employed or engaged in working or providing a service in or on the craft; and
- (b) includes the person in charge of the craft

**“dependent child”** in relation to any person, means a child under 18 years of age who is not married and who is dependent on that person, whether or not the child is a child of that person

**“deportation liability notice”** means a notice that states the matters referred to in **section 81** and, for the purposes of serving a notice, includes a copy of the notice

**“deportation order”**

- (a) means an order containing the information described in **section 87** that, when served on a person in accordance with **section 87(1)**, authorises the person’s deportation to be executed; and
- (b) for the purposes of serving or executing an order described in **paragraph (a)**, includes a copy of the order

**“designated officer”** means a person who is designated by the Secretary to exercise powers and functions under this Act

**“disembarkation”** means the process of physically leaving a craft, whether onto land or otherwise

**“education provider”**—

- (a) means a provider of a course of study; and
- (b) includes the institution, body, or person that is entitled to the fees payable by or on behalf of the persons undertaking the course, or that would be so entitled if those fees were payable

**“employee”** means a person who does work for an employer (whether under a contract of service or a contract for services)

**“employer”** means a person who employs or engages a person to do work, whether under a contract of service or a contract for services

**“entry permission”** is the permission that the following persons are required to obtain before being allowed to enter Kiribati:

- (a) a person who is not a Kiribati citizen:
- (b) a Kiribati citizen who is a national of one or more other countries and who wishes to enter Kiribati other than as a Kiribati citizen

**“excluded person”** means a person to whom **section 9 or 10** applies

**“execute”**, in relation to a deportation order, has the meaning described in **section 88**

**“former Act”** means the Immigration Ordinance 1980

**grant**, in relation to any visa, or entry permission, includes the situation where this Act or the regulations deem a grant of the relevant visa, or entry permission, to occur

**“holder”** in relation to a visa granted under this Act,—

- (a) means the person in respect of whom the visa is granted; but
- (b) does not include a person whose visa has expired or been cancelled

**“immigration control area”** means an area or place designated by the Secretary as an area suitable for processing people arriving in, or departing from, Kiribati

**“immigration procedures”**—

- (a) means immigration procedures certified under **section 16**; and
- (b) includes residence procedures, temporary entry procedures, and transit procedures

**“immigration officer”** means a person designated as an immigration officer by the Secretary, and includes the Secretary

**“imprisonment”** means any form of detention or custody whereby a person is deprived of liberty for a continuous period, including home detention, detention or custody in a psychiatric institution or hospital but does not include detention or custody under this Act

**“Kiribati”** means any land territory within the territorial limits of Kiribati, and includes—

- (a) the territorial seas:
- (b) the inland waters:
- (c) the exclusive economic zone of Kiribati

**“Kiribati citizen”** means a person who has Kiribati citizenship (as provided in the Citizenship Act 1979)

**“leave Kiribati”** means leave Kiribati for a destination in another country

**“Minister”** means the Minister responsible for the administration of this Act

**“Ministry”** means the ministry responsible for this Act

**“minor”** means a person aged under 18 years of age

**“onshore”**, in relation to an applicant for a visa, means that the applicant is in Kiribati other than in an immigration control area

**“operator”**,—

(a) in relation to a port, means—

- (i) the owner of the port; or
- (ii) if the owner is not responsible for the operation or management of the port, the manager of the port or any other person who is, for the time being, responsible for the operation or management of the port:

(b) in relation to an airport, means a person or body authorised to operate or manage the airport

**“passenger”**, in relation to a craft, means a person, other than a member of the crew, who is carried in or on the craft with the consent of the carrier, or the person in charge, of the craft

**“passport”** means a document that is issued by or on behalf of the Government of any country and that is recognised by the Government of Kiribati as a passport, being a document that—

- (a) purports to establish the identity and nationality of the holder; and
- (b) confers on the holder the right to enter the country the Government of which has issued the document; and
- (c) has not expired

**“person in charge”**, in relation to a craft, means the master, captain, pilot in command or driver, or any other person for the time being responsible for the craft

**“personal service”**, in relation to any document or notice served or to be served on a person, means personal delivery of the document or notice to that person or, where the person refuses to accept the document or notice, the bringing of the document or notice to that person’s attention

**“port”** means as defined in the Kiribati Ports Authority Act 1990 and includes;

- (a) any defined area of land and water intended or designed to be used either wholly or partly for the berthing, departure, movement, and servicing of ships; and
- (b) includes any buildings, installations, or equipment on or adjacent to any such area used in connection with the port or its administration

**“prescribed”** means prescribed by the regulations

**“registered post”** includes any postal or courier service where delivery to the



address is recorded

**“residence procedures”** means immigration procedures certified under **section 16** that relate to the grant of residence visas

**“resident”** means the holder of a resident visa

**“Residency Visa Commission”** means the Commission continued by the regulations whose functions are to—

- (a) receive, assess, and consider all applications for resident visas in Kiribati;
- (b) advise and make recommendations to the Minister for approval of resident visas in Kiribati
- (c) carry out the other duties prescribed in the regulations

**“scheduled international service”** means a series of flights or voyages that are—

- (a) performed by a craft for the transport of passengers, cargo, or mail between Kiribati and one or more points in any other country or territory, if the flights or voyages are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable; and
- (b) operated in such a manner that each flight or voyage is open to use by members of the public

**“Secretary”** means the Secretary of the ministry responsible for this Act

**“security”**—

- (a) means—
  - (i) the defence of Kiribati;
  - (ii) the protection of Kiribati from acts of espionage, sabotage, and subversion, whether or not they are directed from or intended to be committed in Kiribati;
  - (iii) the identification of foreign capabilities, intentions, or activities in or relating to Kiribati that adversely affect Kiribati’s international well-being, reputation, or economic well-being;
  - (iv) the protection of Kiribati from activities in or relating to Kiribati that—
    - (A) are influenced by any foreign organisation or any foreign person; and
    - (B) are clandestine or deceptive, or threaten the safety of any person; and
    - (C) adversely affect Kiribati’s international well-being, reputation, or economic well-being;
  - (v) the prevention of any terrorist act and of any activity relating to the carrying out or facilitating of any terrorist act;
  - (vi) the prevention, investigation, and detection of organised crime, including transnational organised crime; and
- (b) in an international security context, also includes the safety and stability of the international community through co-operative measures such as

international conventions and other arrangements or agreements between countries

**“special direction”** means a direction given under **section 62** by the Minister to the Secretary or any other immigration officer, in respect of any person, visa, or document

**“stowaway”** means a person who is carried in or on a craft without the consent of the carrier, or the person in charge, of the craft

**“study”** means undertake a course of study

**“temporary entry class visa”** means a temporary visa, a limited visa, or an interim visa

**“temporary entry procedures”** means immigration procedures that relate to the grant of temporary entry class visas

**“the regulations”** means regulations made under this Act

**“transit procedures”** means immigration procedures that relate to the grant of transit visas

**“transit passenger”** means a person who arrives in Kiribati from another country while in transit to another overseas destination, not intending to enter or remain in Kiribati

**“transit period”** means the period prescribed in the regulations for the purpose of **section 58**

**“travelling to Kiribati”** includes, but is not limited to, travelling to Kiribati from another country in transit to another destination outside Kiribati

**“turnaround”** means to effect, under **section 73**, the departure from Kiribati of a person to whom **section 72** applies, as if the person were a person who had been served with a deportation order

**“unlawfully stays in or enters Kiribati”**, in relation to a person who is not a Kiribati citizen, means a person who is in Kiribati but—

- (a) is not the holder of a visa granted under this Act; or
- (b) has not been granted entry permission under this Act

**“visa”**—

- (a) means an entry in the records of the Ministry—

- (i) made in accordance with **section 39**; an
  - (ii) having the effect set out in **section 25**; and

- (b) includes—

- (i) any visa of a class specified in **section 46**; and
  - (ii) any visa deemed to be, or treated as being, held under this Act

**“visa waiver”** means a waiver of the requirement under **section 45** to hold a visa permitting travel to Kiribati

**“warrant of commitment”** means a warrant of commitment issued under **section 122 or 124**

**“work”**—

- (a) means any activity undertaken for gain or reward; but



- (b) does not include an activity excluded, or excluded for a particular purpose, from this definition by immigration procedures.

#### **4A Transitional, savings, and related provisions**

The Transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

#### **5 Meaning of absolute discretion of the decision maker**

- (1) If a provision of this Act provides that a matter or decision is in the **absolute discretion** of the decision maker concerned, it means that—
  - (a) the matter or decision may not be applied for; and
  - (b) if a person purports to apply for the matter or decision, there is no obligation on the decision maker to—
    - (i) consider the purported application; or
    - (ii) inquire into the circumstances of the person or any other person; or
    - (iii) make any further inquiries in respect of any information provided by, or in respect of, the person or any other person; and
  - (c) whether the purported application is considered or not, the decision maker is not obliged to give reasons for any decision relating to the purported application, other than the reason that this section applies.
- (2) **Subsection (1) (c)** applies to any decision made in relation to a purported application, whether the decision was made before or after the commencement of that subsection.

#### **6 Act binds Government of Kiribati**

This Act binds the Government of Kiribati.

### **Part 2**

#### **Core provisions and matters in relation to decision making**

##### *Eligibility to be in or enter Kiribati*

#### **7 Kiribati citizens may enter and be in Kiribati at any time**

- (1) For the purposes of this Act, every Kiribati citizen has, by virtue of his or her citizenship, the right to enter and be in Kiribati at any time.
- (2) However, to establish his or her right to enter Kiribati, a Kiribati citizen must prove their citizenship and establish their identity by complying with border requirements.
- (3) Nothing in this Act (other than **subsection (2)**) abrogates the right declared in **subsection (1)**, and—
  - (a) no provision of this Act that is inconsistent with that right applies to a Kiribati citizen; and
  - (b) no Kiribati citizen is liable under this Act to deportation from Kiribati in

any circumstances.

- (4) Without limiting **subsection (3)**, no Kiribati citizen—
- (a) requires a visa or entry permission; or
  - (b) may hold a visa, or be granted entry permission, except a Kiribati citizen who—
    - (i) is a national of one or more other countries; and
    - (ii) who wishes to enter Kiribati other than as a Kiribati citizen;
    - (iii) has not been granted Kiribati citizenship, nor been registered as a Kiribati citizen by descent, and has not been issued with an evidentiary certificate or national identity card confirming that he or she is a Kiribati citizen.

**8 Persons other than Kiribati citizens must hold visa to travel to and be in Kiribati**

- (1) A person who is not a Kiribati citizen may—
- (a) travel to Kiribati only if the person—
    - (i) is the holder of a visa granted under this Act and the travel is consistent with the conditions of the visa; or
    - (ii) is a person to whom a visa waiver applies (whether authorised by regulation or special direction); and
  - (b) enter and be in Kiribati only if the person is the holder of a visa granted under this Act and he or she has been granted entry permission.
- (2) To avoid doubt, the fact that an application for a visa has been made by or for any person who is onshore does not—
- (a) make the person's presence in Kiribati lawful; or
  - (b) give the person a right to remain in Kiribati while the application is considered; or
  - (c) give the person a right to apply for or be granted any other visa pending determination of the application; or
  - (d) inhibit any deportation procedures under this Act that may apply to the person.
- (3) This Act applies subject to any enactment allowing persons to be extradited to or from Kiribati.

*Excluded persons*

**9 Certain convicted or deported persons not eligible for visa or entry permission to enter or be in Kiribati**

- (1) No visa or entry permission may be granted, and no visa waiver may apply, to any person—
- (a) who, at any time (whether before or after the commencement of this section), has been convicted of an offence for which the person has been sentenced to imprisonment for a term of 5 years or more, or for an indeterminate period capable of running for 5 years or more; or
  - (b) who, at any time in the preceding 10 years (whether before or after the commencement of this section), has been convicted of an offence for which the person has been sentenced to imprisonment for a term of 12 months or more, or for an indeterminate period capable of running for 12 months or more; or
  - (c) who is subject to a period of prohibition on entry to Kiribati under **section 10 or 11**; or
  - (d) who, at any time (whether before or after the commencement of this section), has been removed or deported from Kiribati under any enactment; or
  - (e) who is excluded from Kiribati under any enactment; or
  - (f) who has, at any time, been removed, excluded, or deported from another country.
- (2) **Paragraphs (a) and (b) of subsection (1)** apply subject to any regulations prescribing what happens if a sentence is suspended or deferred or cumulative on another sentence or if one sentence is imposed for 2 or more offences.
- (3) **Subsection (1)(d)** does not apply to a person who was deported under this Act and on the former Act but is not, or is no longer, subject to a period of prohibition on entry under this section or **section 10**.
- (4) This section is subject to **section 11**.

**10 Certain other persons not eligible for visa or entry permission**

- (1) No visa or entry permission may be granted, and no visa waiver may apply, to any person who—
- (a) the Minister has reason to believe—
    - (i) is likely to commit an offence in Kiribati that is punishable by imprisonment; or
    - (ii) is, or is likely to be, a threat or risk to security; or
    - (iii) is, or is likely to be, a threat or risk to public order; or
    - (iv) is, or is likely to be, a threat or risk to the public interest; or
  - (b) is a member of a terrorist group designated under the Measures to Combat Terrorism and Transnational Organised Crime Act 2005.
- (2) This section is subject to **section 11**.

**11 Exceptions to non-eligibility for visa or entry permission**

- (1) Despite **sections 9 and 10**, a visa and entry permission may be granted to any person in accordance with a special direction.



- (2) Despite **sections 9 and 10**,—
  - (a) entry permission must be granted to the holder of a resident visa:
  - (b) a visa and entry permission must be granted to a person who is for the time being entitled to any immunity from jurisdiction by or under the enactment providing for Diplomatic or Consular privileges or immunities.
- (3) A decision to grant a visa and entry permission under subsection (1) is in the absolute discretion of the decision maker.

### *Persons unlawfully in Kiribati*

#### **12 Obligation of persons unlawfully in Kiribati to leave Kiribati**

- (1) A person who is unlawfully in Kiribati has an obligation to leave Kiribati.
- (2) The obligation under **subsection (1)** arises whether or not the person is aware of the obligation, or of the implications of not meeting it, and—
  - (a) that obligation, and any liability of the person to deportation or other action under this Act, is not affected by any failure or alleged failure of the Secretary to communicate the obligation and related implications under **section 19**; but
  - (b) nothing in **paragraph (a)** prevents any action from being brought in respect of such a failure or alleged failure in proceedings that are not directed towards preventing the deportation of any person.

#### **13 Duty of Secretary to communicate obligation to leave Kiribati**

- (1) The Secretary must communicate to persons who are seeking visas to come to Kiribati or visas to be in Kiribati—
  - (a) the obligation to leave Kiribati created by **section 12**; and
  - (b) that a person who fails to meet that obligation is liable to deportation.
- (2) The Secretary may communicate the information in one or more languages as he or she thinks fit.
- (3) Any temporary entry class visa granted to any person that is evidenced by an endorsement in the holder's passport or certificate of identity must contain words to the effect that the person must leave Kiribati before expiry of the visa, or face deportation.

#### **14 No right for person unlawfully in Kiribati to apply for visa**

No person who is unlawfully in Kiribati may apply for a visa and, where any such person purports to apply for a visa, it is a matter for the absolute discretion of the Minister.

#### **15 No right for person unlawfully in Kiribati to work or study**

A person who is unlawfully enters or stays in Kiribati may not—

- (a) work in Kiribati or in the exclusive economic zone of Kiribati; or
- (b) study in Kiribati, except in compulsory education.

### *Immigration procedures*

#### **16 Immigration procedures**

- (1) The Secretary may certify immigration procedures relating to—
  - (a) resident visas, temporary entry class visas, and transit visas:
  - (b) entry permission:
  - (c) conditions relating to resident visas, temporary entry class visas, and transit visas, including, without limitation, conditions relating to—
    - (i) travel to Kiribati:
    - (ii) the holder's ability to work or study, undertake research, data collection or documentary filming in Kiribati or in the exclusive economic zone of Kiribati:
  - (d) the periods for which each type of temporary entry class visa may be granted:
  - (e) the types of temporary visas that may be granted, and the name and description of each type.
- (2) Immigration procedures take effect from—
  - (a) the date they are certified; or
  - (b) a date specified in the procedures as being the date on which they come into effect, which must not be earlier than the date they are certified.
- (3) Any rules or criteria relating to eligibility for a visa or entry permission may include matters relating to—
  - (a) health:
  - (b) character:
  - (c) sponsorship:
  - (d) the provision of bonds.

#### **17 Publication of immigration procedures**

- (1) The Secretary must publish immigration procedures.
- (2) The Secretary must ensure that copies of immigration procedures are available or readily obtainable for inspection, free of charge, at—
  - (a) offices of the Ministry; and
  - (b) Kiribati government offices overseas that deal with immigration matters.

### *Processing applications for visas and entry permission*

#### **18 How applications for visas and entry permission processed**

- (1) The order and manner of processing any application for a visa or entry permission is a matter for the discretion of the Minister or an immigration officer.



- (2) **Subsection (1)** applies unless immigration procedures that particularly relate to the order or manner of processing applications for residence visas, temporary entry class visas, or transit visas require otherwise.
- (3) However, the Secretary may give general instructions to immigration officers on the order and manner of processing any application, or specified classes of application, and, if so, an immigration officer must process an application in accordance with those instructions.
- (4) In giving any instructions, the Secretary may have regard to any matters that the Secretary thinks fit.
- (5) General instructions may apply to any or all applications regardless of the fact that—
  - (a) the general instructions may be different from those existing at the time that the applications were made; or
  - (b) the general instructions may result in applications being processed in a different order or manner than would otherwise have occurred.
- (6) The question whether an application is processed in an order and manner consistent with any general instructions is a matter for the discretion of the immigration officer concerned, and—
  - (a) no appeal lies against the officer's decision, whether to the Minister, a Court, or otherwise; and
  - (b) no review proceedings may be brought in any Court in respect of—
    - (i) any general instructions; or
    - (ii) the application of any general instructions; or
    - (iii) any failure by the Minister or an immigration officer to process, or to continue to process, an application; or
    - (iv) any decision by the Minister or an immigration officer to process (including a decision to continue to process), or any decision not to process (including a decision not to continue to process), an application.
- (7) The Secretary may make arrangements for providing assistance to the Minister and immigration officers, in processing applications.
- (8) To avoid doubt, general instructions given under this section—
  - (a) are matters of rules and practice of the Ministry; and
  - (b) are not immigration procedures.
- (10) To avoid doubt, nothing in this Act, or in any other law or enactment, requires an immigration officer to process an application in any particular order or manner unless required to do so by—
  - (a) general instructions given under this section; or
  - (b) immigration procedures that particularly relate to the order or manner of processing applications for resident visas, temporary entry class visas, or transit visas; or
  - (c) the regulations.

### *Reasons for decisions*

#### **19 Reasons for decisions must be given if visa or entry permission refused to certain persons**

- (1) Except as otherwise provided in this Act, where a person who applied for a visa or entry permission onshore or in an immigration control area so requests, an immigration officer (or, where the decision is the Minister's, the Minister) must give the reasons for any decision to—
  - (a) refuse to grant a visa to the person; or
  - (b) refuse to grant to the person a visa of a particular type; or
  - (c) refuse to grant entry permission to the person.
- (2) The reasons must be given in writing.

### *Automated decision making and biometric information*

#### **20 Automated decision making in relation to visas, etc**

- (1) An automated electronic system that applies criteria predetermined in accordance with immigration procedures may be used by the Ministry to—
  - (a) process an application for, grant (with or without conditions), or refuse to grant, a visa:
  - (b) process an application for, grant, or refuse to grant, entry permission.
- (2) An automated electronic system may be used by the Ministry to process an application for, grant (with or without conditions), or refuse to grant, an interim visa.
- (3) Conditions imposed on visas granted by an automated electronic system may only be conditions that are specified in immigration procedures for a visa of the relevant class or type.
- (4) However, nothing in this section prevents an immigration officer or the Minister from imposing further conditions, or varying or cancelling conditions under **section 31 or 32**, on or in relation to a visa granted by way of an automated electronic system.
- (5) Where a decision to grant or refuse to grant a visa or entry permission is made by way of an automated electronic system, that decision must for all purposes be treated as a decision of an immigration officer who is authorised to make the decision under this Act.

#### **21 Automated decision making in advance passenger processing**

The Secretary may make a decision under **section 99(1) or 100(1)** by means of an automated electronic system that analyses the information (if any) about a person that is held by the Secretary or to which the Secretary has access using criteria predetermined by the Secretary.

#### **22 Use of automated system to confirm Kiribati citizenship**

- (1) An automated electronic system that applies criteria predetermined by the Secretary may be used, for the purposes of this Act, to confirm a person's status as a Kiribati citizen.

- (2) The automated electronic system may be used to confirm a person's status as a Kiribati citizen only if at least one other way of confirming the person's status is available, and that other way involves confirmation by a person.
- (3) A determination made using an automated electronic system must for all purposes be treated as a determination made by a person who is authorised to make the determination under this Act.

**23 Use of biometric information in decision making**

Biometric information required from persons in accordance with this Act may be used to—

- (a) establish a record of a person's identity; or
- (b) establish or verify a person's identity; or
- (c) assist in decision making under this Act.

**24 Collection and storage of biometric information**

Biometric information collected under this Act may be collected, using an automated system or otherwise, by—

- (a) an immigration officer; or
- (b) an agent or person on behalf of an immigration officer.

**Part 3**

**Visas**

**Subpart 1—Visas generally**

**25 Effect of visa**

- (1) A visa (other than a transit visa) granted outside Kiribati indicates that—
  - (a) the holder of the visa has permission to—
    - (i) travel to Kiribati in accordance with the conditions of the visa (if any); and
    - (ii) apply for entry permission; and
  - (b) at the time the visa is granted, there is no reason to believe that the holder will be refused entry permission if the holder's travel is consistent with the conditions of the visa relating to travel; and
  - (c) if the holder is granted entry permission, the holder has permission to stay in Kiribati in accordance with the conditions of the visa (if any).
- (2) A visa granted in an immigration control area indicates that the holder of the visa,—
  - (a) if granted entry permission, has permission to stay in Kiribati in accordance with the conditions of the visa (if any); and
  - (b) has permission to travel to Kiribati subsequently and apply for entry permission in accordance with the conditions of the visa (if any).
- (3) A visa granted onshore indicates that the holder of the visa—
  - (a) has permission to stay in Kiribati in accordance with the conditions of the visa (if any); and



- (b) has permission to travel to Kiribati subsequently and apply for entry permission in accordance with the conditions of the visa (if any).
- (4) A transit visa indicates that the holder of the visa has permission to travel to Kiribati, and to remain, for no longer than the transit period specified.
- 26 Person may hold only one current visa**  
At any one time, a person may hold only one current visa.
- 27 Grant of visa generally matter of discretion**
  - (1) No person is entitled to a visa as of right
  - (2) In determining a visa application, the Minister, or subject to any special direction, an immigration officer, in his or her discretion,—
    - (a) may grant or refuse to grant a visa; and
    - (b) regardless of the class and type of visa that was applied for, may grant a visa of any class and type; and
    - (c) may impose conditions on the visa granted, or vary or waive conditions that would otherwise apply to it.
  - (3) This section applies unless any provision in this Act expressly provides otherwise.
- 28 Grant of visa does not guarantee entry permission**
  - (1) The granting of a visa does not of itself entitle the holder to be granted entry permission.
  - (2) **Subsection (1)** applies except if the visa granted is a resident visa.
- 29 Grant of visa may be conditional on payment of bond**
  - (1) Before granting a visa to an applicant, the Minister or an immigration officer may require that a bond be paid in accordance with the regulations.
  - (2) A bond required under **subsection (1)** may be—
    - (a) forfeited in accordance with the regulations; or
    - (b) refunded in whole or in part in accordance with the regulations.
  - (3) The fact that a bond is forfeited (whether in whole or in part) does not affect other action taken, or that may be taken, in respect of a failure to comply with any conditions imposed on the visa concerned under **section 31 or 32**.
- 30 Grant of visa may be conditional on sponsorship**
  - (1) Before a visa is granted to an applicant, the applicant may be required to supply a written undertaking, in a form approved by the Secretary, by a person (the **sponsor**) relating to any specified matter or matters.
  - (2) The requirement to supply a written undertaking may be imposed by—
    - (a) immigration procedures, in relation to any class or type of visa; or
    - (b) the Minister or an immigration officer, in relation to any particular visa.
  - (3) Without limiting **subsection (1)**,—

- (a) the specified matter or matters in respect of the undertaking may relate to the—
  - (i) employment of the applicant and any dependants of the applicant;
  - (ii) accommodation of the applicant and any dependants of the applicant;
  - (iii) maintenance (including the cost of any publicly funded services or benefits) of the applicant and any dependants of the applicant;
  - (iv) costs of repatriation or deportation of the applicant and any dependants of the applicant;
- (b) an undertaking may relate to the sponsor—
  - (i) providing any matter directly; or
  - (ii) paying the costs of any matter, if the matter is provided by another person.
- (4) A sponsor must be—
  - (a) a Kiribati citizen or resident; or
  - (b) an organisation that is registered in Kiribati as a company, an incorporated society, or a charitable trust; or
  - (c) a government agency.
- (5) A sponsor who is not a natural person must nominate an individual as the authorised contact for the purposes of the sponsorship.
- (6) A sponsor must also be acceptable to the Minister or the immigration officer, or meet any other criteria required by the relevant immigration procedures, or both, as the case may be.
- (7) It is a matter for the absolute discretion of the Minister or the immigration officer whether a person is acceptable as a sponsor, and no appeal lies against his or her decision, whether to any Court, the Minister, or otherwise.

### *Visa conditions*

#### **31 Visas may be subject to conditions**

- (1) Every visa, other than a resident visa, is subject to such conditions (if any) as may be,—
  - (a) in the case of temporary entry class visas (other than visas subject to restricted temporary entry procedures), specified in temporary entry procedures relating to visas of that class or a type of visa within that class, being procedures applicable at the time the visa was granted;
  - (b) in the case of transit visas, specified in transit procedures applicable at the time the visa was granted;
  - (c) imposed by the Minister or an immigration officer under this section;
  - (d) imposed by or under any other enactment.
- (2) The conditions of a visa relating to travel may—
  - (a) give permission to travel to Kiribati on a single journey, multiple journeys, or a set number of journeys; or



- (b) give permission to travel to Kiribati for or within a specified time period; or
- (c) expressly not authorise any further travel to Kiribati.

**32 Conditions on temporary entry class visas**

- (1) On granting a temporary entry class visa, the Minister or an immigration officer may—
  - (a) impose conditions in addition to those specified in temporary entry procedures in relation to a visa of that class or type:
  - (b) vary or waive conditions that would otherwise apply to a visa of that class or type.
- (2) Following the grant of a temporary entry class visa, the Minister or an immigration officer may—
  - (a) impose further conditions, whether or not the conditions are specified in the temporary entry procedures in relation to a visa of that class or type:
  - (b) vary or cancel conditions that would otherwise apply to a visa of that class or type or that were imposed under **subsection (1)**.
- (3) The Minister or an immigration officer may also do one or more of the things in **subsection (2)** by agreement with the visa holder.
- (4) A condition imposed, varied, waived, or cancelled under this section—
  - (a) must be notified to the visa holder by the Minister or an immigration officer; and
  - (b) takes effect—
    - (i) from the date the visa is granted, if the condition is imposed, varied, or waived when the visa is granted; or
    - (ii) from the date specified in the notice (being a date not earlier than the date of notification), in any other case.
- (5) Nothing in this section applies to a temporary entry class visa that is subject to restricted temporary entry procedures.

**33 Visa holder must comply with conditions**

- (1) The holder of a visa that is subject to conditions must comply with the conditions of the visa.
- (2) In the case of conditions imposed by or under any other Act, or specified in immigration procedures, the obligation to comply with those conditions arises whether or not the visa holder is aware of the conditions, or of the implications of not complying with them.
- (3) A visa holder must comply with conditions imposed or varied and notified to the holder by the Minister or an immigration officer under **section 31 or 32**.
- (4) It is presumed, in the absence of evidence to the contrary, that, a visa holder was notified of any conditions imposed or varied under **section 31 or 32** if notice of them was given in accordance with the regulations.

*General rules relating to visas*

**34 Applications for visas**

- (1) An application for a visa must be made in the manner prescribed for the class or type of visa sought.
- (2) The applicant must provide his or her contact address and address for service.

**35 Obligation on applicant to inform of all relevant facts, including changed circumstances**

- (1) It is the responsibility of an applicant for a visa to ensure that all information, evidence, and submissions that the applicant wishes to have considered in support of the application are provided when the application is made.
- (2) The Minister or immigration officer considering the application—
  - (a) is not obliged to seek any further information, evidence, or submissions; and
  - (b) may determine the application on the basis of the information, evidence, and submissions provided.
- (3) It is also the responsibility of an applicant for a visa to inform the Minister or an immigration officer of any relevant fact, including any material change in circumstances that occurs after the application is made, if that fact or change in circumstances—
  - (a) may affect the decision on the application; or
  - (b) may affect a decision to grant entry permission in reliance on the visa for which the application is made.

**36 Applications by minors**

Where an application for a visa is made by a minor who is not married, the Minister or an immigration officer may decline the application if the Minister or immigration officer is not satisfied that any parent or guardian of the person consents to the making of the application.

**37 Biometric information may be required from visa applicant**

- (1) An applicant for a visa must allow biometric information to be collected from him or her.
- (2) If the applicant fails to allow the biometric information to be collected, the Minister or an immigration officer may refuse to grant the visa applied for.
- (3) The requirement in **subsection (1)** does not apply if the person is exempt from providing the information in accordance with the regulations.

**38 Grant of visa in special case**

- (1) The Minister may at any time, of the Minister's own volition, grant a visa of any type to a person who—
  - (a) is unlawfully in Kiribati; and
  - (b) is not a person in respect of whom a deportation order is in force; and

- (c) is not a person in respect of whom a removal order is in force.
  - (2) A decision to grant a visa under **subsection (1)** is in the Minister's absolute discretion.
- 39 Form of visa**
- (1) A visa is granted by being entered and retained in the records (whether electronic or physical) of the Ministry in a manner determined by the Secretary.
  - (2) The entry for the visa must specify, as appropriate,—
    - (a) its start date (which may be the date of its grant or a future or past date);
    - (b) any conditions of the visa that relate to travel, including—
      - (i) whether the visa allows travel to Kiribati on a later occasion;
      - (ii) if the visa allows travel to Kiribati, the period during which the holder may travel to Kiribati;
      - (iii) if the visa allows travel to Kiribati, whether the visa gives permission to travel to Kiribati on a single journey, multiple journeys, or a set number of journeys;
    - (c) in relation to the holder's stay in Kiribati, the date or event on the occurrence of which the visa will expire, or the period after which it will expire;
    - (d) any other conditions of the visa;
    - (e) for those persons granted entry permission, the date or dates the entry permission was granted;
    - (f) such other matters as may be required or approved by the Secretary.
  - (3) A visa may (but need not) be evidenced by an endorsement in a passport or certificate of identity.
  - (4) To avoid doubt, no electronic or physical record is required to be created for a visa that is deemed to be granted by or under this Act.

**40 Expiry of visa**

- (1) If the holder of a visa is in Kiribati, the visa expires at the time specified in the visa, in accordance with the regulations, as the expiry date.
- (2) If the holder of a visa is outside Kiribati, the visa expires at the time specified in the visa, in accordance with the regulations, as the expiry date.

**41 Cancellation of visa on triggering event**

- (1) A visa is cancelled in the following circumstances:
  - (a) on the deportation of its holder from Kiribati;
  - (b) on the refusal of entry permission to its holder;
  - (c) on entry permission granted to its holder being revoked;
  - (d) if the holder arrived at an immigration control area,—
    - (i) on the holder leaving the immigration control area without presenting himself or herself to an immigration officer; or
    - (ii) on the holder failing to comply with the instruction of an immigration officer to remain in the area;



- (e) if the holder arrived at a place other than an immigration control area, on failing to present himself or herself in the prescribed manner and within the prescribed time as required under **section 71(1)(b)**;
  - (f) on the start date of a further visa granted to its holder;
  - (g) on the grant of Kiribati citizenship to its holder.
- (2) To avoid doubt, if a person's visa is cancelled under **subsection (1) (b)**, the grant of a new visa to the person does not cancel the person's liability to deportation.

**42 Cancellation of temporary entry class or transit visa by Minister or immigration officer**

- (1) The Minister or an immigration officer may, if the Minister or immigration officer determines there is sufficient reason,—
- (a) cancel a temporary entry class visa at any time when its holder is outside Kiribati;
  - (b) cancel a temporary entry class visa that has been extended at any time;
  - (c) cancel a transit visa at any time.
- (2) The Minister or an immigration officer must notify a person, in writing, if—
- (a) the person's visa is cancelled under this section; and
  - (b) the person is outside Kiribati.

**43 Cancellation of visa for administrative error**

An immigration officer may cancel a visa that the officer believes on reasonable grounds was granted as a result of an administrative error if—

- (a) the visa was granted to a person in an immigration control area, or an office of the Ministry, in Kiribati and the person is still in the control area or office; or
- (b) advice of the grant of the visa has not been sent or given to the person concerned, in any other case.

**44 Grant of further visa where visa granted in error**

If the Minister or an immigration officer determines that a visa was granted as a result of an administrative error but the visa was not cancelled under **section 43**, the Minister or immigration officer may, in his or her absolute discretion,—

- (a) offer the holder a visa of a class and type, and subject to any conditions, that the Minister or immigration officer considers appropriate; and
- (b) if the holder agrees, grant such a visa.

*Waiver of requirement for visa permitting travel to Kiribati in certain cases*

**45 Waiver of requirement for visa permitting travel to Kiribati in certain**



#### **cases**

- (1) The regulations may waive the requirement to hold a visa permitting travel to Kiribati in relation to any class of persons, and provide for any conditions of such a waiver.
- (2) The Minister may, by special direction,—
  - (a) waive for a period not exceeding 3 months the requirement to hold a visa permitting travel to Kiribati in relation to any class of persons, subject to any conditions specified by the Minister:
  - (b) suspend for a period not exceeding 3 months a waiver made by regulations referred to in **subsection (1)**:
  - (c) waive, in any individual case, the requirement to hold a visa permitting travel to Kiribati:
  - (d) suspend, in any individual case, a waiver made by regulations referred to in **subsection (1)**.
- (3) A special direction under **subsection (2) (a) or (b)** may not be effectively continued in force by the making of a further special direction to the same or similar effect.
- (4) A waiver under this section does not of itself entitle a person subject to the waiver to be granted entry permission.

### **Subpart 2—Classes of visa**

#### **46 Classes of visa**

The following classes of visa may be granted under this Act:

- (a) residence visas:
- (b) temporary entry class visas, consisting of—
  - (i) temporary visas:
  - (ii) limited visas:
  - (iii) interim visas:
- (c) transit visas.

#### *Residence visas*

#### **47 Who may not apply for residence visas**

To avoid doubt, no limited visa holder, interim visa holder, transit visa holder, or person who is liable for deportation may apply for a residence visa.

#### **48 Decision on applications for residence class visa**

- (1) A person of full age and full capacity may apply in the prescribed manner to the Residency Visa Commission to be granted a residence visa.
- (2) The person making the application must show that the person—
  - (a) was, on the date of the application, and has been, during the period of 3 years immediately before that date, ordinarily resident in Kiribati; and
  - (b) intends to continue to reside in Kiribati; and

- (c) is of good character; and
  - (d) unless prevented by physical or mental disability, is able to speak and understand the Kiribati language for normal conversational purposes and
  - (e) has a respect for the customs and traditions of Kiribati; and
  - (f) has the means of support for him or herself and any dependants.
- (3) If satisfied that the above criteria have been met by the applicant, the Residency Visa Commission must make recommendations to the Minister regarding the application, and the Minister may grant the application, but otherwise must refuse it.

#### **49 Currency and nature of residence visa**

The holder of a residence visa is entitled to—

- (a) stay in Kiribati indefinitely;
- (b) work in Kiribati or in the exclusive economic zone of Kiribati;
- (c) study in Kiribati;
- (d) be automatically granted entry permission upon arrival in Kiribati.

*Temporary entry class visas: provisions applying to all types*

#### **50 Decisions on applications for temporary entry class visa**

The Minister or an immigration officer may, in the Minister's or officer's discretion, grant a temporary entry class visa as an exception to temporary entry class procedures in any particular case.

#### **51 Currency and nature of temporary entry class visa**

- (1) A temporary entry class visa may be granted—
- (a) until a specified date; or
  - (b) until a specified event on the occurrence of which the visa expires; or
  - (c) for a specified period of time.
- (2) The holder of a temporary entry class visa—
- (a) is entitled to—
    - (i) travel to Kiribati; and
    - (ii) apply for entry permission (whether before or after travelling to Kiribati); and
  - (b) if granted entry permission, is entitled, in accordance with the conditions of the visa (if any), to stay in Kiribati during the currency of the visa.
- (3) **Subsection (2)(a)** applies only if the visa holder's travel to Kiribati is consistent with the conditions of the visa relating to travel.
- (4) The holder of a temporary entry class visa may—
- (a) work in Kiribati, or in the exclusive economic zone of Kiribati, only if the conditions of the visa allow, and only consistently with those conditions:

- (b) study in Kiribati, only if the conditions of the visa allow, and only with those conditions:
- (c) invest in Kiribati industries, businesses, infrastructure, or properties, only if the conditions of the visa allow, and only consistently with those conditions.

*Temporary entry class visas: provisions applying to temporary visas*

**52 Who may apply for temporary visa**

- (1) The following persons may apply for a temporary visa:
  - (a) a person, including a person to whom a visa waiver applies, who is outside Kiribati and who wishes to come to Kiribati for any purpose for which a temporary visa may be granted:
  - (b) a person arriving in Kiribati and to whom a visa waiver applies.
- (2) To avoid doubt,—
  - (a) no limited visa holder, interim visa holder, or transit visa holder may apply for a temporary visa; and
  - (b) a person liable for deportation may apply only—
    - (i) for a visa of the same class and type that he or she held before becoming liable for deportation; and
    - (ii) if he or she is not unlawfully in Kiribati.
- (3) However, the Minister, in his or her absolute discretion, may grant a temporary visa to a person prohibited from applying for a temporary visa under **subsection (2)**.

*Temporary entry class visas: provisions applying to interim visas*

**53 Interim visa**

- (1) The Minister or an immigration officer may, for the purpose of maintaining the lawful status in Kiribati of the applicant while the application is being considered, grant an interim visa to a person in Kiribati who—
  - (a) holds a temporary visa; and
  - (b) has applied for a further visa (whether a resident or a temporary entry class visa).
- (2) No person has the right to apply for an interim visa, and any decision as to whether to grant an interim visa is a matter for the absolute discretion of the Minister or relevant immigration officer.
- (3) The holder of an interim visa may not apply for a visa of any other class or type.

*Temporary entry class visas: provisions applying to limited visas*

**54 Who may apply for limited visa**

The following persons may apply for a limited visa:

- (a) a person, including a person to whom a visa waiver applies, who is out-



side Kiribati and who wishes to come to Kiribati for an express purpose:

- (b) a person arriving in Kiribati to whom a visa waiver applies who wishes to stay in Kiribati for an express purpose:
- (c) a person onshore who is—
  - (i) the holder of a current limited visa, if further time is required to achieve the express purpose for which that visa was granted; or
  - (ii) the holder of a temporary visa.

**55 Grant of limited visa rather than temporary visa applied for or held**

- (1) If a person applies for a temporary visa (rather than a limited visa), the Minister or an immigration officer may grant the person a limited visa rather than the temporary visa applied for if—
  - (a) the Minister or the immigration officer identifies a risk that the person will remain in Kiribati beyond the expiry of his or her visa; and
  - (b) the Minister or the immigration officer considers that the grant of a limited visa rather than a temporary visa is necessary to manage that risk.
- (2) If the holder of a temporary visa applies for entry permission, the Minister or an immigration officer may cancel the temporary visa by granting the person a limited visa, and grant entry permission to the person on the basis of the limited visa only if,—
  - (a) the person wishes to enter Kiribati for an express purpose; and
  - (b) the Minister or the immigration officer identifies a risk that the person will remain in Kiribati beyond the expiry of his or her visa; and
  - (c) the Minister or the immigration officer considers that the grant of a limited visa (and entry permission on the basis of that visa) is necessary to manage that risk; and
  - (d) the person agrees to the grant of a limited visa and entry permission on the basis of that visa.

*Transit visas*

**56 Who must obtain transit visa**

- (1) A person intending to travel to and be in Kiribati only as a transit passenger must, before proceeding to Kiribati, apply for and obtain a transit visa.
- (2) **Subsection (1)** applies to the person unless he or she is classified as a person to whom a transit visa waiver applies—
  - (a) by the regulations; or
  - (b) by special direction of the Minister under **subsection (4)**.
- (3) Regulations classifying persons as persons to whom a transit visa waiver applies—
  - (a) may, without limiting the generality of the manner in which persons may be classified, classify persons by reference to all or either of the following:

- (i) their nationality;
  - (ii) whether or not they hold, or are required to hold, any particular type of travel or immigration documentation, by whomever issued;
- (b) are subject to any special direction made under **subsection (4)** that suspends any relevant transit visa waiver.
- (4) The Minister may, by special direction that has effect for a period not exceeding 3 months,—
  - (a) classify persons as persons to whom a transit visa waiver applies (whether by reference to the matters referred to in **subsection (3)(a)** or otherwise);
  - (b) suspend any transit visa waiver specified in regulations for any class or classes of person.
- (5) A special direction made under **subsection (4)** may not be effectively continued in force by the making of a further special direction to the same or similar effect.

**57 Transit visa may be granted as exception to immigration procedures**

The Minister or an immigration officer may, in his or her absolute discretion, grant a transit visa to a person as an exception to immigration procedures.

**58 Currency of transit visa**

A transit visa is current for the period or until the date specified in it, and may be expressed to be effective for any number of journeys to Kiribati in that period or until that date.

**59 Limitations on holders of transit visa**

- (1) The holder of a transit visa may not apply for entry permission or any class or type of visa while in Kiribati during the transit period.
- (2) However, the Minister or an immigration officer, in his or her absolute discretion, may grant to the person a visa of the type and class that the Minister or immigration officer thinks fit.

**60 Cancellation of transit visa**

An immigration officer may cancel a transit visa at any time but, if he or she cancels the visa after the holder of the visa has arrived in Kiribati, the person is liable for turnaround.

**61 Expiry of transit period**

At any time before the transit period of a transit passenger expires, an immigration officer may, in his or her absolute discretion,—

- (a) extend the transit passenger's transit period beyond the transit period prescribed in the regulations; or
- (b) grant the transit passenger a visa and entry permission.

## **Part 4**

### **Decision making**

#### *Special directions*

##### **62 Special directions**

- (1) The Minister may give to the Secretary or any other immigration officer, in writing, a special direction, in relation to any matter for which such a direction is contemplated by any provision of this Act or the regulations, in respect of—
  - (a) any person, visa, or document; or
  - (b) any 2 or more persons, visa, or documents where by reason of any specific event, occurrence, or unusual circumstances there is a common link between those persons, visas, or documents.
- (2) The Minister may give, in writing, a special direction—
  - (a) waiving the requirement to hold a visa permitting travel to Kiribati in relation to any class of persons;
  - (b) suspending a visa waiver;
  - (c) classifying persons to whom a transit visa waiver applies;
  - (d) suspending a transit visa waiver.
- (3) A special direction comes into force on the day on which it is made, or any later date specified in the direction.
- (4) A special direction may be subject to such conditions as the Minister thinks fit
- (5) A special direction may revoke or amend any previous special direction.
- (6) The decision whether to grant a special direction is in the absolute discretion of the Minister.

#### *Delegation of Minister's Powers*

##### **63 Delegation of Minister's powers**

- (1) The Minister may, in writing, delegate to any immigration officer one or more of the powers conferred on the Minister by this Act, except—
  - (a) this power of delegation; and
  - (b) the power to make a special direction waiving the requirement for classes of persons to hold a visa permitting travel to Kiribati; and
  - (c) the power to certify that a person constitutes a threat or risk to security.
- (2) The immigration officer to whom a delegation may be made may be an officer referred to by name or the officer who for the time being holds a specified position.
- (3) Every delegation is revocable at will, and no delegation prevents the exercise of any power by the Minister.
- (4) A delegation may be made subject to such restrictions and conditions as the Minister thinks fit, and may be made either generally or in relation to any particular case.
- (5) A delegation no longer applies to a person when the person leaves the Ministry



or service or employment in respect of which the delegation was made.

- (6) Until revoked, a delegation continues in force according to its tenor, even if the Minister who made it has ceased to hold office, and continues to have effect as if made by the successor in office of that Minister.
- (7) The fact that any immigration officer exercises any power of the Minister, other than a power referred to in **subsection (1)**, is, in the absence of proof to the contrary, sufficient evidence that the officer has been authorised to do so by a delegation under this section.

### *Secretary's responsibilities*

#### **64 Responsibilities of Secretary**

The Secretary has responsibility for—

- (a) approving immigration procedures, immigration application forms, and visa formats; and
- (b) giving instructions on the order and manner of processing applications; and
- (c) designating a public officer, or class of public officers, as an immigration officer, if suitably qualified and trained; and
- (d) specifying the functions and powers an immigration officer is authorised to perform under this Act or any other Act; and
- (e) carrying out any functions or exercising any powers conferred by this Act, the regulations, and any other enactment.

#### **65 General instructions**

- (1) The order and manner of processing any application for a visa or entry permission is a matter for the discretion of the Minister or an immigration officer, unless immigration procedures require otherwise.
- (2) However, the Secretary may give general instructions to immigration officers on the order and manner of processing any application, and an immigration officer must process an application in accordance with those instructions.

#### **66 Immigration control areas**

- (1) The Secretary may designate the following places in Kiribati as immigration control areas:
  - (a) all or any part of an airport:
  - (b) all or any part of a port:
  - (c) any other place that the Secretary considers appropriate for processing people arriving in and departing from Kiribati.
- (2) The Secretary must give written notice of a designation to the operator or person in control of the place, and publicly notify any designation.
- (3) Immigration officers have a right of access to immigration control areas.

#### **67 Designation of functions and conferral of powers on immigration officers**

- (1) The Secretary may designate as an immigration officer any person employed in the Ministry that the Secretary considers is—

- (a) reasonably necessary to be so designated for the purposes of this Act;  
or
  - (b) suitably qualified and trained.
- (2) The Secretary must specify which functions and powers an immigration officer is authorised to exercise under this Act, the regulations, or the immigration procedures.
  - (3) An immigration officer may not perform any functions or exercise those powers unless specifically authorised by the Secretary.
  - (4) An immigration officer authorised to exercise any of the powers specified in **subsection (5)** must be issued with a warrant of designation, signed by the Secretary, specifying which powers the officer may exercise.
  - (5) The powers referred to in **subsection (4)** are the powers—
    - (a) to deport a person:
    - (b) of entry and inspection:
    - (c) to require the production of information or documents for the purpose of ensuring compliance with this Act:
    - (d) conferred on immigration officers at a border:
    - (e) of entry and search:
    - (f) to require a person to give biometric information:
    - (g) to detain a person.
  - (6) Whenever an immigration officer seeks entry to any premises, building, or craft in the course of exercising a power, or orally makes a request or demand of a person, the officer must produce his or her warrant of designation if requested to do so.

### *Visa applications*

#### **68 Visa applicants must provide all relevant information**

- (1) An applicant for a visa must ensure that all information the applicant wishes to have considered is provided when the application is made.
- (2) The Minister or immigration officer who considers the application is not obliged to seek any further information and may determine the application based on the information provided when the application is made.
- (3) The applicant must inform the Minister or an immigration officer of any relevant fact, including any material change in circumstances that occurs after the application is made, if that change could affect the decision on the application.

#### **69 Where false or misleading information, etc, is supplied**

It is a sufficient ground for the Minister or an immigration officer to decline to grant a visa if they are satisfied that the person—

- (a) submitted false or misleading information or withheld relevant information that was potentially prejudicial to the grant of the visa; or
- (b) did not ensure that an immigration officer was informed of any material

change in circumstances that occurred between the time of making the application and the time of a decision on the application.

**70 Applicants must be given reasons for decisions**

If a person who applied for a visa or entry permission onshore or in an immigration control area so requests, an immigration officer or the Minister must give the reasons for any decision to refuse to grant a visa or an entry permission to the person.

**Part 5**

**Turnaround and deportation**

*Obligations on persons arriving in Kiribati*

**71 Obligations on persons arriving in Kiribati**

- (1) Except as provided in the regulations, or in any special direction, every person who arrives in Kiribati from another country has the following responsibilities:
  - (a) if the person arrives at an immigration control area, to present himself or herself to an immigration officer without delay;
  - (b) if the person arrives at a place other than an immigration control area, to present himself or herself in the prescribed manner within the prescribed time;
  - (c) to apply for a visa in the prescribed manner, if the person is a person to whom a visa waiver applies;
  - (d) to apply for entry permission in the prescribed manner unless—
    - (i) the person is a Kiribati citizen and holds and produces a Kiribati passport; or
    - (ii) the person is a Kiribati citizen; or
    - (iii) the person is a transit passenger who holds a transit visa or is a person to whom a transit visa waiver applies;
  - (e) to produce, on demand by an immigration officer, the person's passport or certificate of identity and any travel tickets held by the person;
  - (f) in the case of a Kiribati citizen who is entering Kiribati as a Kiribati citizen, to comply with any requirements prescribed for the purpose of confirming the person's status as a Kiribati citizen.
  - (g) to comply with any direction of an immigration officer to remain in the immigration control area or other prescribed place, or a specified part of the area or place;
  - (h) to comply with any other directions of an immigration officer while in an immigration control area.
- (2) However, the obligation in **subsection (1)(f)** does not apply if the person, before arriving in Kiribati, has already been identified as a Kiribati citizen.
- (3) Where a person arriving in Kiribati is, by reason of age or disability, incapable of complying with any of the requirements of **subsection (1)**, it is the responsibility of the parent or guardian or any other person for the time being having the care of that person to comply with those requirements on that



person's behalf.

### *Turnaround*

#### **72 Person failing to present and apply for entry permission**

A police officer may arrest a person and present him or her to an immigration officer for the purposes of making decisions in relation to the person under this Act, if the police officer has good cause to suspect that—

- (a) the person arrived in Kiribati from another country elsewhere than at an immigration control area or other prescribed place, and did not comply with the requirements of **section 71** or the regulations; or
- (b) the person recently arrived in Kiribati from another country elsewhere than at an immigration control area or other prescribed place and will not comply with the requirements of **section 71** or the regulations; or
- (c) the person arrived in Kiribati from another country at an immigration control area or other prescribed place and did not comply with the requirements of **section 71** or the regulations.

#### **73 Arrest, detention, and turnaround of persons**

- (1) This section applies to any person arriving in Kiribati from another country who—
  - (a) is a person to whom a visa waiver applies and who fails to apply for a visa and entry permission or is refused a visa; or
  - (b) is not a person to whom a visa waiver applies and is not the holder of a visa granted under this Act; or
  - (c) holds a visa but—
    - (i) the visa is subsequently cancelled under this Act; or
    - (ii) the visa is cancelled under this Act while the person is in an immigration control area (unless some other visa is granted to the person or the person is a Kiribati citizen); or
  - (d) is a stowaway; or
  - (e) after arriving in Kiribati, has his or her transit visa cancelled by an immigration officer; or
  - (f) is a transit passenger who holds a transit visa or is a person to whom a transit visa waiver applies, and the transit period concerned has expired.
- (2) The person—
  - (a) is, for the purposes of this Act, unlawfully in Kiribati; and
  - (b) does not have any rights of appeal on humanitarian grounds so long as this section applies to the person; and
  - (c) is liable to be arrested and detained under **Part 9**; and
  - (d) is liable for turnaround.

#### **74 When section 73 ceases to apply to person**

- (1) **Section 73** ceases to apply to a person on the earliest of the following:
  - (a) the expiry of 72 hours after the person (including a stowaway) first

reports or presents to an immigration officer after arriving in Kiribati, unless that person is sooner arrested and detained or otherwise dealt with under **Part 9**:

- (b) in the case of a person whose visa is deemed to be cancelled, 72 hours after the time when the person is physically located by an immigration officer or a police officer following the person's leaving the immigration control area in contravention of the instruction of an immigration officer, unless the person is sooner arrested and detained or otherwise dealt with under **Part 9**;
  - (c) the person being granted a visa and entry permission;
  - (d) the expiry of a warrant of commitment issued under **section 122 or 124**, unless a further warrant of commitment is issued or the person is released on conditions under **Part 9** or agrees to residence and reporting requirements under **section 120**.
- (2) For the purposes of this section, a stowaway is deemed to arrive in Kiribati at the time when the craft on which the stowaway is travelling crosses into the territorial limits of Kiribati.

#### *Deportation criteria*

##### **75 Unlawful presence in Kiribati**

- (1) A person unlawfully in Kiribati is liable to deportation.
- (2) A person unlawfully in Kiribati may, not later than 21 days after the first occasion on which it is determined by an immigration officer that he or she is liable to deportation as a consequence of being unlawfully in Kiribati, appeal to the Minister, upon payment of the prescribed fee, on humanitarian grounds against his or her liability to deportation.

##### **76 Visas or entry permissions granted in error**

- (1) A person is liable to deportation if an immigration officer determines that the person's visa or entry permission was granted as a result of an administrative error and the visa was not previously cancelled.
- (2) A person liable to deportation on the basis of a determination that his or her visa or entry permission was granted in error may, not later than 10 days after the date of service of a deportation liability notice, appeal to the Minister, upon payment of the prescribed fee against the person's liability to deportation on—
  - (a) the ground that the person's visa or entry permission was not granted in error; or
  - (b) humanitarian grounds.
- (3) However, the person may not appeal against their liability to deportation, if the person re-entered Kiribati while the person was subject to a period of prohibition on entry.

##### **77 Visa granted to person with false identity**

- (1) A person is liable to deportation if—
  - (a) the person is convicted of an offence in circumstances where his or her

identity is different to the identity under which the person holds a visa;  
or

(b) the immigration officer determines that the person holds a visa under a false identity.

(2) The person may, not later than 10 days after the date of service of a deportation liability notice, appeal to the Minister, upon payment of the prescribed fee on humanitarian grounds against his or her liability to deportation.

#### **78 Limited purpose or temporary visas may be revoked for sufficient reason**

(1) A person who is the holder of a limited purpose or temporary visa may be deported if an immigration officer considers that there is sufficient reason to revoke their visa and deport them.

(2) For the purposes of **subsection (1)**, sufficient reason includes—

(a) meeting the exclusion criteria:

(b) breach of conditions of the person's visa:

(c) criminal offending:

(d) other matters relating to the person's character:

(e) concealing relevant information in relation to the person's application for a visa:

(f) a situation where the person's circumstances no longer meet the rules or criteria under which the visa was granted.

(3) A person to whom this section applies may not appeal if—

(a) the person holds a limited purpose visa; or

(b) the Minister determines that the person is an excluded person.

(4) A temporary visa holder or interim visa holder who is liable for deportation under this section may, not later than 10 days after the date of service of a deportation liability notice, appeal to the Minister, upon payment of the prescribed fee against his or her liability to deportation on humanitarian grounds.

#### **79 Threat or risk to national or international security**

(1) Where the Minister certifies that a person is a threat or risk to security (as defined in **section 4**), the Minister may order the deportation from Kiribati of that person.

(2) The Minister may consult with the Ministry, his or her Cabinet colleagues, the Beretitenti, and international security agencies before making a decision to certify a person as a threat or risk to security.

(3) A person may not appeal against his or her liability to deportation under this section.

#### **80 Deportation for conviction**

(1) A residence visa holder is liable for deportation if he or she is convicted, in Kiribati or elsewhere, of an offence—

(a) for which a sentence of 5 years or more imprisonment is imposed, com-



- mitted during the first 10 years of residence; or
  - (b) punishable by 2 years or more imprisonment, committed during the first 5 years of residence; and
  - (c) punishable by 3 months or more imprisonment, committed during the first 2 years of residence, and any period before that.
- (2) A person liable for deportation under this section may, not later than 21 days after being served with a deportation liability notice, appeal to the Minister, upon payment of the prescribed fee against his or her liability to deportation on humanitarian grounds.

### *Deportation liability notice*

#### **81 Deportation liability notice content**

- (1) A deportation liability notice must be served on a person liable to deportation if it is intended to execute a deportation order.
- (2) A deportation liability notice may be served only by an immigration officer or by another person on behalf of an immigration officer.
- (3) A deportation liability notice must be signed by an immigration officer or the Minister in the case of **section 79** and **85(3)** and state—
  - (a) the provision of this Act under which liability to deportation arose:
  - (b) the ground or grounds on which liability to deportation arose:
  - (c) whether there is a right of appeal against liability to deportation and, if so—
    - (i) what it is:
    - (ii) how to exercise the right:
    - (iii) the time limit for lodging the appeal.

### *Procedures for deportation*

#### **82 Status of those liable for deportation**

- (1) A person who is not a citizen of Kiribati is lawfully in Kiribati while awaiting the outcome of the person's appeal against deportation may apply for a further visa.
- (2) Subject to **subsection (1)**, a person liable for deportation may not—
  - (a) apply for a visa if he or she is unlawfully in Kiribati; or
  - (b) apply for a further visa of a different class or type, if he or she currently holds a visa.
- (3) However, the Minister or an immigration officer may, in his or her absolute discretion, grant a visa of a different class or type to a person who currently holds a visa.

#### **83 Ten-year limit on deportation liability**

Liability to deportation ceases after a person has been lawfully resident in Kiribati for more than 10 years.

**84 Deportation appeals**

Deportation of any person must not occur until—

- (a) the time for bringing an appeal has expired; or
- (b) if the person appeals, the appeal is determined.

**85 Cancellation or suspension of liability to deportation**

- (1) A decision to cancel or suspend a person's liability to deportation is in the absolute discretion of the Minister
- (2) The Minister may at any time, by written notice, cancel a person's liability to deportation.
- (3) The Minister may also, by written notice, suspend liability to deportation for a period up to 2 years and subject to the visa holder complying with any conditions stated in that notice.
- (4) The Minister may reactivate the person's liability to deportation if the person fails to meet the conditions.
- (5) A person's liability to deportation is reactivated by serving a deportation liability notice on the person that sets out the grounds of the reactivation.
- (6) The person has 21 days from the date the deportation liability notice is served to leave Kiribati.

**86 Effect of cancellation, suspension, or reactivation on existing appeals**

- (1) During a period of suspension the person may not apply for a visa of a different class or type.
- (2) If the Minister determines that a person has met the conditions for the period of the suspension, the Minister must cancel the person's liability to deportation and notify the person.

*Deportation orders*

**87 Deportation order content**

- (1) A deportation order—
  - (a) must be served on a person liable to deportation before he or she can be deported;
  - (b) may be served on that person only by an immigration officer or a police officer.
- (2) A deportation order must specify—
  - (a) that the person named in the order is ordered to be deported from Kiribati; and
  - (b) that any visa held by the person has been, or will be, cancelled; and
  - (c) the provision of this Act under which the person became liable to deportation; and
  - (d) the ground or grounds for deportation; and
  - (e) the period of any prohibition on entry to Kiribati that the person named in the order is subject to; and

- (f) the consequences of attempting to return to Kiribati during the period of prohibition; and
  - (g) that the person is required to repay the actual or the estimated costs of deportation.
- (3) A deportation order must be signed by an immigration officer or the Minister.

#### **88 Executing a deportation order**

- (1) A deportation order may be executed once it has been served on the person subject to the order.
- (2) A deportation order may be executed by taking the person into custody, escorting the person to an airport or a port, and ensuring that the person is placed on board a craft and detained there until the person leaves Kiribati.

#### **89 Prohibition periods**

- (1) A person 18 years of age or over who is deported from Kiribati may not return to Kiribati, or be granted a visa or an entry permission, during the period of prohibition on entry that applies to the person as follows:

##### *No ban*

- (a) if granted a visa as the result of an administrative error and visa not cancelled:

##### *2-year ban*

- (b) if unlawfully in Kiribati and deported within 12 months of the person becoming unlawfully present:

##### *5-year ban*

- (c) if unlawfully in Kiribati and deported more than 12 months after the date on which person became unlawfully present:
- (d) if unlawfully in Kiribati and it is the second or subsequent time that the person has been unlawfully in Kiribati:
- (e) if a temporary entry class visa holder is deported for sufficient reasons:

##### *Permanent prohibition*

- (f) if a visa is granted on the basis of a false identity:
  - (g) if convicted for, or the Minister determines there was, fraud or forgery, or other serious misconduct in relation to an application for a visa or an entry permission:
  - (h) if convicted of a specified offence:
  - (i) if certified as a person constituting a threat or risk to security.
- (2) A person who is liable to deportation is not subject to any period of prohibition on entry if the person—
- (a) is liable to deportation only on the grounds of being unlawfully in Kiribati; and
  - (b) leaves Kiribati voluntarily before being served with a deportation order.
- (3) If a person subject to a period of prohibition attempts to enter Kiribati, the period of prohibition restarts from the date the person attempts re-entry or is



again deported from Kiribati.

- (4) The Minister may, in the Minister's absolute discretion reduce, or remove altogether, the period of prohibition on entry.

**90 Persons may not return until debt paid**

- (1) A person 18 years of age or over who is deported from Kiribati may not return to Kiribati, or be granted a visa or entry permission, until the person has repaid any debt due to the Government in respect of the costs of his or her deportation.
- (2) The Minister may reduce or waive any debt due by a person to whom **subsection (1)** applies in the Minister's absolute discretion.

## **Part 6**

### **Review and appeals**

#### *Reconsideration*

**91 Reconsideration of temporary visa decision for person onshore**

- (1) A person aggrieved by a decision of an immigration officer to decline a temporary entry visa application while the person is onshore may seek reconsideration of that decision.
- (2) A person who wishes to have the decision reconsidered must put their request in writing to the Ministry and submit their request within 7 working days of the decision to decline their application.
- (3) The request must be referred to the immigration officer who made the decision or to another immigration officer who—
  - a) must either—
    - (i) refer the matter to the Secretary within 7 working days; or
    - (ii) reverse the original decision to decline the visa application; and
  - b) may, if he or she refers the application to the Secretary, grant an interim visa enabling the person to stay in Kiribati pending the Secretary's decision.
- (4) A person aggrieved by a decision of the Secretary to uphold the decision may put their request for reconsideration of the Secretary's decision in writing to the Minister, upon payment of the prescribed fee, and submit their request within 7 working days of the decision of the Secretary.
- (5) The Secretary may grant an interim visa allowing the person to stay in Kiribati pending the Minister's decision.

#### *Appeals*

**92 Procedure on appeal**

- (1) This section applies to a person who may appeal under any of **sections 75(2), 76(2), 77(2), 78(4) and 80(2)** to the Minister against a decision that they are liable to deportation.
- (2) The appellant is responsible for ensuring that all information, evidence, and submissions that the appellant wishes to have considered in support of the appeal are provided to the Minister before it makes its decision.

**93 Process after appeal is lodged**

If an appeal is lodged,—

- (a) the Minister must give the Secretary a copy of the notice of appeal and submissions lodged by the appellant; and
- (b) the Secretary must, in the time allowed by the Minister, lodge any file relevant to the appeal that is held by the Ministry, or any other relevant information.

**94 Grounds for determining appeal on facts**

The Minister must allow an appeal against liability to deportation on the facts, in the case of an appellant liable to deportation under **section 76(2)**, only if it is satisfied that the visa was not granted as a result of an administrative error.

**95 Grounds for determining humanitarian appeal**

The Minister must allow an appeal against liability to deportation on humanitarian grounds only if it is satisfied that—

- (a) there are exceptional circumstances of a humanitarian nature that would make it unjust or unduly harsh for the appellant to be deported from Kiribati; and
- (b) it would not, in all the circumstances, be contrary to the public interest to allow the appellant to remain in Kiribati.

**96 Judicial review and appeals on points of law**

- (1) A person who is dissatisfied with the decisions of the Minister may seek leave of the High Court to appeal a decision of the Minister on a point of law, within 21 days of notification of the Minister's decision.
- (2) Judicial review proceedings by any person must be lodged within 21 days of the decision to be reviewed.
- (3) The High Court must endeavour to determine appeals on points of law and any judicial review together where possible.
- (4) The High Court must give priority to these cases so that they are disposed of within a reasonable time.

## **Part 7**

### **Obligations of third parties**

**97 Carrier responsibilities en route to and on arrival in Kiribati**

- (1) The carrier and the person in charge of any craft that is en route to Kiribati or that arrives in Kiribati from another country has the following responsibilities:
  - (a) to ensure that all persons boarding the craft have the prescribed documentation for immigration purposes:
  - (b) on arrival of the craft at an immigration control area,—
    - (i) to produce prescribed documents that an immigration officer specifies:
    - (ii) if applicable, to prevent, with any reasonable force that is

necessary, the disembarkation of any person from the craft otherwise than into an immigration control area:

- (c) if the craft arrives in Kiribati outside of an immigration control area because of unforeseen circumstances, to make appropriate arrangements for all persons on board the craft to report in the manner and within the time prescribed;
- (d) if a stowaway has been found on the craft, to report that fact to an immigration officer as soon as practicable;
- (e) to supply available information relating to any person (crew or passengers) who may have been on board the craft since its last place of call.

(2) **Subsection (1)** is subject to the regulations.

**98 Carrier responsibilities when departing from Kiribati**

The carrier and the person in charge of a craft leaving Kiribati have the following responsibilities:

- (a) to allow any person being deported and any person liable for turnaround to board the craft for passage from Kiribati;
- (b) in respect of such a person who is delivered to the craft by a police officer or an immigration officer, to take all such reasonable steps as are necessary to detain that person on board the craft until it has left the territorial limits of Kiribati;
- (c) to report to an immigration officer, immediately before the departure of the craft, details of any crew member or person who was on board the craft when it arrived in Kiribati but who is no longer on board the craft;
- (d) to bear the cost of passage from Kiribati in all respects of the carrier (or any other carrier) of any person who was on board any craft operated by the carrier when it arrived in Kiribati and did not hold a visa permitting travel to Kiribati and who, on arrival in Kiribati,—
  - (i) was refused a visa and entry permission; or
  - (ii) has entry permission revoked; or
  - (iii) was a member of the crew of a craft and remained unlawfully in Kiribati after the departure of that craft;
- (e) to pay any costs incurred by the Government detaining and maintaining a person described above pending the person's departure from Kiribati.

**99 Carriers to provide advance passenger processing information**

If the Secretary notifies the carrier that the carrier must comply with this section, the carrier and a person in charge of a commercial craft scheduled to travel to Kiribati on a scheduled international service must, within 24 hours of departure,—

- (a) obtain from every person who intends to board the craft for the purpose of travelling to, or from, Kiribati the prescribed advance passenger processing information; and
- (b) provide that information to the Secretary, by means of an approved system, before the departure of the craft to travel to, or from, Kiribati.



**100 Secretary may decide if person can board or not board craft**

- (1) The Secretary may decide that a person about whom information has been received and who intends to board a commercial craft for the purpose of travelling to or from Kiribati—
  - (a) may or may not board the craft; or
  - (b) may board the craft as long as they comply with conditions specified by the Secretary.
- (2) The Secretary may make the decision referred to in **subsection (1)**,—
  - (a) in relation to persons travelling to Kiribati, whether or not the person—
    - (i) holds a visa to travel to Kiribati; or
    - (ii) has been granted entry permission; or
    - (iii) is a person to whom a visa waiver applies; or
  - (b) in relation to persons travelling to or leaving Kiribati, if the Secretary has reason to believe that the person is attempting to travel on a lost, stolen, invalid, forged, false, or improperly altered passport or certificate of identity.
- (3) The Secretary may not make a decision about the boarding of a craft by a residence visa holder or a Kiribati citizen.
- (4) A person in relation to whom a decision referred to in **subsection (1)** is made may not appeal the decision to the Minister.

**Part 8**

**Compliance and enforcement**

*Immigration officers' powers*

**101 Entry and search powers**

For the purposes of exercising functions and duties under this Act, an immigration officer may, without a warrant, and with reasonable force if necessary,—

- (a) enter and search any craft in the exclusive economic zone that is about to enter or has entered Kiribati;
- (b) enter and search any buildings, premises, or craft where the officer has reasonable grounds to believe that—
  - (i) an offence under this Act is likely to be, or is being, committed; or
  - (ii) a person unlawfully in Kiribati is located; or
  - (iii) a person liable to deportation or turnaround is located;
- (c) enter and search any building or premises in which the officer believes on reasonable grounds that a person named in a deportation notice or order is located, and serve the notice or execute the order;
- (d) enter immigration control areas, and craft within those areas, to undertake immigration duties and to search for travel and identity documentation.

## **102 Request to releasing records at education providers premises**

- (1) An immigration officer may enter any part of an education provider's premises to request information or a record for one or more of the following purposes:
  - (a) determining whether a person is complying with the study-related conditions of his or her visa;
  - (b) determining whether an education provider is complying with the provider's obligations under this Act;
  - (c) locating a person who is liable to deportation.
- (2) An immigration officer may enter the premises only if he or she believes on reasonable grounds that information or records are held on the education provider's premises and that that information or records may relate to a person who is—
  - (a) not entitled under this Act to study in Kiribati; or
  - (b) otherwise not complying with their obligations under this Act; or
  - (c) liable to deportation.
- (3) The powers in **subsection (1)** may not be exercised in relation to a person undertaking compulsory education or any member of the family of that person.
- (4) An immigration officer may exercise the powers at any reasonable time during which the education provider is open for business, whether by day or by night, without a warrant or any other authority other than this provision.
- (5) An education provider must promptly comply with a request under **subsection (1)**.

## **103 Request relating to employer records**

- (1) An immigration officer may enter an employer's premises to request information or records for the purpose of determining—
  - (a) whether a person is complying with the work-related conditions of his or her visa; or
  - (b) whether the employer is complying with the employer's obligations under this Act; or
  - (c) the location of a person who is liable for deportation; or
  - (d) whether a person who is working for the employer is entitled to work in Kiribati.
- (2) An immigration officer may enter the employer's premises if he or she believes on reasonable grounds that—
  - (a) there is kept on any employer's premises any record or other document relating to the remuneration or employment conditions of an employee; and
  - (b) there may be information in that record or other document relating to a person who is—
    - (i) not entitled under this Act to work in Kiribati; or
    - (ii) otherwise not complying with their obligations under this Act; or
    - (iii) liable to deportation.

- (3) An immigration officer may exercise the powers at any reasonable time during which the premises are open for business, whether by day or by night, without a warrant or any other authority than this provision.
- (4) An employer must promptly comply with a request under **subsection (1)**.

**104 Non-citizen's passport may be seized**

- (1) An immigration officer may seize and hold the passport of a non-citizen and prevent that person's departure if ordered by a court.
- (2) An immigration officer may, without order of a court, seize and hold for 30 days, or until a contrary direction is given by a court, a person's passport (if they are not a citizen of Kiribati) on one or more of the following grounds:
  - (a) the person owes debts in Kiribati of or over a prescribed amount (not being less than the equivalent of AUD\$1,000);
  - (b) the person is involved in Court proceedings;
  - (c) the Minister or Secretary believes that departure would not be in the interests of justice or national security;
  - (d) to establish whether the document is genuine or obtained irregularly;
  - (e) to preserve it as evidence;
  - (f) to facilitate deportation.

**105 Immigration officer may have assistance**

- (1) For the purpose of performing his or her functions under this Act, an immigration officer may be accompanied, if he or she thinks fit, by any police officer or other employee of the Ministry.
- (2) For the purposes of detaining persons under this Act who are not Kiribati citizens, a police officer has all the powers of an immigration officer.

**106 Powers of immigration officers**

For the purpose of exercising powers and performing functions under this Act, an immigration officer may—

- (a) question any person who wishes to enter Kiribati, or any person whom he or she has reasonable grounds for believing to be an excluded person and require that person to produce any documents that are necessary to enable the immigration officer to carry out duties under this Act;
- (b) require any person who wishes to enter or leave Kiribati to make and sign any prescribed form of declaration;
- (c) require any person who wishes to enter Kiribati to submit to an examination by a government medical officer or any registered medical practitioner or to undergo any health test or investigation that the medical officer or practitioner may require.

**107 Powers to arrest**

If any immigration or police officer has reasonable cause to believe that any person has committed an offence against this Act, or that the presence of any person in Kiribati is unlawful, and if it appears necessary to arrest that person immediately for reasons of public safety,—



- (a) the immigration or police officer may arrest that person without a warrant; and
- (b) the provisions of section 74 of the Police Powers and Duties Act 2008 apply.

*Offences against this Act and penalties*

**108 Provision of false or misleading information**

- (1) Every person commits an offence who—
  - (a) makes any statement, or provides any information, evidence, or submission, knowing that it is false or misleading, in support of a—
    - (i) visa application or entry permission; or
    - (ii) a request for a variation or waiver or visa conditions; or
    - (iii) an appeal to the Minister; or
  - (b) produces or surrenders any document or supplies information to an immigration officer knowing that it is false or misleading; or
  - (c) fails to comply with any responsibilities imposed by or under this Act on arrival in Kiribati.
- (2) An offence against **subsection (1)** is punishable on conviction by a term of imprisonment not exceeding 1 year, or by a fine not exceeding \$5,000, or to both.

**109 Aiding or abetting any other person to breach of visa conditions**

- (1) Every person (person A) commits an offence against this Act who, whether inside or outside Kiribati, aids or abets any other person (person B) to—
  - (a) be unlawfully in Kiribati;
  - (b) breach any condition of a visa granted to person B;
  - (c) unlawfully enter Kiribati knowing that person B's entry would be unlawful;
  - (d) complete a visa or entry permission application, request a variation or cancellation of visa conditions, or appeal to the Minister in a manner known by person A to be false or misleading.
- (2) An offence against **subsection (1)** is punishable on conviction by a term of imprisonment not exceeding 2 years, or by a fine not exceeding \$5,000, or to both.
- (3) A Court may, on sentencing a person for an offence under **subsection (1)**, order payment of the costs of deportation.

**110 Failing to comply with requirement of immigration officer under this Act**

- (1) Every person commits an offence who, without reasonable excuse—
  - (a) refuses or fails to produce any document or information when required to do so by an immigration officer in accordance with any of the provisions of this Act; or
  - (b) fails to remain in or follow an immigration officer's instructions in an immigration control area or other prescribed place when required to do

so; or

- (c) resists or intentionally obstructs any immigration officer or police officer in the exercise of the powers under this Act; or
  - (d) refuses or fails to provide biometric information as required.
- (2) An offence against **subsection (1)** is punishable on conviction by a term of imprisonment not exceeding 6 months, or by a fine not exceeding \$2,000, or both.

#### **111 Using or selling a fraudulent immigration document**

- (1) Every person commits an offence who, whether in or outside Kiribati—
- (a) produces, surrenders, or passes off an immigration or identity document that relates to some other person knowing that it is forged or obtained fraudulently;
  - (b) sells, lends, or otherwise disposes of an immigration or identity documents knowing that the receiver intends to sell it or produce or pass it off as relating to some other person.
- (2) An offence against **subsection (1)** is punishable on conviction by a term of imprisonment not exceeding 2 years, or by a fine not exceeding \$5,000, or both.

#### **112 Unauthorised altering of documents**

- (1) Every person commits an offence against this Act who, after completing a form required for the purposes of this Act, signs it and declares its contents to be true and subsequently—
- (a) alters information entered on it; or
  - (b) attaches any material or further material to it; and
  - (c) allows the form to leave his or her possession without formally indicating that it has been altered.
- (2) An offence against **subsection (1)** is punishable on conviction by a term of imprisonment not exceeding 2 year, or by a fine not exceeding \$5,000, or both.

#### **113 Carrier obligations and offences**

- (1) Every carrier, or person in charge, of a commercial craft commits an offence who fails, without reasonable excuse, to comply with any of the requirements under this Act or the regulations—
- (a) to undertake advanced passenger processing;
  - (b) to provide information about people travelling to or from Kiribati;
  - (c) to ensure that all persons boarding the craft have the prescribed documentation required for immigration purposes;
  - (d) to allow persons being deported or liable for turnaround to board the craft for passage from Kiribati;
  - (e) to produce for inspection those prescribed documents that an immigration officer specifies on arrival in an immigration control area;
  - (f) to prevent, with reasonable force if necessary, the disembarkation of any person from the craft otherwise than into an immigration control area;
  - (g) to make appropriate arrangements for all persons on board the craft to

report to an immigration control area where, because of unforeseen circumstances, the craft arrives in Kiribati other than at an immigration control area:

- (h) to report to an immigration officer as soon as practicable if a stowaway has been found on the craft:
  - (i) to take all reasonable steps necessary to detain a person who is delivered to the craft by a police officer or an immigration officer on board the craft until it has left the territorial limits of Kiribati:
  - (j) to report to an immigration officer immediately before the departure of the craft if any crew member who was on board the craft when it arrived in Kiribati is no longer on board the craft:
  - (k) to provide passage from Kiribati at the cost, in all respects, of the carrier (or to bear the cost of passage from Kiribati by any other carrier) of any person—
    - (i) who was on board a craft operated by the carrier, when it arrived in Kiribati but was refused a visa or entry permission; or
    - (ii) who arrived in Kiribati as crew of a craft operated by the carrier, and who remained unlawfully in Kiribati after the departure of that craft:
  - (l) to pay any costs incurred by the government in detaining and maintaining a person described in **paragraph (k)**, pending the person's departure from Kiribati.
- (2) An offence against **subsection (1)** is punishable by a maximum term of imprisonment not exceeding 5 years, or a fine not exceeding \$30,000, or both.

#### **114 Employer obligations and offences**

- (1) Every employer commits an offence who—
- (a) allows any person to work in that employer's service knowing that the person is not entitled to do so under this Act; or
  - (b) allows a person who is not entitled under this Act to work in the employer's service, without verifying that the person is entitled to do so.
- (2) It is a defence if the employer proves that the employer—
- (a) did not know that the person was not entitled to do the work; and
  - (b) took reasonable precautions to ascertain whether the person was entitled to do the work.
- (3) It is not a defence that the employer did not know that the person was not entitled under this Act to do that work.
- (4) An offence against **subsection (1)** is punishable on conviction,—
- (a) in the case of an employer who knew that the person was not entitled to work, by a fine not exceeding \$5,000:
  - (b) in the case of an employer who failed to take practicable steps to verify whether the person was entitled to work, by a fine not exceeding \$2,000.

#### **115 Offence of exploiting workers**

- (1) Every employer commits an offence against this Act who, while allowing an employee to work in the employer's service while that employee is not entitled



to work under this Act,—

- (a) is responsible for a serious failure to pay the employee money owed as salary or wages; or
  - (b) takes an action intended to prevent or hinder the employee from—
    - (i) leaving the employer's service; or
    - (ii) leaving Kiribati; or
    - (iii) seeking entitlements under the law of Kiribati; or
    - (iv) disclosing to any person the circumstance of his or her work for the employer.
- (2) For the purposes of **subsection (1)(a)**, a serious failure to pay money or salary or wages is a failure to pay, without reasonable excuse, more than 95% of the wages or salary due to that employee during any period.
- (3) An offence against **subsection (1)** is punishable by a term not exceeding 15 years imprisonment or, by a fine not exceeding \$100,000, or both.

#### **116 Education providers enrolling unlawful persons**

- (1) Every education provider commits an offence against this Act who allows any other person to undertake a course of study knowing that the person is not entitled to undertake that course of study under this Act.
- (2) No person commits an offence by reason of allowing or continuing to allow a person who is not entitled to study in Kiribati to undertake compulsory education.
- (3) It is a defence if the education provider proves that the provider—
  - (a) did not know that the person was not entitled to take the course; and
  - (b) took reasonable precautions to ascertain whether the person was entitled to undertake that course.
- (4) It is not a defence that the education provider did not know that the person was not entitled to undertake that course of study.
- (5) An offence against **subsection (1)** is punishable on conviction,—
  - (a) in the case where the education provider knew that the person was not entitled to take the course, by a fine not exceeding \$5,000;
  - (b) in a case where the education provider did not take all practicable precautions to ascertain whether the person was entitled to take the course, by a fine not exceeding \$2,000.

#### *Court proceedings*

#### **117 Only authorised persons may commence proceedings**

Only an immigration officer, a police officer, or some other person authorised for the purpose by the Minister may commence a proceeding for an offence against this Act or the regulations by referring the matter to the Office of the Attorney General and the Kiribati Police Service.

### **Part 9**

## **Arrest and detention**

### *Liability for arrest and detention*

#### **118 Powers of arrest and detention**

The powers of arrest and detention may be exercised by an immigration officer,—

- (a) in the case of a person liable for turnaround, to detain the person in order to place him or her on the first available craft leaving Kiribati;
- (b) in the case of a person liable to deportation, to—
  - (i) detain the person pending the making of a deportation order, including during any appeal; or
  - (ii) to execute a deportation order by placing the person on the first available craft leaving Kiribati;
- (c) in the case of a person who is suspected to be liable to deportation or turnaround and fails to supply satisfactory evidence of his or her identity when requested to do so, to detain the person pending satisfactory establishment of the person's identity;
- (d) in the case of a person who is suspected of constituting a threat or risk to security, to detain the person pending the making of a deportation order.

#### **119 Outcomes for non-citizens liable to arrest and detention**

Where a person is liable to arrest and detention under the Act,—

- (a) an immigration officer may, instead of, or after, arresting the person enter into a monitoring agreement with the person; or
- (b) the person may be arrested by an immigration officer and detained in custody; or
- (c) the person may be arrested by an immigration officer and released on conditions.

### *Monitoring agreements*

#### **120 Monitoring agreements**

- (1) Instead of, or after, arresting a person, an immigration officer may enter into an agreement with that person that the person will do one or more of the following things:
  - (a) reside at a specified place;
  - (b) report to a specified place at specified times in a specified manner;
  - (c) provide a guarantor responsible for ensuring that the person complies with any agreed requirements;
  - (d) undertake any other action for the purpose of facilitating the person's deportation or departure from Kiribati.
- (2) A decision to offer or agree to enter into a monitoring agreement and the nature of the reporting requirements is a matter for the absolute discretion of an immigration officer.

- (3) An immigration officer may vary any reporting requirements for any person at the request or with the agreement of the person.
- (4) A monitoring agreement must be in writing and include a warning that, if the person fails to comply with any requirement, the person may be arrested and detained.
- (5) A person may be arrested and detained if an immigration officer determines that—
  - (a) the person, without reasonable excuse, has failed to comply with the agreed requirements; or
  - (b) those actions are required in order to execute a deportation order or place the person on the first available craft leaving Kiribati.
- (6) An agreement lapses, and the person ceases to be bound by it, when the person leaves Kiribati or otherwise ceases to be liable to arrest and detention.

### *Warrants of commitment*

#### **121 Initial detention without warrant**

- (1) Where a person is liable to arrest and detention, a police officer may, and if requested by an immigration officer must, arrest the person without warrant and place the person in custody.
- (2) A person arrested and detained under this section may be detained only as long as is necessary to achieve the purpose of the arrest and detention, but must not be detained for a period longer than 5 days.

#### **122 Warrants of commitment for immigration detention**

- (1) An immigration officer may apply to the Magistrate Court for a warrant of commitment authorising a person's detention for up to 28 days where it becomes apparent that—
  - (a) there will not be a craft available to take the person from Kiribati; or
  - (b) the person will not supply satisfactory evidence of his or her identity; or
  - (c) the Minister has not made a decision as to whether to certify that the person constitutes a threat or risk to security; or
  - (d) for any other reason, the person is unable to leave Kiribati.
- (2) Every application under this section must include a statement of the reasons why the person should be the subject of a warrant of commitment and may include any other supporting evidence.

#### **123 Effect of warrant of commitment**

A warrant of commitment authorises the person in charge of the premises identified in the warrant to detain a person until—

- (a) the person, if liable for turnaround or deportation, is delivered into the custody of an immigration officer or police officer for the purpose of placing the person on the first available craft to leave Kiribati; or
- (b) written notification is received from an immigration officer that the person has ceased to be liable to detention; or
- (c) a Magistrate or Judge orders the release of the person; or



- (d) the warrant of commitment expires.

**124 Extension of warrants of commitment limited**

- (1) If a person would be detained under consecutive warrants of commitment for a continuous period of more than 6 months following the person's initial detention and the person has exhausted all available appeal rights under the Act, a further warrant of commitment may be issued only if the Magistrate Court is satisfied that—
  - (a) the person's deportation or departure is prevented by some action or inaction of the person; and
  - (b) no exceptional circumstances exist that would warrant the person's release.
- (2) If the Magistrate Court is not satisfied of the matters specified in **subsection(1)(a) and (b)**, it must order the person's release on conditions.
- (3) The Magistrate Court may require any immigration officer to—
  - (a) attend the hearing to give evidence; and
  - (b) undergo cross-examination.

*Release on conditions*

**125 Release on conditions imposed by the Magistrate Court**

- (1) If the Magistrate Court orders a person's release on conditions, the conditions imposed on release may be any that the Magistrate Court thinks fit to impose in the circumstances, including that the released person must—
  - (a) reside at a specified place;
  - (b) report to a specified place at specified times in a specified manner;
  - (c) provide a guarantor who is responsible for ensuring compliance with any conditions imposed;
  - (d) take a specified action for the purpose of facilitating the person's deportation or departure from Kiribati.
- (2) The conditions must be notified in writing and must include a warning that, if the person fails to comply with any condition, the person may be arrested and detained.
- (3) Conditions imposed may be varied at any time by the Magistrate Court on the application of the person released or an immigration officer.
- (4) A person may be arrested and detained, or deported, if an immigration officer determines that the person, without reasonable excuse, has failed to comply with any conditions.
- (5) Conditions imposed lapse, and the person ceases to be bound by them, when the person leaves Kiribati or otherwise ceases to be liable to arrest and detention under this Part.

*Detention procedures*

**126 Immigration officer may use force**

If an immigration officer is exercising a power of detention, the officer may use any physical force that is reasonably necessary to—

- (a) prevent the detained person from harming any person, damaging any property, or from escaping from detention; or
- (b) recapture the person, if the person has escaped from detention.

**127 Secretary may approve detention premises**

The Secretary may approve any premises for the purpose of detention under the Act.

## **Part 10**

### **Biometric information**

**128 Biometric information collection**

- (1) Biometric information is—
  - (a) photographs:
  - (b) fingerprints:
  - (c) iris scans.
- (2) Biometric information collected under this Part may be used to—
  - (a) establish a record of a person's identity; or
  - (b) establish or verify a person's identity; or
  - (c) assist in decision making under the Act.
- (3) The regulations may regulate the use and storage of biometric information.

**129 Applicant must allow collection of biometric information**

- (1) Unless exempted by the regulations, an applicant for a visa must allow biometric information to be collected from him or her.
- (2) If the applicant fails to allow the biometric information to be collected, the Minister or an immigration officer may refuse to grant the visa applied for.

**130 Biometric information may be collected for entry permission**

- (1) An immigration officer may require a person who applies for entry permission to provide biometric information at any time before the person leaves the immigration control area.
- (2) If a person refuses to allow the biometric information to be collected, the Minister or an immigration officer may refuse to grant entry permission or revoke any entry permission already granted.
- (3) **Subsection (1)** is subject to the regulations.

**131 Court may require biometric information**

For the purposes of assisting the Minister to determine an appeal or matter under this Act, or the Magistrate Court for the purposes of considering applications for warrants of commitment the Minister or Magistrate Court may require the appellant or affected person to allow biometric information to be collected from him or her.

**132 Biometric information may be required in deportation or turnaround**

- (1) If a person is liable to deportation or turnaround, an immigration officer may require biometric information to be collected from the person if it is required to determine—
  - (a) the person's liability to deportation or turnaround;
  - (b) the person's compliance with visa conditions;
  - (c) whether the person has undertaken work or study that he or she is not entitled to undertake under the Act; or
  - (d) has obtained a visa or entry permission under a fraudulent identity.
- (2) Any biometric information obtained from a person must be destroyed if the person's liability to deportation is cancelled or suspended.
- (3) **Subsection (1)** is subject to the regulations.

**133 Biometric information collected from Kiribati citizens**

Subject to the regulations, biometric information may be required from Kiribati citizens arriving in Kiribati.

*Information sharing*

**134 Information sharing**

- (1) The Secretary may share any information obtained under this Act that the Secretary considers appropriate with any person that the Secretary considers has a proper interest in receiving the information.
- (2) **Subsection (1)** is subject to—
  - (a) the regulations; and
  - (b) any other enactment or rule of law; and
  - (c) any order of a Court.

**Part 11**

**Miscellaneous provisions**

**135 Regulations**

The Minister may make regulations for one or more of the following purposes:

- (a) prescribing the manner of application and any procedural matters in relation to any applications for visas or other applications under this Act;
- (b) providing that the Secretary may require that certain applications for visas must be made electronically, in which case the Secretary must maintain a list of such requirements and the regulations must prescribe how that list is to be made publicly available;
- (c) prescribing other matters in respect of entry permissions or visas;
- (d) prescribing requirements and procedures in respect of arrivals in and departures from Kiribati;
- (e) prescribing procedures and other matters in respect of reconsiderations, appeals, and reviews under **Part 6**;
- (f) prescribing fees and charges in respect of any matters under this Act, and providing for exemptions from or refunds of any fees and charges;



- (g) prescribing forms for the purposes of this Act:
- (h) prescribing offences in respect of the contravention of, or non-compliance with, any regulations, and the maximum amounts of fines that may be imposed in respect of those offences (which maximum amounts may not exceed \$5,000):
- (i) providing requirements for the manner of service or giving of notices and other documents in specific situations or circumstances:
- (j) exempting classes of persons from the requirement to allow biometric information to be collected from them:
- (k) providing for such other matters as are contemplated by or necessary for giving effect to the provisions of this Act and for its due administration.

**136 Other enactments amended**

- (1) Amend the Acts specified in **Part 1 of Schedule 2** as set out in that Part.
- (2) Amend the regulations specified in **Part 2 of Schedule 2** as set out in that Part.

**137 Savings**

Unless inconsistent with this Act, all regulations, orders or notices made or given under the repealed Act remain in force and can also be amended accordingly as if they were made or given under this Act.

**138 Repeals**

The following Acts are repealed:

- (a) the *Deportation Act 1979*;
- (c) the *Immigration Ordinance Act 1980*;

## **Schedule 1**

### **Transitional provisions**

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#### **1 Immigration Ordinance Act 1980 (the former Act)**

- (1) A person who, immediately before the commencement of this Act,—
- (a) is unlawfully in Kiribati continues to have an obligation to leave Kiribati;
  - (b) is detained under the Immigration Ordinance Act 1980 (the **former Act**), continues to be lawfully detained;
  - (c) is subject to a removal order or deportation order under the former Act or the Deportation Act 1979, continues to be subject to that order.
- (2) The former Act and the Deportation Act 1979 continue in force for the purposes of removing a person referred to in sub clause (1).
- (3) However, if any person to whom subclause (1) applies wishes to apply for a visa on or after the commencement of this Act, the provisions of this Act apply in respect of that application.

#### **2 Government immigration policy under former Act to be treated as immigration procedures**

On and after the commencement of this Act, government immigration policy under the former Act that is in force immediately before that commencement must be treated as immigration procedures for the purposes of this Act, and this Act applies accordingly with any necessary modifications.

#### **3 Undetermined applications for permits**

An application for a permit that was made under the former Act that was not determined before the commencement of this Act must be treated as an application under this Act and as if it were an application for a visa of a type that most closely corresponds with the type of permit applied for under the former Act.

#### **4 Holders of permits deemed to be holders of visas**

A person who, immediately before the commencement of this Act, held a permit issued under the former Act is deemed on the commencement of this Act to be the holder of a visa issued under this Act of the type that most closely corresponds with the type of permit issued under the former Act.

#### **5 Exemptions continue in force**

A person in Kiribati immediately before the commencement of this Act who, under the former Act, was exempt from the requirement to obtain a permit is exempt from the requirement to obtain a visa under this Act.

#### **6 Person released on conditions under former Act**

- (1) This clause applies if, immediately before the commencement of this Act, a person has been released from imprisonment or other detention on conditions

under the former Act.

- (2) The person remains subject to the relevant conditions, and the former Act continues to apply in respect of that person's release, until—
- (a) the person leaves Kiribati; or
  - (b) the conditions expire.

**7 Transitional immigration procedures**

Immigration procedures issued under section 21 may no later than 3 years after the commencement of this Act make any appropriate or necessary provision for facilitating or ensuring an orderly transition from the application of government immigration policy (including government residence policy) under the former Act to the application of the provisions of this Act and immigration procedures and immigration instructions made under it.

**8 References to principal immigration officer**

References in any enactment or other document to the principal immigration officer are deemed, on and after the commencement of this Act, to be references to the Secretary.



## Schedule 2 Enactments amended

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### Part 1 Acts amended

#### **Fisheries Act 2010**

**Section 42(1) and section 42(2):** Omit “Principal Immigration Officer” and substitute “Immigration Secretary”.

#### **Revenue Administration Act 2013**

**Section 40(2) and 40(3):** Omit “Principal Immigration Officer” and substitute “Immigration Secretary”.

#### **Income Tax Act 1990**

**Section 107(5) and 107(6):** Omit “Principal Immigration Officer” and substitute “Immigration Secretary”.

### Part 2 Regulations amended

#### **Immigration (Residency Permit) Regulations 2018**

**Title:** Omit “Permit” and substitute “Visa”.

**Contents page:** Omit “Permit” and substitute “Visa” in titles for Part II, Part II and headings for regulations 18, 21, and 22.

**Preamble:** Omit “Section 24 of the Immigration Ordinance 1980 (Cap 41)” and substitute “Section 135 of the Immigration Act 2019”.

**Regulation 1:** Omit “Permit” and substitute “Visa” in citation.

**Regulation 3(1), definition of “Commission”:** Omit “Permit” and substitute “Visa”.

**Regulation 3(1):** Omit “‘Ordinance’ means the *Immigration Ordinance 1980* (Cap 41)” and substitute “Act means the Immigration Act 2019”.

**Regulation 3(2):** Omit “Ordinance” and substitute “Act”.

**Heading title for Part II:** Omit “Permit” and substitute “Visa”.

**Regulation 5(a) and 5(b):** Omit “permits” and substitute “visas”.

**Regulation 10:** Omit “Ordinance” and substitute “Act”.

**Regulation 11(1) and (2):** Omit “Principal Immigration Officer” and substitute “Secretary”.

**Heading title for Part III:** Omit “Permit” and substitute “Visa”.

**Regulation 18 title:** Omit “permit” and substitute “visa”.

**Regulation 18(1):** Omit “permit” and substitute “visa”.

**Regulation 18(1)(c):** Omit “Principal Immigration Officer” and substitute “Secretary”.

**Regulation 19(1):** Omit “Principal Immigration Officer” and substitute “Secretary”.

**Regulation 20(1):** Omit “Principal Immigration Officer” and substitute “Secretary”.

**Regulation 20(1)(b):** Omit “Principal Immigration Officer” and substitute “Secretary”.

**Regulation 20(2):** Omit “Principal Immigration Officer” and substitute “Secretary”.

**Regulation 21 title:** Omit “Permit” and substitute “Visa”.

**Regulation 21(1):** Omit “permit” and substitute “visa”.

**Regulation 21(1)(c):** Omit “Principal Immigration Officer” and substitute “Secretary”.

**Regulation 22 title:** Omit “Permit” and substitute “Visa”.

**Regulation 22(1):** Omit “permit” and substitute “visa”; omit “Ordinance” and substitute “Act”.

**Regulation 23:** Omit “permit” and substitute “visa”.

**Schedule 1, part C note:** Omit “Permit” and substitute “Visa”.

**Schedule 1, part F checklist:** Omit “Permit” and substitute “Visa”.

**Schedule 1, part G declaration:** Omit “Permit” and substitute “Visa”; and omit “Principal Immigration Officer” and substitute “Secretary” as required.

**Schedule 2 title:** Omit “Permit” and substitute “Visa”.

**Schedule 2 notice:** Omit “Permit” and substitute “Visa”; and omit “Principal Immigration Officer” and substitute “Secretary” as required, and equivalent in Kiribati language.

**Schedule 3 title:** Omit “Permit” and substitute “Visa”.

**Schedule 3:** Omit “Permit” and substitute “Visa” as required; and omit *Immigration Ordinance 1980* (Cap 41), section 10A” and substitute “*Immigration Act 2019, section 49*”.

## **Kiribati Immigration Act 2019 Explanatory Memorandum**

1. The Kiribati Immigration Act 2019 replaces the Immigration Ordinance 1980. This new Act is necessary to make the immigration legislation fair and compliant with international obligations, but at the same time offering the security necessary to effectively manage Kiribati's border.
2. **The key changes include:**
  - (1) a visa system that provides for greater clarity and flexibility in managing non-citizens' travel to and stay in Kiribati, and is consistent with Kiribati's international obligations
  - (2) enabling more flexibility to allow the Minister of Foreign Affairs and Immigration (the Minister) to delegate certain decision-making to officials, and enabling electronic decision-making in future
  - (3) a deportation process that is more efficient for immigration officers while maintaining fairness for those subject to deportation
  - (4) incentives for third parties (employers, education providers, and carriers) to comply with their immigration obligations
  - (5) more powers for compliance and enforcement to provide for integrity in the immigration system
  - (6) flexible monitoring and detention provisions that maintain a commitment to human rights, and
  - (7) the ability to collect and use specified biometric information in future for identity verification and share personal information about non-citizens with appropriate agencies.
3. The Act is divided into parts as follows:

### **Part 1: Preliminary provisions**

4. This part includes a purpose for the Act (which was not present in the Ordinance) that establishes the reasons for the legislation and its key goals. This part also includes an interpretation section and explanation of what it means to have absolute discretion in immigration decision making.

### **Part 2: Core provisions and matters in relation to decision making**

5. Part 2 explicitly sets the requirement for non-Kiribati citizens to require permission to enter and reside in Kiribati, which is a key principle of the Act. Sections 9 and 10 establish criteria for people who will be excluded from entering Kiribati. This includes people who have been convicted and imprisoned for offences and people who might be a threat to security or public order. Every non-citizen must have a visa to stay in Kiribati and those who do not are unlawful and must leave Kiribati. Unlawful persons have no right to work or study in Kiribati.
6. This part also established "Immigration Procedures", which are detailed immigration policy, outside of legislation, that will guide immigration officers and decision makers. Part 2 also includes provisions that will enable future advancements such as automated, electronic processing at the border.



### **Part 3: Visas**

7. The Ordinance's visa and permit system is limited in legislation, with rules set out in Standard Operating Procedures. The proposed new system, using only the term 'visa' is more transparent, with more distinct categories of visa (with detail in regulations and Immigration Procedures). This clarity will meet PACER Plus and other trade agreement recommendations.
8. People can apply for visas offshore. Once they arrive in Kiribati, they may be granted entry permission at the border, which allows them to stay, work, or visit according to the term of their visa. To manage any risk, some visas can be granted on condition that the person is sponsored by a Kiribati citizen, or pays a bond.

### **Part 4: Decision-making**

9. The role of the Secretary of Foreign Affairs and Immigration is clarified and replaces the Ordinance provisions regarding the Principal Immigration Officer. The role of the Minister in immigration decision-making is also set out, especially those decisions that can be delegated to the Secretary and immigration officials.

### **Part 5: Turnaround and deportation**

10. This Act repeals the Deportation Act as well as the Ordinance and brings together numerous provisions regarding removal and deportation in a transparent, more efficient framework.
11. Part 5 sets out the obligations for people who arrive in Kiribati to present at the border and gain entry permission, and the consequences for people who do not do this. People can be turned around at the border or deported for legislated reasons (such as working without a visa or fraudulent behaviour, etc) while they are onshore.

### **Part 6: Review and appeal**

12. Similar to the Ordinance, temporary entrants onshore can ask for a review a decision, however, offshore visa applicants and people turned around at the border cannot. People subject to deportation are allowed to appeal to the Minister on the facts and humanitarian reasons.

### **Part 7: Obligations of third parties**

13. Third parties such as employers, education providers and carriers engage with the immigration system, however, this engagement comes with obligations to act lawfully. Part 7 sets out the criteria for carriers (e.g. aircraft and ships) to meet in order to operate in Kiribati.

### **Part 8: Compliance and enforcement**

14. Part 8 enables officials to access the people, places and information required to ensure compliance. This includes the ability to enter premises to search for an unlawful person or records relating to that person.
15. Part 8 sets out the offences and penalties for non-citizens who evade immigration law, for citizens who aid unlawful persons, for education providers and employers who provide work or education to unlawful persons, and for carriers who bring unlawful persons to Kiribati. These penalties are significantly increased from those in the Ordinance in order to reduce the incentive to illegitimately stay in Kiribati.

#### **Part 9: Arrest and detention**

16. The monitoring and detention framework allows for more flexible responses to risk, including the ability to use monitoring agreements to avoid custody in prison. Monitoring agreements allow immigration officials to manage low-risk persons through enabling them to reside in a set location and report to immigration regularly, while awaiting an appropriate outbound flight. These reduce the costs of imprisonment for low-risk cases.

#### **Part 10: Biometric information**

17. Biometric information is clearly defined as fingerprints, photographs and iris scans only. Part 10 enables Immigration to use technology in the future to help improve the integrity of the immigration system. This part also allows for non-citizen's personal information to be protected by regulations when it is shared between agencies.

#### **Part 11: Miscellaneous provisions**

18. This part has standard provisions related to the type of regulations that the Minister can make, if necessary. It includes a section that repeals the Ordinance and Deportation Act. This part also allows for existing regulations to be continued in force.

#### **Schedule 1: Transitional provisions**

19. This Schedule ensures that people who have permits and stay in Kiribati subject to the provisions of the Immigration Ordinance are not left without status when this new Act is enforced. It allows for permits to now be called visas and for any conditions or exemptions to continue as before (until they expire).

#### **Schedule 2: Enactments amended**

20. Schedule 2 ensures that any references to the Ordinance and its terms in other legislation are amended to reflect the new Act.

**His Excellency Taneti Maamau**

Beretitenti and Minister for Foreign Affairs and Immigration

20 June 2019

#### **LEGAL REPORT**


I hereby certify that in my opinion none of the provisions of the above Act are in conflict with the Constitution and that His Excellency Te 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 Kiribati Immigration Act 2019 has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 5<sup>th</sup> September 2019 and is found by me to be a true and correctly printed copy of the said Bill.

  
.....

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

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

I certify that the above Act was on the 5<sup>th</sup> September 2019 passed by the Maneaba ni Maungatabu on a Certificate of Urgency under section 68(3)(a) of the Constitution.

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

Published by exhibition at the Maneaba ni Maungatabu this ..... day  
of ..... 2019.

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



