

REPUBLIC OF KIRIBATI  
(No. 9 of 1983)

I assent,

*Y. Tebas*  
Beretitenti.  
16th May 1983.

AN ACT TO PRESCRIBE FURTHER FUNCTIONS  
OF THE PUBLIC SERVICE COMMISSION

Commencement:  
16th May 1983.

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

Short title.

1. This Act may be cited as the Public Service Commission (Functions) Act 1983.

Prescribes functions under S.99(3) of the Constitution.

2. Subject to the provisions of the Constitution, power to make appointments in and to the public service, and to remove and to exercise disciplinary control over persons holding such appointments, is vested in the Beretitenti acting in accordance with the advice of the Public Service Commission constituted under Section 98(1) of the Constitution, and the giving of such advice is a function in accordance with Section 99(3) of the Constitution.

Powers of Delegation.

3. The Beretitenti may delegate to the Public Service Commission his power to make certain appointments or certain classes of appointment in and to the public service.

Powers of exemption.

4. The Beretitenti acting in accordance with the advice of Cabinet, may by order exempt from the provisions of Section 2 hereof, certain appointments or classes of appointments in the public service.

Prescribes further functions under S.99(3) of the Constitution.

5. Where any contract of service in the public service confers upon the employee a right of appeal to the Public Service Commission, such appeal may be heard by it and the hearing of any such appeal is a function prescribed hereby in accordance with Section 99(3) of the Constitution.

6. Subject to Section 137 of the Constitution,

- (1) the Public Service Commission in exercise of its functions shall not be bound to permit legal or other representation on behalf of any person and shall have a discretion in that regard and any decision in exercise of such discretion shall be non-justiciable.
- (2) All advices and decisions of the Public Service Commission shall be non-justiciable.

This printed impression has been carefully examined by me with the Bill which passed the Maneaba ni Maungatabu on the 28th day of April 1983, and is found by me to be a true and correctly printed copy of the said Bill.

.....  
Clerk to the Maneaba ni Maungatabu.

I certify that the above Act was on the 28th day of April 1983 passed by the Maneaba ni Maungatabu on a certificate of urgency under Section 68(3)(a) of the Constitution.

.....  
Speaker.

Published by exhibition -

- (a) at the Public Office of the Beretitenti on  
16th May 1983.

.....  
Secretary to the Cabinet

- (b) at the Maneaba ni Maungatabu on  
17th May 1983.

.....  
Clerk to the Maneaba  
ni Maungatabu.

PUBLIC SERVICE COMMISSION  
(FUNCTIONS) ACT 1983)

EXPLANATORY MEMORANDUM

1. Section 99(1) of the Constitution provides that appointment, removal and disciplinary control over public offices shall vest in the Beretitenti acting in accordance with the advice of the Public Service Commission.

2. In practice, 'public offices' has been treated as including all appointments in the public service, and it is understood that this was the intention at the time of the Kiribati Independence Order 1979.

3. The Constitution however in referring to the words 'public offices' did not fulfil such intention, as such words have a limited legal meaning, encompassing only those persons holding 'an office' i.e. not any employment in the public service but one usually enjoying a title and particular function e.g. Chief Accountant; Secretary to a Ministry.

*Komanuka  
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4. The purpose of this Act is to bring within the function of the Public Service Commission, all employments in the public sector, so that appointments, removal, and disciplinary control in respect of all public sector employees, and not only public officers, are to be the responsibility of the Beretitenti acting in accordance with the advice of the Public Service Commission.

5. The Beretitenti acting on the advice of Cabinet may exempt i.e. exclude certain appointments or classes of appointments, and as is already the case under S.99(2) of the Constitution with regard to public offices, may delegate his powers of appointment to the Commission with regard to all other appointments or classes of appointments.

6. It is a brief Act and merely gives statutory authority to what is accepted as current practice. The opportunity has been taken however to include two further provisions in Sections 5 and 6.

7. Section 5 gives the Commission statutory authority to hear appeals where provided under e.g. National Conditions of Service. Such authority is required under Section 99(3) of the Constitution, as the Commission has only those functions conferred by law.

8. Section 6 is prompted by the experience of the Commission. 'Non-justiciable' has the meaning assigned to it by the interpretation and General Clauses Ordinance Chapter 46 and means 'shall not be heard or determined by any Court or tribunal'. It is subject to Section 137 of the Constitution which preserves the right to claim breach of the Constitution or of any law.

R.L. Davey  
Attorney General

LEGAL REPORT

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

R.L. Davey  
Attorney General  
21 March 1983