

REPUBLIC OF KIRIBATI
(No. 9 of 2005)

I assent,

Beretitenti
29/12/2005

AN ACT TO AMEND THE *TRAFFIC ACT 2002*

Commencement:
2005

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

PART I - PREMINARY

1. Short title

This Act may be cited as the *Traffic (Amendment) Act 2005*.

2. Definition of principal Act

In this Act, “principal Act” means the *Traffic Act 2002*.

PART II - AMENDMENT OF PART I

3. Amendment of section 4(1)

Section 4(1) of the principal Act is amended-

- (a) by repealing the definition of “bus operator” and substituting the following definition-

““bus operator” means a person who carries on a business of operating a regular service for the carriage by road of passengers in a bus;”;

- (b) in the definition of “driver”; by inserting at the end the words “and “drive” is to be interpreted accordingly”;

- (c) by the inserting after the definition of “government vehicle” the following definition –

““grievous harm” means any harm which amounts to a maiming or dangerous harm, or seriously or permanently injures health or which is likely so to injure health, or which extends to permanent disfigurement, or to any permanent or serious injury to any external or internal organ, membrane or sense;”;

- (d) by repealing the definition of “ motor bike” and substituting the following definition-

“motor bike” means a motor vehicle with less than four wheels;”;

- (e) by repealing the definition of serious traffic offence” and substituting the following definitions-

“serious traffic offence” means an offence against-

- (a) section 31(1) (dangerous driving causing death);
- (b) section 31(2) (dangerous driving causing grievous bodily harm); or
- (c) section 33(1) (careless driving causing death);

“sound equipment” means equipment designed or adapted for amplifying music and any equipment suitable for use in connection with such equipment; and”;

- (f) by repealing the definition of “trailers”.

PART III – AMENDMENT OF PART II

4. Amendment of section 7(4)

Section 7(4) of the principal Act is amended by repealing “18(1)” and substituting the word “ 18(8)”.

5. Amendment of section 10

Section 10 of the principal Act is amended–

- (a) in paragraph (d), by repealing “cycles;” and substituting the word “ bikes.”;
- (b) by repealing paragraph (e).

6. Amendment of section 12(3)

Section 12(3) of the principal Act is amended by repealing the note thereto.

7. Amendment of section 13

Section 13 of the principal Act is amended –

- (a) by repealing subsection (3) and substituting the following subsection-

“(3) The owner must ensure that the registration label is affixed-

- (a) in the case of a motor vehicle other than a motor bike, to the lower left (or near side) portion of the front windscreen; or
- (b) in the case of a motor bike, to the left side of the motor bike so that the front of the label faces outwards from the motor bike,

such that the label can be read by a person standing next to that side of the vehicle.

Penalty: A fine of not more than \$100.”;

- (b) in subsection (6)(d), by repealing “[written statement/statutory declaration]” and substituting the words “written statement”.

8. Amendment of section 14

Section 14 of the principal Act is amended-

- (a) in subsection (1), by repealing “ the volume of noise that motor vehicles may generate” (as inserted by section 2 (a) of the *Traffic (Amendment) Act 2004*) and substituting the words “the sound equipment that may be installed in that motor vehicle”;
- (b) in subsection (2), by repealing paragraph (d) (as inserted by section 2(b)(i) of the *Traffic (Amendment) Act 2004*) and substituting the following paragraph-
 - “(d) the sound equipment that may be installed in the bus; and”;
- (c) in subsection (3), by repealing “\$200” and substituting the word “\$500”.

9. Amendment of section 16

Section 16 of the principal Act is amended-

- (a) in subsection (2), by inserting after “and” the words “, subject to subsection (4),”;
- (b) in subsection (3)(c), by inserting at the start the words “subject to subsection (4),”;
- (c) by inserting after subsection (3) the following subsection-
 - “(4) Where the registration of the motor vehicle under the name of the previous owner has not yet expired, the Authority may make a *pro rata* reduction of the fee payable by the new owner for registration of the vehicle.”.

PART IV - AMENDMENT OF PART III

10. Amendment of section 19

Section 19 of the principal Act is amended-

- (a) in subsection (1),-
 - (i) by repealing “500” and substituting the word “\$1000”; and
 - (ii) by repealing “1 year” and substituting the words “2 years”;
- (b) by inserting after subsection (1) the following subsection-
 - “(1A) In determining the penalty to be imposed for a contravention of subsection (1), the

court may have regard to all the consequences of the offender’s driving.”.

11. Amendment of section 20

Section 20 of the principal Act is amended-

- (a) in subsection (1), by repealing “16” and substituting “18”; and
- (b) in subsection (5), by inserting after “motor vehicle” the words “, other than a motor bike,”.

12. Amendment of section 22(1)

Section 22(1) of the principal Act is amended by inserting after paragraph (a) the following paragraph-

“(aa) the person resides in the area of Kiribati for which the Authority is responsible; and”.

13. Amendment of section 23

Section 23 of the principal Act is amended-

- (a) in paragraph (a), by repealing “16” and substituting “18”; and
- (b) in paragraph (b), by repealing “17” and substituting “18”.

14. New section 28A

After section 28 of the principal Act the following section is inserted-

“28A. Validity of licences on Tarawa and Kiritimati

- (1) A driver licence issued by an Authority responsible for any part of Tarawa or Kiritimati is valid for use anywhere in Kiribati.
- (2) A driver licence issued by an Authority responsible for an area of Kiribati other than Tarawa or Kiritimati is not valid for use anywhere on Tarawa or Kiritimati.
- (3) Any person who drives a motor vehicle on Tarawa or Kiritimati without holding a driver licence for that class of vehicle issued by an Authority responsible for any part of Tarawa or Kiritimati is deemed, in respect of such driving, not to hold a driver licence.”.

PART V – AMENDMENT OF PART IV

15. Amendment of section 30

Section 30 of the principal Act is amended by inserting after subsection (2) the following subsection-

“(3) The Minister, acting in accordance with the advice of the Cabinet, may from time to time, by notice published in the Gazette,-

- (a) amend the Road Rules; or
- (b) repeal the Schedule containing the Road Rules and substitute a new Schedule.”

PART VI – AMENDMENT OF PART V

16. Repeal and replacement of sections 31, 32 and 33, and new section 33A

Sections 31, 32 and 33 of the principal Act are repealed and the following sections substituted-

“31. Dangerous driving

- (1) A person must not cause the death of another person by driving a motor vehicle on a road or elsewhere at a speed or in a manner dangerous to another person or persons.

Penalty: Imprisonment for life.

- (2) A person must not cause grievous harm to another person by driving a motor vehicle on a road or elsewhere at a speed or in a manner dangerous to another person or persons.

Penalty: Imprisonment for 10 years.

- (3) A person must not drive a motor vehicle on a road or elsewhere at a speed or in a manner dangerous to another person or persons.

Penalty: Imprisonment for 5 years or a fine of \$2000, or both.

- (4) In determining the penalty to be imposed for a contravention of this section, the court may have regard to all of the consequences of the offender’s driving.

- (5) In sentencing a person for an offence under subsections (1) or (2), the court must impose a sentence of imprisonment of not less than-

- (a) for an offence under subsection (1) – 10 years; or

- (b) for an offence under subsection (2) – 5 years,

unless the court is of the opinion that there are exceptional circumstances relating to either the offence or to the offender which justify its not doing so.

32. Meaning of dangerous driving

- (1) For the purposes of section 31 a person’s driving is to be regarded as dangerous if (and, subject to subsection (2), only if)-

- (a) the way he or she drives falls far below what would be expected of a competent and careful driver; and

- (b) it would be obvious to a competent and careful driver that driving in that way would be dangerous.

- (2) A person's driving is also to be regarded as dangerous for the purposes of section 31 if it would be obvious to a competent and careful driver that driving the vehicle in its current state would be dangerous.
- (3) In subsections (1) and (2) "dangerous" refers to danger either of injury to any person or of serious damage to property, and in determining for the purposes of those subsections what would be expected of, or obvious to, a competent and careful driver in a particular case, regard shall be had not only to the circumstances of which he or she could be expected to be aware but also to any circumstances shown to have been within the knowledge of the accused.
- (4) In determining for the purposes of subsection (2) the state of a vehicle, regard may be had to anything attached to or carried on or in it and to the manner in which it is attached or carried.

33. Careless driving

- (1) A person must not cause the death of another person by driving a motor vehicle on a road or elsewhere without due care and attention, or without reasonable consideration for other persons using the road or place.

Penalty: Imprisonment for 5 years or a fine of \$2000, or both.

- (2) A person must not drive a motor vehicle on a road or elsewhere without due care and attention, or without reasonable consideration for other persons using the road or place.

Penalty: Imprisonment for 2 years or a fine of \$1000, or both.

- (3) In determining the penalty to be imposed for a contravention of this section, the court may have regard to all of the consequences of the offender's driving.

33A. Alternative verdicts on charges of dangerous or careless driving

- (1) When a person is charged with contravening section 31(1) and the court is of the opinion that he or she is not guilty of that offence but that he or she is guilty of one of the other offences under section 31 or section 33, the person may be convicted of that offence although he or she was not charged with it.
- (2) When a person is charged with contravening section 31(2) and the court is of the opinion that he or she is not guilty of that offence but that he or she is guilty of an offence under section 31(3) or section 33(2), the person may be convicted of that offence although he or she was not charged with it.
- (3) When a person is charged with contravening section 31(3) and the court is of the opinion that he or she is not guilty of that offence but that he or she is guilty of an offence under section 33(2), the person may be convicted of that offence although he or she was not charged with it.
- (4) When a person is charged with contravening section 33(1) and the court is of the opinion

that he or she is not guilty of that offence but that he or she is guilty of an offence under section 33(2), the person may be convicted of that offence although he or she was not charged with it.”.

17. Amendment of section 34(2)

Section 34(2) of the principal Act is amended by repealing “offe4bce” and substituting the word “offence”

18. Amendment of section 35(1)

Section 35(1) of the principal Act is amended by repealing “\$30” and substituting the word “\$200”.

19. Repeal of section 38(3)

Section 38(3) of the principal Act (as inserted by section 7 of the *Traffic (Amendment) Act 2004*) is repealed.

20. Amendment of section 40(1)

Section 40(1) of the principal Act is amended by repealing “shows a reading over 0.08” and substituting the words “indicates that the concentration of alcohol in the blood of the person providing the specimen of breath exceeds 0.08%”.

21. Amendment of section 46(1)(a)

Section 46(1)(a) of the principal Act is amended by repealing “showed a reading over 0.08” and substituting the words “indicated that the concentration of alcohol in the blood of the person providing the specimen of breath exceeded 0.08%”.

22. Repeal and replacement of section 47(1)

Section 47(1) of the principal Act is repealed and the following subsection substituted-

“(1) Subject to subsection (2), in this Division “penalty notice offence” means an offence of failing to comply with any of the Road Rules.”.

23. Amendment of section 48

Section 48 of the principal Act is amended-

- (a) in paragraph (a), by repealing “\$20” and substituting “\$30”;
- (b) in paragraph (b), by repealing “for a first offence, \$25 and a second or subsequent offence, \$40” and substituting “\$50”;
- (c) in paragraph (c), by repealing “for a first offence, \$45 and a second or subsequent offence, \$60” and substituting the word “\$75”.

24. Amendment of section 52

Section 52 of the principal Act is amended by renumbering subsections (a), (b) and (c) as subsections (1), (2) and (3) respectively.

PART VII - AMENDMENT OF PART VI**25. Amendment of section 56**

Section 56 of the principal Act is amended-

- (a) by repealing subsection (1);
- (b) in subsection (2),-
 - (i) by repealing “When” and substituting the words “Subject to subsection (3), when”; and
 - (ii) by repealing “any other” and substituting the word “an”;
 - (iii) in paragraph (b), by repealing “; or” and substituting a full stop;
- (c) by repealing subsection (3) and substituting the following subsection-

“(3) When a court convicts a person of a serious traffic offence, or a second or subsequent offence against section 39(1) (driving under the influence of alcohol or another drug), the court must cancel the person’s driver licence (if any) and must disqualify the person from holding a driver licence for a period of not less than 1 year.”;
- (d) in subsection (4), by inserting after “order” the words “of suspension, cancellation or disqualification”;
- (e) by repealing subsections (5) and (6) and substituting the following subsection-

“(5) A court must cause particulars of an order of suspension, cancellation or disqualification under this section to be sent immediately to the Authority.”.

26. New section 56A

After section 56 of the principal Act the following section is inserted-

“56A. Offences during period of suspension or disqualification

- (1) A person must not drive a motor vehicle on a road while the person’s driver licence is suspended.

Penalty: A fine of not more than \$2000 or imprisonment for not more than 5 years, or both.

- (2) A person must not, while he or she is disqualified from holding a driver licence,-
- (a) obtain a driver licence; or
 - (b) drive a motor vehicle on a road.

Penalty: A fine of not more than \$2000 or imprisonment for not more than 5 years, or both.

- (3) A driver licence obtained by a person who is disqualified from holding a driver licence is of no effect.
- (4) In determining the penalty to be imposed for a contravention of this section, the court may have regard to all of the consequences of the offender's driving.”.

27. Amendment of section 57

Section 57 of the principal Act is amended by repealing-

- (a) “Part III” and substituting the words “section 21”; and
- (b) “cancellation period” and substituting the words “period of disqualification”.

28. Amendment of section 58

Section 58 of the principal Act is amended-

- (a) by inserting after subsection (1) the following subsections-

“(1A) Where a police officer reasonably suspects that any item on or in a bus or commercial vehicle contravenes any provision of this Act, and such item can be removed from the vehicle without causing damage to the vehicle, the police officer may seize and remove that item from the vehicle.

(1B) Any item seized from a bus or commercial vehicle under subsection (1A) shall be passed into and remain in the custody of the Commissioner until:

- (a) any proceedings concerning the contravention of the Act have concluded; or
- (b) 3 months have passed from the date of the seizure with no proceedings having been commenced,

after which the Commissioner shall return the item to the owner of the vehicle from which it was seized.”;

- (b) in subsection (3), by repealing “(1)” and substituting “(2)”.

29. New section 58A

After section 58 of the principal Act the following section is inserted-

“58A. Duty to stop in case of accident

- (1) Where, in the course of the use of any motor vehicle, an accident occurs whereby any person is injured or any property is damaged, the driver of the motor vehicle must immediately stop the motor vehicle and render such assistance as he or she can.

Penalty: A fine of not more than \$1000 or imprisonment for not more than 2 years, or both.

- (2) It is a defence to any charge under subsection (1) for the person charged to prove that he or she did not stop at the scene of the accident because he or she had a reasonable fear for their personal safety, but only if he or she reported the accident to the nearest police station as soon as was reasonably practicable.
- (3) In determining the penalty to be imposed for a contravention of this section, the court may have regard to all of the consequences of the offender’s driving.”.

30. Amendment of section 59(3)(b)

Section 59(3)(b) of the principal Act is amended by repealing “subrule” and substituting the word “subsection”.

31. Amendment of section 60(1)

Section 60(1) of the principal Act is amended by repealing “magistrate’s court” and substituting the words “Magistrates’ Court”.

32. New section 60A

After section 60 of the principal Act the following section is inserted-

“60A. Jurisdiction of the Magistrates’ Court

Any Magistrates’ Court shall have jurisdiction to hear, try and determine any criminal proceeding arising in or from a charge made before such court that any person has committed, or is suspected of committing, within the area over which such court has jurisdiction, any offence under this Act, other than a serious traffic offence.”.

33. Amendment of section 61

Section 61 of the principal Act is amended by inserting the following subsection, the existing section thereby becoming subsection (1)-

- “(2) Despite section 24(e) of the *Interpretation and General Clauses Ordinance*, any regulations made under subsection (1) may provide that a contravention or breach thereof shall be punishable by a fine not exceeding \$500 or by a term of imprisonment not exceeding 1 year, or by both such fine and imprisonment.”.

34. Amendment of section 62

Section 62 of the principal Act is amended by inserting after subsection (3) the following subsections-

- “(4) Proceeding for offences committed, or alleged to have been committed, before the commencement of the *Traffic (Amendment) Act 2005* are to be determined as if that Act had not been enacted.
- (5) A learner permit, or a driver licence for a motor bike or private motor vehicle, granted by the Authority prior to the commencement of the *Traffic (Amendment) Act 2005* to a person who, at the time of such commencement, is under the age of 18 years, shall remain valid until its expiry date, unless suspended or cancelled.”.

TRAFFIC (AMENDMENT) ACT 2005

EXPLANATORY MEMORANDUM

The *Traffic Act* 2002 has been in force for over two years, and it is felt that it is now an appropriate time to review its provisions and attempt to remedy some of the problems that have been experienced in its implementation. Many of the amendments are minor- intended to correct the inevitable errors in drafting. Others are more substantive, and draw on comments from police and the Courts in an attempt to develop a suitable response to difficulties in the application of the existing law. This memorandum explains many of the proposed amendments, but where a section or part of a section does not seem to require any explanation or comment, none is given.

Section 3 makes a number of changes to definitions in the Act:

- The definition of the expression “bus operator” is replaced, to deal with some confusion in the application of the existing definition, which some felt was too wide.
- A definition of the word “drive” is included for the first time to deal with what was regarded as an omission from the Act.
- A definition of the expression “grievous harm” is inserted, identical to that found in the Penal Code. This is needed as a result of the introduction of the new offence of dangerous driving causing grievous harm.
- The definition of “motor bike” in the present Act is a poor one and will be replaced.
- A new definition of “serious traffic offence” is introduced to address concerns expressed by the Courts that the present definition has been drawn too widely, with unintended consequences. Under the present definition persons convicted of relatively minor traffic offences could still be disqualified from holding a driver licence for at least five years where the conduct giving rise to the charge resulted in death or injury. The new definition will be limited to the offences of dangerous driving causing death or grievous harm and careless driving causing death.
- The expression “sound equipment” is now defined, to supplement new powers conferred on Licensing Authorities to impose conditions on the installation of such equipment in buses and other motor vehicles.
- The definition of “trailer” is repealed in light of the removal of the requirement for trailers to be registered.

Section 4 corrects a cross-referencing error.

Section 5 modifies the expression “motor cycle” in paragraph (d) to “motor bike”, to bring it into line with the remainder of the Act. This section also removes trailers from the list of vehicles requiring registration.

Section 7 replaces subsection (3) of section 13, to introduce a separate requirement for the positioning of registration labels on motor bikes. The current provision requires attachment of the label to the windscreen of the vehicle, which is not possible in the case of motor bikes.

Section 8 replaces provisions in section 14 that were inserted under a previous amending Act, but which did not achieve their intended purpose. Instead of imposing conditions on the volume of noise that can be generated, Authorities will now be able to impose conditions concerning the installation of sound equipment in vehicles, with particular reference to buses.

Section 9 inserts a new subsection (4) into section 16 (with appropriate cross-references) that will enable Authorities to reduce the fee payable on registration of a newly-acquired vehicle where the previous registration was yet to expire.

Section 10 increases the penalties for the offence of unlicensed driving, to better reflect the seriousness of such conduct. The Court will now also be able to take into account any consequences of the driving, such as where a person is killed or injured by an unlicensed driving, in circumstances which do not amount to either dangerous or careless driving.

Section 11 increases the age at which a person can obtain a learner permit from 16 to 18 years.

Section 12 introduces an added requirement that an applicant for a driver licence must reside in the area covered by the Authority to which application is made. This is to prevent persons from obtaining a driver licence from an Authority covering a different area, where it is perceived that the requirements for the grant of a licence (such as the competency test) are not as strict.

Section 13 increases the age at which a person can obtain a driver licence for a motor bike from 16 to 18 years, and for a private motor vehicle from 17 to 18 years.

Section 14 inserts a new section 28A, in order to address mounting concerns that drivers from outer islands, unfamiliar with the complexities of driving on Tarawa or Kiritimati, pose a threat to themselves and other road-users should they attempt to drive in an urban area. Driver licences issued on an outer island will not be valid for driving on Tarawa or Kiritimati.

Section 15 amends section 30 to provide a procedure for the amendment the Road Rules. At present amendment requires passage of new legislation, which does not allow for very much flexibility. The new procedure will allow government to respond more quickly to road safety issues, such as is presently being experienced with the concern over the application of tinting to vehicle windows.

Section 16 introduces the amendments of the greatest substance. The provisions dealing with dangerous, negligent and careless driving will be repealed and replaced with a new hierarchy: dangerous driving causing death, dangerous driving causing grievous harm, dangerous driving *simpliciter*, careless driving causing death and careless driving *simpliciter*. The penalties for such offending will be high, to reflect the seriousness with which the government regards such conduct. The new provisions are modeled on similar legislation from the United Kingdom. Application of the offences is extended to cover driving elsewhere than on a road (such as an airstrip). The new section 32 gives the Court clear guidance in determining whether a person's driving is so bad as to be considered dangerous. The Court will now also be able to take into account any consequences of a person's bad driving. The alternative verdicts available to the Court are set out in full.

Section 19 repeals subsection (3) of section 38, which is now dealt with by the increased penalty available under section 14.

Section 22 amends section 47(1) to reduce the scope of offences for which penalty notices can be

issued. While the existing provision includes both registration offences and driver licence offences in the list of penalty notice offences, no penalties for such offences are set out in section 48. In the circumstances it was thought best to confine penalty notice offences to breaches of the Road Rules.

Section 23 increases the penalties to be imposed for the commission of penalty notice offences to more appropriate amounts. Given that those officers issuing penalty notices will not be in a position to know whether the offender has been previously convicted of a penalty notice offence, provision for higher penalties for subsequent offending will be repealed.

Section 25 amends section 56 by repealing the current mandatory cancellation and disqualification requirements for the commission of serious traffic offences. This is in response to comments from the High Court concerning the undesirability of such stringent provisions. Anyone convicted of an offence on the now-reduced list of serious traffic offences, or a second or subsequent offence of driving under the influence of alcohol or another drug, will still face mandatory disqualification (under the new subsection (3)), but not to the same degree.

The new section 56A, inserted by section 26, takes some of the provisions previously in section 56 and sets them out with greater clarity. As with the offence of unlicensed driving, the Court will be able to take into account the consequences of a person driving while their licence is suspended, or they are disqualified from holding a licence, such as the causing of property damage or injury.

Section 58 will be amended by section 28, to set out with greater clarity some of the powers of police officers. The police are given express power to seize offending items from motor vehicles (such as non-approved seating or illegal sound equipment).

Section 29 inserts a new section 58A, to create a new offence of failing to stop at the scene of an accident. A driver who has a reasonable fear for their safety (such as where by-standers are behaving in a threatening manner) will have a defence to the charge, but only if they go straight to the nearest police station and report the accident.

A new section 60A is inserted by section 32, to state clearly that Magistrates' Court have the power to hear all proceedings for offences under the Act, except serious traffic offences, which will remain within the jurisdiction of the High Court.

Section 61 is amended by section 33 to enable regulations (such as the recently promulgated *Traffic (Road Safety) Regulations*) to provide for higher penalties than would otherwise be permitted by the *Interpretation and General Clauses Ordinance*.

Finally, section 62 is amended by section 34 to provide that only offences committed after this Act becomes law will be affected by the amendments introduced herein. Given the increase in the age at which persons will be able to obtain learner permits and driver licences for motor bikes and private motor vehicles, provision is also made for the continuing validity of permits and licences issued to those under 18 years prior to this Act becoming law.

Titabu Tabane
Attorney-General
9 May 2005