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## A PROPOSED ORGANIC LAW

entitled

### **Organic Law on the Independent Commission Against Corruption.**

Being an Organic Law to implement Division VIII.3 of the **Constitution (The Independent Commission Against Corruption)** and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister

#### **PART 1 - PRELIMINARY.**

##### **1 COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Organic Law, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (Qualified Rights) of the Constitution, namely:

- (a) liberty of the person conferred by section 42 of the Constitution; and
- (b) freedom from arbitrary search of person or property and entry of premises, conferred by section 44 of the Constitution; and
- (c) freedom of conscience, thought and religion conferred by section 45 of the Constitution; and
- (d) freedom of expression conferred by section 46 of the Constitution; and
- (e) freedom of assembly and association conferred by section 47 of the Constitution; and
- (f) freedom of employment conferred by section 48 of the Constitution; and
- (g) the right to privacy conferred by section 49 of the Constitution; and
- (h) the right to freedom of information conferred by section 51 of the Constitution; and
- (i) the right to freedom of movement conferred by section 52 of the Constitution; and
- (j) the protection from unjust deprivation of property conferred by section 53 of the Constitution;

is a law that is made pursuant to section 38 of the Constitution that is necessary for the purpose of giving effect to the public interest in public safety, public order and public welfare and is reasonably justifiable in a democratic society having a proper respect and regard for the rights and dignity of mankind, taking into account the National Goals and Directive Principles and Basic Social Obligations, because of the risk that corruption poses to public safety, public order and public welfare as well as to the successful economic and human development of Papua New Guinea and its citizens and to the stability of the State of Papua New Guinea.

##### **2 APPLICATION.**

This Law applies both within and outside Papua New Guinea.

##### **3 LAW TO BIND THE STATE.**

This Law binds the State.

##### **4 APPLICATION OF CRIMINAL CODE ACT.**

The *Criminal Code Act 1974* applies to all offences under this Law.

##### **5 INTERPRETATION.**

- (1) In this Law, unless the contrary intention appears:

“**assisting the Commission**” has the meaning given by section 13;

“**Code of Conduct**” means the Code of Conduct determined under section 128;

“**Commission**” means the Independent Commission against Corruption;

**“Commission investigator”** means a person authorised to be a Commission investigator under subsection 133(1), and is deemed to include the Commissioner and a Deputy Commissioner;

**“Commission officer”** means:

- (a) the Commissioner; or
- (b) a Deputy Commissioner; or
- (c) a member of the staff of the Service; or
- (d) a Commission investigator; or
- (e) a Commission prosecutor; or
- (f) a person seconded to the Service; or
- (g) a legal practitioner engaged by the Commission;

and in Part 13 and for other offences under this Law includes a former Commission officer;

**“Commission prosecutor”** means a legal practitioner authorised to be a Commission prosecutor under subsection 133(5), and is deemed to include the Commissioner and a Deputy Commissioner if he is a legal practitioner;

**“Commissioner”** means the Commissioner of the Commission;

**“computer”** means any electronic device for storing, transmitting or processing information;

**“conduct”** includes any act or omission;

**“consultant”** means a person engaged by the Commission as a consultant under section 125;

**“corrupt conduct”** has the meaning given by sections 6, 7 and 8, and has the same meaning for the purposes of Division VIII.3 of the *Constitution*;

**“data interception device”** means any device or program capable of being used to record or monitor the input of information into, or the output of information from, a computer but does not include an optical interception device;

**“device”** includes instrument, apparatus and equipment;

**“Deputy Commissioner”** means a Deputy Commissioner of the Commission;

**“disciplinary offence”** means any act or omission which could form the grounds for:

- (a) disciplinary action against; or
- (b) terminating the services of; or
- (c) dismissal or removal from office of;

a public official under any law, including a breach of the Leadership Code;

**“disciplinary proceeding”** means a proceeding relating to a disciplinary offence;

**“document”** means any record of information, and includes:

- (a) anything on which there is writing; and
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; and
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; and
- (d) a map, plan, drawing or photograph;

whether stored in hard copy, electronically or in some other format.

**“enhancement equipment”**, in relation to an interception device, means equipment capable of enhancing a signal, image, moving image or other information obtained by the use of the interception device;

**“family member”** of a person means any of the following:

- (a) a spouse of the person;
- (b) a child of the person or a child of the person’s spouse;
- (c) a parent of the person or a parent of the person’s spouse;
- (d) a grandparent of the person or a grandparent of the person’s spouse;
- (e) a brother or sister of the person or a brother or sister of the person’s spouse;
- (f) any other person who is treated by the person or his or her spouse as a family member;

**“hearing”** means a hearing of the Commission under Part 5;

**“install”** includes attach;

**“integrity agency”** means:

- (a) the Ombudsman Commission; or
- (b) the Office of the Auditor-General; or
- (c) the Public Services Commission; or
- (d) the Judicial and Legal Services Commission.

**“interception device”** means:

- (a) a data interception device, a listening device, an optical interception device or a tracking device; or
- (b) a device that is a combination of any 2 or more of the devices in paragraph (a);

**“interception warrant”** means a warrant issued under Division 2 of Part 6;

**“international agency”** means an agency or body outside of Papua New Guinea that has similar functions to the Commission, an integrity agency, a law enforcement agency or a regulatory agency.

**“interest”**, in relation to property, means:

- (a) a legal or equitable estate or interest in the property; or
  - (b) a right, power or privilege in connection with the property;
- whether present or future and whether vested or contingent;

**“investigation”** means an investigation into corrupt conduct by the Commission under this Law;

**“law enforcement agency”** means:

- (a) the Royal Papua New Guinea Constabulary; or
- (b) the Office of the Public Prosecutor; or
- (c) the Financial Intelligence Unit.

**“legal practitioner”** means a person authorised by law to practice as a lawyer in Papua New Guinea;

**“listening device”** means any device capable of being used to overhear, record, monitor or listen to a conversation or words spoken to or by any person in a conversation, but does not include a hearing aid;

**“member of the Commission”** means the Commissioner or a Deputy Commissioner of the Commission;

**“occupational detriment”** has the meaning given by section 12;

**“optical interception device”** means any device capable of being used to record visually or observe an activity, but does not include spectacles or contact lenses;

**“premises”** includes the following:

- (a) a structure, building, vehicle, or chattel;
- (b) land or a place (whether or not enclosed or built on);
- (c) a part of premises (including premises of a kind referred to in paragraph (a) or (b));

**“property”** means real or personal property of every description, whether situated in Papua New Guinea or elsewhere, and includes an interest in any such real or personal property;

**“public body”** has the meaning given by section 9;

**“public official”** has the meaning given by section 10;

**“regulatory agency”** means an agency or body established by or under a Constitutional Law or an Act whose functions include setting, monitoring or enforcing compliance with standards or obligations prescribed by or under that or another Constitutional Law or Act;

**“relevant agency”** means:

- (a) an integrity agency; or
- (b) a law enforcement agency; or
- (c) a regulatory agency;

**“retaliates”** has the meaning given by section 11;

**“search warrant”** means a search warrant issued under Division 1 of Part 6;

**“confidentiality provision”** means a provision of a law of Papua New Guinea that:

- (a) prohibits or restricts the communication, divulging or publication of information; or

(b) protects the confidentiality of information;

**“serious corrupt conduct”** means corrupt conduct engaged in by a person that could result in him or her being charged with:

- (a) a criminal offence punishable, on conviction, by a term of imprisonment for 12 months or more; or
- (b) a disciplinary offence punishable by the termination of the person’s services, or the removal or dismissal from office of the person;

**“Service”** means the Independent Commission against Corruption Staff Service established by Part 10;

**“Service Orders”** means the orders made by the Commission under section 129;

**“spouse”** of a person means any individual of the opposite sex to the person who:

- (a) is or has been married to the person; or
- (b) although not married to the person, is living with the person in a marriage-like relationship, or has lived with the person in such a relationship; or
- (c) is a biological parent of a child with the person (whether or not they are or have been married or are or have lived together);

**“State Service”** means a State Service established under section 188 of the *Constitution* or any other State Service established by or under a Constitutional Law or an Act;

**“statement of information”** means a statement of information produced in response to a notice under section 52;

**“summons”** means a summons issued under section 68;

**“systemic corrupt conduct”** means instances of corrupt conduct (which may or may not constitute serious corrupt conduct) that reveal a pattern of corrupt conduct in one or more public bodies, or by one or more public officials;

**“tracking device”** means any electronic device capable of being used to determine or monitor the location of a person or an object or the status of an object;

**“vehicle”** includes aircraft and vessel.

## 6 CORRUPT CONDUCT.

(1) Conduct of a public official is corrupt conduct if:

- (a) the conduct constitutes or involves, or is engaged in for the purpose of:
  - (i) dishonestly exercising any of his or her official functions; or
  - (ii) abusing any of his or her official functions; or
  - (iii) exercising any of his or her official functions in a way that is not impartial; or
  - (iv) misusing information or material that he has acquired in the course of his or her official functions; or
  - (v) obstructing, interfering with or perverting the administration or the course of justice; and
- (b) the conduct could amount to a disciplinary offence or a criminal offence.

(2) The conduct of a person (whether or not a public official) is corrupt conduct if:

- (a) the conduct affects or influences, or could affect or influence, any of the conduct mentioned in subsection (1) by a public official; and
- (b) the conduct could amount to a disciplinary offence or a criminal offence.

(3) The conduct of a person who is not a public official is corrupt conduct if:

- (a) the conduct constitutes or involves, or is engaged in for the purpose of, obstructing, interfering with or perverting the administration or the course of justice; and
  - (b) the conduct could amount to a criminal offence.
- (4) Conduct of any person (whether or not a public official) is corrupt conduct if the conduct:
- (a) allows, encourages, causes, aids, abets, incites, induces, counsels or procures or assists to conceal any of the conduct mentioned in paragraph (b) of this subsection, or subsections (1) to (4); or
  - (b) is an attempt, preparation or conspiracy to commit any of the conduct mentioned in paragraph (a) of this subsection, or subsections (1) to (4); or
  - (c) is indirectly or indirectly connected with, or is a part of a course of activity, involving any of the conduct mentioned in paragraph (a) or (b) of this subsection, or subsections (1) to (4).
- (5) Conduct may be corrupt conduct regardless of whether the conduct or part of the conduct occurred before the commencement of this Organic Law.

#### 7 CONDUCT OF PUBLIC OFFICIALS.

- (1) If conduct of a person occurs before the person becomes a public official, the conduct may be corrupt conduct if the conduct is connected to the exercise of the person's official functions after he became a public official.
- (2) Conduct of a person may be corrupt conduct regardless of whether some of the conduct occurs after the person ceases to be a public official.
- (3) Conduct of a person may be corrupt conduct regardless of whether the person ceases to be a public official after the conduct concerned occurred.
- (4) Conduct of a public official may be corrupt conduct regardless of whether the conduct is for the benefit of the public official.

#### 8 CONDUCT OUTSIDE PAPUA NEW GUINEA.

Conduct that occurs outside of Papua New Guinea may be corrupt conduct if:

- (a) the conduct is connected to other conduct that occurs in Papua New Guinea; or
- (b) the conduct is committed by a citizen; or
- (c) a citizen or the State is affected by or connected with the conduct; or
- (d) the conduct occurs on an aircraft that is registered under the laws of Papua New Guinea; or
- (e) the conduct occurs on a vessel that is flying the national flag of Papua New Guinea; or
- (f) the conduct concerns property or funds that are located in Papua New Guinea, or are moved out of or into Papua New Guinea.

#### 9 PUBLIC BODY.

- (1) A body, authority or entity (whether incorporated or not) is a public body if it is established for a public purpose by or under a Constitutional Law or an Act.
- (2) Without limiting subsection (1), each of the following is a public body:
  - (a) the National Parliament;
  - (b) the National Government and an arm, department, agency or instrumentality of the National Government;
  - (c) a State Service;
  - (d) a Provincial Government and a Provincial Assembly, and an arm, department, agency or instrumentality of a Provincial Government;
  - (e) a Local-level Government and an arm, agency or instrumentality of a Local-level Government;



- (f) the Supreme Court, the National Court, a District Court, a Village Court or any other court established by or under a Constitutional Law or an Act;
- (g) a body set up by statute or administrative act for governmental or official purposes.

#### 10 PUBLIC OFFICIAL.

- (1) A person is a public official if the person is:
  - (a) subject to the Leadership Code under section 26 of the **Constitution**; or
  - (b) a member of staff, an officer or a member of a public body; or
  - (c) a member of staff of a public official; or
  - (d) a person:
    - (i) seconded to a public body; or
    - (ii) engaged or contracted to perform services for a public body or public official; or
    - (iii) engaged or contracted to act on behalf of a public body or public official; or
  - (e) a person appointed to an office or position by the Governor-General.
- (2) Subsection (1) applies regardless of whether the person is or was:
  - (a) paid or unpaid; or
  - (b) elected or appointed; or
  - (c) temporary or permanent.

#### 11 MEANING OF RETALIATES.

A person retaliates if:

- (a) he causes or inflicts by act or omission any of the following on or against another person:
  - (i) any violence, injury, punishment, damage, loss, harm or disadvantage;
  - (ii) any victimization, harassment or intimidation;
  - (iii) any occupational detriment

and

- (b) when the act or omission occurs, he believes or suspects that the other person or another person or persons is assisting, may have assisted or may assist the Commission; and
- (c) that belief or suspicion is the reason, or part of the reason, for the act or omission.

#### 12 MEANING OF OCCUPATIONAL DETRIMENT.

Occupational detriment for a person who is an employee includes:

- (a) the taking of disciplinary action against the employee;
- (b) the dismissal, suspension or demotion of the employee;
- (c) the victimization or intimidation of the employee in the workplace;
- (d) the transfer of the employee against his or her will to another place or position;
- (e) the employee being refused an appointment, transfer or promotion;
- (f) the employee being refused a reference or being provided with an adverse reference;

- (g) the employee being disadvantaged in his or her employment;
- (h) discrimination between the employee and other employees of the same employer.

### 13 MEANING OF ASSISTING THE COMMISSION.

- (1) A reference to a person who is assisting the Commission is a reference to a person who:
  - (a) has appeared, is appearing or is to appear at a hearing to give evidence or to produce a document or other thing to the Commission; or
  - (b) has produced or proposes to produce a document or other thing to the Commission; or
  - (c) has produced or proposes to produce a statement of information to the Commission; or
  - (d) has made a complaint regarding corrupt conduct to the Commission under this Law; or
  - (e) has provided or proposes to provide information regarding corrupt conduct to the Commission; or
  - (f) has assisted, is assisting or is to assist the Commission in some other manner.
- (2) Subsection (1) applies to a person whether the person is assisting the Commission voluntarily or by compulsion of law.

## PART 2- COMMISSIONER AND DEPUTY COMMISSIONERS.

### 14 COMMISSION CONSISTS OF COMMISSIONER AND DEPUTY COMMISSIONERS.

There is an Independent Commission Against Corruption that consists of the Commissioner and two Deputy Commissioners in accordance with Section 220B(1) of the **Constitution**.

### 15 CONSTITUTIONAL OFFICE-HOLDERS.

The Commissioner and Deputy Commissioners are declared to be constitutional office-holders for the purposes of Part IX (**Constitutional Office-holders and Constitutional Institutions**) of the **Constitution**.

### 16 APPOINTMENT OF COMMISSIONER AND DEPUTY COMMISSIONERS.

- (1) The Head of State acting with, and in accordance with, the advice of the Appointments Committee is to appoint the Commissioner and two Deputy Commissioners. Each appointment is to be made by instrument in writing.
- (2) The decision by the Appointments Committee as to who should be recommended to the Head of State for appointment as a member of the Commission, including an acting appointment under section 27 or 28, must be made at a meeting of at least 4 members of the Appointments Committee and the decision must be agreed to by at least 4 members of the Appointments Committee.
- (3) The Appointments Committee must make the decision mentioned in subsection (2) based on the relative merits of the candidates.

### 17 EXPRESSIONS OF INTEREST.

- (1) The Appointments Committee must seek expressions of interest for appointment and determine the procedures to be used when seeking expressions of interest.
- (2) Without limiting subsection (1), the Chairperson of the Appointments Committee must cause to be published or publish an advertisement:
  - (a) seeking expressions of interest from persons for appointment as a member of the Commission; and
  - (b) fixing a date by which expressions of interest must be provided to the Appointments Committee.
- (3) The advertisement must appear in one of the national newspapers of Papua New Guinea for at least seven days in total.

### 18 QUALIFICATIONS FOR APPOINTMENT.

- (1) Subject to section 21, a person is qualified for appointment as the Commissioner if he:
  - (a) is a person of high integrity, independence of mind and good reputation; and
  - (b) is qualified for appointment as a Judge of the National Court.

- (2) Subject to section 21, a person is qualified for appointment as a Deputy Commissioner if he:
- (a) is a person of high integrity, independence of mind and good reputation; and
  - (b) either:
    - (i) is qualified for appointment as a Judge of the National Court; or
    - (ii) holds qualifications and has demonstrated experience of at least 5 years in fields that are relevant to the functions of the Commission.

#### 19 PERIOD OF APPOINTMENT.

- (1) A person is to be appointed as the Commissioner for a period of:
- (a) 6 years if he is a citizen; or
  - (b) 3 years in any other case.
- (2) A person appointed as the Commissioner is eligible for reappointment as the Commissioner for only one additional term.
- (3) A person is to be appointed as a Deputy Commissioner for a period of:
- (a) 6 years if he is a citizen; or
  - (b) 3 years in any other case.
- (4) A person appointed as a Deputy Commissioner is eligible for reappointment as a Deputy Commissioner for only one additional term.
- (5) To avoid doubt, nothing in this Law prevents a person who is or has been a Deputy Commissioner from being appointed the Commissioner.

#### 20 SENIORITY OF DEPUTY COMMISSIONERS.

The Deputy Commissioners have seniority as Deputy Commissioners according to the dates of their first appointment to the Commission, or, if two Deputy Commissioners were appointed on the same day, according to the precedence assigned to them in their instruments of appointment.

#### 21 DISQUALIFICATION FOR APPOINTMENT AND GROUNDS FOR REMOVAL.

A person is not qualified to be, or to remain, a member of the Commission if he:

- (a) is a member, or candidate for election as a member, of the Parliament; or
- (b) is a member of a Provincial Government or a Provincial Assembly; or
- (c) is a candidate for election as a member of a Local-level Government, or is a member of a Local-level Government or a Local-level Government Special Purposes Authority; or
- (d) is an office-holder, or candidate for election as an office-holder, in a registered political party; or
- (e) is an undischarged bankrupt or insolvent; or
- (f) is of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (g) has been found guilty of any criminal offence under the law of Papua New Guinea or a foreign law, whether before, on or after the commencement of this Law; or
- (h) has been found guilty of misconduct in office under the *Organic Law on the Duties and Responsibilities of Leadership*, whether before, on or after the commencement of this Law.

#### 22 SPECIAL CONDITIONS OF EMPLOYMENT.

- (1) A member of the Commission must as soon as practicable report any suspected corrupt conduct of:
- (a) the Commissioner to the Appointments Committee; and
  - (b) a Deputy Commissioner to the Commissioner; and

- (c) any other Commission officer to the Commissioner.
- (2) A member of the Commission must not:
- (a) actively engage in politics; or
  - (b) subject to subsection (4), engage either directly or indirectly in the management or control of a corporation or other body carrying on business for profit; or
  - (c) directly or indirectly engage in any paid employment outside the duties of his or her office; or
  - (d) subject to subsection (5), acquire by way of gift or otherwise, or use or hold in any other manner any interest in, any property of the State, or solicit, accept or receive any benefit in addition to his or her terms and conditions of employment; or
  - (e) except with the written consent of the Chairperson of the Appointments Committee, or because of illness, absent himself or herself from duty for more than 14 consecutive days or more than 28 days in any period of 12 months.
- (3) A member of the Commission must advise the Chairperson of the Appointments Committee in writing of any change of circumstances that may affect his or her eligibility for appointment or continuation as a member of the Commission.
- (4) Nothing in paragraph (2)(b) prevents a member of the Commission from holding office in a professional body in relation to which his or her qualifications are relevant.
- (5) Subject to any Organic Law made for the purposes of Division III.2 (**Leadership Code**) of the **Constitution**, a member of the Commission who is a citizen may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

#### 23REMOVAL FROM OFFICE.

- (1) A member of the Commission can be removed from office on the grounds set out in section 21 or a breach of a condition mentioned in section 22, or the grounds set out in section 7 of the *Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders*.
- (2) The process for removal on any ground is to be determined in accordance with the *Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders*.

#### 24RESIGNATION.

- (1) If a member of the Commission intends to resign, he may do so by giving three months' notice in writing to the Head of State.
- (2) The period of 3 months is deemed to commence on the twenty-second day after the receipt by the Head of State of the notice, unless the Head of State, acting with, and in accordance with, the advice of the Appointments Committee, by notice in writing to the member, fixes an earlier date for the commencement.
- (3) A member of the Commission may withdraw his or her intention to resign at any time before the period of 3 months.

#### 25RETIREMENT.

- (1) A person who has attained the age of 65 years is not to be appointed or re-appointed as a member of the Commission.
- (2) A person is not to be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 65 years.
- (3) Despite subsections (1) and (2), the Head of State acting with, and in accordance with, the advice of the Appointments Committee, may in special circumstances:
  - (a) appoint or re-appoint a person who is over 65 years of age to be a member of the Commission; or
  - (b) appoint or re-appoint a person for a period that extends beyond the date on which he will attain the age of 65 years.

- (4) However, a member of the Commission must not continue as a member after he has attained the age of 70 years under any circumstances.

#### 26 VACANCY.

- (1) An office of a member of the Commission becomes vacant if the member:
- (a) dies; or
  - (b) resigns in accordance with section 24; or
  - (c) retires in accordance with section 25; or
  - (d) is not re-appointed at the end of a term of office; or
  - (e) is removed from office in accordance with the *Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders*.
- (2) A vacancy in the office of a member of the Commission must be filled as soon as practicable and, in any event, not later than 4 months after the office became vacant.

#### 27 ACTING COMMISSIONER.

- (1) If for 4 months or less:
- (a) the Commissioner is suspended from office; or
  - (b) there is a vacancy in the office of the Commissioner; or
  - (c) the Commissioner is on leave of absence;

the more senior Deputy Commissioner must act as the Commissioner. However, if there is only one Deputy Commissioner, he must act as the Commissioner.

- (2) If:
- (a) any of the circumstances in paragraph (1)(a),(b) or (c) apply for more than 4 months; or
  - (b) a Deputy Commissioner is unable to act as the Commissioner;

the Head of State acting with, and in accordance with, the advice of the Appointments Committee may appoint a person to act as the Commissioner if the person satisfies the criteria for appointment under subsection 18(1).

- (3) The Appointments Committee is not required to comply with section 18 before advising the Head of State about an acting appointment.

#### 28 ACTING DEPUTY COMMISSIONER.

- (1) If for 4 months or less:
- (a) a Deputy Commissioner is suspended from office; or
  - (b) there is a vacancy in the office of a Deputy Commissioner; or
  - (c) a Deputy Commissioner is on leave of absence;

the Commissioner may appoint a Commission officer to act as the Deputy Commissioner if he satisfies the criteria for appointment under section 18(2).

- (2) If:
- (a) any of the circumstances in paragraph (1)(a), (b) or (c) apply for more than 4 months; or
  - (b) a Commission officer is unable to act as a Deputy Commissioner;

the Head of State acting with, and in accordance with, the advice of the Appointments Committee may appoint a person to act as the Deputy Commissioner if the person satisfies the criteria for appointment under subsection 18(2).

- (3) The Appointments Committee is not required to comply with section 17 before advising the Head of State about an acting appointment.

#### 29 DISCLOSURE OF INTERESTS.

- (1) A member of the Commission must give written notice to the Chairperson of the Appointments Committee of all interests (financial or otherwise) that the member has or acquires and that could conflict with the proper performance of the Commission's functions.
- (2) The member of the Commission must make the disclosure as soon as practicable after he acquires the interest concerned or becomes aware of the potential conflict.

#### 30 SALARIES, ALLOWANCES AND BENEFITS.

The members of the Commission are to be paid such salaries, allowances and benefits (financial and otherwise) fixed by the Parliament as provided for by section 13 of the *Salaries and Remuneration Commission Act 1988*.

#### 31 VACANCY ETC NOT TO AFFECT POWERS OR FUNCTIONS.

An act or decision of the Commission is not invalid by reason only of:

- (a) a defect or irregularity in, or in connection with, the appointment of a member of the Commission; or
- (b) a vacancy in an office of a member of the Commission.

#### 32 OATH OR AFFIRMATION OF OFFICE

Before commencing the duties of his or her office, a member of the Commission must take an oath of office in Form 1 of Schedule 1 or make an affirmation of office in Form 2 of Schedule 1 before the Head of State or a person appointed by the Head of State.

### PART 3 - FUNCTIONS AND POWERS OF THE COMMISSION.

#### 33 FUNCTIONS AND POWERS OF THE COMMISSION.

- (1) In addition to the functions and powers of the Commission specified in Division VIII.3 (***The Independent Commission against Corruption***) of the ***Constitution***, the Commission has such functions and powers as are conferred on it by this Law or any other Constitutional Law or Act.
- (2) In addition to the specific powers conferred on the Commission, the Commission has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the performance of its functions or the exercise of its powers.

#### 34 PREVENTING AND REDUCING CORRUPT CONDUCT.

Without limiting how the Commission may prevent and reduce corrupt conduct, the Commission may do any or all of the following:

- (a) undertake or commission research;
- (b) review and make recommendations regarding the systems, strategies, policies, practices and procedures of any public body or public official;
- (c) undertake or commission education, training or awareness, either to the public generally or to a particular section of the public or private sector, including but not limited to educational institutions;
- (d) enlist and foster public support for preventing and reducing corrupt conduct;
- (e) analyse information regarding complaints, investigations and prosecutions;
- (f) make recommendations for legal, operational or policy reforms;
- (g) publish recommendations, research, reports, policies or guidelines, and provide such material to other agencies and bodies;
- (h) make public statements necessary for its purposes under this Law or regarding the powers or functions of the Commission;
- (i) work in cooperation with other agencies and bodies, including but not limited to other public sector agencies and bodies, the media, civil society, educational institutions and the private sector.

### 35 REDUCING AND COMBATING CORRUPT CONDUCT.

Without limiting how the Commission may reduce and combat corrupt conduct, the Commission may do any or all of the following:

- (a) investigate alleged or suspected corrupt conduct, including perform functions or exercise powers under Parts 4, 5 and 6;
- (b) prosecute indictable offences relating to corrupt conduct in accordance with Part 7;
- (c) publish reports and provide reports to other agencies and bodies.

### 36 COOPERATION WITH AGENCIES AND BODIES

- (1) In performing its functions and exercising its powers, the Commission is, so far as practicable, to cooperate with relevant agencies, and may cooperate with such other agencies and bodies (including international agencies) as the Commission considers appropriate.

### 37 EXCHANGE OF INFORMATION

- (1) The Commission may provide information relating to alleged or suspected corrupt conduct to a relevant agency or any other agency or body (including an international agency) if the information relates to the functions of the relevant agency or the other agency or body.
- (2) If the Commission provides the information to a relevant agency, or any other agency or body, any restrictions on the use of the information that apply to the Commission apply to the relevant agency, or the other agency or body.
- (3) The Commission may receive information from a relevant agency or any other agency or body (including an international agency).

### 38 REFERRAL OF MATTERS

- (1) The Commission may refer a matter involving alleged or suspected corrupt conduct to a relevant agency or any other agency or body (including an international agency) if the matter relates to the functions of the relevant agency or the other agency or body.
- (2) When referring the matter, the Commission:
  - (a) may recommend what action should be taken by the relevant agency or the other agency or body; and
  - (b) shall provide to the relevant agency or the other agency or body any information obtained by the Commission during an investigation that is relevant to the functions of the relevant agency or other agency or body to which the matter has been referred.
- (3) Despite the Commission having referred a matter to a relevant agency, or other agency or body, if the Commission:
  - (a) has power to deal with the matter; and
  - (b) is of the view that it would be in the interests of justice or the public interest to deal with the matterthe Commission may continue to deal with the matter or refer the matter to another relevant agency, or another agency or body.
- (4) The Commission may advise a complainant that a matter has been referred under this section.
- (5) The Commission may accept the referral of a matter relating to alleged or suspected corrupt conduct from a relevant agency or any other agency or body (including an international agency).

### 39 COMMITTEES AND TASKFORCES, ARRANGEMENTS AND AGREEMENTS.

The Commission may establish or participate in committees and taskforces with relevant agencies, and such other bodies and agencies as the Commission considers appropriate.

### 40 ADMINISTRATIVE ARRANGEMENTS AND AGREEMENTS.

The Commission may enter into administrative arrangements and agreements with relevant agencies, and such other bodies and agencies as the Commission considers appropriate, to facilitate the performance of the Commission's functions and the exercise of its powers, including, but not limited to:

- (a) cooperation with relevant agencies and other agencies and bodies; and
- (b) the exchange of information, including to protect the confidentiality of the information; and
- (c) the referral of matters between relevant agencies and other agencies and bodies.

#### 41 MEETINGS OF THE COMMISSION

- (1) The Commission is to convene such meetings of the Commission as the Commission considers appropriate.
- (2) The Commissioner is to preside at all meetings at which he is present. If the Commissioner is not present at a meeting, he may appoint a Deputy Commissioner to preside at the meeting.
- (3) The quorum for a meeting of the Commission is 2 members of the Commission and the quorum must be present at all times during the meeting.
- (4) A question arising at a meeting of the Commission is to be determined by a majority of votes of the members present.
- (5) The person presiding at a meeting has:
  - (a) a deliberative vote; and
  - (b) if necessary, also a casting vote.
- (6) In addition to meeting in person, the members of the Commission may participate in a meeting by telephone or any electronic means of communication.
- (7) A member who participates in a meeting by any of the means referred to in subsection (6) is deemed to be present at the meeting and to form part of the quorum for the meeting.
- (8) A meeting relying on a means of participation referred to in subsection (6) may be held at 2 or more places at the same time.
- (9) A decision of the Commission must be recorded in writing, unless it is made by written agreement.
- (10) The Commission may otherwise determine its own procedures for the conduct of its meetings.
- (11) This section does not apply to a hearing of the Commission.

#### 42 DISCLOSURE OF CONFLICTS OF INTEREST.

- (1) This section applies to a member of the Commission (the interested person) if:
  - (a) the interested person has a material personal interest in an issue being considered, or about to be considered, by the Commission; and
  - (b) the interest could conflict with the proper performance of the person's duties about the consideration of the issue.
- (2) As soon as practicable after the relevant facts come to the interested person's knowledge, the person must disclose the nature of the interest to a meeting of the Commission.
- (3) Unless the Commission otherwise directs, the interested person must not:
  - (a) be present when the Commission considers the issue; or
  - (b) take part in a decision of the Commission about the issue.
- (4) The interested person must not be present when the Commission is considering whether to give a direction under subsection (3).
- (5) A disclosure under subsection (2) must be recorded in the Commission's record of the meeting.
- (6) A failure to disclose a material personal interest does not, of itself, invalidate a decision of the Commission.



- (7) In this section, “**material personal interest**” means:
- (a) a direct or indirect interest relating to the personal affairs of a member of the Commission that may have, or be seen to have, an influence on the conduct of the member at a meeting of the Commission; or
  - (b) a personal or political association that might influence the member of the Commission in the discharge of the member’s duties.

## PART 4 – INVESTIGATING CORRUPT CONDUCT.

### Division 1 – Duty to report corrupt conduct and complaints

#### 43 DUTY TO NOTIFY COMMISSION OF POSSIBLE CORRUPT CONDUCT.

- (1) Subject to subsections (3) and (4), notwithstanding any other Act, any person to whom Division III.2 (**Leadership Code**) of the **Constitution** applies is under a duty to report to the Commission any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct.
- (2) The person must report the matter to the Commission as soon as practicable after the person becomes aware of the matter, and may do so orally or in writing.
- (3) The duty to report under this section does not apply if:
  - (a) the Prime Minister certifies that to do so is likely to prejudice the security or defence of Papua New Guinea; or
  - (b) the Prime Minister certifies that to do so is likely to prejudice Papua New Guinea’s relations with the Government of any other country or with any international organization; or
  - (c) to do so would involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any committee of that Council, which the Prime Minister certifies relate to matters of a secret or confidential nature, disclosure of which would be injurious to the public interest; or
  - (d) to do so would be a breach of Parliamentary privilege or immunity; or
  - (e) the matter is subject to a claim of legal professional privilege.
- (4) The Commissioner of Police, the Public Prosecutor, the Public Solicitor, a Judge, the Chief Magistrate and a member of the Ombudsman Commission are not under a duty to report to the Commission any matter that concerns or may concern corrupt conduct if he became aware of the matter while performing official duties, unless the matter concerns or may concern corrupt conduct of:
  - (a) in the case of the Commissioner of Police – a member of the Police Force; or
  - (b) in the case of the Public Prosecutor – a member of the staff of the Office of the Public Prosecutor; or
  - (c) in the case of the Public Solicitor – a member of the staff of the Office of the Public Solicitor; or
  - (d) in the case of a Judge – another Judge, or an officer or employee of the National Judicial Staff Service; or
  - (e) in the case of the Chief Magistrate – a Magistrate or a member of the staff of the Magisterial Service; or
  - (f) in the case of a member of the Ombudsman Commission – another member of the Ombudsman Commission or an officer or employee of the Service of the Ombudsman Commission.

#### 44 COMPLAINTS ABOUT POSSIBLE CORRUPT CONDUCT.

- (1) Any person may make a complaint to the Commission about alleged or suspected corrupt conduct.
- (2) A person may make a complaint orally or in writing.

- (3) Without limiting subsection (2), a person may make a complaint in person, on behalf of another person, by telephone, email or using any other electronic means of communication.
- (4) The Commission may decide whether to accept a complaint that does not include the complainant's identity or contact details, or both.
- (5) If a complainant's identity or contact details, or both, are included in a complaint, the complainant may request that his or her identity or contact details, or both, are not be disclosed
- (6) The Commission may authorize other bodies or agencies to accept complaints on behalf of the Commission in accordance with agreements between the Commission and such other bodies or agencies.

#### 45 DISCLOSURE OF IDENTITY OR CONTACT DETAILS, OR BOTH.

- (1) If a request is made under subsection 44(5) that a complainant's identity or contact details, or both, not be disclosed, a Commission officer or a consultant must not disclose the complainant's identity or contact details, or both, as the case requires, to another Commission officer or consultant unless the disclosure is made while performing functions, or exercising powers, under, or for the purposes of, this Law.
- (2) A Commission officer or a consultant who contravenes subsection (1) commits an offence.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

- (3) If a request is made under subsection 44(5) that a complainant's identity or contact details, or both, not be disclosed, a Commission officer, a consultant or any other person must not disclose the complainant's identity or contact details, or both, as the case requires, to a person who is not a Commission officer or a consultant unless the complainant has consented in writing to the disclosure.
- (4) A Commission officer, a consultant or any other person who contravenes subsection (3) commits an offence.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

#### 46 FALSE OR MISLEADING COMPLAINTS.

A person commits an offence if the person makes a complaint to the Commission about alleged or suspected corrupt conduct that the person knows is false or misleading in a material particular.

Penalty: Fine not exceeding K 15,000 or imprisonment for a term not exceeding 3 years, or both.

### Division 2 – Assessments of complaints etc.

#### 47 ASSESSMENT OF COMPLAINTS ETC.

- (1) After receipt of a complaint about alleged or suspected corrupt conduct, the Commission may assess the complaint.
- (2) In assessing a complaint, the Commission may have regard to whether the complaint:
  - (a) raises a potential matter of corrupt conduct; or
  - (b) raises a matter of serious corrupt conduct or systemic corrupt conduct; or
  - (c) raises any matter of public interest; or
  - (d) appears to lack credibility or substance; or
  - (e) is trivial, vexatious or frivolous; or
  - (f) raises a matter that occurred too long ago to justify an investigation; or
  - (g) raises a matter that is more appropriately dealt with by another agency or body; or
  - (h) raises a matter that has previously been dealt with by another agency or body and there is no reason to re-examine it, or there is other good reason why no action should be taken in respect of the matter.
- (3) The Commission may also assess a matter involving alleged or suspected corrupt conduct if:

- (a) the matter has been reported or referred to the Commission by another agency or body; or
  - (b) the Commission has become aware of the matter acting on its own initiative.
- (4) If the Commission assesses a matter mentioned in subsection (3), the Commission may have regard to any or all of the matters mentioned in subsection (2).

#### 48 ACTION THAT THE COMMISSION MAY TAKE.

- (1) After making an assessment of a matter under section 48, the Commission may:
- (a) investigate the matter; or
  - (b) decide to take no further action; or
  - (c) refer the matter to another body or agency.
- (2) The same matter, or different aspects of the same matter, may be dealt with contemporaneously under more than one paragraph of subsection (1).
- (3) The Commission may, at any time, reconsider how a matter should be dealt with.
- (4) Without limiting subsection (3), the Commission:
- (a) may discontinue an investigation; or
  - (b) having decided not to investigate a matter, may decide to investigate the matter; or
  - (c) may decide to refer a matter to another agency or body (before, during or after an investigation).
- (5) The Commission may inform a complainant, or an agency or body that has reported or referred a matter to the Commission, as to the action (if any) taken under this section in respect of the matter.

#### 49 PUBLIC STATEMENTS.

- (1) The Commission may, subject to other laws, make or publish a public statement about a complaint, assessment or investigation concerning alleged or suspected corrupt conduct if, in the Commission's opinion, it is appropriate to do so in the public interest, having regard to the following:
- (a) the benefits to an investigation under this Law that might be derived from making the statement;
  - (b) the risk of prejudicing the reputation or safety of a person by making the statement;
  - (c) whether the statement is necessary in order to allay public concern or to prevent or minimise the risk of prejudice to the reputation of a person;
  - (d) if an allegation against a person has been made public and, in the opinion of the Commission the person is not implicated in corrupt conduct - whether the statement would redress prejudice caused to the reputation of the person as a result of the allegation having been made public;
  - (e) the risk of adversely affecting a potential prosecution of a criminal offence or disciplinary proceeding.

### Division 3 – Investigations into corrupt conduct

#### 50 INVESTIGATIONS GENERALLY.

- (1) The Commission may conduct an investigation into alleged or suspected corrupt conduct:
- (a) on its own initiative; or
  - (b) in response to a complaint made to it; or
  - (c) in response to a report or reference made to it by another body or agency (including an international agency).
- (2) The Commission may conduct an investigation even though no public official or public body has been implicated.

#### 51 ACTION BY THE COMMISSION.

Subject to this Law, the Commission may conduct an investigation into alleged or suspected corrupt conduct in any manner that the Commission sees fit, including performing any or all of its functions or exercising any or all of its powers under this Law.

#### 52 POWER TO REQUIRE STATEMENT OF INFORMATION.

- (1) For the purposes of an investigation into corrupt conduct, the Commission may, by notice in writing, require a public body or a public official to produce a statement of information.
- (2) The notice:
  - (a) must specify or describe the information concerned; and
  - (b) must fix a time and date for compliance with the notice; and
  - (c) may specify a Commission officer to whom the production is to be made; and
  - (d) must be served on the officer in charge of the public body or the public official required to comply with the notice.
- (3) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the public body or public official and may, but need not, specify the person or class of persons who may so act.
- (4) Notwithstanding any other Act, the public body or public official to which the notice relates must produce a statement of information under subsection (1).
- (5) However, the public body or public official is not required to produce a statement of information if:
  - (a) the Prime Minister certifies that to do so is likely to prejudice the security or defence of Papua New Guinea; or
  - (b) the Prime Minister certifies that to do so is likely to prejudice Papua New Guinea's relations with the Government of any other country or with any international organization; or
  - (c) to do so would involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any committee of that Council, which the Prime Minister certifies relate to matters of a secret or confidential nature, disclosure of which would be injurious to the public interest; or
  - (d) to do so would be a breach of Parliamentary privilege or immunity; or
  - (e) the information sought is subject to a claim of legal professional privilege.

#### 53 SELF-INCRIMINATION ETC.

- (1) A person served with a notice under section 53 is not excused from producing a statement of information on the ground that doing so would tend to incriminate the person or expose him or her to a penalty.
- (2) The statement of information is not admissible in evidence against the person in any civil or criminal proceedings.
- (3) The statement of information is admissible in a hearing of the Commission.

#### 54 OFFENCE NOT TO PROVIDE STATEMENT OF INFORMATION.

A person commits an offence if he refuses or fails to provide a statement of information as required by a notice under section 52.

Penalty: A fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

#### 55 POWER TO ENTER PUBLIC PREMISES.

- (1) For the purposes of an investigation into corrupt conduct, the Commission may, at any time:
  - (a) enter and inspect any premises occupied or used by a public body or public official in that capacity (other than residential premises); and
  - (b) inspect any document or other thing in or on the premises; and

- (c) take copies of any document in or on the premises.
- (2) The public body or public official must make available to the Commission such assistance and facilities as are necessary to enable the Commission to exercise the powers mentioned in subsection (1).
- (3) Notwithstanding any other Act, the public body or public official must allow the Commission to exercise any or all of the powers under subsection (1).
- (4) However, the public body or public official may refuse to allow the Commission to exercise any or all of the powers under subsection (1) if:
  - (a) the Prime Minister certifies that the exercise of the powers is likely to prejudice the security or defence of Papua New Guinea; or
  - (b) the Prime Minister certifies that the exercise of the powers is likely to prejudice Papua New Guinea's relations with the Government of any other country or with any international organization; or
  - (c) the exercise of the power or powers would involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any committee of that Council, which the Prime Minister certifies relate to matters of a secret or confidential nature, and the disclosure of which would be injurious to the public interest; or
  - (d) to do so would be a breach of Parliamentary privilege or immunity; or
  - (e) the document or thing is subject to a claim of legal professional privilege.

#### 56 NOTICE TO PRODUCE DOCUMENT OR THING.

- (1) For the purpose of an investigation into corrupt conduct, the Commission may, by notice in writing require a person (whether or not a public official or public body) to produce a document or thing.
- (2) The notice:
  - (a) must be signed by a member of the Commission; and
  - (b) must specify or describe the document or thing to be produced; and
  - (c) must fix a time and date for compliance with the notice; and
  - (d) may specify a Commission officer to whom the production is to be made; and
  - (e) must be served on the person required to comply with the notice.
- (3) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom the requirement was imposed and may, but need not, specify the person or class of persons who may so act.
- (4) Notwithstanding any other Act, a person served with a notice must produce a document or thing required by the notice.
- (5) However, a person served with a notice is not required to produce a document or thing required by the notice if:
  - (a) the Prime Minister certifies that to do so is likely to prejudice the security or defence of Papua New Guinea; or
  - (b) the Prime Minister certifies that to do so is likely to prejudice Papua New Guinea's relations with the Government of any other country or with any international organization; or
  - (c) to do so would involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any committee of that Council, which the Prime Minister certifies relate to matters of a secret or confidential nature, disclosure of which would be injurious to the public interest; or
  - (d) to do so would be a breach of Parliamentary privilege or immunity; or
  - (e) the document or thing is subject to a claim of legal professional privilege.

#### 57 SELF-INCRIMINATION ETC.

- (1) A person served with a notice under section 56 is not excused from producing a document or thing on the ground that doing so would tend to incriminate the person or expose the person to a penalty.
- (2) The document or thing produced is not admissible in evidence against the person in any civil or criminal proceedings.
- (3) The document or thing produced is admissible in a hearing of the Commission.

#### 58 FAILURE TO COMPLY WITH NOTICE TO PRODUCE.

A person commits an offence if:

- (a) the person is served with a notice under section 56; and
- (b) the person fails to comply with the notice.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

#### 59 DISCLOSURE OF NOTICE TO PRODUCE MAY BE PROHIBITED.

- (1) The Commission may include a notation in a notice issued under section 56 to the effect that disclosure of the existence of the notice or any information about the notice is prohibited except in the circumstances (if any) specified in the notation if the Commission is satisfied that a failure to include a notation is likely to prejudice:
  - (a) a person's safety; or
  - (b) the fair trial of a person who has been, or may be, charged with a criminal offence; or
  - (c) the investigation to which the notice relates or an investigation into other corrupt conduct; or
  - (d) any action taken as a result of an investigation referred to in paragraph (c).
- (2) If a notation is included in the notice, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 60 on the person on whom the notice is served.
- (3) A notation included in the notice is cancelled by this subsection if:
  - (a) the Commission concludes the investigation to which the notice relates; and
  - (b) any criminal offences or disciplinary proceedings resulting from the investigation are commenced.

#### 60 OFFENCES OF DISCLOSURE OF NOTICE TO PRODUCE.

- (1) A person commits an offence if:
  - (a) the person is served with a notice under section 56; and
  - (b) the notice includes a notation under section 59; and
  - (c) the person discloses the existence of, or any information about, the notice; and
  - (d) when the disclosure is made:
    - (i) the notation has not been cancelled by subsection 59(3); and
    - (ii) the period of 5 years after the notice is served has not ended.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

- (2) In proceedings for an offence against subsection (1), it is a defence if the person makes the disclosure:
  - (a) in the circumstances, if any, permitted by the terms of the notation; or
  - (b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the notice; or
  - (c) to a person, other than a legal practitioner, for the purpose of ensuring compliance with the notice; or

- (d) if the person making the disclosure is a legal practitioner, for the purpose of any or all of the following:
  - (i) obtaining the agreement of another person to the legal practitioner producing a document or thing;
  - (ii) obtaining or giving legal advice;
  - (iii) making legal representations.

#### 61 COMMISSION MAY RETAIN DOCUMENTS AND THINGS.

- (1) If a document or thing is produced in accordance with a notice under section 56, the Commission:
  - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
  - (b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation to which the document or thing relates.
- (2) While retaining the document or thing, the Commission must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.
- (3) If the retention of the document or thing by the Commission is not, or ceases to be, reasonably necessary for the purposes of the investigation or a prosecution to which the document or thing relates, the Commission must cause it to be delivered to the person who appears to the Commission to be entitled to possession of the document or thing.
- (4) The Commission must make a record of all documents or things produced.

#### 62 ORDER FOR NON-COMPLIANCE WITH CERTAIN NOTICES

- (1) The Commission may apply to the National Court for an order under this section.
- (2) The application must be supported by affidavit setting out the grounds on which the order is sought.
- (3) If the Court is satisfied that a person has, without reasonable excuse, refused or failed to comply with a notice under section 52 or 56, the Court may make an order requiring the person to produce to the Commission at a time and date specified in the order:
  - (a) the statement of information that was required by the notice under section 52; or
  - (b) the document or thing that was required by the notice under section 56.
- (4) The order may be made subject to such other conditions as the Court determines.
- (5) The Court may make such other orders as the Court considers appropriate.

### PART 5 – HEARINGS.

#### Division 1 – General provisions for hearings

#### 63 HEARINGS.

- (1) The Commission may hold a hearing for the purposes of an investigation into corrupt conduct.
- (2) A hearing must be held before at least one member of the Commission.
- (3) The Commission may decide to hold the whole or a part of a hearing either in public or in private.
- (4) In making a decision under subsection (3), the Commission may have regard to the following:
  - (a) the benefit of exposing the public to, and making the public aware of, corrupt conduct;
  - (b) the seriousness of the corrupt conduct being investigated;
  - (c) whether the evidence that may be given, or a matter that may arise, during the hearing is likely to be of a confidential nature or relates to the commission, or to the alleged or suspected commission, of an offence;

- (d) the risk of any unfair prejudice to a person's reputation that would be likely to be caused if the hearing took place in public;
  - (e) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned;
  - (f) whether a public hearing would prejudice any of the following matters:
    - (i) defence;
    - (ii) public safety;
    - (iii) public order;
    - (iv) public welfare;
    - (v) the welfare of persons under voting age;
    - (vi) the investigation into or the prosecution of corrupt conduct.
- (5) The Commission may make a record of a hearing.

#### 64 LEGAL REPRESENTATION AT A HEARING.

- (1) A person giving evidence at a hearing may be represented by a legal practitioner.
- (2) The Commission may appoint a Commission prosecutor or another legal practitioner to assist the Commission during a hearing, and he may appear before the Commission.

#### 65 POWER TO EXAMINE ON OATH.

- (1) The Commission may take evidence on oath or affirmation at a hearing.
- (2) For the purposes of subsection (1), the member of the Commission presiding at the hearing:
  - (a) may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation; and
  - (b) may administer an oath or affirmation to a person so appearing at the hearing.

#### 66 EXAMINATION AND CROSS EXAMINATION.

At a hearing, the following persons may, if the Commission thinks it appropriate, examine or cross-examine any witness on any matter that the Commission considers relevant:

- (a) a Commission prosecutor or other legal practitioner assisting the Commission at the hearing;
- (b) a person summoned to appear at the hearing;
- (c) any legal practitioner representing a person at the hearing.

#### 67 RULES OF EVIDENCE DO NOT APPLY.

- (1) The Commission is not bound by the rules of evidence at a hearing and may inform itself on any matter in such manner as the Commission considers appropriate.
- (2) The Commission is to conduct a hearing with as little formality and technicality as the Commission considers appropriate.

### Division 2 – Summons to attend hearing

#### 68 COMMISSION MAY SUMMON PERSON.

- (1) For the purposes of an investigation into corrupt conduct, the Commission may summon a person to attend a hearing to do either or both of the following:
  - (a) to give evidence;
  - (b) to produce a document or thing.
- (2) A summons must:
  - (a) be signed by a member of the Commission; and
  - (b) set out the general nature of the corrupt conduct the subject of the hearing, or specify the document or thing to be produced, or both; and
  - (c) specify the time and date of the hearing; and



- (d) be served on the person required to attend the hearing.
- (3) Notwithstanding any other Act, a person served with a summons requiring the person to produce a document or thing must produce the document or thing.
- (4) However, a person served with a summons requiring the person to produce a document or thing is not required to produce the document or thing if:
  - (a) The Prime Minister certifies that to do so is likely to prejudice the security or defence of Papua New Guinea; or
  - (b) The Prime Minister certifies that to do so is likely to prejudice Papua New Guinea's relations with the Government of any other country or with any international organization; or
  - (c) to do so would involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any committee of that Council, which the Prime Minister certifies relate to matters of a secret or confidential nature, disclosure of which would be injurious to the public interest; or
  - (d) to do so would be a breach of Parliamentary privilege or immunity; or
  - (e) the document or thing is subject to a claim of legal professional privilege.
- (5) A person summoned to appear as a witness at a hearing is entitled to be paid the same fees, allowances and expenses as a witness in legal proceedings before the National Court.

#### 69 WITNESS AT A HEARING

- (1) This section applies to a person appearing as a witness at a hearing, whether or not the person is summoned under section 69 to give evidence at the hearing.
- (2) Notwithstanding any other Act, the person is required to answer a question at a hearing.
- (3) However, the person is not required to answer a question at a hearing if:
  - (a) The Prime Minister certifies that to do so is likely to prejudice the security or defence of Papua New Guinea; or
  - (b) The Prime Minister certifies that to do so is likely to prejudice Papua New Guinea's relations with the Government of any other country or with any international organization; or
  - (c) to do so would involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any committee of that Council, which the Prime Minister certifies relate to matters of a secret or confidential nature, disclosure of which would be injurious to the public interest; or
  - (d) to do so would be a breach of Parliamentary privilege or immunity; or
  - (e) the answer is subject to a claim of legal professional privilege.

#### 70 ON GOING REQUIREMENT FOR WITNESS TO ATTEND.

- (1) A witness who has been summoned to appear before the Commission must appear and report from day to day unless the witness is excused from appearance or until the witness is released from further appearance by the member of the Commission presiding at the hearing.
- (2) The Commission may, by notice in writing, excuse a person who has been summoned to appear before the Commission and produce documents or other things from the required appearance on condition that the person (or a person acting on the person's behalf) produces those documents or things in accordance with any directions given by the Commission before the time of the required appearance.

#### 71 SELF-INCRIMINATION ETC.

- (1) If a person is summoned under section 68 to produce a document or thing at a hearing, the person is not excused from producing the document or thing on the ground that doing so would tend to incriminate the person or expose the person to a penalty.

- (2) A person who is a witness at a hearing is not excused from answering a question at the hearing, whether or not the person is summoned under section 68 to give evidence, on the ground that doing so would tend to incriminate the person or expose the person to a penalty.
- (3) The answer given, and the document or thing produced, are not admissible in evidence against the person in any civil or criminal proceeding.
- (4) The answer given, and the document or thing produced, are admissible in a hearing of the Commission.

#### 72 OFFENCES-ATTENDANCE AT HEARINGS ETC.

- (1) A person commits an offence if:
  - (a) the person is served with a summons to attend a hearing; and
  - (b) the person fails:
    - (i) to attend as required by the summons; or
    - (ii) to appear and report from day to day unless excused or released from further attendance by the Commission.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

- (2) A person commits an offence if:
  - (a) the person is served with a summons to attend a hearing; and
  - (b) the person fails:
    - (i) to be sworn or to make an affirmation at the hearing; or
    - (ii) to answer a question at the hearing that the Commission requires the person to answer.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

- (3) A person commits an offence if:
  - (a) the person is served with a summons to produce a document or thing specified in the summons; and
  - (b) the person fails to produce the document or thing that the person was required to produce.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

#### 73 DISCLOSURE OF SUMMONS MAY BE PROHIBITED.

- (1) This section applies if:
  - (a) a summons is served on a person under section 68 to attend a hearing; and
  - (b) the hearing is to be held in private.
- (2) The Commission may include a notation in the summons to the effect that disclosure of the existence of the summons or any information about the summons is prohibited except in the circumstances (if any) specified in the notation if the Commission is satisfied that a failure to include a notation is likely to prejudice:
  - (a) a person's safety; or
  - (b) the fair trial of a person who has been, or may be, charged with an offence; or
  - (c) the investigation to which the summons relates or an investigation into other corrupt conduct; or
  - (d) any action taken as a result of an investigation referred to in paragraph (c).
- (3) If a notation is included in the summons, it must be accompanied by a written statement setting out the rights and obligations conferred or imposed by section 74 on the person on whom the summons is served.
- (4) A notation included in the summons is cancelled by this subsection if:
  - (a) the Commission concludes the investigation to which the summons relates; and

- (b) any criminal offences or disciplinary proceedings resulting from the investigation are commenced.

#### 74 OFFENCES OF DISCLOSURE OF SUMMONS.

- (1) A person commits an offence if:
  - (a) the person is served with a summons under section 68; and
  - (b) the summons includes a notation under section 73; and
  - (c) the person discloses the existence of, or any information about, the summons; and
  - (d) when the disclosure is made:
    - (i) the notation has not been cancelled by subsection 73(4); and
    - (ii) the period of 5 years after the summons is served has not ended.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

- (2) In proceedings for an offence against subsection (1), it is a defence if the person makes the disclosure:
  - (a) in the circumstances, if any, permitted by the terms of the notation; or
  - (b) to a legal practitioner for the purpose of obtaining legal advice or representation in relation to the summons; or
  - (c) to a person, other than a legal practitioner, for the purpose of ensuring compliance with the summons; or
  - (d) if the person making the disclosure is a legal practitioner, for the purpose of any or all of the following:
    - (i) obtaining the agreement of another person to the legal practitioner producing a document or thing;
    - (ii) obtaining or giving legal advice;
    - (iii) making legal representations.

#### 75 COMMISSION MAY RETAIN DOCUMENTS AND THINGS.

- (1) If a document or thing is produced in accordance with a summons, the Commission:
  - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
  - (b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation to which the document or thing relates.
- (2) While retaining the document or thing, the Commission must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.
- (3) If the retention of the document or other thing by the Commission is not, or ceases to be, reasonably necessary for the purposes of the investigation or a prosecution to which the document or thing relates, the Commission must cause it to be delivered to the person who appears to the Commission to be entitled to possession of the document or thing.
- (4) The Commission must make a record of all documents or things produced.

### Division 3 – Hearing directions and court orders

#### 76 DIRECTIONS IN RELATION TO CONFIDENTIALITY.

- (1) The Commission may direct that:
  - (a) particular evidence given at a hearing; or
  - (b) the contents of a particular document, or a description of any thing, produced to the Commission at a hearing; or
  - (c) particular information that might enable a person who has given evidence at a hearing to be identified; or

- (d) the fact that a particular person has given or may be about to give evidence at a hearing;

must not be published, or must not be published except in such manner, and to such persons, as the Commission specifies if the Commission is satisfied of any of the matters in subsection (2).

(2) The Commission must be satisfied that:

- (a) a direction is likely to prevent prejudice to:
  - (i) the administration of justice; or
  - (ii) an investigation into corrupt conduct; or
  - (iii) a person's reputation; or
- (b) a direction is likely to protect a person's safety or prevent other serious harm to a person; or
- (c) a direction is likely to prevent a serious risk of intimidation of a witness or other person providing information to the Commission; or
- (d) a direction is required to protect national security; or
- (e) a direction is otherwise in the public interest.

(3) A direction is operative for such period as the Commission specifies in the direction, including any further period as the Commission determines.

(4) A person commits an offence if the person contravenes a direction.

Penalty:

- (a) in the case of an individual, a fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both; or
- (b) in any other case, a fine not exceeding K 50,000.

#### 77 DIRECTIONS AT A HEARING.

(1) The Commission may issue directions for the purposes of a hearing, including directions as to the persons who may be present at a hearing or part of a hearing.

(2) A person commits an offence if the person contravenes a direction.

Penalty: Fine not exceeding K 5,000 or imprisonment for a term not exceeding 12 months, or both.

#### 78 ORDER FOR NON-COMPLIANCE WITH SUMMONS OR DIRECTION

(1) The Commission may apply to the National Court for an order under subsection (3) or (5).

(2) The application must be supported by affidavit setting out the grounds on which the order is sought.

(3) If the Court is satisfied that the person has, without reasonable excuse, refused or failed to comply with a summons, the Court may make an order requiring the person to attend a hearing of the Commission at a time and place specified in the order to do either or both of the following:

- (a) to give evidence;
- (b) to produce a document or thing.

(4) An order under subsection (3):

- (a) must set out the general nature of the corrupt conduct the subject of the hearing, or specify the document or thing to be produced, or both; and
- (b) may be made subject to such other conditions as the Court determines.

(5) If the Court is satisfied that the person has, without reasonable excuse, refused or failed to comply with a direction by the Commission, the Court may make an order requiring the person to comply with the direction in accordance with the conditions specified in the order.

(6) The Court may make such other orders as the Court considers appropriate.

(7) If it is impracticable for an application under this section to be made in person for reasons of urgency, the application may be made by fax, email or such other means of communication approved by the Court.

- (8) An application under this section may be heard *ex parte* and may be heard in closed court or in chambers.

#### 79ORDER FOR DELIVERY TO COMMISSION OF PASSPORT OF WITNESS.

- (1) The Commission may apply to the National Court for an order under this section.
- (2) The application must be supported by affidavit setting out the grounds on which the application is made.
- (3) The Court may make an order under subsection (4) if satisfied that:
  - (a) in connection with an investigation into serious corrupt conduct or systemic corrupt conduct, a summons has been issued requiring a person to appear at a hearing before the Commission (whether or not the summons has been served), or a person has appeared at a hearing, to give evidence or to produce documents or other things; and
  - (b) there are reasonable grounds for believing that the person may be able to give to the Commission evidence or further evidence that is, or to produce to the Commission documents or other things or further documents or other things that are, relevant to the investigation and could be of particular significance to the investigation; and
  - (c) there are reasonable grounds for suspecting that the person intends to leave Papua New Guinea.
- (4) The Court may make an order:
  - (a) requiring the person to deliver to the Commission any passport issued to him or her that is in his or her possession, custody or control; and
  - (b) authorising the Commission to retain the passport until the expiration of such period as is specified in the order.
- (5) The order may be made subject to such other conditions as the Court determines.
- (6) The Court may make such other orders as the Court considers appropriate.
- (7) The Court may, on application by the Commission, extend the period for which the Commission is authorised to retain a passport under an order made under subsection (4).
- (8) The Court may, at any time while the Commission is authorised under an order made under this section to retain a passport issued to a person, on application made by the person, revoke the order and, if the order is revoked, the Commission must immediately return the passport to the person.
- (9) If it is impracticable for an application under subsection (1) or (7) to be made in person for reasons of urgency, the application may be made by fax, email or such other means of communication approved by the Court.
- (10) An application made under subsection (1) or (7) may be heard *ex parte* and may be heard in closed court or in chambers.

## PART 6 – WARRANTS.

### Division 1 – Search Warrants

#### 80APPLICATION FOR A SEARCH WARRANT.

- (1) The Commission may apply to the National Court to issue a search warrant for the purposes of an investigation into corrupt conduct.
- (2) The application must be supported by affidavit setting out the grounds on which the search warrant is sought.
- (3) If it is impracticable for the application to be made in person for reasons of urgency, the application may be made by fax, email or such other means of communication approved by the Court.
- (4) The application may be heard *ex parte* and may be heard in closed court or in chambers.

## 81 ISSUE OF SEARCH WARRANTS.

The National Court may issue a search warrant authorising the Commission to enter and search premises if the Court is satisfied there are reasonable grounds for suspecting that a document or other thing that is relevant to or connected with an investigation into corrupt conduct:

- (a) is in or on the premises; or
- (b) is likely to be in or on the premises within the next 72 hours.

## 82 AUTHORITY CONFERRED BY SEARCH WARRANT.

(1) A search warrant must:

- (a) state who is authorised to execute the warrant; and
- (b) contain a statement of the purpose for which the warrant is issued; and
- (c) contain a description of the kind of documents and things that can be searched for and seized under the warrant; and
- (d) specify the premises to which the warrant relates; and
- (e) state whether entry is authorised at any time of the day or night or during specified hours of the day or night; and
- (f) state a failure to cooperate with the person executing the warrant may amount to an offence; and
- (g) specify any other conditions to which the warrant is subject.

(2) A search warrant authorises the Commission:

- (a) to enter and search and, if necessary, use reasonable force to break into or open:
  - (i) premises to which the warrant relates; or
  - (ii) part of, or anything in or on, the premises; and
- (b) to stay in or on the premises to which the warrant relates for the time reasonably necessary to exercise powers authorised under the warrant and this Division; and
- (c) to pass over, through, along or under other premises to enter the premises to which the warrant relates; and
- (d) to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for any document or thing connected with the investigation; and
- (e) to dig up land; and
- (f) to detain a person in or on the premises to which the warrant relates for the time reasonably necessary to find out if he has anything sought under the warrant; and
- (g) to search a person if a Commission officer reasonably suspects that the person:
  - (i) is, or has been, on or in the premises to which the warrant relates; or
  - (ii) is about to enter the premises;and the person has on, or about, his or her body a document or thing connected with the investigation; and
- (h) to use force against persons and things that is necessary and reasonable in the circumstances; and
- (i) to give directions with respect to the stopping or movement of any vehicle to which the warrant relates.

(3) A search warrant authorises a Commission officer in the course of executing the warrant:

- (a) to take photographs, films or audio, video or other electronic recordings; and
- (b) to examine, copy or take extracts from a document connected with the investigation; and
- (c) to examine, use or test any thing, including electronic devices, connected with the investigation, or cause or require it to be examined, used or tested; and

- (d) to open anything in or on the premises to which the warrant relates that is locked; and
- (e) to search for and record fingerprints found on or in the premises to which the warrant relates, and take samples of things (other than human biological fluid or tissue) found on or in the premises for forensic purposes; and
- (f) to seize and retain any document or thing that the Commission officer reasonably suspects is relevant to or connected with the investigation and found in or on the premises to which the warrant relates, and deliver it to the Commission; and
- (g) to take a vehicle to a place with appropriate facilities for searching the vehicle and to search the vehicle.

### 83 ASSISTANCE IN EXECUTING A SEARCH WARRANT.

- (1) In executing a search warrant, the Commission may be assisted by such persons that are necessary and reasonable in the circumstances.
- (2) A person who is not a Commission officer may use force against things that is necessary and reasonable in the circumstances to assist a Commission officer executing a search warrant.
- (3) A Commission officer may require an occupier of premises to which the search warrant relates to give to the officer, or a person assisting the officer, such assistance as is reasonably required for the effective execution of the search warrant, including, but not limited to, the following:
  - (a) facilitating access to electronic equipment;
  - (b) unlocking doors, cabinets, drawers and other things;
  - (c) responding to questions about the location on the premises of documents or things.
- (4) A Commission officer executing the search warrant or a person assisting the Commission officer may bring onto the premises to which the warrant relates any equipment (including electronic equipment), vehicle, animal or other material reasonably necessary to examine, detect, transport or process documents or things found in or on the premises in order to determine whether they are documents or things that may be seized under the warrant.

### 84 SEARCH OF A PERSON UNDER A SEARCH WARRANT.

- (1) In searching a person under a search warrant, a Commission officer:
  - (a) may run his or her hands over the person's outer clothing; and
  - (b) may require the person to remove a coat, jacket, hat or shoes the person is wearing, and may run his or her hands over the person's remaining outer clothing; and
  - (c) if the officer sees or detects any thing that he reasonably suspects is connected with the investigation to which the warrant relates, may require the person to surrender that item for inspection; and
  - (d) may use reasonable force to remove an item from a person if the person does not comply with a requirement to remove or surrender the item under paragraph (c); and
  - (e) may inspect an item that a person has removed or surrendered, or that has been removed from a person; and
  - (f) must conduct the search in a manner that affords, to the extent that the circumstances of the search warrant permit, reasonable privacy and respect for human dignity to the person being searched; and
  - (g) must conduct the search as quickly as is reasonably practicable in the circumstances of the search.
- (2) A search must be conducted by a person of the same sex as the person being searched unless it is not reasonable or practicable to do so in the circumstances of the search.
- (3) If a person is searched, the Commission officer executing the search warrant or a person assisting the Commission officer must make a copy of the warrant available to the person.

#### 85 DUTY TO SHOW WARRANT.

If an occupier of the premises to which a search warrant relates, or another person who apparently represents an occupier, is present at the premises, the Commission officer executing the search warrant or a person assisting the Commission officer must make a copy of the warrant available to the occupier or other person.

#### 86 RESTORE PREMISES.

The Commission must, within a reasonable period after the conclusion of a search of premises under a search warrant, restore the premises or cause the premises to be restored as nearly as possible to the same state of cleanliness and neatness that existed immediately before the commencement of the search.

#### 87 COMMISSION MAY RETAIN DOCUMENTS AND THINGS.

- (1) If a document or thing is seized under a search warrant, the Commission:
  - (a) may take possession of, and may make copies of, the document or thing, or take extracts from the document; and
  - (b) may retain possession of the document or thing for such period as is necessary for the purposes of the investigation to which the document or thing relates.
- (2) While retaining the document or thing, the Commission must allow a person who would otherwise be entitled to inspect the document or view the thing to do so at the times that the person would ordinarily be able to do so.
- (3) If the retention of the document or other thing by the Commission is not, or ceases to be, reasonably necessary for the purposes of the investigation or a prosecution to which the document or thing relates, the Commission must cause it to be delivered to the person who appears to the Commission to be entitled to possession of the document or thing.
- (4) The Commission must make a record of all documents or things seized under a search warrant.

#### 88 OBSTRUCTION OF PERSON EXECUTING A SEARCH WARRANT.

A person commits an offence if the person prevents, hinders or obstructs:

- (a) a Commission officer executing a search warrant; or
- (b) a person assisting a Commission officer executing a search warrant.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

### Division 2 – Interception Warrants

#### 89 APPLICATION FOR INTERCEPTION WARRANT.

- (1) The Commission may apply to the National Court for an interception warrant authorising the use of an interception device for the purposes of an investigation into corrupt conduct.
- (2) The application must:
  - (a) be supported by affidavit setting out the grounds on which the interception warrant is sought; and
  - (b) specify the nature and duration of the warrant sought, including the kind of interception device or devices to be used.
- (3) The application may be heard *ex parte* and may be heard in closed court or in chambers.
- (4) If it is impracticable for the application to be made in person for reasons of urgency, the application may be made by fax, email or such other means of communication approved by the Court.

#### 90 CONSIDERATION OF APPLICATION FOR INTERCEPTION WARRANT.

In deciding whether to issue an interception warrant, the National Court may, having regard to the intrusive nature of using an interception device, consider the following, amongst other matters:

- (a) whether the corrupt conduct being investigated is serious corrupt conduct or systemic corrupt conduct;
- (b) if a warrant is issued, the extent to which the privacy of persons is likely to be affected;
- (c) the extent to which issuing the warrant would help prevent, detect, or provide evidence of the commission of corrupt conduct;



- (d) the benefits derived from the issue of any previous interception warrants in relation to corrupt conduct;
- (e) the extent to which Commission officers investigating corrupt conduct have used alternative means of investigation;
- (f) the existence of any alternative means of investigation and the extent to which those means may assist or prejudice the investigation.

#### 91 ISSUE OF INTERCEPTION WARRANT.

- (1) The National Court may issue an interception warrant if satisfied that there are reasonable grounds for suspecting that:
  - (a) the use of an interception device by the Commission is likely to assist the Commission in an investigation of corrupt conduct; and
  - (b) other methods of investigation have been tried and have failed, or would because of the circumstances of the particular case be unlikely to succeed.
- (2) The Court may impose any conditions on the interception warrant that the Court considers are necessary in the public interest.
- (3) The interception warrant may be issued in respect of:
  - (a) more than one kind of interception device; and
  - (b) more than one interception device of any particular kind.
- (4) Subject to subsection 95(1), the interception warrant remains in force until the end of the period of validity specified in the warrant, including any extension of the warrant under section 94.

#### 92 WHAT AN INTERCEPTION WARRANT AUTHORISES

- (1) An interception warrant (subject to any conditions specified in it) may authorize one or more of the following:
  - (a) the use of an interception device on specified premises;
  - (b) the use of an interception device in or on a specified object or class of object;
  - (c) the use of an interception device in respect of the conversations, activities or location of a specified person or a person whose identity is unknown.
- (2) An interception warrant of a kind mentioned in paragraph (1)(a) authorizes:
  - (a) the installation, use and maintenance of an interception device of the kind specified in the warrant on the specified premises; and
  - (b) the entry, by force if necessary, onto the premises, and onto other specified premises adjoining or providing access to the premises, for any of the purposes referred to in paragraph (a) or subsection (5).
- (3) An interception warrant of a kind mentioned in paragraph (1)(b) authorizes:
  - (a) the installation, use and maintenance of an interception device of the kind specified in the warrant in or on the specified object or an object of the specified class; and
  - (b) the entry, by force if necessary, onto any premises where the object, or an object of the class, is reasonably believed to be or is likely to be, and onto other specified premises adjoining or providing access to those premises, for any of the purposes referred to in paragraph (a) or subsection (5).
- (4) An interception warrant of a kind mentioned in paragraph (1)(c) authorizes:
  - (a) the installation, use and maintenance of an interception device of the kind specified in the warrant in or on premises where the person is reasonably believed to be or likely to be; and
  - (b) the entry, by force if necessary, onto the premises, or other premises adjoining or providing access to those premises, for any of the purposes referred to in paragraph (a) or subsection (5).

- (5) An interception warrant also authorizes:
- (a) the retrieval of the interception device; and
  - (b) the installation, use, maintenance and retrieval of enhancement equipment in relation to the interception device; and
  - (c) the disconnection of, or otherwise making inoperative, any security system for the purpose of the installation, use, maintenance or retrieval of the interception device or enhancement equipment; and
  - (d) the temporary removal of an object or vehicle from premises for the installation, maintenance or retrieval of the interception device or enhancement equipment and the return of the object or vehicle to the premises; and
  - (e) the breaking open of anything for the installation, maintenance or retrieval of the interception device or enhancement equipment; and
  - (f) the connection of the interception device or enhancement equipment to any source of electricity and the use of electricity from that source to operate the device or equipment; and
  - (g) the connection of the interception device or enhancement equipment to any telecommunications system or network that may be used to transmit information in any form and the use of that telecommunications system or network in connection with the operation of the device or equipment; and
  - (h) the provision of assistance or technical expertise to the Commission officer responsible for the execution of the warrant in the installation, use, maintenance or retrieval of the interception device or enhancement equipment; and
  - (i) the use of a person to translate or interpret conversations intercepted under the interception warrant.
- (6) An interception warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the installation, use, maintenance or retrieval of an interception device or enhancement equipment under the warrant.
- (7) An interception warrant may authorise the interference with property of a person who is not the subject of the investigation in respect of which the warrant was issued but, if the interference would be on premises not specified in the warrant, only if the Court issuing the warrant is satisfied that it is necessary to do so in order to give effect to the warrant.
- (8) A Commission officer may use an interception device under an interception warrant only in the performance of his or her functions or the exercise of his or her powers.

### 93 CONTENTS OF AN INTERCEPTION WARRANT

- (1) An interception warrant must state the following:
- (a) who is authorised to execute the warrant;
  - (b) the purpose for which the warrant is issued;
  - (c) the name of the person, if known, to be placed under interception;
  - (d) if applicable, the premises where the interception device authorised under the warrant may be used;
  - (e) the number and kind of interception devices authorised to be used under the warrant;
  - (f) if applicable, the object or class of object in relation to which the interception device authorised under the warrant may be used;
  - (g) any conditions of the warrant imposed by the National Court;
  - (h) subject to subsection (2), the day and time the warrant starts and when the warrant ends.
- (2) An interception warrant may be issued for a period not exceeding 90 days.

#### 94 EXTENSION AND VARIATION OF INTERCEPTION WARRANT.

- (1) The Commission may apply, at any time before the expiry of an interception warrant for:
  - (a) an extension of the warrant; or
  - (b) a variation of any of the terms of the warrant.
- (2) The application is to be made to the National Court and must be accompanied by the original warrant.
- (3) Section 89 applies, with any necessary changes, to an application under this section as if it were an application for an interception warrant.
- (4) The Court may grant the application if satisfied that the circumstances mentioned in paragraphs 91(1)(a) and (b) still exist, and in deciding whether to grant the application may have regard to the matters mentioned in section 90.
- (5) If the Court grants the application, the Court must, subject to subsection (6), endorse the new expiry date and any other varied term on the original interception warrant.
- (6) An interception warrant may be extended for a period not exceeding 90 days.
- (7) An application may be made under this section more than once.

#### 95 REVOCATION AND DISCONTINUANCE.

- (1) The National Court may revoke an interception warrant on its own initiative at any time before the expiry of the period of validity specified in the warrant.
- (2) The Commission must as soon as practicable take the steps necessary to ensure that the use of an interception device authorised by an interception warrant is discontinued if:
  - (a) the interception warrant expires; or
  - (b) the interception warrant is revoked by the Court.

#### 96 RESTRICTION ABOUT RECORDS AND ACCESS TO INTERCEPTION WARRANT APPLICATIONS ETC.

- (1) Despite any other law, a person must not make a transcript of a relevant proceeding.
- (2) Except by direction of the National Court, a person must not:
  - (a) make a record of a relevant proceeding available for search by any person; or
  - (b) publish or otherwise disclose a notice or report of a relevant proceeding.
- (3) A person commits an offence if the person contravenes subsection (1), or paragraphs (2)(a) or (b).

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

- (4) A person is not entitled to search information in the custody of a court in relation to a relevant proceeding, unless the National Court otherwise orders in the interests of justice.
- (5) Nothing in this section prevents a person who was present at a relevant proceeding from giving oral evidence to a court about things that happened at the proceeding.
- (6) In this section, “**relevant proceeding**” means:
  - (a) an application to the National Court for an interception warrant or an extension of the warrant; or
  - (b) a warrant issued or an order made under the application.

#### 97 ADMISSIBILITY AND DISCLOSURE OF INFORMATION OBTAINED USING INTERCEPTION WARRANT.

- (1) This section applies to information that was obtained by using an interception warrant (relevant information).
- (2) Subject to subsection (3), the relevant information is not admissible in evidence against a person in any civil or criminal proceedings.

- (3) The relevant information is admissible in any or all of the following:
  - (a) proceedings for an offence against this Law and other proceedings under this Division;
  - (b) proceedings relating to serious corrupt conduct or systemic corrupt conduct;
  - (c) proceedings under the *Proceeds of Crime Act 2005*.
- (4) The relevant information is admissible in a hearing of the Commission under this Law.
- (5) This section does not render inadmissible relevant information that was obtained independently of the use of an interception warrant.
- (6) A Commission officer who obtains relevant information must not disclose the information, except for:
  - (a) the purposes of any proceedings mentioned in subsection (3); or
  - (b) the purposes of an investigation into serious corrupt conduct or systemic corrupt conduct; or
  - (c) the purposes of a hearing.
- (7) A Commission officer who contravenes subsection (6) commits an offence.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

#### 98 DESTRUCTION OF RECORDS.

- (1) The Commission must keep all information obtained under an interception warrant and transcripts of recordings or photographs made or taken under the warrant in a secure place.
- (2) The Commission must ensure any recording made or photograph taken under the interception warrant or a transcript or copy made from information obtained under the warrant is destroyed as soon as practicable after it is no longer required, and in any event within 10 years after being made or taken.
- (3) However, subsection (2) does not prevent information or other material being preserved for any period or indefinitely if the Commission is satisfied that it is relevant to:
  - (a) any offence of which someone has been charged or convicted if there is a possibility that an issue about the charge or conviction may arise; or
  - (b) an ongoing investigation or prosecution.

#### 99 PRIVILEGED COMMUNICATIONS.

This Division does not render admissible in evidence any information obtained under an interception warrant if that information would otherwise be inadmissible because it is subject to a claim of privilege.

#### 100 OBSTRUCTION OF PERSON EXECUTING A WARRANT.

A person commits an offence if the person prevents, hinders or obstructs a person authorized to execute an interception warrant from executing the warrant.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

### PART 7 – PROSECUTIONS.

#### 101 ARRESTS.

- (1) This section applies to an indictable offence relating to corrupt conduct (relevant offence).
- (2) The Commission has the same duties and powers under the *Arrest Act 1977* in relation to a relevant offence as a policeman would have under that Act in relation to the relevant offence, other than the powers under Part II (*Circumstances justifying arrest without warrant*) of that Act.
- (3) The Commission also has the same duties and powers under the *Arrest Act 1977* in relation to a relevant offence as a member of the public would have under that Act in relation to the relevant offence.
- (4) The Commission has the same duties and powers under the *Bail Act 1977* in relation to a relevant offence as a policeman would have under that Act in relation to the relevant offence, but the Commission is not a bail authority within the meaning of that Act.

- (5) The Commission has the same duties and powers under the *District Courts Act 1963* in relation to a relevant offence as a police officer would have under that Act in relation to the relevant offence.

#### 102 COMMENCEMENT AND CONDUCT OF COMMITTAL PROCEEDINGS FOR CERTAIN OFFENCES.

The Commission may commence criminal proceedings and conduct committal proceedings for indictable offences relating to corrupt conduct.

#### 103 PROSECUTION OF CERTAIN OFFENCES WITH CONSENT OF PUBLIC PROSECUTOR.

The Commission may, in accordance with law, prosecute the trial of an indictable offence relating to corrupt conduct with the written consent of the Public Prosecutor.

#### 104 OBTAINING CONSENT OF PUBLIC PROSECUTOR.

- (1) The Commission must in writing request the consent of the Public Prosecutor to prosecute the trial of an indictable offence relating to corrupt conduct.
- (2) The Public Prosecutor must, within 60 days after receiving the Commission's request, notify the Commission in writing of his or her decision to consent to the prosecution or refuse consent.
- (3) If the Public Prosecutor refuses to consent to the prosecution, the Public Prosecutor must include in the notice under subsection (2) the reasons for the refusal, indicating whether the Public Prosecutor:
  - (a) considers that there is no reasonable prospect of a conviction; and
  - (b) considers that the prosecution is not in the public interest; and
  - (c) intends to conduct the prosecution.
- (4) If, within 60 days after receiving the Commission's request to prosecute an indictable offence relating to corrupt conduct, the Public Prosecutor has not responded in writing to the request, the Public Prosecutor is deemed to have consented to the prosecution by the Commission.
- (5) The Commission may request the consent of the Public Prosecutor to the prosecution of a particular indictable offence relating to corrupt conduct or to a class of indictable offences relating to corrupt conduct.

#### 105 APPEALS AND OTHER PROCEEDINGS.

If the Public Prosecutor consents, or is deemed to have consented, under section 104 to the prosecution of the trial of an indictable offence relating to corrupt conduct, the Commission may conduct any other proceeding arising out of or relating to the prosecution, including any appeal.

#### 106 REFERRAL FOR POSSIBLE PROSECUTION OF MATTERS INVOLVING CORRUPT CONDUCT.

If the Commission does not have the power to prosecute a matter involving corrupt conduct or has decided that it does not wish to do so, the Commission may refer the matter to the Public Prosecutor or the Police Force for consideration of whether to prosecute the matter.

### PART 8 - PROTECTING PEOPLE WHO ASSIST THE COMMISSION.

#### 107 DIRECTIONS TO PROTECT WITNESSES DURING COMMISSION HEARINGS.

If the Commission considers that a witness at a hearing may be intimidated, distressed or fear for his or her safety or that of another person as a result of appearing as a witness at the hearing, the Commission may direct that one or more of the following special measures be used at the hearing:

- (a) the use of a screen or other arrangement to prevent the witness from seeing other persons in the hearing room;
- (b) the presence of a support person chosen by the witness and seated with the witness when he is giving evidence;
- (c) planned seating arrangements for people who have an interest in the hearing, including the level at which they are seated and the people in the line of vision of the witness;
- (d) the adjournment of the hearing or any part of the hearing to other premises;
- (e) the exclusion of persons from the hearing room, while the witness is giving evidence;

- (f) permitting the evidence to be given from a place other than the hearing room by means of closed-circuit television or other facilities that enable communication between that place and the hearing room.

#### 108 PROTECTION OF WHISTLEBLOWERS.

- (1) A person is not liable to any civil or criminal action, including disciplinary proceedings, if the person in good faith gives or provides information to assist the Commission.
- (2) Subsection (1) applies to a person despite the person being subject to a confidentiality provision or a duty of confidentiality, or any other prohibition or restriction on disclosure in any other law of Papua New Guinea.
- (3) In this section, “**good faith**” means that a person is acting on an honest belief held on reasonable grounds that the information was true at the time it was given or provided to the Commission.

#### 109 COMPENSATION.

- (1) This section applies if the National Court is satisfied, on the application of a person (the applicant), that another person (the respondent) has retaliated or threatened to retaliate, or is retaliating or threatening to retaliate, against the applicant.
- (2) The Court may make an order requiring the respondent to compensate the applicant for any loss, damage or injury suffered as a result of the retaliation or threat.

#### 110 REINSTATEMENT ETC.

- (1) This section applies if the National Court is satisfied, on the application of a person (the applicant), that:
  - (a) another person (the respondent) has retaliated, or is retaliating, against the applicant; and
  - (b) the applicant is or was employed in a particular position with the respondent; and
  - (c) the retaliation wholly or partly consists, or consisted, of:
    - (i) the respondent terminating, or purporting to terminate, the applicant's employment; or
    - (ii) the respondent doing an act or making an omission that constituted other occupational detriment by the respondent to the applicant.
- (2) The Court may make an order that the applicant be reinstated in that position or a position at a comparable level, or that other action be taken to address the other occupational detriment suffered by the applicant.

#### 111 INJUNCTIONS AND OTHER ORDERS.

- (1) This section applies if the National Court is satisfied, on the application of a person (the applicant), that another person (the respondent) has retaliated or threatened to retaliate, or is retaliating or threatening to retaliate, against the applicant.
- (2) The Court may make any or all of the following orders:
  - (a) an order granting an injunction, on such terms as the Court considers appropriate:
    - (i) restraining the respondent from taking, or threatening to take, the retaliation; or
    - (ii) if the retaliation or threat involves refusing or failing to do something-requiring the respondent to do that thing;
  - (b) any other order the Court considers appropriate.
- (3) The Court may make any other orders (including granting an injunction) that the Court considers appropriate against any other person who has:
  - (a) aided, abetted, counselled or procured the conduct against the applicant; or
  - (b) induced the conduct against the applicant, whether through threats or promises or otherwise; or
  - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the conduct against the applicant; or
  - (d) conspired with others to effect the conduct against the applicant.

#### 112 OFFENCE OF RETALIATION.

- (1) A person commits an offence if the person retaliates, or threatens to retaliate, against another person.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

- (2) For the purpose of subsection (1), a threat may be:
  - (a) express or implied; or
  - (b) conditional or unconditional.
- (3) In a prosecution for an offence against subsection (1), it is not necessary to prove that the person who was threatened actually feared that the threat would be carried out

#### 113 PHYSICAL PROTECTION OF PERSONS ASSISTING THE COMMISSION

- (1) If it appears to the Commission that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or any other person may be subject to intimidation or harassment, the Commission may make such arrangements as are necessary:
  - (a) to protect the safety of any such person; or
  - (b) to protect any such person from intimidation or harassment.
- (2) If it appears to the Commission that, because of the performance by a Commission officer or a consultant of his or her functions or the exercise of his or her powers, the safety of the Commission officer, a consultant or any other person may be prejudiced or the officer or any other person may be subject to intimidation or harassment, the Commission may make such arrangements as are necessary:
  - (a) to protect the safety of the Commission officer, the consultant or any such person; or
  - (b) to protect the Commission officer, the consultant or any such person from intimidation or harassment.
- (3) Any such arrangements may (but need not) involve the Commissioner requesting the Commissioner of Police or another public body or public official:
  - (a) to provide any protection referred to in subsection (1) or (2); or
  - (b) to provide personnel or facilities or both to assist in providing that protection; or
  - (c) to otherwise assist in the provision of that protection.

#### 114 PREVENTING ETC. PERSON FROM ASSISTING THE COMMISSION.

A person commits an offence if the person prevents, hinders or obstructs a person from assisting the Commission.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

### PART 9 - REPORTING AND FINANCES.

#### 115 ANNUAL REPORT.

The annual report of the Commission required under section 220H of the **Constitution** must include the following:

- (a) statistics regarding:
  - (i) the complaints of alleged or suspected corrupt conduct received by the Commission; and
  - (ii) the matters referred to the Commission by other agencies and bodies; and
  - (iii) the matters referred by the Commission to other agencies and bodies; andincluding the agencies and bodies to which the complaints or matters relate, and the categories of corrupt conduct to which the complaints or matters relate;
- (b) statistics regarding:
  - (i) the investigations undertaken by the Commission, including investigations undertaken on its own initiative; and
  - (ii) the prosecutions of indictable offences undertaken by the Commission and the Public Prosecutor following investigations by the Commission;
- (c) statistics regarding the search warrants and interception warrants issued under this Law;

- (d) a description of any patterns or trends of corrupt conduct identified by the Commission;
- (e) any recommendations for changes in the laws of Papua New Guinea, or for changes to policies or administrative action, that the Commission considers should be made;
- (f) a description of the Commission's significant activities during that year in relation to its function of preventing and reducing corrupt conduct;
- (g) statistics regarding court proceedings involving the Commission;
- (h) a list of the Commission's reports and other publications;
- (i) the details of the Commission's organisational structure;
- (j) statistics regarding the staff of the Service and consultants (without identifying individuals) and their remuneration levels;
- (k) the financial statements of the Commission;
- (l) such other matters relating to its functions as the Commission determines to be in the public interest.

#### 116 SUPPLEMENT TO ANNUAL REPORT.

- (1) The Commission must also produce a supplement to the annual report written in plain English and TokPisin.
- (2) The supplement must summarise the annual report so as to be suitable for use by educational institutions and in raising community awareness.

#### 117 FINANCES OF THE COMMISSION.

- (1) There must be an appropriation for each year for the Commission.
- (2) The appropriation must be sufficient to maintain the effectiveness, independence and impartiality of the Commission, and to provide for:
  - (a) the salaries and allowances (financial and otherwise) of the Commissioner and the Deputy Commissioners; and
  - (b) the Independent Commission against Corruption Staff Service; and
  - (c) the capital costs, operational costs, facilities and other services necessary for the Commission to perform its functions effectively.

#### 118 APPLICATION OF THE AUDIT ACT.

To avoid doubt, the Commission is a public body within the meaning of the *Audit Act 1989* and is subject to that Act.

#### 119 APPLICATION OF THE PUBLIC FINANCES (MANAGEMENT) ACT.

- (1) Subject to subsection (2), Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Commission, other than sections 50, 54, 55 and 56.
- (2) Section 63 of the *Public Finances (Management) Act 1995* applies only in relation to financial statements of the Commission.



## **PART -10 INDEPENDENT COMMISSION AGAINST CORRUPTION STAFF SERVICE.**

### **120 ESTABLISHMENT OF INDEPENDENT COMMISSION AGAINST CORRUPTION STAFF SERVICE.**

- (1) The Independent Commission against Corruption Staff Service is established as a State Service.
- (2) The Service consists of the staff of the Service.

### **121 CONTROL OF THE SERVICE.**

The Service is subject to the control and direction of the Commission.

### **122 FUNCTIONS OF THE SERVICE.**

The functions of the Service are to provide staff and services to enable the Commission to operate efficiently and effectively.

### **123 ENGAGEMENT OF STAFF OF THE SERVICE.**

- (1) The Commission is to engage staff of the Service under agreements in writing on such terms and conditions as are specified in the agreements.
- (2) Staff may be engaged on a fixed-term or an ongoing basis.

### **124 OUTSIDE EMPLOYMENT PROHIBITED.**

A member of the staff of the Service must not directly or indirectly engage in any paid employment outside the duties of his or her office or position in the Service, without the consent in writing of the Commission.

### **125 ENGAGEMENT OF CONSULTANTS.**

- (1) The Commission may engage persons having suitable qualifications and experience as consultants to the Commission.
- (2) Consultants are to be engaged under agreements in writing on such terms and conditions as are specified in the agreements and in accordance with law.
- (3) The Commission may engage non-citizens as consultants.

### **126 SECONDMENTS.**

- (1) The Commission may be assisted in the performance of its functions by members of another State Service seconded to the Service.
- (2) The Commission may second staff of the Service to other State Services to assist those State Services in the performance of their functions.

### **127 ENGAGEMENT OF NON-CITIZENS.**

- (1) The Commission may engage non-citizens as staff of the Service, including as Commission investigators and Commission prosecutors, in accordance with law and on such terms and conditions as the Commission determines.
- (2) The Commission is not subject to the *Public Employment (Non-Citizens) Act 1978* but is subject to the *Employment of Non-Citizens Act 2008*.

### **128 CODE OF CONDUCT.**

- (1) The Commission must determine a Code of Conduct for the Service and all Commission officers.
- (2) The Commission must publish the Code of Conduct and ensure that all Commission officers are aware of the Code.
- (3) The Code of Conduct must be published in the National Gazette.

### **129 SERVICE ORDERS.**

- (1) The Commission may make orders, not inconsistent with this Law, for any matter that is necessary or desirable for the efficient management and control of the Service.
- (2) The Service Orders must be published in the National Gazette.

### **130 DUTY TO REPORT CORRUPT CONDUCT.**

- (1) A Commission officer (other than a member of the Commission) must as soon as practicable report any suspected corrupt conduct by:
  - (a) the Commissioner to the Appointments Committee; and

- (b) a Deputy Commissioner to the Commissioner; and
  - (c) any other Commission officer to the Commissioner.
- (2) The Commissioner and a Deputy Commissioner must report any suspected corrupt conduct of a Commission officer in accordance with section 23.

#### 131 CONSULTATION WITH THE PUBLIC SERVICES COMMISSION.

The Commission must consult with the Public Services Commission about:

- (a) the Code of Conduct; and
- (b) the Service Orders; and
- (c) the terms and conditions of engagement of staff of the Service.

#### 132 DELEGATION.

- (1) Subject to this section, the Commission may delegate to a Commission officer any or all of its functions and powers (other than the power of delegation conferred by this section).
- (2) The Commission may delegate any or all of the following functions and powers only to the Commissioner or a Deputy Commissioner:
- (a) to issue a public statement under section 49;
  - (b) to issue a notice to produce documents or things under section 56;
  - (c) to include a notation prohibiting disclosure of a notice to produce documents or things under section 60;
  - (d) the powers under Part 5 (other than the powers under section 75, 78 and 79);
  - (e) to decide under section 78 whether to apply to the National Court for an order under that section;
  - (f) to decide under section 79 whether to apply to the National Court for an order under that section;
  - (g) to decide under Part 6 whether to make an application to the National Court for a search warrant or an interception warrant;
  - (h) to decide whether to prosecute an indictable offence under Part 7.
- (3) The Commission may delegate any or all of the following functions and powers only to a Commission investigator or a Commission prosecutor:
- (a) to refer a matter to a relevant agency or any other agency or body under section 38;
  - (b) to issue a notice requiring a public body or public official to produce a statement of information under section 52;
  - (c) to enter public premises under section 55;
  - (d) if the Commission has decided to apply for an order under section 78, to make the application and to exercise other powers under that section;
  - (e) if the Commission has decided to apply for an order under section 79, to make the application and to exercise other powers under that section;
  - (f) if the Commission has decided to apply for a search warrant or an interception warrant under Part 6, to make the application and to exercise other powers under that Part;
  - (g) if the Commission has decided to prosecute an indictable offence under Part 7, to commence criminal proceedings and conduct committal proceedings under section 102;
  - (h) to refer a matter to the Police Force under section 106.

- (4) If the Commission has decided to prosecute an indictable offence under Part 7, the Commission may delegate only to a Commission prosecutor or a legal practitioner engaged by the Commission to act on its behalf any or all of the following functions and powers:
  - (a) to prosecute an indictable offence under section 103;
  - (b) to obtain the Public Prosecutor's consent under section 104;
  - (c) to conduct any other proceeding under section 105;
  - (d) to refer a matter to the Public Prosecutor under section 106.
- (5) The Commission may delegate any or all of the powers under section 101 only to a Commission investigator.
- (6) A delegation:
  - (a) must be made by instrument in writing; and
  - (b) may be absolute or conditional; and
  - (c) does not derogate from the power of the delegator to act in a matter; and
  - (d) is revocable at will; and
  - (e) may be made to a Commission officer or a class of Commission officers.

### 133 COMMISSION INVESTIGATORS AND COMMISSION PROSECUTORS.

- (1) If the Commission is satisfied that a person has suitable qualifications or experience, the Commission may in writing authorise the person to be a Commission investigator.
- (2) Section 76(a) of the *Firearms Act 1978* applies to a Commission investigator when performing functions or exercising powers as a Commission investigator as if he were a person referred to in that section.
- (3) The Commission must issue an identity card to a Commission investigator and the identity card must contain a recent photograph of the person and his or her name and state that the person is a Commission investigator.
- (4) A Commission investigator must carry his or her identity card at all times when performing functions or exercising powers as a Commission investigator.
- (5) If the Commission is satisfied that a legal practitioner has suitable qualifications or experience, the Commission may in writing authorise the legal practitioner to be a Commission prosecutor.
- (6) This Organic Law does not affect the provisions of the *Criminal Code Act 1974* that require that certain powers and functions must only be exercised by State Prosecutors.

## PART 11 - APPOINTMENTS COMMITTEE.

### 134 APPOINTMENTS COMMITTEE.

- (1) The Appointments Committee consists of:
  - (a) the Prime Minister; and
  - (b) the Leader of the Opposition; and
  - (c) the Chief Justice; and
  - (d) the Chairman of the Public Services Commission; and
  - (e) the Chairperson of the Papua New Guinea Council of Churches.
- (2) A member of the Appointments Committee referred to in sections 135(1)(a), (b), (c) or (d) is an *ex officio* member and is not entitled to receive any remuneration by virtue of his or her membership of the Appointments Committee, and is not appointed under any terms and conditions.

(3) A member of the Appointments Committee referred to in sections 135(1)(e) is an ex officio member and is to be paid the fees and allowances (if any) determined under the *Boards (Fees and Allowances) Act 1955*.

(4) The Prime Minister is the Chairperson of the Appointments Committee.

#### 135 FUNCTIONS AND POWERS OF THE APPOINTMENTS COMMITTEE.

(1) The functions of the Appointments Committee are:

(a) to advise the Head of State in relation to the appointment of the Commissioner and the two Deputy Commissioners; and

(b) to advise the Head of State in relation to the appointment of an acting Commissioner and acting Deputy Commissioners; and

(c) such other functions as are conferred on the Committee by this and any other Organic Law.

(2) The Appointments Committee has such powers as are conferred on it by this and any other Organic Law.

#### 136 MEETINGS OF THE APPOINTMENTS COMMITTEE.

(1) The Chairperson of the Appointments Committee is to convene such meetings of the Appointments Committee as the Chairperson considers appropriate, but must convene a meeting of the Appointments Committee as soon as practicable after a vacancy arises in the membership of the Commission.

(2) The Chairperson of the Appointments Committee presides at all meetings at which he is present. If the Chairperson is not present at a meeting, he may appoint another member of the Committee to preside.

(3) In addition to meeting in person, the members of the Appointments Committee may participate in a meeting by telephone or any electronic means of communication.

(4) A member who participates in a meeting by any of the means referred to in subsection (3) is deemed to be present at the meeting and to form part of the quorum for the meeting.

(5) A meeting relying on a means of participation referred to in subsection (3) may be held at 2 or more places at the same time.

(6) A decision of the Appointments Committee must be recorded in writing, unless it is made by written agreement.

(7) A decision of the Appointments Committee, whether recorded in writing or made by written agreement, must include the information used by the Committee to make the decision and the reasons for the decision.

(8) The Appointments Committee is to otherwise determine its own procedures.

#### 137 QUORUM.

(1) Subject to section 16(2), the quorum for a meeting of the Appointments Committee is 3 members and the quorum must be present at all times during the meeting.

(2) A question arising at a meeting of the Committee is to be determined by a majority of votes of the members present.

(3) The person presiding at a meeting of the Committee has:

(a) a deliberative vote; and

(b) if necessary, also a casting vote.

## PART 12 -OVERSIGHT COMMITTEE.

### 138 MEMBERSHIP OF THE OVERSIGHT COMMITTEE.

- (1) The Oversight Committee consists of 5 members.
- (2) The Appointments Committee is to appoint the members of the Oversight Committee following consultation with the Commission.
- (3) A member is to be appointed for a period not exceeding 3 years and on such terms and conditions as are specified in the instrument of appointment.
- (4) The Appointments Committee is to appoint a member of the Oversight Committee as the Chairperson of the Oversight Committee.
- (5) A member of the Oversight Committee is eligible for reappointment.

### 139 CRITERIA FOR APPOINTMENT OF MEMBERS.

- (1) A person is not eligible for appointment to the Oversight Committee if he:
  - (a) is, or has been, a member of the National Parliament or a Provincial Assembly; or
  - (b) is a public official.
- (2) The Appointments Committee must have regard to the following criteria for the appointment of members of the Oversight Committee:
  - (a) a person must be of high integrity, independence of mind and good reputation;
  - (b) a person must hold qualifications and have demonstrated experience (whether practical or academic) of at least 5 years in fields that are relevant to the functions of an anti-corruption agency, an integrity agency or a law enforcement agency.
- (3) In appointing members of the Oversight Committee, the Appointments Committee may have regard to the benefit of having:
  - (a) members from within and outside Papua New Guinea; and
  - (b) members who can bring a diverse range of expertise to the Oversight Committee.

### 140 FUNCTIONS AND POWERS OF THE OVERSIGHT COMMITTEE.

- (1) The functions of the Oversight Committee are set out in Section 220G of the **Constitution** and the Commission is to cooperate with the Oversight Committee in the performance of the Committee's functions.
- (2) In exercising its functions, the Oversight Committee may:
  - (a) review and make recommendations on the operations, functions and powers of the Commission; and
  - (b) review the staffing, financial and other resourcing requirements of the Commission and make recommendations that it considers necessary to address any resourcing needs; and
  - (c) review the Commission's annual report.
- (3) In performing its functions and exercising its powers, the Oversight Committee cannot examine, review or report on:
  - (a) the alleged or suspected corrupt conduct of a particular person, or a particular body or agency; and
  - (b) the action (if any) taken by the Commission relating to the alleged or suspected corrupt conduct of a particular person, or a particular body or agency.

### 141 MEETINGS OF THE OVERSIGHT COMMITTEE.

- (1) The Oversight Committee must meet at least once a year and the Chairperson of the Committee may convene such other meetings as he considers necessary.

- (2) The Chairperson of the Oversight Committee presides at all meetings at which he is present. If the Chairperson is not present at a meeting, he may appoint another member of the Committee to preside.
- (3) A quorum for a meeting of the Oversight Committee is 3 members of the Committee.
- (4) In addition to meeting in person, the members of the Oversight Committee may participate in a meeting by telephone or any electronic means of communication.
- (5) A member who participates in a meeting by any of the means referred to in subsection (4) is deemed to be present at the meeting and to form part of the quorum for the meeting.
- (6) A meeting relying on a means of participation referred to in subsection (4) may be held at 2 or more places at the same time.
- (7) A decision of the Oversight Committee must be recorded in writing, unless it is made by written agreement.
- (8) The Oversight Committee is to otherwise determine its own procedures.

#### 142 REPORT OF THE OVERSIGHT COMMITTEE.

- (1) The Oversight Committee must prepare an annual report for each year on the performance of its functions and the exercise of its powers.
- (2) The Oversight Committee must provide a copy of its annual report to the Speaker of Parliament within 3 months after the Committee receives the Commission's annual report.
- (3) The Speaker of Parliament must present the Oversight Committee's annual report to the Parliament at the next meeting of the Parliament following the receipt of the report.
- (4) The Oversight Committee must publish its annual report as soon as practicable after the Speaker of the Parliament has presented the annual report to the Parliament.
- (5) Nothing in this Law, prevents the Oversight Committee from preparing and publishing other reports.

#### 143 FEES AND ALLOWANCES.

A member of the Oversight Committee is to be paid the fees and allowances (if any) determined under the *Boards (Fees and Allowances) Act 1955*.

### PART 13 OFFENCES.

#### 144 CONFIDENTIALITY.

- (1) This section applies to information obtained by a Commission officer or a consultant in the performance of functions or the exercise of powers under, or for the purposes of, this Law.
- (2) The Commission officer or consultant commits an offence if the officer or consultant:
  - (a) directly or indirectly, makes a record of the information or discloses the information; and
  - (b) the record or disclosure was not made in the performance of the officer's or consultant's functions or the exercise of the officer's powers under, or for the purposes of, this Law.

Penalty: Fine not exceeding K 20,000 or imprisonment for a term not exceeding 5 years, or both.

- (3) Any person to whom the information is lawfully disclosed by a Commission officer or consultant under subsection (1) commits an offence if the person:
  - (a) directly or indirectly, makes a record of the information or discloses the information; and
  - (b) the record or disclosure was not made in the performance of the person's official duties.

Penalty: Fine not exceeding K 20,000 or imprisonment for a term not exceeding 5 years, or both.

#### 145 IMPERSONATION OF COMMISSION OFFICER.

A person commits an offence if the person falsely represents, by words or conduct, that he is a Commission officer.

Penalty: Fine not exceeding K 15,000 or imprisonment for a term not exceeding 3 years, or both.

#### 146 ABUSE OF COMMISSION OFFICE.

(1) A Commission officer commits an offence if the officer asks for, receives or obtains, or agrees to receive or obtain, property or a benefit of any kind for himself or herself or someone else from a person with a view to the officer:

- (a) neglecting the performance of his or her functions or the exercise of his or her powers; or
- (b) being influenced in the performance of his or her functions or the exercise of his or her powers.

Penalty: Imprisonment for a term not exceeding 14 years.

(2) A Commission officer commits an offence if he uses or takes advantage of his or her position to improperly gain benefit or advantage for himself or herself or someone else.

Penalty: Imprisonment for a term not exceeding 14 years.

#### 147 BRIBERY OF COMMISSION OFFICER.

A person commits an offence if the person gives to, confers on, or procures for a Commission officer or someone else property or a benefit of any kind, or promises or offers to do so, with a view to:

- (a) the officer neglecting the performance of his or her functions or the exercise of his or her powers; or
- (b) influencing the officer in the performance of his or her functions or the exercise of his or her powers.

Penalty: Imprisonment for a term not exceeding 7 years.

#### 148 OBSTRUCTION OF COMMISSION OR COMMISSION OFFICER.

(1) A person commits an offence if the person disrupts a hearing.

Penalty: Fine not exceeding K 5,000 or imprisonment for a term not exceeding 12 months, or both.

(2) A person commits an offence if the person prevents, hinders or obstructs the Commission or a Commission officer performing functions or exercising powers under this Law.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

(3) A person commits an offence if the person refuses or fails to comply with any lawful requirement of the Commission or a Commission officer.

Penalty: Fine not exceeding K 10,000 or imprisonment for a term not exceeding 2 years, or both.

(4) A person commits an offence if the person alters, destroys, conceals or fabricates a document or other thing knowing that it is or is likely to be required by the Commission or a Commission officer.

Penalty: Fine not exceeding K 15,000 or imprisonment for a term not exceeding 3 years, or both.

#### 149 FALSE OR MISLEADING EVIDENCE OR STATEMENTS.

A person commits an offence if the person gives evidence at a hearing or states anything to the Commission or a Commission officer that the person knows is false or misleading in a material particular.

Penalty: Fine not exceeding K 15,000 or imprisonment for a term not exceeding 3 years, or both.

#### 150 FALSE OR MISLEADING DOCUMENTS.

(1) A person commits an offence if the person knows a document is false or misleading in a material particular and the person:

- (a) produces the document at a hearing; or
- (b) gives the Commission or a Commission officer the document.

Penalty: Fine not exceeding K 15,000 or imprisonment for a term not exceeding 3 years, or both.

(2) Subsection (1) does not apply to a person if the person, when producing or giving the document:

- (a) tells the Commission or a Commission officer, to the best of the person's ability, how the document is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information, gives the correct information.

#### 151 BRIBERY OF WITNESS.

- (1) A person commits an offence if the person gives to, confers on, or procures for, another person (second mentioned person) property or a benefit of any kind, or promises or offers to do so, with a view to the second mentioned person or any other person doing any or all of the following:
  - (a) withholding information or evidence, or a document or other thing, from the Commission;
  - (b) discontinuing to provide information or give evidence, or produce documents or other things, to the Commission;
  - (c) providing false or misleading information or giving false or misleading evidence, or producing false or misleading documents or other things, to the Commission.

Penalty: Imprisonment for a term not exceeding 7 years.

- (2) A person (first mentioned person) commits an offence if he asks for, receives or obtains, or agrees to receive or obtain, property or a benefit of any kind for himself or herself, or for any other person, with a view to the first mentioned person doing any or all of the following:
  - (a) withholding information or evidence, or a document or other thing, from the Commission;
  - (b) discontinuing to provide information or give evidence, or produce documents or other things, to the Commission;
  - (c) providing false or misleading information or giving false or misleading evidence, or producing false or misleading documents or other things, to the Commission.

Penalty: Imprisonment for a term not exceeding 7 years.

### PART 14 - MISCELLANEOUS.

#### 152 DISPOSAL OF PROPERTY.

- (1) This section applies to property if:
  - (a) the property is lawfully in the custody of the Commission in connection with an investigation; and
  - (b) the property is not required for the purposes of an investigation or a criminal prosecution or disciplinary proceeding; and
  - (c) the person lawfully entitled to the property cannot be located or identified.
- (2) A court may, on application by the Commission, make an order that the property be forfeited to the State if the court is satisfied that no person is lawfully entitled to the property.
- (3) Property ordered to be forfeited to the State:
  - (a) if money, is to be paid to the Treasurer for payment into the Consolidated Revenue Fund; or
  - (b) in any other case, may be sold by or on behalf of the Commission at public auction and the proceeds of sale paid to the Treasurer for payment into the Consolidated Revenue Fund.
- (4) If the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commission.

#### 153 PROTECTION FROM LIABILITY.

- (1) A member of the Commission has the same privileges, protections and immunities as a Judge of the National Court.



- (2) A witness at a hearing and a person summoned to attend as a witness or to produce a document or other thing to the Commission have the same protections and immunities as a witness in proceedings before the National Court.
- (3) A legal practitioner assisting the Commission or representing a person before the Commission has the same protections and immunities as a legal practitioner has in appearing for a party in proceedings before the National Court.

#### 154 PRIVILEGE.

- (1) A Commission officer is not subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done in good faith under or for the purposes of this Law or any other law.
- (2) A Commission officer is not to be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his or her knowledge in performing functions or exercising powers under or for the purposes of this Law.

#### 155 GRANT OF IMMUNITY FROM PROSECUTION.

- (1) If:
  - (a) the Commission is prosecuting a person for an indictable offence; and
  - (b) in the opinion of the Commission, after consultation with the Public Prosecutor, it is necessary in the interests of justice to do so;

the Commission may grant to the person an immunity from prosecution, either absolute or conditional, in relation to an offence with which the person could otherwise be charged.

- (2) If the grant of the immunity to a person is absolute, the person is not to be charged before any court with that offence.
- (3) If the grant of the immunity to a person is conditional, the person is not to be charged before any court with that offence unless the Commission has first certified in writing that the person has breached the conditions of the grant of immunity.
- (4) This section does not prevent a person who has been granted immunity from prosecution in relation to an offence being charged with any other offence against a law of Papua New Guinea.

#### 156 SERVICE.

A notice, summons or other document required or authorised to be given to or served on a person under this Law may:

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company within the meaning of the *Companies Act 1997*, be served in accordance with that Act.

#### 157 GUIDELINES.

The Commission may issue advisory guidelines for the purposes of this Law.

#### 158 TRANSITIONAL ARRANGEMENTS FROM OTHER STATE SERVICES

- (1) This section applies to any person who immediately before becoming a Commission officer was a member of another State Service.
- (2) All leave entitlements of the person accrued under that other State Service before he became a Commission officer are retained by the person as if they had accrued under the Independent Commission against Corruption Staff Service.

## SCHEDULE 1 –OATH OR AFFIRMATION OF OFFICE

Section 32

Form 1.

### OATH.

"I, \_\_\_\_\_, swear that I will at all times well and truly serve the Independent State of Papua New Guinea and its People, and properly exercise the functions and powers conferred on me under the *Constitution* and the *Organic Law on the Independent Commission Against Corruption* without fear or favour, affection or ill-will, in accordance with the laws of the Independent State of Papua New Guinea.

Form 2.

### AFFIRMATION.

"I, \_\_\_\_\_, promise and declare that I will at all times well and truly serve the Independent State of Papua New Guinea and its People, and properly exercise the functions and powers conferred on me under the *Constitution* and the *Organic Law on the Independent Commission Against Corruption* without fear or favour, affection or ill-will, in accordance with the laws of the Independent State of Papua New Guinea.