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INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

ALTERATION TO THE CONSTITUTION

THE Government proposes to alter the Constitution and, pursuant to Section 14(2) (*Making of alterations to the Constitution and Organic Laws*) of the Constitution, I, John Pundari, Speaker of the National Parliament, hereby publish the proposed Law—

Draft of 13/10/97.

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE CONSTITUTION

*Constitutional Amendment (Independent Commission Against Corruption)*

ARRANGEMENT OF CLAUSES

1. Special references to the Supreme Court (Amendment of Section 19).
2. The Law Officers (Amendment of Section 156).
3. Functions of the Public Prosecutor and the Public Solicitor (Amendment of Section 177).
4. Functions of the Police Force (Amendment of Section 197).
5. Other Forces (Amendment of Section 199).
6. Parliamentary Responsibility (Amendment of Section 209).
7. Executive Initiative (Amendment of Section 210).
8. Accounting, etc., for public moneys (Amendment of Section 211).
9. Revenue and expenditure without prior approval (Amendment of Section 212).
10. New Division VIII.3.

*"Division 3.—The Independent Commission Against Corruption.*

- "220A. THE INDEPENDENT COMMISSION AGAINST CORRUPTION"
- "220B. PURPOSES OF THE COMMISSION"
- "220C. FUNCTIONS OF THE COMMISSION"
- "220D. REPORTS BY THE INDEPENDENT COMMISSION AGAINST CORRUPTION"

11. Definitions (Amendment of Section 221).
12. Amendment of Schedule 1.

Draft of 13/10/97.

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

**PROPOSED LAW TO ALTER THE CONSTITUTION.**

entitled

***Constitutional Amendment (Independent Commission Against Corruption),***

Being a Law to alter the *Constitution* by making provision for the establishment of an 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.

**1. SPECIAL REFERENCES TO THE SUPREME COURT (AMENDMENT OF SECTION 19).**

Section 19(3) of the *Constitution* is amended by inserting after Paragraph (*ec*) the following new Paragraph:-

“(*ed*) the Independent Commission Against Corruption; and”.

**2. THE LAW OFFICERS (AMENDMENT OF SECTION 156).**

Section 156 of the *Constitution* is amended by adding the following new Paragraph:-

“(*d*) the Chief Commissioner of the Independent Commission Against Corruption.”.

**3. FUNCTIONS OF THE PUBLIC PROSECUTOR AND THE PUBLIC SOLICITOR (AMENDMENT OF SECTION 177).**

Section 177(1)(*a*) of the *Constitution* is amended by inserting before the words “in accordance with an Act of the Parliament” the following:-

“subject to the functions and powers of the Independent Commission Against Corruption,”.

**4. FUNCTIONS OF THE POLICE FORCE (AMENDMENT OF SECTION 197).**

Section 197(2) of the *Constitution* is amended by repealing the words “Insofar as it is a function of the Police Force” and replacing them with the following:-

“Subject to the functions and powers of the Independent Commission Against Corruption, insofar as it is a function of the Police Force”.

***Constitutional Amendment (Independent Commission Against Corruption)***

**5. OTHER FORCES (AMENDMENT OF SECTION 199).**

Section 199 of the *Constitution* is amended by repealing the words “an Act of the Parliament” and replacing them with the following:-

“a Constitutional Law or an Act of the Parliament.”.

**6. PARLIAMENTARY RESPONSIBILITY (AMENDMENT OF SECTION 209).**

Section 209 of the *Constitution* is amended -

(a) in Subsection (2)(b), by adding the following new Subparagraph:-

“(iv) the services of the Independent Commission Against Corruption; and”;

(b) in Subsection (2A), by adding the following new Paragraph:-

“(c) “the services of the Independent Commission Against Corruption” include -

(i) the salaries and allowances (financial and otherwise) of the members of; and

(ii) the salaries and allowance (financial and otherwise) of the members of the staff of; and

(iii) the costs of maintenance of and carrying out the functions of,

the Independent Commission Against Corruption.”; and

(c) by repealing Subsection (2B) and replacing it with the following:-

“(2B) For the purposes of -

(a) Subsection (2)(b)(i) - the Speaker of the Parliament; and

(b) Subsection (2)(b)(iii) - the Chief Justice; and

(c) Subsection (2)(b)(iv) - the Chief Commissioner of the Independent Commission Against Corruption,

respectively shall, before 30 September in each year, submit to the Prime Minister estimates of expenditure for the services of the Parliament, the services of the Judiciary and the services of the Independent Commission Against Corruption respectively in the following fiscal year.”.

**7. EXECUTIVE INITIATIVE (AMENDMENT OF SECTION 210).**

Section 210 (3) of the *Constitution* is repealed and is replaced with the following:-

“(3) Where, in the opinion of the Parliament, the proposed expenditure for -

(a) the services of the Parliament is below that submitted by the Speaker and is insufficient to meet the requirements of those services; or

***Constitutional Amendment (Independent Commission Against Corruption)***

- (b) the services of the Judiciary is below that submitted by the Chief Justice and is insufficient to meet the requirements of those services; or
- (c) the services of the Independent Commission Against Corruption is below that submitted by the Chief Commissioner of the Independent Commission Against Corruption, and is insufficient to meet the requirements of those services,

the Parliament may increase the expenditure to an amount not exceeding the original estimates submitted by the Speaker or the Chief Justice or the Chief Commissioner of the Independent Commission Against Corruption, as the case may be, under Section 209(2B).”.

**8. ACCOUNTING, ETC., FOR PUBLIC MONEYS (AMENDMENT OF SECTION 211).**

Section 211(2) of the *Constitution* is amended by inserting after the words “and the Judiciary” the following:-

“and the Independent Commission Against Corruption”.

**9. REVENUE AND EXPENDITURE WITHOUT PRIOR APPROVAL (AMENDMENT OF SECTION 212).**

Section 212(1) of the *Constitution* is amended by inserting after the words “or the Judiciary” (twice occurring) in each case the following:-

“or the Independent Commission Against Corruption”.

**10. NEW DIVISION VIII.3.**

Part VIII of the *Constitution* is amended by adding the following new Division:-

***“Division 3. - The Independent Commission Against Corruption.***

**“220A. THE INDEPENDENT COMMISSION AGAINST CORRUPTION.**

(1) There shall be an Independent Commission Against Corruption consisting of a Chief Commissioner and two Commissioners.

“(2) The members of the Commission shall be appointed by the Head of State, acting with, and in accordance with, the advice of the Independent Commission Against Corruption Appointments Committee consisting of -

- (a) the Prime Minister, who shall be Chairman; and
- (b) the Chief Justice; and
- (c) the Leader of the Opposition; and
- (d) the Chairman of the appropriate Permanent Parliamentary Committee, or, if the Chairman is not a member of the Parliament who is recognized by the Parliament as being generally committed to support the Government in the Parliament, the Deputy Chairman of that Committee; and

***Constitutional Amendment (Independent Commission Against Corruption)***

(e) the Chairman of the Public Services Commission.

“(3) A quorum for a meeting of the Committee shall be three members, one of whom is not a member of the Parliament and otherwise the Committee shall determine its own procedures.

“(4) The salary and other conditions of employment of the Chief Commissioner shall be not less than or inferior to the salary and other conditions of employment of the Deputy Chief Justice without taking into account any conditions of employment personal to that Deputy Chief Justice.

“(5) The salary and other conditions of employment of the Commissioners shall be not less than or inferior to the salary and other conditions of employment of a Judge, without taking into account any conditions of employment particular to any particular Judge.

“(6) In the performance of its functions under Section 220C (*Functions of the Independent Commission Against Corruption*) the Commission is not subject to direction or control by any person or authority.

“(7) The proceedings of the Commission are not subject to review in any way, except by the Supreme Court or the National Court on the ground that it has exceeded its jurisdiction.

“(8) An Organic Law shall make further provision in respect of the qualifications and appointment of the Chief Commissioner and Commissioners and of the powers, procedures and immunity of the Commission.

“(9) An Organic Law shall make provision for an Advisory Committee (consisting mainly of persons who are not members of the Commission or of the staff of the Commission) to advise on overall policy directions and for such other Committees as may be necessary and for a Complaints Committee (consisting of persons who are not members of the Commission or of the staff of the Commission) to monitor and review -

- (a) the procedure for handling generally complaints against the Commission or members of the Commission or of the staff of the Commission; and
- (b) where necessary, the handling by the Commission of any specific complaint against the Commission or the members of the Commission or the staff of the Commission.

**“220B. PURPOSES OF THE COMMISSION.**

(1) The purposes of the establishment of the Independent Commission Against Corruption are to help further the attainment of the National Goals by endeavouring to eliminate corruption.

*Constitutional Amendment (Independent Commission Against Corruption)*

(2) For the purposes of this Division, "corruption" means conduct constituting offences referred to in or created by an Organic Law as offences in relation to which the Commission has jurisdiction.

**"220C. FUNCTIONS OF THE COMMISSION.**

(1) Subject to any Organic Law made for the purposes of Subsection (2), the functions of the Independent Commission Against Corruption are -

- (a) to receive and consider complaints against corruption and investigate such of those complaints as it considers practicable; and
- (b) to investigate and prosecute any alleged or suspected offences being offences referred to in or created by an Organic Law in relation to which the Commission has jurisdiction; and
- (c) to investigate any conduct of a public office-holder or other person declared by an Organic Law to be a person to whom this Paragraph applies which, in the opinion of the Commission, is connected with or conducive to corruption, and to report thereon to the Chief Ombudsman; and
- (d) to examine the practices and procedures of governmental bodies in order to facilitate the discovery of corruption and to ensure the revision of methods of work or procedures which, in the opinion of the Commission, may be conducive to corruption; and
- (e) to instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person; and
- (f) to direct heads of governmental bodies to make changes in practices or procedures compatible with the effective discharge of the duties of such governmental bodies which the Commission thinks necessary to reduce the likelihood of corruption; and
- (g) to educate the public against the evils of corruption; and
- (h) to enlist and foster public support in combatting corruption; and
- (i) to publish guidelines for the avoidance of corruption; and
- (j) any other functions conferred upon it by or under an Organic Law.

"(2) An Organic Law or an Act of the Parliament shall make provision in respect of the powers and procedures of the Independent Commission Against Corruption and in particular, but without prejudice to the foregoing generality -

- (a) shall, subject to Paragraph (b), make provision for the Commission to have access to all available relevant information; and
- (b) may impose reasonable restrictions on the availability of information; and
- (c) may provide for the enforcement of directions given by the Commission under Subsection (1)(f); and

***Constitutional Amendment (Independent Commission Against Corruption)***

- (d) shall make provision to ensure the secrecy or confidentiality of secret or confidential information made available to the Commission or to a member of the Commission or to a member of the staff of the Commission; and
- (e) may limit or restrict to a reasonable extent and in a reasonable manner the jurisdiction of the Commission in relation to any matters or class of matters and in particular in relation to national security; and
- (f) shall make provision for and in respect of publicity for the proceedings, reports and recommendations of the Commission.

**“220D. REPORTS BY THE INDEPENDENT COMMISSION AGAINST CORRUPTION.**

(1) The Independent Commission Against Corruption shall, at least once in each period of 12 months, at such time as is fixed by or under an Organic Law, give to the Head of State, for presentation to the Parliament, a report on the functions and workings of the Commission, with such recommendation as to improvement as the Commission thinks proper.

“(2) Nothing in Subsection (1) prevents the Independent Commission Against Corruption from making, on its own initiative or at the request of the Parliament or of the National Executive Council, other reports on any aspects of the functions and workings of the Commission.”.

**11. DEFINITIONS (AMENDMENT OF SECTION 221).**

Section 221 of the *Constitution* is amended in the definition of “constitutional office-holder” by inserting after Paragraph (h) the following:-

“(ha) a member of the Independent Commission Against Corruption; or”.

**12. AMENDMENT OF SCHEDULE 1.**

Schedule 1.2(1) of the *Constitution* is amended by inserting before the definition of “Judge” the following new definition:-

“‘Independent Commission Against Corruption’ means the Independent Commission Against Corruption established by Section 220A(1) (*The Independent Commission Against Corruption*);”.

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

**THE CONSTITUTION.**

***ORGANIC LAW ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION.***

The Government proposes to introduce the *Organic Law on the Independent Commission Against Corruption* and, pursuant to Section 14(2) (*Making of alteration to the Constitution and Organic Laws*) of the *Constitution*, I, JOHN PUNDARI, Speaker of the National Parliament, hereby publish the proposed Law -

Draft of 13/10/97.  
**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

***A PROPOSED ORGANIC LAW***

entitled

*The Organic Law on the Independent Commission Against Corruption,*

**ARRANGEMENT OF CLAUSES.**

**PART I. - PRELIMINARY.**

1. Compliance with Constitutional requirements.
2. Interpretation -
  - “Advisory Committee”
  - “bank”
  - “banker’s books”
  - “Chief Commissioner”
  - “Commission”
  - “Commissioner”
  - “Committee”
  - “company books”
  - “Complaints Committee”
  - “corruption”
  - “document”
  - “financial institution”
  - “governmental body”
  - “investigating officer”
  - “lawyer”
  - “member of the Commission”
  - “officer”
  - “parents”
  - “relevant offence”
  - “restraining order”
  - “this Organic Law”
  - “travel document”.

**PART II. - CONSTITUTION OF THE COMMISSION.**

3. Qualifications for appointment.
4. Term of office.
5. Disqualifications from office.
6. Special conditions of employment.
7. Resignation.

8. Acting Chief Commissioner and Acting Commissioner.
9. Declaration of office.

**PART III. - THE SERVICE OF THE COMMISSION, ETC.,**

10. Appointment of officers.
11. Control of Service.
12. Regulations for the Service of the Commission.
13. Temporary and casual employees.
14. Employment of counsel.
15. Consultants.

**PART IV. - FINANCE.**

16. Application of *Public Finances (Management) Act 1995*.

**PART V. - COMMITTEES.**

17. Independent Commission Against Corruption Advisory Committee.
18. Other Committees.
19. Complaints Committee.

**PART VI. - JURISDICTION OF THE COMMISSION.**

20. Jurisdiction of the Commission.

**PART VII. - POWERS AND MATTERS RELATED THERETO.**

*Division 1. - General.*

21. General powers.
22. Power to obtain assistance.
23. Appointment of investigating officer.

*Division 2. - Power to obtain information.*

24. Powers in relation to Governmental body.
25. Special powers of investigation.
26. Power to make application for an order in relation to material, etc., held by Commissioner General of Internal Revenue, etc.,
27. Disclosure of information obtained under Section 26.
28. Restriction on publication of information disclosed under Section 26.
29. Power to obtain information.

*Division 3. - Power of Arrest.*

30. Power of arrest.
31. Procedure after arrest.

32. Arrest of persons granted bail.

***Division 4. - Powers of Search and Seizure.***

33. Power of search and seizure.
34. Further powers of search.

***Division 5. - Prosecutory Powers.***

35. Prosecutory powers of the Commission.

***Division 6. - Other Powers.***

36. Power to take finger-prints and photographs.

**PART VIII. - RESTRAINING ORDERS.**

37. Restraining Orders.
38. Variation and revocation of restraining orders.
39. Application for directions.

**PART IX. - EVIDENCE.**

40. Custom not to be a defence.
41. Admissibility of accused's declarations and statements.
42. Evidence of pecuniary resources or property.
43. Certificate as to official emoluments, etc.,
44. Person giving or receiving bribe not to be regarded as an accomplice.
45. Power to secure evidence of parties to offences.
46. Burden of proof.

**PART X. - OFFENCES.**

47. Resisting or obstructing officers.
48. False reports.
49. Falsely pretending to be a member of the Commission.
50. Failure to disclose information, etc.,
51. False representation of an authorization under Section 24.
52. Publication or broadcast of information the subject of an order under Section 28(5), etc.,
53. Failure to comply with notice under Section 29(3).
54. Wilfully making false statement in answer to a notice under Section 29(3).
55. Disclosing or dealing with property the subject of a restraining order.
56. Officer failing to render assistance.
57. Disclosure of identity of person being investigated.
58. Contempt of the Commission.

**PART XI. - MISCELLANEOUS.**

59. Surrender of travel documents.
60. Return of travel documents.
61. Lawyers and privileged information.
62. Protection of informers.
63. Further protection of informers and witnesses, etc.,
64. Commission may require banks, etc., to provide information.
65. Members of the Commission and of the staff of the Commission, etc., to maintain secrecy.
66. Preservation of secrecy.
67. Privileges.
68. Constitutional Regulations.

**SCHEDULES.**

Draft of 13/10/97.

**INDEPENDENT STATE OF PAPUA NEW GUINEA.*****A PROPOSED ORGANIC LAW***

entitled

***The Organic Law on the Independent Commission Against Corruption,***

Being an Organic Law to implement Division VIII.3 (*Independent Commission Against Corruption*) and other provisions of the *Constitution* 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 I. - 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) freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
- (c) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (d) the right to privacy conferred by Section 49 of the *Constitution*; and
- (e) the right to freedom of information conferred by Section 51 of the *Constitution*; and
- (f) the right to freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

**2. INTERPRETATION.**

In this Organic Law, unless the contrary intention appears -

“Advisory Committee” means the Independent Commission Against Corruption, Advisory Committee established by Section 17;

“bank” means a corporation licensed as a bank under the *Banks and Financial Institutions Act* (Chapter 137);

“banker’s books” means -

- (a) any ledger, ledger card, statement of account, day book, cash book, account book or other book or document whatsoever; and
- (b) any cheque, voucher, record card, report, letter or other document whatsoever; and
- (c) any copy of anything referred to in Paragraph (a) or (b) used in the ordinary business of a bank;

***The Organic Law on the Independent Commission Against Corruption***

- “Chief Commissioner” means the Chief Commissioner of the Independent Commission Against Corruption appointed under Section 220A(2) (*The Independent Commission Against Corruption*) of the *Constitution*;
- “Commission” means the Independent Commission Against Corruption established by Section 220A (*The Independent Commission Against Corruption*) of the *Constitution*;
- “Commissioner” means a Commissioner of the Independent Commission Against Corruption appointed under Section 220A(2) (*The Independent Commission Against Corruption*) of the *Constitution*;
- “Committee” means the Independent Commission Against Corruption Appointments Committee established by Section 220A(2) (*The Independent Commission Against Corruption*) of the *Constitution*;
- “company books” means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book, report, letter or other book or document used in the ordinary business of a company;
- “Complaints Committee” means the Independent Commission Against Corruption Complaints Committee established by Section 19;
- “corruption” means conduct constituting offences referred to in Section 20(1);
- “document” includes any register, book, record, tape-recording, any form of computer input and output, and any other material (whether produced mechanically, electronically or manually or by any other means whatsoever);
- “financial institution” means a financial institution licensed as such under the *Banks and Financial Institutions Act* (Chapter 137);
- “governmental body” means -
- (a) the National Government; and
  - (b) a Provincial Government; and
  - (c) a Local-level Government; and
  - (d) an arm, department, agency or instrumentality of the National Government or of a Provincial Government or of a Local-level Government; and
  - (e) a State Service; and
  - (f) a body set up by statute or administrative act for governmental or administrative purposes,
- and, without prejudice to the foregoing generality, includes a member of the National Executive Council and a Constitutional Office-holder;
- “investigating officer” means an investigating officer appointed under Section 23;
- “lawyer” means a person admitted to practise as a lawyer under the *Lawyers Act 1986*;
- “member of the Commission” means the Chief Commissioner or a Commissioner;
- “officer” means an officer of the Commission;
- “parents” include parents-in-law and step-parents;
- “relevant offence” has the meaning given to it by Section 20;
- “restraining order” means a restraining order under Section 37 and includes a restraining order varied under Section 38;

***The Organic Law on the Independent Commission Against Corruption***

“this Organic Law” includes any Constitutional Regulations made under this Organic Law;

“travel document” means a passport or other document establishing the identity or nationality of the holder.

**PART II. - CONSTITUTION OF THE COMMISSION.**

**3. QUALIFICATIONS FOR APPOINTMENT.**

(1) A person is not qualified for appointment as the Chief Commissioner unless he is in the opinion of the Committee, a person of integrity, independence of mind, resolution and high standing within the Community and is a lawyer -

- (a) qualified for appointment as a Judge of the National Court; or
- (b) a former Judge of the National Court.

(2) A person is not qualified for appointment as a Commissioner unless -

- (a) in the opinion of the Committee, he is a person of integrity, independence of mind, resolution and high standing within the community; and
- (b) he has demonstrated experience in matters relevant to the functions of the Commission.

**4. TERM OF OFFICE.**

- (1) The term of appointment of -
- (a) the Chief Commissioner; and
  - (b) a Commissioner,

shall be five years.

(2) The Chief Commissioner and a Commissioner are eligible for re-appointment.

**5. DISQUALIFICATIONS FROM OFFICE.**

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

- (a) a member of the Parliament; or
- (b) a member of a Provincial Government; or
- (c) a member of a Local-level Government; or
- (d) an office-holder in a registered political party; or
- (e) an undischarged bankrupt or insolvent; or
- (f) 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) under sentence of death or imprisonment.

**6. SPECIAL CONDITIONS OF EMPLOYMENT.**

- (1) A member of the Commission shall not -
- (a) actively engage in politics; or
  - (b) subject to Subsection (2), engage either directly or indirectly in the management or control of a corporation or other body of persons carrying on business for profit; or

*The Organic Law on the Independent Commission Against Corruption*

- (c) except on leave granted by the Head of State, or because of illness, absent himself from duty for more than 14 consecutive days or more than 28 days in any period of 12 months; or
- (d) subject to Subsection (3), acquire by way of gift or otherwise, or use or hold in any other manner any interest in, any property in Papua New Guinea or solicit, accept or receive any other benefit in addition to his terms and conditions of employment.

(2) Nothing in Subsection (1)(b) prevents a member of the Commission from holding office in a professional body in relation to which his qualifications are relevant.

(3) Subject to any Organic Law made for the purposes of Division III.2 (*Leadership Code*) of the *Constitution*, a member of the Commission may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen, or non-citizen, as the case may be.

**7. RESIGNATION.**

(1) A member of the Commission may resign by giving three months' notice in writing of his intention to do so to the Head of State.

(2) The period of three months specified in Subsection (1) shall be deemed to commence on the twenty-second day after the receipt by the Head of State of the notice except where the Head of State, acting with, and in accordance with, the advice of the Committee, by notice in writing to the member, fixes an earlier date for the commencement.

(3) A member of the Commission may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

**8. ACTING CHIEF COMMISSIONER AND ACTING COMMISSIONER.**

A person suitably qualified may be appointed to be an acting Chief Commissioner or an acting Commissioner -

- (a) to fill temporarily a vacancy; or
- (b) in the case of the absence from duty for any reason of the Chief Commissioner or of a Commissioner.

**9. DECLARATION OF OFFICE.**

Before entering upon the duties of their offices, the Chief Commissioner and the Commissioners shall make the Declaration of Office before the Head of State or a person appointed by the Head of State for the purpose.

**PART III. - THE STAFF OF THE COMMISSION, ETC.,**

**10. APPOINTMENT OF OFFICERS, ETC.,**

(1) The Commission shall appoint such suitably qualified officers and employees as, in its opinion, are necessary for the efficient performance of the functions of the Commission.

***The Organic Law on the Independent Commission Against Corruption***

(2) The officers and employees of the Commission constitute the staff of the Commission.

(3) Subject to this section and Part, to the Constitutional Regulations and to the *Salaries and Conditions Monitoring Committee Act 1988*, officers and employees hold office on such terms and conditions as the Commission fixes and may be employed on contract.

(4) If an officer appointed under this section was, immediately before his appointment, an officer of the National Public Service, his service as an officer of the Commission shall be counted as service in the National Public Service for the purposes of determining his rights (if any) in respect of -

- (a) absence or leave on the ground of illness; and
- (b) furlough or pay in lieu of furlough (including pay to dependants or personal representatives on the death of the officer).

**11. CONTROL OF SERVICE.**

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

**12. REGULATIONS FOR THE SERVICE OF THE COMMISSION.**

Constitutional Regulations may make provision in relation to the staff of the Commission and in particular, may -

- (a) subject to the *Salaries and Conditions Monitoring Committee Act 1988*, prescribe the terms and conditions of employment of officers; and
- (b) make provision for the establishment of a superannuation scheme to provide benefits for officers of the Commission on retirement, resignations, retrenchment or death.

**13. TEMPORARY AND CASUAL EMPLOYEES.**

(1) The Commission may appoint such temporary and casual employees as it thinks necessary for the purposes of this Law.

(2) Employees appointed under Subsection (1) shall be employed on such terms and conditions as the Commission determines.

**14. EMPLOYMENT OF COUNSEL.**

(1) In addition to appointments under Sections 10 and 13, the Commission may appoint a barrister or solicitor to act as counsel for the Commission in relation to the exercise by the Commission of any of its functions and powers.

***The Organic Law on the Independent Commission Against Corruption***

(2) The provisions of any Act of the Parliament relating to the employment of a barrister or solicitor who is a non-citizen and not ordinarily resident in the country do not apply to a barrister or solicitor appointed to act as counsel for the Commission under Subsection (1).

**15. CONSULTANTS.**

The Commission may, from time to time, employ such consultants as, in the opinion of the Commission, are necessary for the functions of the Commission.

**PART IV. - FINANCE.**

**16. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995.***

(1) Part VIII of the *Public Finances (Management) Act 1995* (other than Sections 50, 51, 53 and 59) applies to and in relation to the Commission.

- (2) The funds of the Commission shall consist of -
- (a) any money appropriated by Parliament for the purposes of the Commission and paid to the Commission; and
  - (b) all other moneys lawfully received by the Commission for the purposes of the Commission; and
  - (c) all accumulations of income derived from any such moneys.

**PART V. - COMMITTEES.**

**17. INDEPENDENT COMMISSION AGAINST CORRUPTION ADVISORY COMMITTEE.**

(1) There is established an Independent Commission Against Corruption Advisory Committee consisting of -

- (a) the Chief Commissioner, who shall be the Chairman; and
- (b) the Attorney-General; and
- (c) the Auditor-General; and
- (d) the Chief Ombudsman; and
- (e) the Public Prosecutor; and
- (f) four persons of standing in the community appointed by the Head of State, acting on advice, by notice in the National Gazette.

- (2) The functions of the Advisory Committee are -
- (a) to advise the Commission on any aspect of the problem of corruption in Papua New Guinea; and
  - (b) to keep operational, staffing and administrative policies of the Commission under review; and
  - (c) to consider the annual estimates of expenditure of the Commission; and
  - (d) to scrutinize the annual report of the Commission before its submission to the Head of State; and

***The Organic Law on the Independent Commission Against Corruption***

- (e) to submit an annual report to the Head of State, for presentation to the Parliament on the work of the Advisory Committee.
- (3) The Advisory Committee shall meet at least three times in each year.
- (4) The quorum for a meeting of the Advisory Committee is five members.
- (5) Subject to this Organic Law, the procedures of the Advisory Committee are as determined by it.

**18. OTHER COMMITTEES.**

- (1) The Commission may establish such other Committees as the Commission considers necessary to advise the Commission on any particular aspect of the work of the Commission and may appoint persons to be members of such a Committee.
- (2) A Committee established under Subsection (1) -
  - (a) has such functions and powers as are determined by the Commission; and
  - (b) may include members who are not members of the Commission or of the staff of the Commission; and
  - (c) has such quorum and procedures as are determined by the Commission.

**19. COMPLAINTS COMMITTEE.**

- (1) There is established an Independent Commission Against Corruption Complaints Committee consisting of seven persons of standing in the community appointed by the Head of State, acting on advice, by notice in the National Gazette.
- (2) A member of the Commission or of the staff of the Commission is not eligible to be a member of the Complaints Committee.
- (3) The Head of State, acting on advice, shall appoint one of the persons appointed under Subsection (1) to be Chairman of the Complaints Committee.
- (4) The functions of the Complaints Committee are -
  - (a) to ensure that the Commission establishes and maintains a procedure for dealing with complaints by persons against the actions of members of the Commission or of the staff of the Commission in the exercise of the powers and functions of the Commission; and
  - (b) to receive and consider complaints from persons who consider that the complaints procedure of the Commission has not adequately dealt with their complaint to the Commission; and
  - (c) to advise the Commission on ways of improving the complaints procedure and in respect of complaints considered under Paragraph (b).
- (5) The Complaints Committee shall meet at least three times in each year.

*The Organic Law on the Independent Commission Against Corruption*

(6) The quorum for a meeting of the Complaints Committee is four members.

(7) Subject to this Organic Law, the procedures of the Complaints Committee are as determined by it.

(8) The Commission shall co-operate with and assist the Complaints Committee in the exercise of the functions of the Complaints Committee but is not required to disclose to the Complaints Committee information certified in writing by the Chief Commissioner to be confidential.

**PART VI. - JURISDICTION OF THE COMMISSION.**

**20. JURISDICTION OF THE COMMISSION.**

(1) The Commission shall perform its functions and exercise its powers of investigation and prosecution in relation to the following offences:-

- (a) offences described in Sections 61 (*Members of the Parliament receiving bribes*) and 62 (*Bribery of member of the Parliament*) of the *Criminal Code* (Chapter 262); and
- (b) offences described in Division III.1 (*Disclosing Official Secrets*) of the *Criminal Code* (Chapter 262); and
- (c) offences described in Division III.2 (*Corruption and Abuse of Office*) of the *Criminal Code* (Chapter 262); and
- (d) offences described in Division III.2A (*Secret Commissions*) of the *Criminal Code* (Chapter 262); and
- (e) offences described in Division III.3 (*Corrupt and Improper Practices at Elections*) of the *Criminal Code* (Chapter 262) where the offence is alleged to have been committed by a person who was, at the time the alleged offence was committed, an officer or employee of a governmental body; and
- (f) offences described in Division VII.2 (*Conspiracy*) of the *Criminal Code* (Chapter 262), insofar as related to offences referred to in Paragraphs (a) to (e) inclusive; and
- (g) offences described in Part X of this Organic Law; and
- (h) such further offences specified by the Head of State, acting on advice, by notice in the National Gazette to be offences in relation to which the Commission shall perform its functions and exercise its powers.

(2) For the purposes of this Organic Law, a "relevant offence" is an offence referred to in Subsection (1).

(3) The jurisdiction of the Commission extends to the investigation and prosecution of relevant offences committed or alleged or suspected to have been committed before as well as on and from the date of the coming into operation of this Organic Law.

***The Organic Law on the Independent Commission Against Corruption***

(4) The Commission shall perform its functions and exercise its powers, other than those of investigation and prosecution provided for in Subsection (1), in relation to corruption.

- (5) Except insofar as otherwise provided by or under this Organic Law -
- (a) other provisions of the *Criminal Code* (Chapter 262) relating to offences specified in Subsection (1) apply in respect of such offences; and
  - (b) provisions in any law relating to the prosecution of such offences apply to prosecution by the Commission.

**PART VII. - POWERS AND MATTERS RELATED THERETO.**

***Division I. - General.***

**21. GENERAL POWERS.**

The Commission has power -

- (a) to sue and be sued in the name of the Commission; and
- (b) to enter into contracts; and
- (c) to acquire, mortgage or charge, let, hold and dispose of property; and
- (d) to make arrangements and provide for the protection of informers, witnesses and other persons who assist the Commission; and
- (e) to do all things which it is empowered to do by this Organic Law or any other law; and
- (f) to do anything incidental to its powers.

**22. POWER TO OBTAIN ASSISTANCE.**

An investigating officer conducting an investigation into an alleged or suspected relevant offence may apply to an officer of the Public Service or any other State Service for assistance in the exercise of his powers and the discharge of his duties under this Organic Law, and an officer of the Public Service or any other State Service to whom such application is made shall assist where practicable.

**23. APPOINTMENT OF INVESTIGATING OFFICER.**

(1) The Commission may, by instrument in writing, appoint an officer of the staff of the Commission to be an investigating officer for the purposes of this Organic Law.

(2) The Commission may issue to an investigating officer appointed under Subsection (1) a warrant card, which shall be *prima facie* evidence of the investigating officer's appointment as such.

(3) A warrant card referred to in Subsection (2) shall be in a form determined by the Commission.

***The Organic Law on the Independent Commission Against Corruption***

***Division 2. - Powers to obtain information.***

**24. POWERS IN RELATION TO GOVERNMENTAL BODY.**

The Commission and members of the Commission and an investigating officer have power -

- (a) in so far as is necessary for the performance of any of the Commission's functions under the *Constitution* and this Organic Law to have access to all records, books and other documents relating to the work of any governmental body; and
- (b) to photograph or make copies of such records, books and other documents.

**25. SPECIAL POWERS OF INVESTIGATION.**

(1) Where the Commission is satisfied that there is reasonable cause to believe that -

- (a) a relevant offence may have been committed by a person; and
- (b) any share account, purchase account, club account, subscription account, investment account, trust account, mutual or trust fund account, expense account, bank account or other account of whatsoever kind or description, and any banker's books, company books, documents or other article of or relating to any person named or identified in writing by the Commission are likely to be relevant for the purposes of an investigation of such relevant offence,

the Commission may authorize in writing an investigating officer, on production of his warrant card -

- (c) to investigate and inspect such accounts, books or documents or other articles of or relating to the person named or otherwise identified by the Commission; and
- (d) to require from any person the production of such accounts, books, documents or other article of or relating to the person named or otherwise identified by the Commission which may be required for the purposes of such investigation and the disclosure of all or any information relating thereto; and
- (e) to take copies of such accounts, books or documents or of any relevant entry therein and photographs of any other article.

(2) The Commissioner shall not, without the leave of the National Court obtained on an *ex parte* application in chambers, issue an authorization under or by virtue of which a particular person who is alleged or suspected to have committed a relevant offence can be required to comply with any requirement of the description mentioned in Subsection (1)(c), (d) and (e).

(3) The National Court shall not grant leave for the issue of an authorization referred to in Subsection (2) unless, on consideration of an application under Subsection (2), it is satisfied as to the matters with which the Commission is required to be satisfied under Subsection (1).

*The Organic Law on the Independent Commission Against Corruption*

(4) An authorization under Subsection (1) is deemed also to authorize the investigating officer to require from any person information as to whether or not at any bank, financial institution, company or other place there is any account, book, document or other article liable to investigation, inspection or production under such authorization.

(5) A requirement under Subsection (4) shall be made in writing and any statement therein as to the existence of the appropriate authorization under Subsection (1) shall be accepted as true without further proof of the fact.

**26. POWER TO MAKE APPLICATION FOR AN ORDER IN RELATION TO MATERIAL, ETC., HELD BY COMMISSIONER GENERAL OF INTERNAL REVENUE, ETC.,**

(1) The Commission, or an investigating officer with the consent of the Commission, may, for the purpose of an investigation into, or proceedings related to a relevant offence, make an *ex parte* application to the National Court in chambers for an order under Subsection (2) in relation to particular material or material of a particular description held by the Commissioner General of Internal Revenue or by any officer of the Internal Revenue Commission.

(2) Subject to Subsection (6), the National Court may, where on an application under Subsection (1) it is satisfied that -

- (a) there are reasonable grounds for suspecting that a relevant offence has been committed; and
- (b) there are reasonable grounds for believing that the material to which the application relates is likely to be relevant to the investigation or proceedings for the purpose of which the application is made; and
- (c) there are reasonable grounds for believing that it is in the public interest, having regard to -
  - (i) the seriousness of the relevant offence suspected to have been committed; and
  - (ii) whether or not the suspected relevant offence could be effectively investigated if an order under this section is not made; and
  - (iii) the benefit likely to accrue to the investigation or proceedings if the material is so produced or access to it is given; and
  - (iv) the public interest in preserving secrecy with regard to matters relating to the affairs of persons that may come to the knowledge of the Commissioner General of Internal Revenue or to an officer of the Internal Revenue Commission in the performance of their duties under the *Income Tax Act 1959*,

make an order that the Commissioner General of Internal Revenue or any officer of the Internal Revenue Commission -

- (d) shall -
  - (i) produce the material for the Commission or an investigating officer to take away; and

*The Organic Law on the Independent Commission Against Corruption*

- (ii) give them access to the material within such period as the order may specify; and
- (iii) in relation to the material, render to the Commission or to an investigating officer in the exercise of the powers of the Commission or of an investigating officer or the discharge of the functions of the Commission or an investigating officer under the *Constitution* or this Organic Law such assistance as the Commission or an investigating officer, as the case may be, may reasonably require.

(3) The period to be specified in an order under Subsection (2) shall be seven days unless it appears to the National Court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) Where an order is made under Subsection (2) the Commissioner General of Internal Revenue or any officer of the Internal Revenue Commission shall, notwithstanding the provisions of any other law to the contrary including the provisions of Section 9 of the *Income Tax Act 1959* and Sections 24 and 25 of this Organic Law comply with the terms of that order within such period as the order may specify.

(5) For the purposes of the prosecution of a relevant offence, where an order is made under Subsection (2), the giving of evidence by the Commissioner General of Internal Revenue or any officer of the Internal Revenue Commission in relation to particular material or material of a particular description with respect to which the order is made shall not be subject to any obligation as to secrecy or other restriction as to disclosure imposed by Section 9 of the *Income Tax Act 1959* or otherwise.

(6) Where an application under Subsection (1) relates to material of a particular description, an order under Subsection (2) shall only be made where an application in relation to particular material is not reasonably practical.

(7) Where material to which an application under this section relates consists of information recorded otherwise than in legible form -

- (a) an order under Subsection (2)(d)(i) shall have effect as an order to produce the material in a form in which it can be carried away; and
- (b) an order under Subsection (2)(d)(ii) shall have effect as an order to give access to the material in a form in which it is visible and legible.

(8) Where an order made under Subsection (2)(d) relates to information recorded otherwise than in legible form, the Commissioner or an investigating officer may by notice in writing require the Commissioner General of Internal Revenue or an officer of the Internal Revenue Commission to produce the material in a form in which it is visible and legible and can be taken away.

*The Organic Law on the Independent Commission Against Corruption*

- (9) The Commission or an investigating officer may, by notice in writing -
- (a) extend the period specified in an order under Subsection (2) and any such extension is deemed to be an order made by the National Court under Subsection (2); or
  - (b) release the Commissioner General of Internal Revenue or an officer of the Internal Revenue Commission from any obligation under an order of the description mentioned in Subsection (8) to produce material in the form in which it was recorded.

(10) The Commission or an investigating officer may photograph or make copies of any material produced under this section.

**27. DISCLOSURE OF INFORMATION OBTAINED UNDER SECTION 26.**

Where any information subject to an obligation of secrecy under the *Income Tax Act 1959* has been obtained from the Commissioner General of Internal Revenue or an officer of the Internal Revenue Commission under or by virtue of Section 26, that information may, subject to Section 26, be disclosed for the purposes of any proceedings relating to or any prosecution by the Commission of a relevant offence, but may not otherwise be disclosed.

**28. RESTRICTION ON PUBLICATION OF INFORMATION DISCLOSED UNDER SECTION 26.**

- (1) This section applies where -
- (a) information of the description mentioned in Section 26 which has been furnished to the Commissioner General of Internal Revenue or to an officer of the Internal Revenue Commission in respect of the liability, responsibility or obligation of a person (hereinafter in this section referred to as "the person named") under the *Income Tax Act 1959*; and
  - (b) that information is disclosed under Section 26; and
  - (c) the Chief Commissioner denies that any of the evidence so disclosed is to be adduced in evidence by the prosecution for the purpose of the prosecution of a relevant offence, not being a relevant offence alleged to have been committed by the person named; and
  - (d) a venue for and a date and time of hearing of the proceedings relating to the prosecution have been fixed; and
  - (e) those proceedings relating to the prosecution may result in the information being publicly revealed.
- (2) As soon as practicable after having made a decision as referred to in Subsection (1)(d), and in any case not later than 14 days before the date referred to in Subsection (1)(d), the Chief Commissioner shall serve notice in writing of that fact on -
- (a) the person who furnished the information referred to in Subsection (1)(a); and
  - (b) the person named.

***The Organic Law on the Independent Commission Against Corruption***

(3) A notice under Subsection (2) shall be accompanied by a statement in writing so as adequately to inform the person on whom it is served of -

- (a) the details of the information that is to be adduced; and
- (b) the venue for, date and time of the hearing of those proceedings; and
- (c) the substance of this section.

(4) Within 14 days after the service on him of a notice under Subsection (2), the person on whom it is served may on notice in writing to the Chief Commissioner make an application in chambers to the court before whom the proceedings are to heard for an order under Subsection (5) and the Chief Commissioner shall be given an opportunity to be heard on that application.

(5) On application made to it under Subsection (4), the court may by order give directions prohibiting or restricting the publication of any information which may lead to the identity of the person named being publicly revealed.

(6) In considering whether or not to make the order under Subsection (5), the court shall consider -

- (a) the views, if any, of the Chief Commissioner on the application; and
- (b) the views of the applicant; and
- (c) whether the public interest in the publication of any information being the subject of the application, without prohibition or restriction, outweighs -
  - (i) the privacy and confidentiality of that information; or
  - (ii) any prejudice to the person named which might result from the publication of that information without prohibition or restriction; or
  - (iii) the public interest in preserving secrecy with regard to matters relating to the affairs of persons that may come to the knowledge of the Commissioner General of Internal Revenue or to any officer of the Internal Revenue Commission in the performance of their duties under the *Income Tax Act 1959*.

(7) Where in the course of a prosecution of a relevant offence after the making of an order under Subsection (5), the court by whom the order was made is satisfied, after giving the person in favour of whom the order was made an opportunity to be heard, that -

- (a) the effect of that order is to impose a substantial and unreasonable prohibition or restriction upon the reporting of that prosecution; and
- (b) that, notwithstanding the matters referred to in Subsection (6)(c)(i), (ii) and (iii) and the view of the person in favour of whom the order was made, if any, it is in the public interest to remove the prohibition or relax the restriction,

the court or the judge shall direct that the order shall not apply to such information in respect of which that order was made as is specified in the direction.

*The Organic Law on the Independent Commission Against Corruption*

**29. POWER TO OBTAIN INFORMATION.**

(1) The Commission or an investigating officer may, for the purpose of an investigation into, or proceedings relating to, a relevant offence suspected to have been committed by a person, make an *ex parte* application to the National Court in chambers for an order under Subsection (3).

(2) The National Court shall not make an order under Subsection (3) unless on an *ex parte* application under Subsection (1) it is satisfied that there are reasonable grounds for suspecting that -

- (a) in the case of an application relating to Subsection (3)(c), the information to be required from the person being the subject of the application is likely to be relevant to the investigation or the proceedings; and
- (b) in the case of an application relating to Subsection (3)(d) or (e), the person being the subject of the application has or may reasonably have access to information likely to be relevant to the investigation or the proceedings.

(3) Where on an application under Subsection (1) the National Court is satisfied that there are reasonable grounds for suspecting that a relevant offence has been committed it may make an order authorizing the Commission by a notice in writing to require -

- (a) the suspected person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commissioner sees fit, a statement in writing, enumerating -
  - (i) the property, being property in such categories or classes of property, moveable or immovable, as may be specified in such notice, belonging to, or possessed by, or which at any time during the three years immediately preceding the date of such notice or during such shorter period as may be specified in such notice belonged to or was possessed by, the suspected person his agents or trustees specifying -
    - (A) in respect of each property enumerated - whether it is or was possessed jointly (and, if so, with whom) or severally; and
    - (B) the date upon which, and the person from whom, each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise; and
    - (C) where any such property was acquired by purchase - the consideration paid therefor; and
    - (D) in respect of any such property which has been disposed of, whether by sale, gift or otherwise at any time during the three years immediately preceding the date of the notice or such shorter period as may be specified in the notice, - how and to whom it was disposed of and where it was disposed of by sale, the consideration given therefor; and

*The Organic Law on the Independent Commission Against Corruption*

- (ii) all expenditure incurred by the suspected person in respect of himself, his spouse, parents or children with regard to living expenses and other private expenditure during any period specified in such notice (not being a period commencing earlier than three years before the date of the notice); and
  - (iii) all liabilities incurred by such person, his agents or trustees, at such time or during such period as may be specified in such notice (not, however, being a period commencing earlier than three years from the date of the notice) and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally; and
- (b) the suspected person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commission sees fit, a statement in writing of any money or other property sent out of Papua New Guinea by him or on his behalf during such period as may be specified in the notice; and
- (c) any other person to furnish to the investigating officer specified in such notice a statutory declaration or, as the Commission sees fit, a statement in writing enumerating the property, moveable or immovable, as may be specified in such notice, belonging to or possessed by him and further stating, in respect of such property, the date upon which and the person from whom it was acquired, where the Commission believes that such information may assist the investigation or proceedings; and
- (d) any other person whom the Commission believes to be acquainted with any facts relevant to such investigation or proceedings -
- (i) to furnish to the investigating officer specified in such notice all information in his possession or to which he may reasonably have access (not being information readily available to the public) respecting such matters as are specified in the notice; or
  - (ii) to appear before the investigating officer specified in such notice or such other person specified in the notice and to answer orally on oath or affirmation any questions relative thereto,
- and on demand by the investigating officer specified in such notice or to such other person, to produce or deliver or otherwise furnish to him the original or a copy of any document in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public) which, in the opinion of the investigating officer specified in such notice or such other person, may be relevant to such investigation or proceedings; and

***The Organic Law on the Independent Commission Against Corruption***

- (e) the person in charge of any governmental body to produce or furnish to the investigating officer specified in such notice any document, or a copy certified by the person in charge, of any document which is in his possession or under his control or to which he may reasonably have access (not being a document readily available to the public); and
- (f) the manager of any bank or financial institution to give to the investigating officer specified in such notice copies of the accounts of such person or his spouse, parents or children at the bank or financial institution as is named in the notice.

(4) Without prejudice to the generality of the powers conferred by Subsection (3)(1)(a), such powers include the power to require information from, and to require the attendance for the purpose of answering questions of -

- (a) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction; and
- (b) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange respecting any land or property transaction,

as to any of the following matters:-

- (c) the full names (including classes) and address of any of the persons referred to in Paragraphs (a) and (b) and any other information in his possession which may be helpful in identifying or locating any such person;
- (d) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction;
- (e) the terms and conditions of any such land or property transaction.

(5) A notice under Subsection (3) shall be served on the person to whom it is addressed either personally or by registered post at his last known place of business or residence.

(6) A person on whom a notice under Subsection (3) is served shall, notwithstanding the provisions of any other law to the contrary, except only the provisions of Section 9 of the *Income Tax Act 1959*, comply with the terms of that notice within such time as may be specified in the notice or within such further time as the Commission may, in its discretion, authorize.

(7) For the purposes of Subsection (3)(e), an investigating officer or such other person referred to in that Paragraph has authority to administer any oath or take any affirmation.

*The Organic Law on the Independent Commission Against Corruption*

*Division 3. - Powers of Arrest.*

**30. POWER OF ARREST.**

- (1) An investigating officer may without warrant arrest a person if he reasonably believes that such person is guilty of a relevant offence.
- (2) Where, during an investigation by the Commission of a suspected relevant offence another offence is disclosed, an investigation officer may without warrant arrest a person if he reasonably suspects that such person is guilty of that other offence and -
  - (a) he reasonably suspects that such other offence was connected with, or that either directly or indirectly its commission was facilitated by the suspected relevant offence; or
  - (b) the other offence is one specified for the purposes of this subsection in Subsection (5).
- (3) An investigating officer -
  - (a) may use such force as is reasonable in the circumstances in effecting an arrest under Subsection (1) or (2); and
  - (b) may, for the purpose of effecting such an arrest, enter and search any premises or place if he has reason to believe that there is in the premises or place a person who is to be so arrested.
- (4) No premises or place shall be entered under Subsection (3) unless the investigating officer has first stated that he is an investigating officer and the purpose for which he seeks entry and has produced his warrant card to any person requesting its production, but subject to the foregoing an investigating officer may enter any such premises or place by force if necessary.
- (5) The following offences are specified for the purposes of Subsection (2):-
  - (a) the offence described in Section 136 (*Attempting to pervert justice*) of the *Criminal Code* (Chapter 262); and
  - (b) the offence described in Subdivisions VI.1B (*Stealing*), VI.IF (*Obtaining Property by False Pretences; Cheating*) and VI.IH (*Frauds by Trustees and Officers of Corporations; False Accounting*) of the *Criminal Code* (Chapter 262); and
  - (c) such other offences as are specified by the Head of State, acting on advice, by notice in the National Gazette.

**31. PROCEDURE AFTER ARREST.**

- (1) A person arrested under Section 30 -
  - (a) may be taken forthwith to a police station and there dealt with in accordance with the *Arrest Act* (Chapter 339); or
  - (b) may be taken to the offices of the Commission.

*The Organic Law on the Independent Commission Against Corruption*

(2) A person arrested under Section 30 who is taken to the offices of the Commission may be -

- (a) detained there if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary for the purpose of further inquiries; and
- (b) released from custody -
  - (i) on his depositing such reasonable sum of money as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or
  - (ii) on his entering into such recognizance, with such sureties, if any, as an officer of the rank of Senior Commission Against Corruption Officer or above may require; or
  - (iii) on his depositing such a sum of money and entering into such a recognizance.

(3) A person who has deposited a sum of money for the purposes of Subsection (2) and has thereupon been released from custody shall -

- (a) attend at the offices of the Commission at such time as an officer of the rank of Senior Commission Against Corruption Officer or above has specified and, having so attended, shall further attend at such other times thereafter as such an officer may specify; or
- (b) appear before a magistrate at such time and place as an officer of the rank of Senior Commission Against Corruption Officer or above has specified.

(4) A person who has been released from custody under Subsection (3) and -

- (a) who attends at the offices of the Commission at a further time as shall have been specified; and
- (b) who on such attendance advised an officer of the rank of Senior Commission Against Corruption Officer or above that he will refuse to attend at any further time, whether specified or not,

shall have the sum of money deposited for the purposes of Subsection (2) refunded to him and shall not be bound by any recognizance entered into by him with respect to his attendance.

(5) A recognizance entered into for the purposes of Subsection (2) shall be subject to the conditions -

- (a) that the person attend at the offices of the Commission at such time as may be specified therein and at such other time thereafter as an officer of the rank of Senior Commission Against Corruption Officer or above may specify; or
- (b) that the person appear before a magistrate at such time and place as may be specified therein.

*The Organic Law on the Independent Commission Against Corruption*

(6) Where a person fails to attend at the offices of the Commission or to appear before a magistrate in accordance with Subsection (3) or a recognizance entered into for the purposes of Subsection (2), such sum of money may be forfeited or such recognizance estreated by a magistrate on application by the Commission.

(7) A person who is detained at the offices of the Commission under Subsection (2) (a) shall be brought before a magistrate as soon as practicable and in any event within 48 hours after his arrest unless he is sooner released, whether under Subsection (2)(b) or otherwise.

(8) A person who is detained at the offices of the Commission under Subsection (2) (a) may be taken in the custody of an officer to and from any other place if an officer of the rank of Senior Commission Against Corruption Officer or above considers it necessary or desirable to do so.

(9) A person who is being taken to and from any such place in the custody of an officer under Subsection (8) is deemed to be in lawful custody.

(10) The Head of State, acting on advice, may by Constitutional Regulations make provision with respect to the treatment of persons detained at the offices of the Commission, whether under Subsection (2)(a) or pursuant to the order of a magistrate.

**32. ARREST OF PERSONS GRANTED BAIL.**

(1) An investigating officer may arrest without warrant any person who has been released from custody in accordance with Section 31 or otherwise admitted to bail following his arrest under Section 30 or his appearance on a summons in respect of an offence referred to in that section -

- (a) if the investigating officer has reasonable grounds for believing that any condition on or subject to which such person was so released or otherwise admitted to bail has been or is likely to be broken; or
- (b) on being notified in writing by any guarantor for that person (including a guarantor who has deposited a sum of money pursuant to an order under Section 19 of the *Bail Act* (Chapter 340) that the guarantor believes that that person is likely to break the condition that he will appear at the time and place required and for that reason the guarantor wishes to be relieved of his obligation as guarantor.

(2) A person arrested under Subsection (1) shall be brought within the period of 24 hours after his arrest or as soon as practicable after the expiry of that period before a magistrate, except where he was so arrested within the period of 24 hours immediately preceding an occasion on which he is required by virtue of a condition of his release under Section 31(2) or other bail to appear before any court, in which case he shall be brought before that court.

*The Organic Law on the Independent Commission Against Corruption*

(3) Where it appears to the court before which a person is brought under Subsection (2) that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be broken, the court may -

- (a) remand that person in custody; or
- (b) admit that person to bail on the same conditions or on such other conditions as it thinks fit,

but if it does not so appear to that court the court shall admit that person to bail on the same conditions.

*Division 4. - Powers of Search and Seizure.*

**33. POWER OF SEARCH AND SEIZURE.**

(1) An investigating officer may -

- (a) search any person if he reasonably suspects that such person is guilty of a relevant offence or of any of the offences referred to in Section 30(5); and
- (b) search the premises or place in which any person was arrested under Section 30, or the premises or place in which a person who evades arrest therein under Section 30 was to be arrested; for evidence of any of the offences referred to in Section 30(5); and
- (c) seize and detain anything which such officer has reason to believe to be or to contain evidence of a relevant offence or of any of the offences referred to in Section 30(5).

(2) A person shall not be searched under Subsection (1) except by a person of the same sex.

(3) The powers conferred by Subsection (1) shall not derogate from the power conferred on any officer by Section 34 or a warrant issued thereunder.

**34. FURTHER POWERS OF SEARCH.**

(1) An investigating officer may, for the purposes of an investigation into, or proceedings relating to, a suspected relevant offence, make an *ex parte* submission to a court for the issue of a warrant under Subsection (2).

(2) Where, on application under Subsection (1), the court is satisfied that there is reasonable cause to believe that in any premises or place there is anything which is or contains evidence of a relevant offence, the court may by warrant directed to an investigating officer named in the warrant, empower such officer and any other investigating officer to enter such premises or place, by force if necessary, and search the same.

(3) Notwithstanding Subsections (1) and (2), where the Commission is satisfied that there is reasonable cause to believe -

***The Organic Law on the Independent Commission Against Corruption***

- (a) that in any premises or place there may be anything which is or contains evidence of a relevant offence; and
- (b) that the making of an *ex parte* application under Subsection (1) would seriously impede an investigation into, or proceedings relating to, a suspected relevant offence,

the Commission may by warrant directed to an investigating officer named in the warrant, empower such officer and any other investigating officer to enter such premises or place, by force if necessary, and search the same.

(4) Without prejudice to any other law relating to entry and search, the offices of a lawyer are not subject to entry and search under this section or under any warrant issued under this section except in the course of investigating a relevant offence alleged or suspected to have been committed by that lawyer or by his clerk or any servant employed by him in such office.

***Division 5. - Prosecutory Powers.***

**35. PROSECUTORY POWERS OF THE COMMISSION.**

(1) The Commission has full powers to initiate and conduct the prosecution of alleged or suspected relevant offences.

(2) Before a prosecution of an alleged or suspected relevant offence is initiated by the Commission, the Chief Commissioner shall certify in writing that the evidence disclosed by the investigation into such alleged or suspected relevant offence justifies the initiation of a prosecution.

(3) In relation to the prosecution of an alleged or suspected relevant offence, the Chief Commissioner has all the powers and functions of the Public Prosecutor.

***Division 6. - Other Powers.***

**36. POWER TO TAKE FINGER-PRINTS AND PHOTOGRAPHS.**

(1) In this section -

“identifying particulars” in relation to a person means photographs, finger-prints and the weight and height measurements of that person:  
 “Section 30 offence” means a relevant offence or any offence for which a person may be arrested under Section 30.

(2) Where a person has been arrested under Section 30 or has been served with a summons in respect of a Section 30 offence, an officer may take, or cause to be taken under the supervision of an officer, photographs, finger-prints and the weight and height measurements of that person.

***The Organic Law on the Independent Commission Against Corruption***

(3) The identifying particulars of a person taken under Subsection (2) may be retained by the Commission, except that where -

- (a) a decision is taken not to charge the person with any offence; or
- (b) the person is charged with a Section 30 offence but discharged by a court before conviction or acquitted at his trial or on appeal,

the identifying particulars, together with any negatives or copies thereof, shall as soon as reasonably practicable be destroyed or, if the person prefers, delivered to that person.

(4) Notwithstanding Subsection (3), the Commission may retain the identifying particulars of a person who has been previously convicted of any Section 30 offence.

**PART VIII. - RESTRAINING ORDERS.**

**37. RESTRAINING ORDERS.**

(1) If, on application *ex parte* by or on behalf of the Commission, the court is satisfied that -

- (a) any property is in the possession of or under the control of or is due to a person (in this Part referred to as the "suspected person"), who is the subject of an investigation in respect of a relevant offence alleged or suspected to have been committed by him or against whom a prosecution for such an offence has been initiated, from another person (in this Part referred to as the "third party"); or
- (b) a third party is holding any property for or on behalf of or to the order of a suspected person,

the court may make an order under this subsection (in this Act referred to as a "restraining order").

(2) In making a restraining order the court may -

- (a) impose such conditions; or
- (b) exempt such property from the operation thereof (including periodic payments of money),

as it thinks fit, but subject as aforesaid, the suspected person and any third party on whom a restraining order is served in accordance with Subsection (4) shall not dispose of or otherwise deal with any property specified in the restraining order except in accordance with directions of the court.

(3) A restraining order shall, if so provided in the order, apply to the income from any property specified therein as it applies to the property itself.

(4) A restraining order shall be served on the suspected person and any third party to whom it is directed and may be served by delivering it to him or them personally or may, where the court is satisfied that such person cannot be found or is not in Papua New Guinea, be served in such other manner as the court may direct on application *ex parte* by or on behalf of the Commission.

***The Organic Law on the Independent Commission Against Corruption***

(5) Where any property specified in a restraining order is immovable property, such order is deemed to be an instrument affecting land and shall be registrable as such under the *Land Registration Act* (Chapter 191) in such manner as the Registrar of Titles thinks fit.

(6) Where any property specified in a restraining order includes any debt or obligation due by a bank or deposit-taking company or financial institution to the person to whom the notice is given the Commission may serve on such bank or deposit-taking company or financial institution a copy of that restraining order which copy restraining order shall have the effect of directing the bank or deposit-taking company or financial institution with respect to the person specified in the copy restraining order not to pay, liquidate, satisfy, settle or discharge that debt or obligation either in whole or in part without the consent of the court.

(7) Subject to Subsection (8), a restraining order with respect to property -

(a) of the description mentioned in Subsection (1)(a) shall continue in force for a period of 12 months from the making thereof, but on application by or on behalf of the Commission the court may extend its operation for periods of 12 months at a time; and

(b) of the description mentioned in Subsection (1)(b) shall continue in force for a period of six months from the making thereof, but on application by or on behalf of the Commission the court may extend its operation for periods of three months at a time.

(8) Where -

(a) a restraining order is made with respect to a third party or a suspected person against whom a prosecution for a relevant offence has been initiated; or

(b) a restraining order is in force with respect to a third party or a suspected person against whom a prosecution for such an offence is initiated,

the restraining order shall, except in the case of a prosecution against a third party, continue in force until the proceedings on such prosecution have been finally determined and, if an order is made against that person with respect to the confiscation of assets or the payment of a sum related to the value of the property, until that order has been set aside, complied with or enforced, as the case may be.

(9) Nothing in Subsection (7) or (8) shall prevent the court from making a further restraining order in respect of the same property on application *ex parte* by or on behalf of the Commission.

**38. VARIATION AND REVOCATION OF RESTRAINING ORDER.**

(1) The Commission may at any time apply *ex parte* to the court for the variation or revocation of a restraining order.

*The Organic Law on the Independent Commission Against Corruption*

(2) A person on whom a restraining order has been served in accordance with Section 37(4) or Subsection (5) of this section may at any time apply to the National Court for an order revoking or varying the order.

(3) The applicant under Subsection (2) shall give to the Commission such notice of the day fixed for the hearing of the application as a Judge of the National Court may order.

- (4) On the hearing of an application under Subsection (2), the National Court may -
- (a) revoke the order if it is satisfied that undue hardship will be caused by its continuance in operation; or
  - (b) vary the order in such manner as it thinks fit.

(5) Where a restraining order has been revoked or varied under this section, notice of such revocation or the order as so varied, as the case may be, shall be served on the third party to whom it is directed and on the suspected person.

**39. APPLICATION FOR DIRECTIONS.**

(1) The suspected person or a third party on whom a restraining order has been served in accordance with Section 37(4) or 38(5) may at any time apply to the National Court for directions.

- (2) The parties to an application under Subsection (1) shall be -
- (a) the suspected person and the third party; and
  - (b) the Commission.

(3) A person applying for directions under Subsection (1) shall give to each other party to the application such notice of the day fixed for the hearing of the application as a Judge of the National Court may order.

(4) On the hearing of an application under Subsection (1), the National Court may give such directions as it thinks fit.

**PART IX. - EVIDENCE.**

**40. CUSTOM NOT TO BE A DEFENCE.**

In any proceedings for a relevant offence, it shall not be a defence to show that corruption is customary in any profession, trade, vocation, calling, area of the country, or tribal or family group.

**41. ADMISSIBILITY OF ACCUSED'S DECLARATIONS AND STATEMENTS.**

In any proceedings against a person for a relevant offence -

- (a) where such person tenders himself as a witness then any statutory declaration or statement in writing furnished by him in compliance or purported compliance with the terms of a notice served on him under

*The Organic Law on the Independent Commission Against Corruption*

- Section 29 shall be regarded as a former statement made by him relative to the subject-matter of the proceedings and the relevant provisions of the *Evidence Act* (Chapter 48) shall apply with respect to that witness; and
- (b) the fact of the person's failure in any respect to comply with the terms of a notice served on him under Section 29 may be adduced in evidence and made the subject of comment by the court and the prosecution.

**42. EVIDENCE OF PECUNIARY RESOURCES OR PROPERTY.**

(1) In any proceedings against a person for a relevant offence, the fact that the accused was, at or about the date of or at any time since the date of the alleged offence, or is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court -

- (a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage; and
- (b) as showing that such advantage was accepted or solicited as an inducement or reward.

(2) For the purposes of Subsection (1), a person accused of a relevant offence shall be presumed to be or to have been in possession of pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

**43. CERTIFICATE AS TO OFFICIAL EMOLUMENTS, ETC.,**

(1) In any proceedings against a person for a relevant offence, a certificate purporting -

- (a) to certify -
- (i) the rate of, and the total amount of, official emoluments and the allowances, other than such emoluments, paid to an officer in relation to the discharge by him of his duties as such officer; or
- (ii) that any person was or was not serving at any specified time or during any specified period as an officer or ceased to be an officer at or before any specified time; or
- (iii) that an officer held or did not hold at any specified time any specified office; and
- (b) to be signed by the Departmental Head of the Department responsible for personnel management matters,

shall be admitted in such proceedings by any court on its production without further proof.

*The Organic Law on the Independent Commission Against Corruption*

(2) On the production of a certificate under Subsection (1) the court before which it is produced shall, until the contrary is proved, presume -

- (a) that the facts stated therein are true; and
- (b) that the certificate was signed by the Departmental Head of the Department responsible for personnel management matters.

(3) In this section -

“officer” means an officer of the Public Service;

“official emoluments” includes a pension or gratuity payable under the *Public Officers Superannuation Act 1991*.

**44. PERSON GIVING OR RECEIVING BRIBE NOT TO BE REGARDED AS AN ACCOMPLICE.**

Notwithstanding any rule of law or practice to the contrary, no witness shall, in any proceedings for a relevant offence, be regarded as an accomplice by reason only of any payment or delivery by him or on his behalf of any advantage to the person accused or, as the case may be, by reason only of any payment or delivery of any advantage by or on behalf of the person accused to him.

**45. POWER TO SECURE EVIDENCE OF PARTIES TO OFFENCES.**

In or for the purpose of any proceedings for a relevant offence, the court may, at the request in writing of the Chief Commissioner, inform a person accused or suspected of such offence or of any other relevant offence that, if he gives full and true evidence in such proceedings and, where such proceedings are proceedings held with a view to committal for trial, in the trial before the National Court of all things as to which he is lawfully examined, he will not be prosecuted for any offence disclosed by his evidence, and upon such person giving evidence in any such proceedings no prosecution against him for any offence disclosed by his evidence therein shall be initiated or carried on unless the court before which he gives evidence considers that he has wilfully withheld evidence or given false testimony and so certifies to the Chief Commissioner in writing.

**46. BURDEN OF PROOF.**

In any proceedings against a person for a relevant offence, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused.

**PART X. - OFFENCES.**

**47. RESISTING OR OBSTRUCTING OFFICERS.**

A person, who resists or obstructs a member of the Commission or of the staff of the Commission in the execution of his powers or duties, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year, or both.

*The Organic Law on the Independent Commission Against Corruption*

**48. FALSE REPORTS.**

A person, who knowingly -

- (a) makes or causes to be made to a member of the Commission or an investigating officer or a member of the staff of the Commission a false report of the commission of a relevant offence; or
- (b) misleads a member of the Commission or an investigating officer or a member of the staff of the Commission by giving false information or by making false statements or accusations,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

**49. FALSELY PRETENDING TO BE A MEMBER OF THE COMMISSION, ETC.,**

A person, who falsely pretends -

- (a) that he is a member of the Commission or of the staff of the Commission or has any of the powers of the Commission or of an investigating officer under this Organic Law or any other law; or
- (b) that he is able to procure a member of the Commission or of the staff of the Commission to do or refrain from doing anything in connection with the functions or duties of such member,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

**50. FAILURE TO DISCLOSE INFORMATION, ETC.,**

A person who -

- (a) having been lawfully required under Section 25 to disclose any information or produce any accounts, books, documents or other article to an investigating officer, fails or neglects, without reasonable excuse, so to do; or
- (b) obstructs an investigating officer in the execution of an authorization given under Section 25(1),

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

**51. FALSE REPRESENTATION OF AN AUTHORIZATION UNDER SECTION 25.**

A person, who falsely represents that an authorization has been given under Section 25(1), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

*The Organic Law on the Independent Commission Against Corruption*

**52. PUBLICATION OR BROADCAST OF INFORMATION THE SUBJECT OF AN ORDER UNDER SECTION 28(5), ETC.,**

A person, who publishes or broadcasts information being the subject of an order under Section 28(5), including an order in respect of which a direction is made under Section 28(7), in contravention of that order, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.

**53. FAILURE TO COMPLY WITH NOTICE UNDER SECTION 29(3).**

A person, on whom a notice under Section 29(3) has been served, who without reasonable excuse, neglects or fails to comply with the terms of such notice within such time as may be specified in the notice or within such further time as the Commissioner may, in its discretion, authorize, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.

**54. WILFULLY MAKING FALSE STATEMENT IN ANSWER TO A NOTICE UNDER SECTION 29(3).**

A person, who wilfully makes a false statement in answer to a notice under Section 29(3), is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding two years, or both.

**55. DISCLOSING OR DEALING WITH PROPERTY THE SUBJECT OF A RESTRAINING ORDER.**

A person, on whom a copy of a restraining order has been served in accordance with Section 37 or 38, who, during the continuance in force of the order, knowingly disposes of or otherwise deals with any property specified in the restraining order otherwise than in accordance with the directions of the National Court, is guilty of an offence.

Penalty: A fine of K10,000.00 or the value of the property disposed of or otherwise dealt with, whichever is the greater amount, and imprisonment for a term not exceeding two years.

**56. OFFICER FAILING TO RENDER ASSISTANCE.**

An officer of the Public Service or of any other State Service, who when requested under Section 22 to render assistance, without reasonable excuse neglects or fails to render such assistance, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

*The Organic Law on the Independent Commission Against Corruption*

**57. DISCLOSURE OF IDENTITY OF PERSON BEING INVESTIGATED.**

(1) A person, who knowing or suspecting that an investigation in respect of a relevant offence alleged or suspected of having been committed is taking place, without lawful authority or reasonable excuse, discloses to -

- (a) the person who is the subject of the investigation (hereafter referred to in this section as the "subject person") the fact he is so subject, or any detail of the investigation; or
- (b) the public, a section of the public or any particular person -
  - (i) the identity of the subject person; or
  - (ii) the fact that the subject person is so subject; or
  - (iii) any details of such investigation,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

(2) Subsection (1) does not apply to disclosure of any of the descriptions mentioned in that subsection where, in connection with such investigation -

- (a) a warrant has been issued for the arrest of the subject person; or
- (b) the subject person has been arrested whether with or without warrant; or
- (c) the subject person has been required to furnish a statutory declaration or a statement in writing by a notice under Section 29; or
- (d) a restraining order in relation to the investigation has been served on any person under Section 37; or
- (e) the residence of the subject person has been searched under a warrant issued under Section 34; or
- (f) the subject person has been required to surrender to the Commission any travel document in his possession by a notice served on him under Section 59.

(3) Without prejudicing the generality of the term "reasonable excuse" in Subsection (1), a person has reasonable excuse as regards disclosure of any of the descriptions mentioned in that subsection where, but only to the extent that, the disclosure reveals -

- (a) any unlawful activity, abuse of power, serious neglect of duty or other serious misconduct by a member of the Commission or an investigating officer or a member of the staff of the Commission; or
- (b) a serious threat to public order or to the security of Papua New Guinea or to the health or safety of the public.

**58. CONTEMPT OF THE COMMISSION.**

A person who wilfully insults a member of the Commission or wilfully interrupts the proceedings of the Commission, or is in any manner guilty of wilful contempt of the Commission, is guilty of an offence.

Penalty: A fine not exceeding K2,000.00 or imprisonment for a term not exceeding one year, or both.

*The Organic Law on the Independent Commission Against Corruption*

**PART IX. - MISCELLANEOUS.**

**59. SURRENDER OF TRAVEL DOCUMENTS.**

(1) A magistrate may, in the application *ex parte* by the Commission, by written notice require a person who is the subject of an investigation in respect of a relevant offence reasonably suspected to have been committed by him to surrender to the Commission any travel document in his possession.

(2) A notice under Subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under Subsection (1) is served shall comply with such notice immediately.

(4) Where a person on whom a notice under Subsection (1) is served fails to comply with the notice immediately, he may be arrested and taken before a magistrate.

(5) Where a person is taken before a magistrate under Subsection (4), the magistrate shall, unless such person thereupon complies with the notice under Subsection (1) or satisfies the magistrate that he does not possess a travel document, by warrant commit him to a corrective institution to be detained -

- (a) until the expiry of 28 days from the date of his committal; or
- (b) until such person complies with the notice under Subsection (1) and a magistrate, by order, orders and directs the Commissioner of the Correctional Service to discharge such person from the corrective institution (which order shall be sufficient warrant to the Commissioner of the Correctional Service so to do),

whichever occurs first.

(6) Subject to Section 60, a travel document which is surrendered to the Commission under this section may be detained -

- (a) for six months from the date on which it was surrendered; and
- (b) subject to Subsection (7), for a further three months if a magistrate, on application by the Commission, is satisfied that the investigation could not reasonably have been completed before the date of such application and authorizes such detention.

(7) A magistrate shall not hear an application under Subsection (6)(b) unless reasonable notice of the application has been given by the Commission to the person who surrendered the travel document.

(8) All proceedings before a magistrate under this section shall be conducted *in camera*.

*The Organic Law on the Independent Commission Against Corruption*

(9) A notice under Subsection (1) which has been served in accordance with Subsection (2) and complied with shall not thereafter be revoked or withdrawn.

**60. RETURN OF TRAVEL DOCUMENTS.**

(1) A person who has surrendered a travel document under Section 59 may at any time make application in writing, either to the Commission or to a magistrate or both for its return, and every such application shall contain a statement of the grounds on which it is made.

(2) A magistrate shall not consider an application made under Subsection (1) unless he is satisfied that reasonable notice in writing of it has been given to the Commission.

(3) The Commission or a magistrate shall only grant an application made under Subsection (1) where the Commission or the magistrate, as the case may be, is satisfied that having regard to all the circumstances, including the interests of the investigation referred to in Section 59(1), a refusal to grant the application would cause unreasonable hardship to the applicant.

(4) Before an application is granted under this section -

(a) the applicant may be required to -

(i) deposit such reasonable sum of money with such person as may be specified; or

(ii) enter into such recognizance with such sureties, if any, as may be specified; or

(iii) deposit such a sum of money and enter into such a recognizance as may be specified; and

(b) any such applicant or surety may be required to deposit such property or document of title thereto with such person as may be specified for retention by that person until such time as any recognizance entered into under this subsection is no longer required or is forfeited.

(5) A recognizance referred to in Subsection (4) shall be conditioned for the further surrender of the travel document and for the appearance of the applicant at such time and place as may be specified and at such other time and place thereafter as may be further specified.

(6) An application under this section may be granted either without conditions or subject to such conditions as to the further surrender of the travel document and the appearance of the applicant at any time and place in Papua New Guinea as may be specified.

(7) Where a travel document returned to the applicant under this section is subsequently surrendered by him pursuant to a condition imposed under Subsection (6) the provisions of Section 59 shall continue to apply in respect of the travel document as if no return had been made to the applicant under this section.

*The Organic Law on the Independent Commission Against Corruption*

- (8) Proceedings before a magistrate under this section -
- (a) shall be conducted in camera; and
  - (b) shall be deemed to be proceedings which a magistrate has power to determine in a summary way.

(9) Anything to be specified in respect of an applicant under this section shall be specified by notice in writing served personally on the applicant.

**61. LAWYERS AND PRIVILEGED INFORMATION.**

(1) Except as is provided in this section, nothing in this Organic Law requires the disclosure by a lawyer of any privileged information, communication, book, document or other article.

(2) Subject to Subsection (4), the information referred to in Sections 25 and 26 may be required from a lawyer as from any other person, notwithstanding that the effect of compliance would be to disclose privileged information or communication.

(3) Subject to Subsection (4), a lawyer may be required by notice under Section 29(3)(d) -

- (a) to state whether, at any time during such period as is specified in the notice, he has acted on behalf of any person named or otherwise identified in the notice in connection with -
  - (i) the transfer by such person of any moneys out of Papua New Guinea; or
  - (ii) the investment by such a person within or outside Papua New Guinea of any moneys; and
- (b) if so, to furnish information with respect thereto, being information as to -
  - (i) the date of the transfer or investment; and
  - (ii) the amount of the transfer or investment; and
  - (iii) in the case of a transfer, the name and address of the bank and the name and number (if any) of the account to which the money was transferred; and
  - (iv) in the case of an investment, the nature of the investment,

notwithstanding that the effect of compliance with such a requirement would be to disclose any privileged information or communication.

(4) Nothing in Subsection (2) or (3) requires a lawyer to comply with any such requirement as is specified in those subsections to the extent to which such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of -

- (a) any proceedings, begun or in contemplation, before a court; or
- (b) enabling him to give legal advice to his client.

(5) The protection conferred by this section on a lawyer extends to a clerk or servant of, or employed by, a lawyer.

*The Organic Law on the Independent Commission Against Corruption*

**62. PROTECTION OF INFORMERS.**

(1) Except as is provided in Subsection (2) -

(a) no information for a relevant offence shall be admitted in any civil or criminal proceeding; and

(b) no witness in any civil or criminal proceeding shall be obliged -

(i) to disclose the name or address of any informer who has given information to the Commission with respect to a relevant offence or of any person who has assisted the Commission in any way with respect to a relevant offence; or

(ii) to answer any question if the answer thereto would lead, or would tend to lead, to discovery of the name or address of such informer or person,

where, in either case, such informer or person is not himself a witness in such proceeding, and if any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(2) Where in any proceeding before a court for a relevant offence the court, after fully inquiring into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings a court is of the opinion that justice cannot fully be done between the parties thereto without disclosure of the name of an informer or person who has assisted the Commission, the court may permit inquiry and require full disclosure concerning the informer or such person.

**63. FURTHER PROTECTION OF INFORMERS AND WITNESSES, ETC.,**

An Act of the Parliament may make provision for the protection against any form of victimisation or violence of -

(a) any informer who has given information to the Commission; and

(b) any person who has assisted the Commission; and

(c) any person who is to give, is giving or has given evidence,

with respect to a relevant offence.

**64. COMMISSION MAY REQUIRE BANKS, ETC., TO PROVIDE INFORMATION.**

(1) The Commission may, in writing or electronic form, require the manager or person in charge of a bank or financial institution to provide to the Commission, within or at a specified time, information relative to the functions of the Commission.

(2) Information required under Subsection (1) may be -

(a) information (either general or specific) relating to -

(i) the account or accounts maintained in; or

(ii) the transaction or transactions transacted at,

a bank or financial institution by a specified person or persons; or

***The Organic Law on the Independent Commission Against Corruption***

(b) general information relating to the conduct of the business of the bank or financial institution.

(3) The provisions of this section apply notwithstanding any provisions of any other law relating to the confidentiality of bank accounts.

**65. MEMBERS OF THE COMMISSION AND OF THE STAFF OF THE COMMISSION, ETC., TO MAINTAIN SECRECY.**

(1) Before entering on the exercise of the duties of his office, a member of the Commission shall take an oath or make an affirmation in the form in Part I of Schedule 1 before a Judge of the National Court.

(2) Every officer and employee of the Commission shall maintain secrecy in respect of all matters that come to their knowledge in the exercise of their duties and shall, before entering on the exercise of their duties, take an oath or make an affirmation in the form in Part II of Schedule 1 before a member of the Commission.

(3) Notwithstanding the provisions of Subsection (1), the Commission may disclose for the purposes of any investigation being conducted by it and in any report made by it, such matters as in its opinion ought to be disclosed in order properly to investigate the matter before it or establish grounds for its conclusion and recommendations, as the case may be.

(4) The power conferred by Subsection (3) does not extend to any matter that might prejudice the security, defence or international relations of Papua New Guinea (including Papua New Guinea's relations with the Government of any other country or with any international organization) or the investigation or detection of offences, or that might involve the disclosure of the deliberations of the National Executive Council.

**66. PRESERVATION OF SECRECY.**

(1) The Commission may direct that any evidence given to it, or any document, paper or thing produced to it, be not published.

(2) A person who publishes or discloses to any person -

(a) any evidence given to the Commission; or

(b) any of the contents of any document, paper or thing,

which the Commission has directed not to be published without the consent in writing of the Commission, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding three years, or both.

**67. PRIVILEGES.**

(1) A member of the Commission or a member of the staff of the Commission is not liable for any act or omission done or made *bona fide* and without negligence under or for the purposes of this Organic Law.

*The Organic Law on the Independent Commission Against Corruption*

(2) A Commissioner or a member of the staff of the Commission shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the course of any inquiry by or proceedings before the Commission under this Law are privileged in the same manner as if the inquiry or proceedings were proceedings in a Court.

**68. CONSTITUTIONAL REGULATIONS.**

The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make Constitutional Regulations, not inconsistent with this Law, prescribing all matters that by this Law are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Law, and generally for achieving the purposes of this Law, and in particular for prescribing penalties not exceeding K5,000.00 and default penalties not exceeding K500.00 for offences against or contraventions of any Constitutional Regulations so made.

*The Organic Law on Independent Commission Against Corruption*

**SCHEDULES.**

**SCHEDULE 1.**

Sec. 66.

**PART I.**

*Oath and Affirmation of Secrecy to be taken or made by a member of the Independent Commission Against Corruption.*

**OATH.**

I, \_\_\_\_\_, a member of the Independent Commission Against Corruption, do swear that I will at all times maintain secrecy in relation to the affairs of the Commission and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as a member of the Commission, except under compulsion or obligation of law or as provided by law.

So help me God!

**AFFIRMATION.**

I, \_\_\_\_\_, a member of the Independent Commission Against Corruption, do solemnly and sincerely promise and declare that I will at all times maintain secrecy in relation to the affairs of the Commission and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as an officer/employee of the Commission, except under compulsion or obligation of law or as provided by law.

So help me God!

*The Organic Law on the Independent Commission Against Corruption*

**PART II.**

*Oath and Affirmation of Secrecy to be taken or made by a member of the staff of the Independent Commission Against Corruption.*

**OATH.**

I, \_\_\_\_\_, (a member of the staff of the Independent Commission Against Corruption), do swear that I will at all times maintain secrecy in relation to the affairs of the Commission and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as an officer/employee of the Commission, except under compulsion or obligation of law or as provided by law.

So help me God!

**AFFIRMATION.**

I, \_\_\_\_\_, (a member of the staff of the Independent Commission Against Corruption), do swear that I will at all times maintain secrecy in relation to the affairs of the Commission and, in particular, that I will not directly or indirectly communicate or divulge any information that comes to my knowledge in the performance of my functions as an officer/employee of the Commission, except under compulsion or obligation of law or as provided by law.

So help me God!

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

**THE CONSTITUTION.**

**ALTERATION TO THE CONSTITUTION.**

The Government proposes to alter the Constitution and, pursuant to Section 14(2) (*Making of alterations to the Constitution and Organic Laws*) of the *Constitution*, I, JOHN PUNDARI, Speaker of the National Parliament, hereby publish the proposed Law -

Draft of 13/10/97.

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

**PROPOSED LAW TO ALTER THE CONSTITUTION.**

*Constitutional Amendment (Independent Commission Against Corruption)*

**ARRANGEMENT OF CLAUSES.**

1. Special references to the Supreme Court (Amendment of Section 19).
2. The Law Officers (Amendment of Section 156).
3. Functions of the Public Prosecutor and the Public Solicitor (Amendment of Section 177).
4. Functions of the Police Force (Amendment of Section 197).
5. Other Forces (Amendment of Section 199).
6. Parliamentary Responsibility (Amendment of Section 209).
7. Executive initiative (Amendment of Section 210).
8. Accounting, etc., for public moneys (Amendment of Section 211).
9. Revenue and expenditure without prior approval (Amendment of Section 212).
10. New Division VIII.3.

*“Division 3. - The Independent Commission Against Corruption.*

- “220A. THE INDEPENDENT COMMISSION AGAINST CORRUPTION”
- “220B. PURPOSES OF THE COMMISSION”
- “220C. FUNCTIONS OF THE COMMISSION”
- “220D. REPORTS BY THE INDEPENDENT COMMISSION AGAINST CORRUPTION”

11. Definitions (Amendment of Section 221).
12. Amendment of Schedule 1.