

**INDEPENDENT STATE OF  
PAPUA NEW GUINEA**

**CONSTITUTION  
OF  
THE INDEPENDENT STATE OF  
PAPUA NEW GUINEA**

**(RELEVANT PROVISIONS)**

*PREAMBLE*

**Adoption of Constitution**

**WE, THE PEOPLE OF PAPUA NEW GUINEA -**

- united in one nation
- pay homage to the memory of our ancestors-the source of our strength and origin of our combined heritage
- acknowledge the worthy customs and traditional wisdoms of our people-which have come down to us from generation to generation
- pledge ourselves to guard and pass on to those who come after us our noble traditions and the Christian principles that are ours now.
- By authority of our inherent right as ancient, free and independent peoples
- **WE, THE PEOPLE**, do now establish this sovereign nation and declare ourselves,
- under the guiding hand of God, to be the Independent State of Papua New Guinea.

**AND WE ASSERT**, by virtue of that authority

- that all power belongs to the people-acting through their duly elected representatives
- that respect for the dignity of the individual and community interdependence are basic principles of our society
- that we guard with our lives our national identity, integrity and self respect
- that we reject violence and seek consensus as a means of solving our common problems
- that our national wealth, won by honest, hard work be equitably shared by all

**WE DO NOW THEREFORE DECLARE**

that we, having resolved to enact a Constitution for the Independent State of Papua New Guinea

**AND ACTING** through our Constituent Assembly on 15 August 1975

**HEREBY ESTABLISH, ADOPT and GIVE TO OURSELVES** this Constitution to come into effect on Independence Day, that is 16 September 1975.

**IN SO DOING WE, THE PEOPLE OF PAPUA NEW GUINEA, SET BEFORE OURSELVES THESE NATIONAL GOALS AND DIRECTIVE PRINCIPLES THAT UNDERLIE OUR CONSTITUTION: -**

*National Goals and Directive Principles*

**WE HEREBY PROCLAIM** the following aims as our National Goals, and direct all persons and bodies, corporate and unincorporate, to be guided by these our declared Directives in pursuing and achieving our aims: -

**1. Integral human development**

We declare our first goal to be for every person to be dynamically involved in the process of freeing himself or herself from every form of domination or oppression so that each man or woman will have the opportunity to develop as a whole person in relationship with others.

**WE ACCORDINGLY CALL FOR-**

- (1) everyone to be involved in our endeavours to achieve integral human development of the whole person for every person and to seek fulfilment through his or her contribution to the common good; and
- (2) education to be based on mutual respect and dialogue, and to promote awareness of our human potential and motivation to achieve our National Goals through self-reliant effort; and
- (3) all forms of beneficial creativity, including sciences and cultures, to be actively encouraged; and
- (4) improvement in the level of nutrition and the standard of public health to enable our people to attain self fulfilment; and
- (5) the family unit to be recognized as the fundamental basis of our society, and for every step to be taken to promote the moral, cultural, economic and social standing of the Melanesian family; and
- (6) development to take place primarily through the use of Papua New Guinean forms of social and political organization.

**2. Equality and participation**

We declare our second goal to be for all citizens to have an equal opportunity to participate in, and benefit from, the development of our country.

**WE ACCORDINGLY CALL FOR-**

- (1) an equal opportunity for every citizen to take part in the political, economic, social, religious and cultural life of the country; and
- (2) the creation of political structures that will enable effective, meaningful participation by our people in that life, and in view of the rich cultural and ethnic diversity of our people for those structures to provide for substantial decentralization of all forms of government activity; and
- (3) every effort to be made to achieve an equitable distribution of incomes and other benefits of development among individuals and throughout the various parts of the country; and
- (4) equalization of services in all parts of the country, and for every citizen to have equal access to legal processes and all services, governmental and otherwise, that are required for the fulfilment of his or her real needs and aspirations; and
- (5) equal participation by women citizens in all political, economic, social and religious activities; and
- (6) the maximization of the number of citizens participating in every aspect of development; and
- (7) active steps to be taken to facilitate the organization and legal recognition of all groups engaging in development activities; and
- (8) means to be provided to ensure that any citizen can exercise his personal creativity and enterprise in pursuit of fulfilment that is consistent with the common good, and for no citizen to be deprived of this opportunity because of the predominant position of another; and
- (9) every citizen to be able to participate, either directly or through a representative, in the consideration of any matter affecting his interests or the interests of his community; and
- (10) all persons and governmental bodies of Papua New Guinea to ensure that, as far as possible, political and official bodies are so composed as to be broadly representative of citizens from the various areas of the country; and
- (11) all persons and governmental bodies to endeavour to achieve universal literacy in Pisin, Hiri Motu or English, and in "tok ples" or "ita eda tano gado"; and

- (12) recognition of the principles that a complete relationship in marriage rests on equality of rights and duties of the partners, and that responsible parenthood is based on that equality.

### **3. National sovereignty and self-reliance**

We declare our third goal to be for Papua New Guinea to be politically and economically independent, and our economy basically self-reliant.

#### **WE ACCORDINGLY CALL FOR-**

- (1) our leaders to be committed to these National Goals and Directive Principles, to ensure that their freedom to make decisions is not restricted by obligations to or relationship with others, and to make all of their decisions in the national interest; and
- (2) all governmental bodies to base their planning for political, economic and social development on these Goals and Principles; and
- (3) internal interdependence and solidarity among citizens, and between provinces, to be actively promoted; and
- (4) citizens and governmental bodies to have control of the bulk of economic enterprise and production; and
- (5) strict control of foreign investment capital and wise assessment of foreign ideas and values so that these will be subordinate to the goal of national sovereignty and self-reliance, and in particular for the entry of foreign capital to be geared to internal social and economic policies and to the integrity of the Nation and the People; and
- (6) the State to take effective measures to control and actively participate in the national economy, and in particular to control major enterprises engaged in the exploitation of natural resources; and
- (7) economic development to take place primarily by the use of skills and resources available in the country either from citizens or the State and not in dependence on imported skills and resources; and
- (8) the constant recognition of our sovereignty, which must not be undermined by dependence on foreign assistance of any sort, and in particular for no investment, military or foreign-aid agreement or understanding to be entered into that imperils our self-reliance and self-respect, or our commitment to these National Goals and Directive Principles, or that may lead to substantial dependence upon or influence by any country, investor, lender or donor.

### **4. Natural resources and environment**

We declare our fourth goal to be for Papua New Guinea's natural resources and environment to be conserved and used for the collective benefit of us all, and be replenished for the benefit of future generations.

#### **WE ACCORDINGLY CALL FOR-**

- (1) wise use to be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations; and
- (2) the conservation and replenishment, for the benefit of ourselves and posterity, of the environment and its sacred, scenic, and historical qualities; and
- (3) all necessary steps to be taken to give adequate protection to our valued birds, animals, fish, insects, plants and trees.

### **5. Papua New Guinean ways**

We declare our fifth goal to be to achieve development primarily through the use of Papua New Guinean forms of social, political and economic organization.

**WE ACCORDINGLY CALL FOR-**

- (1) a fundamental re-orientation of our attitudes and the institutions of government, commerce, education and religion towards Papua New Guinean forms of participation, consultation, and consensus, and a continuous renewal of the responsiveness of these institutions to the needs and attitudes of the People; and
- (2) particular emphasis in our economic development to be placed on small-scale artisan, service and business activity; and
- (3) recognition that the cultural, commercial and ethnic diversity of our people is a positive strength, and for the fostering of a respect for, and appreciation of, traditional ways of life and culture, including language, in all their richness and variety, as well as for a willingness to apply these ways dynamically and creatively for the tasks of development; and
- (4) traditional villages and communities to remain as viable units of Papua New Guinean society, and for active steps to be taken to improve their cultural, social, economic and ethical quality.

***Basic Rights***

**WE HEREBY ACKNOWLEDGE** that, subject to any restrictions imposed by law on non-citizens, all persons in our country are entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever their race, tribe, places of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the legitimate public interest, to each of the following:-

- (a) life, liberty, security of the person and the protection of the law; and
- (b) the right to take part in political activities; and
- (c) freedom from inhuman treatment and forced labour; and
- (d) freedom of conscience, of expression, of information and of assembly and association; and
- (e) freedom of employment and freedom of movement; and
- (f) protection for the privacy of their homes and other property and from unjust deprivation of property,

and have accordingly included in this Constitution provisions designed to afford protection to those rights and freedoms, subject to such limitations on that protection as are contained in those provisions, being limitations primarily designed to ensure that the enjoyment of the acknowledged rights and freedoms by an individual does not prejudice the rights and freedoms of others or the legitimate public interest.

***Basic Social Obligations***

**WE HEREBY DECLARE** that all persons in our country have the following basic obligations to themselves and their descendants, to each other, and to the Nation:-

- (a) to respect, and to act in the spirit of, this Constitution; and
- (b) to recognize that they can fully develop their capabilities and advance their true interests only by active participation in the development of the national community as a whole; and
- (c) to exercise the rights guaranteed or conferred by this Constitution, and to use the opportunities made available to them under it to participate fully in the government of the Nation; and
- (d) to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations; and
- (e) to work according to their talents in socially useful employment, and if necessary to create for themselves legitimate opportunities for such employment; and

- (f) to respect the rights and freedoms of others, and to cooperate fully with others in the interests of interdependence and solidarity; and
- (g) to contribute, as required by law, according to their means to the revenues required for the advancement of the Nation and the purposes of Papua New Guinea; and
- (h) in the case of parents, to support, assist and educate their children (whether born in or out of wedlock), and in particular to give them a true understanding of their basic rights and obligations and of the National Goals and Directive Principles; and
- (i) in the case of the children, to respect their parents.

**IN ADDITION, WE HEREBY DECLARE** that all citizens have an obligation to themselves and their descendants, to each other and to the Nation to use profits from economic activities in the advancement of our country and our people, and that the law may impose a similar obligation on non-citizens carrying on economic activities in or from our country.

## **19. Special references to the Supreme Court**

- (1) Subject to Subsection (4), the Supreme Court shall, on application by an authority referred to in Subsection (3), give its opinion on any question relating to the interpretation or application of any provision of a Constitutional Law, including (but without limiting the generality of that expression) any question as to the validity of a law or proposed law.
- (2) An opinion given under Subsection (1) has the same binding effect as any other decision of the Supreme Court.
- (3) The following authorities only are entitled to make application under Subsection (1):-
  - (a) the Parliament; and
  - (b) the Head of State, acting with, and in accordance with, the advice of the National Executive Council; and
  - (c) the Law Officers of Papua New Guinea; and
  - (d) the Law Reform Commission; and
  - (e) the Ombudsman Commission; and
  - (ea) a Provincial Assembly or a Local-level Government; and
  - (eb) a provincial executive; and
  - (ec) a body established by a Constitutional Law or an Act of the Parliament specifically for the settlement of disputes between the National Government and Provincial Governments or Local-level Governments, or between Provincial Governments, or between Provincial Governments and Local-level Governments, or Local-level Governments; and
  - (f) the Speaker, in accordance with Section 137(3) (Acts of Indemnity).
- (4) Subject to any Act of the Parliament, the Rules of Court of the Supreme Court may make provision in respect of matters relating to the jurisdiction of the Supreme Court under this section, and in particular as to-
  - (a) the form and contents of questions to be decided by the Court; and
  - (b) the provision of counsel adequate to enable full argument before the Court of any question; and
  - (c) cases and circumstances in which the Court may decline to give an opinion.

- (5) In this section, "proposed law" means a law that has been formally placed before the relevant law-making body.

## **22. Enforcement of the Constitution**

The provisions of this Constitution that recognize rights of individuals (including corporations and associations) as well as those that confer powers or impose duties on public authorities, shall not be left without effect because of the lack of supporting, machinery or procedural laws, but the lack shall, as far as practicable, be supplied by the National Court in the light of the National Goals and Directive Principles, and by way of analogy from other laws, general principles of justice and generally-accepted doctrine.

## **23. Sanctions**

- (1) Where any provision of a Constitutional Law prohibits or restricts an act, or imposes a duty, then unless a Constitutional Law or an Act of the Parliament provides for the enforcement of that provision the National Court may-
- (a) impose a sentence of imprisonment for a period not exceeding 10 years or a fine not exceeding K10 000.00; or
  - (b) in the absence of any other equally effective remedy under the laws of Papua New Guinea, order the making of compensation by a person (including a governmental body) who is in default,
- or both, for a breach of the prohibition, restriction or duty, and may make such further order in the circumstances as it thinks proper.
- (2) Where a provision of a Constitutional Law prohibits or restricts an act or imposes a duty, the National Court may, if it thinks it proper to do so, make any order that it thinks proper for preventing or remedying a breach of the prohibition, restriction or duty, and Subsection (1) applies to a failure to comply with the order as if it were a breach of a provision of this Constitution.
- (3) Where the National Court considers it proper to do so, it may include in an order under Subsection (2) an anticipatory order under Subsection (1).

## **25. Implementation of the National Goals and Directive Principles**

- (1) Except to the extent provided in Subsections (3) and (4), the National Goals and Directive Principles are non-justiciable.
- (2) Nevertheless, it is the duty of all governmental bodies to apply and give effect to them as far as lies within their respective powers.
- (3) Where any law, or any power conferred by any law (whether the power be of a legislative, judicial, executive, administrative or other kind), can reasonably be understood, applied, exercised or enforced, without failing to give effect to the intention of the Parliament or to this Constitution, in such a way as to give effect to the National Goals and Directive Principles, or at least not to derogate them, it is to be understood, applied or exercised, and shall be enforced, in that way.
- (4) Subsection (1) does not apply to the jurisdiction of the Ombudsman Commission or of any other body prescribed for the purposes of Division III.2 (leadership code), which shall take the National Goals and Directive Principles fully into account in all cases as appropriate.

## ***Division 2 - Leadership Code***

### **26. Application of Division 2**

- (1) The provisions of this Division apply to and in relation to-
- (a) the Prime Minister, the Deputy Prime Minister and the other Ministers; and

- (b) the Leader and Deputy Leader of the Opposition; and
  - (c) all other members of the Parliament; and
  - (d) members of Provincial Assemblies and Local-level Governments; and
  - (e) all constitutional office-holders within the meaning of Section 221 (definitions); and
  - (f) all heads of Departments of the National Public Service; and
  - (g) all heads of or members of the boards or other controlling bodies of statutory authorities; and
  - (h) the Commissioner of Police; and
  - (i) the Commander of the Defence Force; and
  - (j) all ambassadors and other senior diplomatic and consular officials prescribed by an Organic Law or an Act of the Parliament; and
  - (k) the public trustee; and
  - (l) the personal staff of the Governor-General, the Ministers and the Leader and Deputy Leader of the Opposition; and
  - (m) executive officers of registered political parties as defined by Section 128 ("registered political party"); and
  - (n) persons holding such public offices as are declared under Subsection (3) to be offices to and in relation to which this Division applies.
- (2) This Division applies to and in relation to a person referred to in Subsection (1) not only in the office referred to in that subsection but also in any other office or position that he holds under any law by virtue of that office.
- (3) An Organic Law or an Act of the Parliament may declare any public office (including an office in a provincial government or a local-level government body) to be an office to and in relation to which this Division applies.
- (4) In the event of doubt as to whether a person is a person to whom this Division applies, the decision of the Ombudsman Commission is final.

**27. Responsibilities of office**

- (1) A person to whom this Division applies has a duty to conduct himself in such a way, both in his public or official life and his private life, and in his associations with other persons, as not-
- (a) to place himself in a position in which he has or could have a conflict of interests or might be compromised when discharging his public or official duties; or
  - (b) to demean his office or position; or
  - (c) to allow his public or official integrity, or his personal integrity, to be called into question; or
  - (d) to endanger or diminish respect for and confidence in the integrity of government in Papua New Guinea.
- (2) In particular, a person to whom this Division applies shall not use his office for personal gain or enter into any transaction or engage in any enterprise or activity that might be expected to give rise to doubt in the public mind as to whether he is carrying out or has carried out the duty imposed by Subsection (1).
- (3) It is the further duty of a person to whom this Division applies-
- (a) to ensure, as far as is within his lawful power, that his spouse and children and any other persons for whom he is responsible (whether morally, legally or by usage), including nominees, trustees and agents, do not conduct themselves in a way that might be expected to give rise to doubt in the public mind as to his complying with his duties under this section; and
  - (b) if necessary, to publicly disassociate himself from any activity or enterprise of any of his associates, or of a person referred to in paragraph (a), that might be expected to give rise to such a doubt.
- (4) The Ombudsman Commission or other authority prescribed for the purpose under Section 28 (further provisions) may, subject to this Division and to any Organic Law made for the purposes of this Division, give directions, either generally or in a particular case, to ensure the attainment of the objects of this section.
- (5) A person to whom this Division applies who-
- (a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or
  - (b) fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) and (3),
- is guilty of misconduct in office.

**28. Further provisions**

- (1) For the purposes of this Division, an Organic Law-
- (a) may give to the Ombudsman Commission or some other authority any powers that are necessary or convenient for attaining the objects of this Division and of the Organic Law; and
  - (b) shall make provision for the disclosure to the Ombudsman Commission or some other authority of the personal and business incomes and financial affairs of persons to whom this Division applies, and of their families and associates, and in particular of interests in contracts with governmental bodies and of directorships and similar offices held by them (including powers to nominate directors, trustees or agents, or similar officers); and



- (c) shall empower the Ombudsman Commission or some other authority to require a person to whom this Division applies to dispose of, or place under the control of the public trustee, any assets or income where this seems to be desirable for attaining the objects of this Division; and
  - (d) may prescribe specific acts that constitute misconduct in office; and
  - (e) may create offences (including offences by persons to whom this Division applies and offences by other persons); and
  - (f) shall provide for the investigation by the Ombudsman Commission or some other authority of cases of alleged or suspected misconduct in office, and confer on the Commission or authority any powers that are necessary or convenient for that purpose; and
  - (g) shall establish independent tribunals that-
    - (i) shall investigate and determine any cases of alleged or suspected misconduct in office referred to them in accordance with the Organic Law; and
    - (ii) are required subject to Subsection (1A), to recommend to the appropriate authority that a person found guilty of misconduct in office be dismissed from office or position; and
  - (h) may make any other provision that is necessary or convenient for attaining the objects of this Division.
- (1A) An Organic Law may provide that where the independent tribunal referred to in Subsection (1)(g) finds that-
- (a) there was no serious culpability on the part of a person found guilty of misconduct in office; and
  - (b) public policy and the public good do not require dismissal, it may recommend to the appropriate authority that some other penalty provided for by law be imposed.
- (2) Where an independent tribunal referred to in Subsection (1)(g) makes a recommendation to the appropriate authority in accordance with that paragraph or with Subsection (1A), the appropriate authority shall act in accordance with the recommendation.
- (3) For the purposes of Subsections (1)(g), (1A) and (2), "the appropriate authority"-
- (a) in relation to-
    - (i) a person holding an office referred to in Section 26(1)(a), (b), (c) or (d) (application of Division 2); or
    - (ii) a person holding an elective office that is declared under Section 6(3) to be an office to and in relation to which this Division applies, means the Head of State; and
  - (b) in relation to a person holding any other office to which this Division applies-means the appropriate appointing authority.
- (4) An Organic Law may provide for the suspension from office of a person to whom this Division applies pending the investigation of any case of alleged or suspected misconduct in office by him.
- (5) Proceedings under Subsection (1)(g) are not judicial proceedings but are subject to the principles of natural justice, and-
- (a) no such proceedings are a bar to any other proceedings provided for by law; and
  - (b) no other proceedings provided for by law are a bar to proceedings under that paragraph.

**29. Prosecution of misconduct in office**

- (1) Where the Ombudsman Commission or other authority referred to in Section 28(1)(f) (further provisions) is satisfied that there is a prima facie case that a person has been guilty of misconduct in office, it shall refer the matter to the Public Prosecutor for prosecution before a tribunal established under Section 28(1)(g) (further provisions).
- (2) If the Public Prosecutor fails to prosecute the matter within a reasonable period, the Commission may prosecute it in his stead.

**30. Other authority**

Where another authority is prescribed under Section 28 (further provisions) that authority-

- (a) shall be composed of a person or persons who are declared under Section 221(1) (definitions) to be a constitutional office-holder; and
- (b) is not subject to direction or control by any person or authority.

**31. Disqualifications on dismissal**

- (1) A person who has been dismissed from office under this Division for misconduct in office is not eligible-
  - (a) to election to any elective public office; or
  - (b) for appointment as Head of State or as a nominated member of the Parliament; or
  - (c) for appointment to a provincial legislature or provincial executive (including the office of head of a provincial executive), or to a local-level government body, for a period of three years after the date of his dismissal.
- (2) In the event of doubt as to whether an office or position is an office or position to which Subsection (1) (a), (b) or (c) applies, the decision of the Ombudsman Commission is final.

**57. Enforcement of guaranteed rights and freedoms**

- (1) A right or freedom referred to in this Division shall be protected by, and is enforceable in, the Supreme Court or the National Court or any other court prescribed for the purpose by an Act of the Parliament, either on its own initiative or on application by any person who has an interest in its protection and enforcement, or in the case of a person who is, in the opinion of the court, unable fully and freely to exercise his rights under this section by a person acting on his behalf, whether or not by his authority.
- (2) For the purposes of this section-
  - (a) the Law Officers of Papua New Guinea; and
  - (b) any other persons prescribed for the purpose by an Act of the Parliament; and
  - (c) any other persons with an interest (whether personal or not) in the maintenance of the principles commonly known as the Rule of Law such that, in the opinion of the court concerned, they ought to be allowed to appear and be heard on the matter in question,

have an interest in the protection and enforcement of the rights and freedoms referred to in this Division, but this subsection does not limit the persons or classes of persons who have such an interest.
- (3) A court that has jurisdiction under Subsection (1) may make all such orders and declarations as are necessary or appropriate for the purposes of this section, and may make an order or declaration in relation to a statute at any time after it is made (whether or not it is in force).

- (4) Any court, tribunal or authority may, on its own initiative or at the request of a person referred to in Subsection (1), adjourn, or otherwise delay a decision in, any proceedings before it in order to allow a question concerning the effect or application of this Division to be determined in accordance with Subsection (1).
- (5) Relief under this section is not limited to cases of actual or imminent infringement of the guaranteed rights and freedoms, but may, if the court thinks it proper to do so, be given in cases in which there is a reasonable probability of infringement, or in which an action that a person reasonably desires to take is inhibited by the likelihood of, or a reasonable fear of, an infringement.
- (6) The jurisdiction and powers of the courts under this section are in addition to, and not in derogation of, their jurisdiction and powers under any other provision of this Constitution.

### **63. Enforcement of the Basic Social Obligations**

- (1) Except to the extent provided in Subsections (3) and (4), the Basic Social Obligations are non-justiciable.
- (2) Nevertheless, it is the duty of all governmental bodies to encourage compliance with them as far as lies within their respective powers.
- (3) Where any law, or any power conferred or duty imposed by any law (whether the power or duty be of a legislative, judicial, executive, administrative or other kind), can reasonably be understood, applied, exercised, complied with or enforced, without failing to give effect to the intention of the Parliament or to this Constitution, in such a way as to enforce or encourage compliance with the Basic Social Obligations, or at least not to derogate them, it is to be understood, applied, exercised, complied with or enforced in that way.
- (4) Subsection (1) does not apply in the exercise of the jurisdiction of the Ombudsman Commission or other body prescribed for the purposes of Division III.2 (leadership code), which shall take the Basic Social Obligations fully into account in all cases as appropriate.

### **87. Qualifications for appointment**

- (1) The Governor-General must be a citizen who-
  - (a) is qualified to be a member of the Parliament (except for the reason that he occupies the office of Governor-General); and
  - (b) is a mature person of good standing who enjoys the general respect of the community.
- (2) The question, whether for the purposes of Subsection (1) a person is a person to whom Subsection (1)(b) applies, is non-justiciable.
- (3) The Governor-General must not hold any office or position or engage in any calling other than that of, or an office or position associated with, his office as Governor-General, except with the consent of the Head of State, acting with, and in accordance with, the joint advice of the National Executive Council and the Ombudsman Commission.
- (4) A request for the consent of the Head of State under Subsection (3) shall not be made unless agreement on the matter in relation to which the consent is sought has been reached between the National Executive Council and the Ombudsman Commission.
- (5) A request for the consent of the Head of State under Subsection (3) shall not be made unless agreement on the matter in relation to which the consent is sought has been reached between the National Executive Council and the Ombudsman Commission.
- (6) No person is eligible for appointment as Governor-General more than once unless the Parliament, by two-thirds absolute majority vote, approves appointment for a second term, but no person is eligible for appointment for a third term.

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**104. Normal term of office**

- (2) The seat of a member of the Parliament becomes vacant-
  - (h) if he is dismissed from office under Division III.2 (leadership code).

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**115. Parliamentary privileges, etc**

- (3) No member of the Parliament is subject to the jurisdiction of any court in respect of the exercise of his powers or the performance of his functions, duties or responsibilities as such, but this subsection does not affect the operation of Division III.2 (leadership code).

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**129. Integrity of political parties**

- (1) An Organic Law shall make provision-
  - (a) requiring any political party or organization having political aims and desiring to nominate a candidate for election to the Parliament, or to publicly support such a candidate as representing its views, to register with the Electoral Commission such reasonable particulars as are prescribed by Organic Law; and
  - (b) requiring any such party or organization to disclose to the Ombudsman Commission or some other authority prescribed by the law in such manner, at such times and with such details as are prescribed in or under the law-
    - (j) its assets and income, and their sources; and
    - (ii) its expenditure on or connected with an election or the support of a candidate; and
  - (c) prohibiting non-citizens from membership of, and from contributing to the funds of, any such party or organization; and
  - (d) defining the corporations and organizations that are to be regarded as non-citizens for the purposes of a provision made for the purposes of paragraph (c); and
  - (e) limiting the amount of contributions that such a party or organization may receive from any source or sources; and
  - (f) requiring persons who have made, or may have made, contributions to any such party or organization to give to the Ombudsman Commission, or some other authority, details of any such contribution.
- (2) Where another authority is prescribed by the law under Subsection (1)(b), that authority-
  - (a) shall be composed of a person or persons who are declared under paragraph (i) of the definition of "constitutional office-holder" in Section 221 (definitions) to be a constitutional office-holder; and
  - (b) is not subject to direction or control by any person or authority.
- (3) An Organic Law made for the purposes of Subsection (1) may provide that the value of any assistance given otherwise than in cash shall be taken into account as expenditure or contributions for any purpose of that subsection or of that law.

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**130. Integrity of candidates**

- (1) An Organic Law shall make provision-

- (a) requiring a candidate or former candidate for election to the Parliament to disclose to the Ombudsman Commission or some other authority prescribed by the law, in such manner, at such times and with such details as are prescribed by or under the law-
    - (i) any assistance (financial or other) received by him in respect of his candidature, and its source; and
    - (ii) the amount or value of his electoral expenses; and
  - (b) prohibiting a candidate or former candidate for election to the Parliament from accepting from a non-citizen assistance (financial or other) in respect of his candidature; and
  - (c) defining the corporations and organizations that are to be regarded as non-citizens for the purposes of a provision made for the purposes of paragraph (b); and
  - (d) regulating or restricting the amount or kind of such assistance that may be received from any source other than a registered political party; and
  - (e) prohibiting a candidate for election to the Parliament from holding himself out as representing any party or organization other than a registered political party that has publicly adopted him as its candidate.
- (2) Where another authority is prescribed by the law under Subsection (1)(b), that authority-
- (a) shall be composed of a person or persons who are declared under paragraph (i) of the definition of "constitutional office-holder" in Section 221 (definitions) to be a constitutional office-holder; and
  - (b) is not subject to direction or control by any person or authority.
- (3) An Organic Law made for the purposes of Subsection (1) may make provision for further defining what are to be regarded as assistance and electoral expenses for any purpose of that subsection or of that law, and in particular may provide that-
- (a) the value of hospitality (including meals, accommodation and transport) of a kind and to a degree recognized by custom in the country shall not be taken into account as assistance; and
  - (b) the personal expenses of a candidate shall not be taken into account as electoral expenses.
- (4) In this section-

"electoral expenses", in relation to a candidate, means expenses incurred (whether before, during or after an election to the Parliament, including expenses incurred before the issue of the writ for election) by him or on his behalf on account of or in respect of the election;

"personal expenses", in relation to a candidate, means any reasonable costs incurred by him personally for travel and for living away from his home for the purposes of the election.

## **142. The Prime Minister**

- (1) An office of Prime Minister is hereby established.
- (2) The Prime Minister shall be appointed, at the first meeting of the Parliament after a general election and otherwise from time to time as the occasion for the appointment of a Prime Minister arises, by the Head of State, acting in accordance with a decision of the Parliament.
- (3) If the Parliament is in session when a Prime Minister is to be appointed, the question of the appointment shall be the first matter for consideration, after any formal business and any nomination of a Governor-General or appointment of a Speaker, on the next sitting day.

- (4) If the Parliament is not in session when a Prime Minister is to be appointed, the Speaker shall immediately call a meeting of the Parliament, and the question of the appointment shall be the first matter for consideration, after any formal business and any nomination of a Governor-General or appointment of a Speaker, on the next sitting day.
- (5) The Prime Minister-
- (a) shall be dismissed from office by the Head of State if the Parliament passes, in accordance with Section 145 (motions of no confidence), a motion of no confidence in him or the Ministry, except where the motion is moved within the last 12 months before the fifth anniversary of the date fixed for the return of the writs at the previous general election; and
  - (b) may be dismissed from office in accordance with Division III.2 (leadership code); and
  - (c) may be removed from office by the Head of State, acting in accordance with a decision of the Parliament, if the Speaker advises the Parliament that two medical practitioners appointed by the National Authority responsible for the registration or licensing of medical practitioners have jointly reported in accordance with an Act of the Parliament that, in their professional opinions, the Prime Minister is unfit, by reason of physical or mental incapacity, to carry out the duties of his office.
- (6) The Prime Minister may be suspended from office-
- (a) by the tribunal appointed under an Organic Law made for the purposes of Section 28 (further provisions), pending an investigation into a question of misconduct in office within the meaning of Division III.2 (leadership code), and any resultant action; or
  - (b) in accordance with an Act of the Parliament, pending an investigation for the purposes of Subsection (5)(c), and any resultant action by the Parliament.

#### **144. Other Ministers**

- (1) There shall be such number of Ministers (other than the Prime Minister), not being less than six or more than one quarter of the number of members of the Parliament from time to time, as is determined by or under an Organic Law.
- (2) The Ministers, other than the Prime Minister, shall be appointed by the Head of State, acting with, and in accordance with, the advice of the Prime Minister.
- (3) A Minister, other than the Prime Minister, may be suspended from office in accordance with an Organic Law made for the purposes of Section 28(2) (further provisions).
- (4) A Minister other than the Prime Minister-
- (a) shall be dismissed from office by the Head of State if the Parliament passes, in accordance with Section 145 (motions of no confidence), a motion of no confidence in him; and
  - (b) may be dismissed from office-
    - (i) by the Head of State, acting with, and in accordance with, the advice of the Prime Minister; or
    - (ii) in accordance with Division III.2 (leadership code).

#### **177. Functions of the Public Prosecutor and the Public Solicitor**

- (1) The functions of the Public Prosecutor are-
- (a) in accordance with an Act of the Parliament and the Rules of Court of the Supreme Court and the National Court, to control the exercise and performance of the prosecution function (including appeals and the refusal to initiate and the discontinuance of prosecutions) before the

Supreme Court and the National Court, and before other Courts as provided by or under Acts of the Parliament; and

- (b) to bring or to decline to bring proceedings under Division III.2 (leadership code) for misconduct in office.
- (2) The functions of the Public Solicitor are to provide legal aid, advice and assistance for persons in need of help by him, and in particular-
- (a) to provide legal assistance to a person in need of help by him who has been charged with an offence punishable by imprisonment for more than two years; and
  - (b) notwithstanding the provisions of Section 176(5) (establishment of offices) he shall provide legal aid, advice and assistance to any person when directed to do so by the Supreme Court or the National Court; and
  - (c) in his discretion in any matter, whether of a criminal or civil nature provided that such assistance shall be-
    - (i) limited to advice and preparation of documents in any proceedings in respect of which an Act of the Parliament prohibits legal representation of any party to the proceedings; and
    - (ii) granted in accordance with an order of priorities relative to the resources of the Public Solicitor laid down by an Act of the Parliament.
- (3) A person aggrieved by a refusal of the Public Solicitor to provide legal aid may apply to the Supreme Court or the National Court for a direction under Subsection (2)(b).
- (4) For the purposes of this section the need of a person is to be interpreted in relation to each particular case and, without limiting the generality of this expression, account shall be taken of the means of the person to meet the probable cost of obtaining alternative legal assistance, the availability of such assistance and the hardship which might result to the person if compelled to obtain legal assistance other than by the Public Solicitor.
- (5) An Act of Parliament may make provision for the Public Solicitor to make a reasonable charge for services provided by him to persons in need of his help whom he considers are able to make a contribution towards the cost of these services.
- (6) An Act of the Parliament may confer, or may provide for the conferring of, additional functions, not inconsistent with the performance of the functions conferred by Subsections (1) and (2), on the Public Prosecutor or the Public Solicitor.

### **178. Grounds of removal**

A Judge, the Public Prosecutor, the Public Solicitor or the Chief Magistrate may, during his term of office, be removed from office only-

- (a) for inability (whether arising from physical or mental infirmity or otherwise) to perform the functions and duties of his office; or
- (b) for misbehaviour; or
- (c) in accordance with Division III.2 (leadership code), for misconduct in office.

### **183. Establishment of the Commission**

- (1) A Judicial and Legal Services Commission is hereby established.
- (2) Subject to Subsection (3), the Commission consists of-

- (a) the Minister responsible for the National Justice Administration, or a person nominated by him, who is the Chairman; and
  - (b) the Chief Justice; and
  - (c) the Deputy Chief Justice; and
  - (d) the Chief Ombudsman; and
  - (e) a member of the Parliament appointed by the Parliament.
- (3) When the Commission is considering a matter relating to the appointment or removal from office of a member of the Magisterial Service, or any other matter relating to the Magisterial Service prescribed for the purposes of this subsection by or under an Act of the Parliament, the Chief Magistrate is (except in a matter involving himself) an additional member of the Commission.
- (4) The Commission is not subject to direction or control by any person or authority.
- (5) An Organic Law may make further provision in respect of the constitution, powers, functions, duties and responsibilities of the Commission, and for guaranteeing its independence.

## ***Division 2 -The Ombudsman Commission***

### **217. The Ombudsman Commission**

- (1) There shall be an Ombudsman Commission, consisting of a Chief Ombudsman and two Ombudsmen.
- (2) The members of the Commission shall be appointed by the Head of State, acting with, and in accordance with, the advice of an Ombudsman 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
  - (e) the Chairman of the Public Services Commission.
- (3) The salary and other conditions of employment of the Chief Ombudsman shall not be less than or inferior to the salary and other conditions of employment of a Judge other than the Chief Justice and the Deputy Chief Justice without taking into account any conditions of employment personal to that Judge.
- (4) The salary and other conditions of employment of the Ombudsmen shall be not less than or inferior to the salary and other conditions of employment of the Public Prosecutor, without taking into account any conditions of employment personal to any particular Public Prosecutor.
- (5) In the performance of its functions under Section 219 (functions of the Commission) the Commission is not subject to direction or control by any person or authority.
- (6) 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.
- (7) An Organic Law shall make further provision in respect of the appointment, powers, procedures and immunity of the Commission.



- (8) In this section "conduct" includes-
- (a) any action or inaction relating to a matter of administration; and
  - (b) any alleged action or inaction relating to a matter of administration.

**218. Purposes of the Commission**

The purposes of the establishment of the Ombudsman Commission are-

- (a) to ensure that all governmental bodies are responsive to the needs and aspirations of the People; and
- (b) to help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them; and
- (c) to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies; and
- (d) to supervise the enforcement of Division III.2 (leadership code).

**219. Functions of the Commission**

- (1) Subject to this section and to any Organic Law made for the purposes of Subsection (7), the functions of the Ombudsman Commission are-
- (a) to investigate, on its own initiative or on complaint by a person affected, any conduct on the part of-
    - (i) any State Service or provincial service, or a member of any such service; or
    - (ii) any other governmental body, or an officer or employee of a governmental body; or
    - (iii) any local government body or an officer or employee of any such body; or
    - (iv) any other body set up by statute-
      - (A) that is wholly or mainly supported out of public moneys of Papua New Guinea; or
      - (B) all of, or the majority of, the members of the controlling authority of which are appointed by the National Executive,
 or an officer or employee of any such body; and
    - (v) any member of the personal staff of the Governor-General, a Minister or the Leader or Deputy Leader of the Opposition; or
    - (vi) any other body or person prescribed for the purpose by an Act of the Parliament,
 

specified by or under an Organic Law in the exercise of a power or function vested in it or him by law in cases where the conduct is or may be wrong, taking into account, amongst other things, the National Goals and Directive Principles, the Basic Rights and the Basic Social Obligations, and
  - (b) to investigate any defects in any law or administrative practice appearing from any such investigation; and
  - (c) to investigate, either on its own initiative or on complaint by a person affected, any case of an alleged or suspected discriminatory practice within the meaning of a law prohibiting such practices; and
  - (d) any functions conferred on it under Division III.2 (leadership code); and

- (e) any other functions conferred upon it by or under an Organic Law.
- (2) Subject to Subsections (3), (4) and (5), and without otherwise limiting the generality of the expression, for the purposes of Subsection (1)(a) conduct is wrong if it is-
- (a) contrary to law; or
  - (b) unreasonable, unjust, oppressive or improperly discriminatory, whether or not it is in accordance with law or practice; or
  - (c) based wholly or partly on improper motives, irrelevant grounds or irrelevant considerations; or
  - (d) based wholly or partly on a mistake of law or of fact; or
  - (e) conduct for which reasons should be given but were not, whether or not the act was supposed to be done in the exercise of deliberate judgement within the meaning of Section 62 (decisions in "deliberate judgement").
- (3) The Commission shall not inquire into the justifiability of a policy of the National Government or a Minister or a provincial government or a member of a provincial executive, except insofar as the policy may be contrary to law or to the National Goals and Directive Principles, the Basic Rights or the Basic Social Obligations, or of any Act of the Parliament.
- (4) The Commission shall not inquire into the exercise of a rule-making power by a local government body.
- (5) The Commission shall not inquire into a decision by a court, except insofar as the decision may show an apparent defect in law or administrative practice to which Subsection (1)(b) would apply.
- (6) Except as provided by or under Division III.2 (leadership code), the Commission's powers of enforcement are limited to publicity for its proceedings, reports and recommendations, to the making of reports and recommendations to the Parliament and other appropriate authorities as provided by an Organic Law, and to the giving of advice.
- (7) An Organic Law shall make provision in respect of the powers and procedures of the Commission, and in particular-
- (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) 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 of its staff; and
  - (d) 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
  - (e) shall make provision for and in respect of publicity for the proceedings, reports and recommendations of the Commission.
- (8) In this section, "conduct" includes-
- (a) any action or inaction relating to a matter of administration; and
  - (b) any alleged action or inaction relating to a matter of administration.

**220. Reports by the Commission**

- (1) The Ombudsman Commission shall, at least once in each period of 12 months, at such time as is fixed by or under an Act of the Parliament or, subject to any such Act, by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, give to the Head of State, for presentation to the Parliament, a report on the functions and workings of the Commission, with such recommendations as to improvement as the Commission thinks proper.
- (2) Nothing in Subsection (1) prevents the Commission from making, on its own initiative or at the request of the Parliament or of the National Executive, other reports on any aspect of the functions and workings of the Commission.

## **PART IX - CONSTITUTIONAL OFFICE-HOLDERS AND CONSTITUTIONAL INSTITUTIONS**

**221. Definitions**

In this Part-

"constitutional institution" means any office or institution established or provided for by this Constitution, other than an office of Head of State or of a Minister, or the National Executive Council;

"constitutional office-holder" means-

- (a) a Judge; or
- (b) the Public Prosecutor or the Public Solicitor; or
- (c) the Chief Magistrate; or
- (d) a member of the Ombudsman Commission; or
- (e) a member of the Electoral Commission; or
- (f) the Clerk of the Parliament; or
- (g) a member of the Public Services Commission; or
- (h) the Auditor-General; or
- (i) the holder of any other office declared by an Organic Law or an Act of the Parliament to be a constitutional office for the purposes of this Part.

**222. Other provisions relating to constitutional office-holders and constitutional institutions**

This Part shall be read subject to any other provisions of this Constitution relating to particular constitutional office-holders or particular constitutional institutions.

**223. General provision for constitutional office-holders**

- (1) Subject to this Constitution, Organic Laws shall make provision for and in respect of the qualifications, appointment and terms and conditions of employment of constitutional office-holders.
- (2) In particular, Organic Laws shall make provision guaranteeing the rights and independence of constitutional office-holders by, amongst other things-
  - (a) specifying the grounds on which, and the procedures by which, they may be dismissed or removed from office, but only by, or in accordance with the recommendation of, an independent and impartial tribunal; and

- (b) providing that at the end of their periods of office they are entitled, unless they have been dismissed from office, to suitable further employment by a governmental body, or to adequate and suitable pensions or other retirement benefits, or both, subject to such reasonable requirements and conditions (if any) as are laid down by an Organic Law.
- (3) A constitutional office-holder may not be suspended, dismissed or removed from office during his term of office except in accordance with a Constitutional Law.
- (4) The total emoluments of a constitutional office-holder shall not be reduced while he is in office, except-
  - (a) as part of a general reduction applicable equally or proportionately to all constitutional office-holders or, if he is a member of a State Service, to members of that service; or
  - (b) as a result of taxation that does not discriminate against him as a constitutional office-holder, or against constitutional office-holders generally.
- (5) The office of a constitutional office-holder may not be abolished while there is a substantive holder of the office but this subsection does not apply to the abolition of any additional constitutional office created by an Act of the Parliament.
- (6) Nothing in this section prevents the making by or under an Organic Law or an Act of the Parliament of reasonable provision for the appointment of a person to act temporarily in the office of a constitutional office-holder.

#### **224. Special provision for constitutional institutions**

- (1) Subject to this Constitution, Organic Laws and Acts of the Parliament shall provide, or shall make provision for, the powers and procedures of constitutional institutions, and generally for facilitating the performance of their functions, duties and responsibilities.
- (2) Subject to this Constitution, if no provision is made under Subsection (1) a constitutional institution-
  - (a) may provide, to the extent of the deficiency, for its own procedures; and
  - (b) has all reasonable powers that are necessary or convenient for the exercise and performance of its powers, functions, duties and responsibilities.

#### **225. Provision of facilities, etc**

Without limiting the generality of any other provision of this Constitution, it is the duty of the National Government and of all other governmental bodies, and of all public office-holders and institutions, to ensure, as far as is within their respective legal powers, that all arrangements are made, staff and facilities provided and steps taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the functions of all constitutional institutions and of the offices of all constitutional office-holders.

#### **Sch.1.7. "Non-justiciable"**

Where a Constitutional Law declares a question to be non-justiciable, the question may not be heard or determined by any court or tribunal, but nothing in this section limits the jurisdiction of the Ombudsman Commission or of any other tribunal established for the purposes of Division III.2 (leadership code).

#### **Sch.1.17. Repeal, etc**

- (1) The repeal of a Constitutional Law or a part of a Constitutional Law does not-
  - (a) revive anything (including a statute or any part of the underlying law) that was not in force or existing immediately before the repeal took effect; or
  - (b) affect the previous operation of the repealed provisions or anything duly done or suffered under them; or

- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed provisions; or
  - (d) affect any penalty, forfeiture or punishment incurred in respect of an offence committed against the repealed provisions; or
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the repealed provisions had continued in force.
- (2) In particular, the repeal of a Constitutional Law or a part of a Constitutional Law does not-
- (a) affect any liability under Division III.2 (leadership code); or
  - (b) prevent the Ombudsman Commission or any other tribunal established for the purpose of that Division from investigating any act,
- to which the repealed provisions were relevant.
- (3) Where a Constitutional Law or a part of a Constitutional Law is repealed and re-enacted (with or without modification), references in any other law to any of the repealed provisions shall, unless the contrary intention appears, be read as a reference to the amended or replacing provision.
- (4) In this section, "repeal" includes revocation, suspension and expiry.

**Sch.1.19. Independence**

Where a Constitutional Law provides that a person or institution is not subject to control or direction, or otherwise refers to the independence of a person or institution, that provision does not affect-

- (a) control or direction by a court; or
- (b) the regulation, by or under a Constitutional Law or an Act of the Parliament, of the exercise or performance of the powers, functions, duties or responsibilities of the person or institution; or
- (c) the exercise of jurisdiction under Division III.2 (leadership code), Subdivision VIII.1.B (the Auditor-General), or Subdivision VIII.1.C (the Public Accounts Committee),

and does not constitute an appropriation of, or authority to expend, funds.

**Sch.1.21. "the Head of State"; "the Governor-General"**

For the avoidance of doubt, it is hereby declared that-

- (a) in this Constitution-
  - (i) a reference to "the Head of State" is a reference to the Queen and Head of State of Papua New Guinea for the time being and includes a reference to the person or persons exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland in the event of the youth or incapacity of the person in that sovereignty; and
  - (ii) a reference to "the Governor-General" does not include a reference to the Queen or the person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland; and
  - (iii) a reference to "the Head of State" is a reference to the Queen or a person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland or, where such a person does not act personally, to the Governor-General as the representative of the Queen or that person; and

- (b) the question, whether in performing a function or carrying out a duty as Head of State the Governor-General is acting in accordance with the will or opinion of the person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland, is non-justiciable and is not subject to the jurisdiction of the Ombudsman Commission or any other person or authority.



**INDEPENDENT STATE OF  
PAPUA NEW GUINEA**

**ORGANIC LAW ON THE DUTIES AND RESPONSIBILITIES OF LEADERSHIP**

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## ***Organic Law on the Duties and Responsibilities of Leadership***

Being a Provisional Organic Law to implement Division III.2 (leadership code) of the Constitution,

MADE by the Constituent Assembly to come into operation on Independence Day.

### **PART I - PRELIMINARY**

#### **1. Definitions**

In this Law-

"associate", in relation to a person to whom this Law applies, includes a member of his family or a relative, or a person (including an unincorporated profit-seeking organization) associated with him or with a member of his family or a relative;

"benefit" includes any gift, loan or service (whether or not it has a monetary value) and all other personal advantages and favours given beyond the normal standards of hospitality;

"constitutional office-holder" means a person referred to in the definition of "constitutional office-holder" in Section 226 (definitions) of the Constitution;

"foreign enterprise" means a foreign enterprise within the meaning of the Investment Promotion Act 1992;

"other authority", in relation to a particular examination or investigation under this Law, means the authority (if any) appointed by the Ombudsman Commission under Section 19 to carry out the examination or conduct the investigation;

"person to whom this Law applies" means the persons specified in Section 26 (application of Division 2) of the Constitution;

"prohibited interest, benefit or property" means an interest, a benefit or property referred to in Section 24;

"the Ombudsman Commission" means the Ombudsman Commission established under Section 217 (the Ombudsman Commission) of the Constitution;

"tribunal" means a tribunal referred to in Section 27.

#### **2. Application of other laws**

Except where the contrary intention appears no action taken under this Law prejudices any other action that may be taken under any other law.

#### **3. Non-derogation, etc., of Organic Law on the Ombudsman Commission**

- (1) This Law is in addition to, and does not derogate, the provisions of the Organic Law on the Ombudsman Commission.
- (2) The powers, functions, duties and responsibilities conferred or imposed on the Ombudsman Commission by this Law are in addition to, and do not derogate any other powers, functions, duties or responsibilities conferred or imposed on the Commission or other authority by or under any other Law.

### **PART II - RESPONSIBILITIES OF LEADERSHIP**

#### **4. Statement of income, etc**

- (1) A person to whom this Law applies shall-
  - (a) within three months after Independence Day; or
  - (b) within three months after becoming such a person,

as the case may be, and at least once in every period of 12 months while he remains such a person, give to the Ombudsman Commission a statement to the best of his knowledge setting out, in respect separately of himself and his spouse and any of his children under voting age-

- (a) the total assets including money, personal property and real property in the possession or under the control of each of them; and
  - (b) the total income received by each of them during the period to which the statement relates and the source of each of those incomes; and
  - (c) the business connexions of each of them (including any business connexions with unincorporated profit-seeking organizations); and
  - (d) the directorships or other offices in a corporation or an unincorporated profit-seeking organization held by each of them; and
  - (e) all business transactions entered into by each of them (including transactions with unincorporated profit-seeking organizations) during the period to which the statement relates; and
  - (f) all gifts received by them (other than gifts received in the normal course of events from close relatives) during the period to which the statement relates and the value of those gifts; and
  - (g) the assets acquired by each of them during the period to which the statement relates; and
  - (h) the liabilities incurred or discharged by each of them during the period to which the statement relates, and the amount of each such liability.
- (2) The period to which a statement under Subsection (1) shall relate is-
- (a) in the case of the first statement-the preceding 12 months; and
  - (b) in any other case-the period since the last statement was given.
- (3) In the case of sundries and minor items it is sufficient if the declaration shows their general natures and approximate amounts or values.
- (4) The Ombudsman Commission or other authority may, by notice in writing to a person to whom this Law applies, require him to explain or give details or further details of any matters relating to the statement including-
- (a) sundries and minor items shown in accordance with Subsection (3); and
  - (b) omissions or apparent omissions; and
  - (c) discrepancies in the statement or between it and other statements or other information available to the Ombudsman Commission or other authority.
- (5) Statements and information given to the Ombudsman Commission or other authority under this section shall not be revealed to any person except-
- (a) in the course of the duties of the Ombudsman Commission; or
  - (b) for the purpose of proceedings or possible proceedings under Section 27; or
  - (c) under an order of a court of competent jurisdiction.

- (6) A person to whom this Law applies who-
- (a) fails without reasonable excuse (the burden of proof of which is upon him) to give to the Ombudsman Commission or other authority a statement in accordance with Subsection (1), or to give any explanation or details required under Subsection (4); or
  - (b) knowingly, recklessly or negligently gives such a statement or explanation, or any such details, that is or are false, misleading or incomplete in a material particular,
- is guilty of misconduct in office.

**5. Use of office for personal benefit, etc**

- (1) A person to whom this Law applies who, except as specifically authorized by law, directly or indirectly asks for or accepts, on behalf of himself or an associate, any benefit in relation to any action (past, present or future) in the course of his duties, or in the course of or by reason of his official position, is guilty of misconduct in office.
- (2) Subsection (1) extends to the case of a person to whom this Law applies who, except in the course of and for the purpose of his official duties or his official position, uses or allows his name or his official position to be used for the benefit of himself or any other person.

**6. Personal interest**

- (1) A person to whom this Law applies who fails to reveal to the Ombudsman Commission and the appropriate authority the nature and extent of his interest, or the interest of an associate, in a matter with which he has to deal in his official capacity is guilty of misconduct in office.
- (2) A person to whom this Law applies-
- (a) who, or an associate of whom, has an interest in a matter which he has to deal with in an official capacity; and
  - (b) who does deal with that matter (whether by voting on a question concerning it or otherwise),
- is, subject to Subsection (3), guilty of misconduct in office.
- (3) Subsection (2) does not apply if the person concerned dealt in good faith with the matter-
- (a) under compulsion of law; or
  - (b) in case of urgent necessity, if he-
    - (i) has revealed his interest in accordance with Subsection (1); or
    - (ii) does so reveal his action as soon as practicable; or
  - (c) after he has revealed his interest in accordance with Subsection (1) and under authorization by the appropriate authority.
- (4) In this section, "the appropriate authority" means-
- (a) in relation to the Prime Minister and each Minister-the National Executive Council; and
  - (b) in relation to each member of the Parliament (including the Prime Minister, a Minister, the Leader of the Opposition and the Deputy Leader of the Opposition)-the Parliament; and
  - (c) in relation to the head of each provincial executive-the Provincial Assembly; and
  - (d) in relation to each other person specified in Section 26 (application of Division 2) of the Constitution-the authority responsible for the appointment to office of that person.

## 7. **Company directorships, etc**

- (1) Subject to Subsection (2), a Minister-
- (a) who becomes or nominates a director of a company or a foreign enterprise; or
  - (b) whose spouse or any of whose children under voting age becomes or nominates a director of a company or foreign enterprise,
- is guilty of misconduct in office.
- (2) A Minister who fails to give priority to official business over personal business is guilty of misconduct in office.
- (3) Subsection (1) does not apply to or in relation to-
- (a) an honorary directorship; or
  - (b) a directorship held by the Minister as a nominee of Papua New Guinea in which Papua New Guinea has a fiscal interest where-
    - (i) no direct or indirect financial benefit is received by the Minister as such a nominee; or
    - (ii) any direct or indirect financial benefit received by the Minister as such a nominee is paid by him into the Consolidated Revenue Fund; or
  - (c) a company at least one-half of the voting rights in which are beneficially held by the Minister or his spouse or any of his children under voting age and in respect of which citizens of Papua New Guinea have effective control; or
  - (d) a Business Group incorporated under the Business Groups Incorporation Act (Chapter 144); or
  - (e) an incorporated Land Group recognized under the Land Groups Act (Chapter 147), where the Minister has obtained the permission of the Ombudsman Commission.
- (4) Subsection (1) does not prevent a person who becomes a Minister, or the spouse or child of such a person, from continuing to act as a director of a company or a foreign enterprise for any period that is reasonably required to enable him to divest himself of the office, or from acting as a director during such period-
- (a) as is required by law; or
  - (b) for the purpose of taking any steps that may be necessary to enable him to divest himself of that office.
- (5) Subsection (1) does not prevent a person who becomes a Minister, or the spouse or child of such a person, from continuing to act as a director of a company or a foreign enterprise for any period that is reasonably required to enable him to divest himself of the office, or from acting as a director during such period as is required-
- (a) by law; or
  - (b) for the purpose of taking any steps that may be necessary to enable him to divest himself of that office.

## **8. Shareholdings**

- (1) Subject to Subsections (3) and (4), a person to whom this Law applies-
- (a) who holds shares or any other investment in any company or unincorporated profit-seeking organization; or
  - (b) whose spouse or any of whose children under voting age hold any such shares or other investment,

that could reasonably be expected to place him in a position in which he could have a conflict of interests or might be compromised when discharging his public or official duties, is guilty of misconduct in office.

- (2) Subject to Subsections (3) and (4), a person to whom this Law applies-
- (a) who holds shares or other investment in any foreign enterprise; or
  - (b) whose spouse or any of whose children under voting age holds any such shares or other investment,

is guilty of misconduct in office.

- (3) Subsections (1) and (2) do not apply to a person who, prior to obtaining the shares or making the investment, has obtained the written approval of the Ombudsman Commission to do so.

- (4) Subsections (1) and (2) do not prevent a person who becomes a person to whom this Law applies, or the spouse or child of such a person, who-

- (a) at the time the person becomes such a person holds shares or other investment in any company or unincorporated profit-seeking organization; or
- (b) unexpectedly acquires shares or other investment in any company or unincorporated profit-seeking organization,

from holding the shares or maintaining the investment for such period as is reasonably necessary to dispose of them.

- (5) Subject to Subsection (4), the Ombudsman Commission may, from time to time, publish guidelines specifying the conditions and restrictions subject to which it may grant approvals under Subsection (3).

## **9. Engaging in other paid employment**

- (1) A person to whom this Law applies who after becoming such a person remains in, or engages in any paid employment other than his official employment, without obtaining the written approval of the Ombudsman Commission, is guilty of misconduct in office.

- (2) The Ombudsman Commission shall not grant an approval under Subsection (1) where it is of the opinion that-

- (a) the remaining in, or engaging in other paid employment may involve the person in significant potential conflict of interest; or
- (b) the obtaining of the paid employment involves or involved the use by that person of his official position.

## **10. Interests in contracts**

- (1) Subject to Subsection (2), a person to whom this Law applies-

- (a) who; or

- (b) whose spouse or child under voting age; or
- (c) who has a controlling interest in a company and whose company,

seeks, accepts or holds any beneficial interest in any contract of Papua New Guinea is guilty of misconduct in office.

- (2) Subsection (1) does not apply to a person who, prior to seeking, accepting or otherwise obtaining the beneficial interest in the contract, has obtained the written approval of the Ombudsman Commission to do so.
- (3) The Ombudsman Commission shall not grant an approval under Subsection (2) where it is of the opinion that-
  - (a) the holding of a beneficial interest in such a contract may involve the person in significant potential conflict of interest; or
  - (b) the seeking, accepting or obtaining the beneficial interest involves or involved the use by that person of his official position.

#### **11. Acceptance, etc., of bribes**

A person to whom this Law applies who, or any of whose associates, corruptly asks for, receives or obtains, or agrees or attempts to receive or obtain, any property, benefit or favour of any kind for himself or any other person in consideration of his actions as a public official being influenced in any manner, or on account of his having acted as a public official in any manner (whether generally or in a particular case) is guilty of misconduct in office.

#### **12. Acceptance, etc., of loans, etc**

- (1) Subject to Subsection (2), a person to whom this Law applies who, or whose spouse or child under voting age-
  - (a) accepts any loan of moneys; or
  - (b) holds any franchise; or
  - (c) accepts any gift or other benefit or advantage,
 from a person (including an unincorporated profit-seeking organization) or a foreign enterprise is guilty of misconduct in office.
- (2) Subsection (1) does not apply to a normal bank loan, a loan from a Savings and Loan Society or a hire-purchase agreement obtained or entered into on the same or similar terms and conditions applicable to other borrowers or hirers, as the case may be.
- (3) The Ombudsman Commission may, by instrument in writing, either absolutely or subject to such terms and conditions as is specified in the notice, exempt a person or a class of persons from any liability under Subsection (1) where, in its deliberate judgement, it is reasonable to do so having regard to the purposes for which the loan, franchise or other benefit or advantage was obtained.
- (4) The Ombudsman Commission may publish guidelines specifying the terms and conditions subject to which it will consider granting an exemption to a person or class of persons under Subsection (3).

#### **13. Misappropriation of funds of Papua New Guinea**

A person to whom this Law applies who-

- (a) intentionally applies any money forming part of any fund under the control of Papua New Guinea to any purpose to which it cannot be lawfully be applied; or

(b) intentionally agrees to any such application of any such moneys,  
is guilty of misconduct in office.

**14. Personal advantage not to be gained from official information**

(1) Subject to Subsection (2), a person to whom this Law applies who-

- (a) except in the course of his official duty, divulges, directly or indirectly, any confidential or secret information acquired by him in the course of his official duty; or
- (b) for personal gain or advantage or for the personal gain or advantage of some other person discloses or uses any information acquired by him in the course of his official duty,

is guilty of misconduct in office.

(2) The provisions of Subsection (1) do not apply to information which has been officially released by the person or body having power to release it for public information.

**15. Disclosure of interest before debate or voting**

(1) A member of a legislative or executive body who proposes to speak or vote on any matter before the body or a committee of the body, and who has a direct or indirect beneficial interest in the matter, shall first disclose to the body or the committee the nature of his interest in the matter.

(2) If so requested by any other member of the body with the leave of the person presiding, the member shall give reasonable particulars of his interest in clarification or expansion of his disclosure.

(3) A disclosure under Subsection (1) shall be recorded in the minutes of proceedings of the body or of the committee of the body, as the case may be, and after the disclosure, the member-

- (a) shall not take part in any deliberation or decision of the body, unless the body otherwise resolves; and
- (b) shall be disregarded for the purposes of constituting a quorum of the body for any such deliberation or decision; and
- (c) may, by resolution of the body, be excluded from the meeting.

(4) Where-

- (a) after a member has made a disclosure under this Law any information comes to his knowledge that leads him to believe or suspect, or ought reasonably to make him believe or suspect, that the disclosure was inadequate or incorrect; or
- (b) any information comes to the knowledge of a member which, if known earlier, would have obliged him to make a disclosure to the body of which he is a member, he shall-
  - (i) immediately inform the Speaker, Premier, Chairman or other person who normally presides at meetings of the body; and
  - (ii) disclose the information to the first meeting of the body after the information comes to his knowledge.

(5) A person to whom this Law applies who fails to make a disclosure as required by this section is guilty of misconduct in office.

(6) In this section "member of a legislative or executive body" and "member" means a person to whom this Law applies who is a member of-

- (a) the Parliament; or

- (b) the National Executive Council; or
- (c) a provincial government body; or
- (d) a Local Government Council or Authority; or
- (e) any other legally recognized body having governmental functions.

#### **16. Agents, etc**

If an act that, if it was done by a person to whom this Law applies, would constitute, or form an element of, misconduct in office is done with his consent (express or implied), or by his authority (express or implied), or by a spouse, relative or associate from whose actions he could have disassociated himself, the person is guilty of misconduct in office.

### **PART III -INVESTIGATIONS**

#### **17. Functions of the Ombudsman Commission**

For the purposes of this Law, the functions of the Ombudsman Commission, in addition to the functions specified in Sections 27 (responsibilities of office) and 29 (prosecution of misconduct in office) of the Constitution and elsewhere in this Law, are-

- (a) to examine or cause to be examined each statement lodged with it under Section 4; and
- (b) to examine or cause to be examined each disclosure made under Section 15 or any subsequent disclosure relating to that disclosure; and
- (c) to investigate, on its own initiative or on complaint by any person, or cause such an investigation to be carried out into any alleged or suspected misconduct in office by a person to whom this Law applies; and
- (d) to refer to the Public Prosecutor for prosecution by him before the appropriate tribunal referred to in Section 27 any case where, in its deliberate judgement, there is evidence of misconduct in office by a person to whom this Law applies.

#### **18. Complaints**

- (1) Any person may make a complaint to the Ombudsman Commission concerning the alleged or suspected misconduct in office of a person to whom this Law applies.
- (2) A letter to the Commission from a person in custody, confined in a hospital or in an institution under the control of a governmental body shall not be opened by any person other than a member of the Commission or a person authorized by the Commission, and the person in charge of the place where the correspondent is in custody or is confined shall make all facilities available that may be necessary to have the letter properly forwarded.

Penalty: K1,000.00 or imprisonment for 12 months.

- (3) The Commission shall investigate, or shall cause to be investigated, any complaint received by it unless, in its deliberate judgement, it decides not to do so because-
  - (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
  - (b) the complaint has been too long delayed to justify an investigation; or
  - (c) the subject matter of the complaint is outside the jurisdiction of the Commission; or
  - (d) its resources are insufficient for adequate investigation,
 and may defer or discontinue an investigation for any of the same reasons.



- (4) No decision by the Commission to decline to investigate or to defer or discontinue, an investigation into the subject of a complaint affects the Commission's power to inquire generally into a matter on its own initiative.

**19. Appointment of investigating authorities**

- (1) The Ombudsman Commission may, where it is itself unable for any reason to conduct an examination or investigation referred to in Section 17, appoint one or more constitutional office-holders to carry out the examination or conduct the investigation and to report to it on the results of the examination or investigation.
- (2) An examining or investigating authority appointed under Subsection (1) has, for the purposes of carrying out any examination or investigation in respect of which it is appointed, all the powers of the Commission necessary to enable it to carry out the examination or conduct the investigation including in the case of an investigation the powers referred to in Sections 20, 21, and 22.

**20. Proceedings of the Commission**

- (1) Every investigation by the Commission or other authority under this Law shall be conducted in private.
- (2) The Commission or other authority may hear or obtain information from any person who the Commission considers can assist and may make whatever inquiries it thinks fit and shall, before taking action under Subsection (4) notify the person whose conduct is being investigated.
- (3) Nothing in this Law compels the Commission or other authority to hold any hearing and no person, other than the person whose conduct is being investigated is entitled as of right to be heard by the Commission.
- (4) If, after an investigation, the Commission is of the opinion that there is evidence of misconduct in office by a person to whom this Law applies, it shall refer the matter to the Public Prosecutor for prosecution by him before the appropriate tribunal.

**21. Production of documents, etc**

- (1) Subject to the provisions of this section and of Section 22, the Commission or other authority may from time to time require any person who in its opinion is able to give any information relating to any alleged or suspected misconduct in office by a person to whom this Law applies that is being investigated by the Commission or other authority to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission or other authority, relate to any matter being investigated by it and that may be in the possession or control of that person.
- (2) Subsection (1) applies whether or not-
- (a) the person is an officer, employee or member of any State Service, provincial service, local government body or statutory body; and
  - (b) the documents, papers or things referred to in that subsection are in the custody or under the control of any State Service, provincial service, local government body or statutory body.
- (3) The Commission or other authority may, by instrument in writing, summon any person (including the spouse and children of the person whose conduct is being examined or investigated) who in its opinion is able to give any information relating to any matter that is being investigated by the Commission or other authority to attend the Commission or other authority at a time and place specified in the summons for examination by it on oath.
- (4) The Commission or other authority may administer an oath to a person appearing as a witness before the Commission or other authority whether the witness has been summoned or appears without being summoned, and may examine the witness on oath or affirmation.
- (5) A witness attending before the Commission or other authority has the same privileges and is subject to the same penalties in relation to the giving of information, the answering of questions and the production of documents, papers and things as a witness before the National Court.

- (6) Except on the trial of any person for perjury in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commission or other authority is admissible in evidence against any person in any court or at any inquiry or any other proceedings, and no evidence in respect of proceedings before the Commission or other authority shall be given against any person.
- (7) Where any person is required by the Commission or other authority to attend before it for the purposes of this section, the person is entitled to the same fees, allowances and expenses as if he were a witness in the National Court.

**22. Disclosure of certain matters not to be required**

- (1) Where the Prime Minister, after consultation with the Chief Ombudsman, certifies that the giving of any information or the answering of any question or the production of any documents or papers or things is likely to-
- (a) 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
- (b) involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any Committee of that Council which, the Prime Minister certifies, relate to matters of a secret or confidential nature and the disclosure of which would be injurious to the public interest,

the Commission shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced.

- (2) Subject to Subsection (1), any Law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure of the document, paper or thing or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Commission.

**23. Failure to cooperate**

A person to whom this Law applies who obstructs, or fails to co-operate to the best of his ability with, the Ombudsman Commission, or other authority or a tribunal in any investigation or proceedings under or for the purposes of this Law (whether in relation to himself or some other person) is guilty of misconduct in office.

**PART IV -PROHIBITED INTERESTS, ETC**

**24. Declaration of prohibited interests, etc**

- (1) The Ombudsman Commission may, by notice published in the National Gazette, declare in relation to-
- (a) a person; or
- (b) all persons; or
- (c) a class of persons,

to whom this Law applies, and in relation to any associate of any such person or class of persons, the interests, benefits or property that such a person or class of persons is prohibited from seeking, obtaining or holding.

- (2) Nothing in this Part derogates or affects in any way any other provision of this Act relating to the holding of any interest, benefit or property by a person to whom this Law applies or an associate of such a person.

**25. Seeking, etc., prohibited interest, etc**

- (1) Subject to this Part and to Subsection (2), a person to whom this Law applies who, or whose spouse or child under voting age, seeks, accepts, obtains or holds any prohibited interest, benefit or property is guilty of misconduct in office.
- (2) Subsection (1) does not apply to a person who, prior to seeking, accepting or otherwise obtaining the interest, benefit or property, has obtained the written approval of the Ombudsman Commission to do so.

**26. Commission may order forfeiture, etc., of prohibited interest, etc**

- (1) Where after investigation by it or by any other authority, the Ombudsman Commission is satisfied that a person to whom this Law applies, or whose spouse or child under voting age, has obtained and holds any prohibited interest, benefit or property, the Commission may, in its deliberate judgement, instead of referring the matter to the Public Prosecutor for prosecution before the relevant tribunal and after giving the person concerned adequate opportunity of stating his case to the Commission, order that the whole or any part of the amount or value of the interest, benefit or property, as the case may be or the property acquired by him or any other person concerned-
  - (a) be placed in trust with the Public Trustee for return to him or any other person concerned when he has ceased to be a person to whom this Law applies; or
  - (b) be otherwise disposed of.
- (2) A person to whom this Law applies who, or whose spouse or child under voting age, fails or refuses to comply with an order of the Ombudsman Commission given under Subsection (1), is guilty of misconduct in office.
- (3) An order under Subsection (1)-
  - (a) may be made subject to such terms and conditions as the Ombudsman Commission, in its deliberate judgement, considers fit; and
  - (b) shall, where the Ombudsman Commission, in its deliberate judgement, considers that any person would suffer substantial loss under the order, be made subject to the payment of just compensation.
- (4) A person aggrieved by the failure to make or the amount of an award of compensation under Subsection (3)(b) may appeal to the National Court.

**PART V - ENFORCEMENT****27. Tribunals**

- (1) If the Ombudsman Commission is satisfied that a person to whom this Law applies is guilty of misconduct in office, it shall refer the matter, together with a statement of its reasons for its opinion-
  - (a) to the Public Prosecutor; or
  - (b) to the appropriate tribunal referred to in Subsection (7).
- (2) If the Public Prosecutor considers that the matter should be proceeded with, he shall refer the matter, together with the statement of the Ombudsman Commission, to the appropriate tribunal referred to in Subsection (7).
- (3) Where a matter has been referred to the Public Prosecutor under Subsection (1) and the Public Prosecutor has failed to refer it to the appropriate tribunal or the Ombudsman Commission is of the opinion that the matter has not been properly referred to the appropriate tribunal, the Commission may refer the matter, together with a statement of its reasons for its opinion, to the appropriate tribunal referred to in Subsection (7).

- (4) The tribunal shall make due inquiry into the matter referred to it, without regard to legal formalities or the rules of evidence, and may inform itself in such manner as it thinks proper, subject to compliance with the principles of natural justice.
- (5) If the tribunal finds that a person to whom this Law applies is guilty of misconduct in office, it shall recommend to the appropriate authority that-
- (a) he be dismissed from office or position; or
  - (b) as permitted by Section 28(1A) (further provisions relating to the Leadership Code) of the Constitution and in the circumstances set out in that subsection-some other penalty provided for by an Act of the Parliament be imposed.
- (6) The tribunal shall announce its decision in public, and shall send a copy of the decision to the Speaker, for presentation to the Parliament, and to the National Executive Council and, in the case of a Judge, a Law Officer or the Chief Magistrate, to the Judicial and Legal Services Tribunal.
- (7) For the purposes of this section-

"the appropriate authority" means, in relation to a person to whom this Law applies, the authority to whom, in accordance with Section 28(1)(g)(ii) or Section 28(1A) of the Constitution, a recommendation under that provision in relation to him should be made;

"the appropriate tribunal" means-

- (a) in the case of alleged misconduct in office by the Chief Justice-the tribunal referred to in Section 179 (removal from office of Chief Justice) of the Constitution; or
  - (b) in the case of alleged misconduct in office by a Judge, a Law Officer or the Chief Magistrate-the tribunal referred to in Section 180 (removal from office of other Judges, etc.) of the Constitution; or
  - (c) in the case of alleged misconduct in office by any other constitutional office-holder-the tribunal established by Section 3 of the Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders; or
  - (d) in the case of alleged misconduct in office by the Prime Minister-a tribunal appointed by the Chief Justice, consisting of a Chairman and two other members, all of whom must be-
    - (i) Judges or former Judges of the National Court; or
    - (ii) former Judges of the pre-Independence Supreme Court of Papua New Guinea; or
    - (iii) Judges or former Judges of an equivalent court of a country that has a legal system similar to that of Papua New Guinea;
  - (e) in any other case-a tribunal consisting of a Judge (who shall be the Chairman) and two senior magistrates appointed by the Chief Justice.
- (8) The Judicial and Legal Services Commission shall determine the matters referred to in Paragraph (d)(iii) of the definition "the appropriate tribunal".

## **28. Suspension**

- (1) Where a matter has been referred to a tribunal under Section 27 the person alleged to have committed misconduct in office is suspended from duty.
- (2) A suspension under Subsection (1) is on full pay.

## **29. Application of Section 21 to tribunals**

Section 21 applies, with the necessary modifications, to the production of documents, papers or things to a tribunal in the same way as it applies to the Ombudsman Commission.

**30. Effect of proceedings**

- (1) The result of any proceedings in respect of a charge of misconduct in office is not a bar to proceedings in respect of the same act under any other provision of the Constitution or any other law.
- (2) The result of any proceedings under any other provision of the Constitution or of any other law is not a bar to proceedings in respect of the same act under this Law.
- (3) It is the duty of the Supreme Court and the National Court to ensure that advantage is not taken of Subsection (1) or (2) in cases that are truly vexatious or oppressive, and that proceedings under one provision or law are not used primarily with a view to obtaining evidence for use in or in relation to, or to gain advantage in or in relation to, other proceedings.

**PART VI - OFFENCES****31. Failure to attend or produce documents**

A person who, having been summoned to attend the Ombudsman Commission, other authority or tribunal, fails without reasonable excuse, the burden of proof of which lies on him, to attend the Commission, other authority or tribunal, or to produce any documents, books or writings in his custody or control that he is required by the summons to produce, is guilty of an offence.

Penalty: K500.00 or imprisonment for three months.

**32. Refusing to be sworn or give evidence**

A person appearing as a witness before the Ombudsman Commission, other authority or tribunal, who refuses to be sworn or to make affirmation or to answer any questions relevant to the inquiry put to him by a member of the Commission, other authority or tribunal, or having attended leaves the Commission, other authority or tribunal, without the permission of a member of the Commission, other authority or tribunal, is guilty of an offence.

Penalty: K500.00 or imprisonment for three months.

**33. Contempt of the Commission, etc**

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

Penalty: K500.00 or imprisonment for three months.

**34. Giving false evidence**

A person appearing as a witness before the Ombudsman Commission, other authority or tribunal, who wilfully gives false evidence, is guilty of perjury and is liable to prosecution and punishment accordingly.

**35. Offences in relation to certain matters done after ceasing to hold office**

A person to whom this Law applies who, without the approval of the Ombudsman Commission, within three years after ceasing to be such a person accepts or holds a directorship, consultancy or any other prescribed position with a foreign enterprise, is guilty of an offence.

Penalty: K1,000.00 or imprisonment for 12 months.

**36. Prosecution for offences**

Proceedings for an offence under this Law-

- (a) shall be brought in the National Court; and

- (b) may not be brought against any person except with the consent in writing of the Ombudsman Commission.

## **PART VII - MISCELLANEOUS**

### **37. Privilege**

A member of the Ombudsman Commission or other authority or an officer or employee 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 Law.

### **38. Protection to witnesses, etc**

Subject to this Law, witnesses and persons appearing before the Ombudsman Commission, other authority or a tribunal have the same privileges and immunities as witnesses and persons appearing before the National Court.

### **39. Witnesses' expenses**

A witness appearing before the Ombudsman Commission, other authority or a tribunal is entitled to conduct money, expenses and allowances at the same rates and on the same conditions as witnesses appearing in civil actions before the National Court.

### **40. Reimbursement of accountancy fees in relation to annual statement**

The Ombudsman Commission shall, if it is satisfied that a statement given to it under Section 4(1) is an accurate statement of the affairs of the person to whom it relates and the affairs of his spouse and children under voting age, authorize payment to the person by Papua New Guinea of an amount that in its opinion is the reasonable costs of the preparation of the statement.

### **41. Regulations**

The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make regulations, not inconsistent with this Law, prescribing all matters that by this Law are required or permitted to be prescribed for carrying out or giving effect to this Law, and generally for achieving purposes of this Law, and in particular for prescribing penalties not exceeding K500.00 and default penalties not exceeding K50.00 for offences against or contraventions of any regulations so made.



**INDEPENDENT STATE OF  
PAPUA NEW GUINEA**

**LEADERSHIP CODE (ALTERNATIVE PENALTIES) ACT**

Being an Act to implement Section 28(1A) (further provisions) of the Constitution and Section 27(5)(b) of the Organic Law on the Duties and Responsibilities of Leadership by providing for penalties, other than dismissal, for misconduct in office.

**1. Interpretation**

In this Act-

"the appropriate authority" has the same meaning as in Section 27(7) of the Organic Law;

"the Organic Law" means the Organic Law on the Duties and Responsibilities of Leadership;

"the tribunal", in relation to a person found guilty of misconduct in office, means the tribunal referred to in Section 27 of the Organic Law, that found him guilty.

**2. Alternative penalties**

The penalties that may be recommended and imposed under and for the purposes of Section 28(1A) of the Constitution and Section 27(5)(b) of the Organic Law are that the person found guilty of misconduct in office-

- (a) be fined an amount fixed by the tribunal, not exceeding K1,000.00; or
- (b) be ordered by the appropriate authority to enter into his own recognizance in a reasonable amount, not exceeding K500.00, fixed by the tribunal that he will comply with Division III.2 (Leadership Code) of the Constitution and with the Organic Law during a period fixed by the tribunal, not exceeding 12 months from the date of the announcement, under Section 27(6) of the Organic Law, of the decision of the tribunal; or
- (c) be suspended, without pay, from office or position for a period not exceeding three months from the date of commencement of the suspension; or
- (d) be reprimanded,

or if he is a public office-holder as that expression is defined in Section Sch.1.2(1) of the Constitution, that, as determined by the tribunal-

- (e) he be reduced in salary; or
- (f) if his conditions of employment are such as to allow of demotion-he be demoted.



**INDEPENDENT STATE OF  
PAPUA NEW GUINEA**

**ORGANIC LAW ON THE OMBUDSMAN COMMISSION**

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SCHEDULES

SCHEDULE 1. -

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## ***Organic Law on the Ombudsman Commission***

Being a Provisional Organic Law to implement Division VIII.2 (Ombudsman Commission) of the Constitution,  
MADE by the Constituent Assembly to come into operation on Independence Day.

### **PART I -INTRODUCTORY**

#### **1. Effect of this Law**

- (1) Sections 2 and 19 and Parts V, VI and VIII are intended to take effect, as provided for by Section 12(3)(a) (Organic Laws) of the Constitution as an Act of the Parliament.
- (2) The balance of this Law takes effect as an Organic Law.

#### **2. Definitions**

In this Law-

"the Commission" means the Ombudsman Commission;

"the Committee" means the Ombudsman Appointments Committee established by Section 229 (the Ombudsman Commission) of the Constitution;

"member of the Commission" means the Chief Ombudsman or an Ombudsman;

"the responsible person" means-

- (a) in the case of any State Service, provincial service or other governmental body-the Permanent Head of that service or body; and
- (b) in the case of a natural person-that person; and
- (c) in the case of any statutory body-the statutory head of that body; and
- (d) in the case of any local government body-the President or Chairman of that body.

"statutory body" means any body to which Section 231(1)(a)(iv) (functions of the Commission) of the Constitution refers.

#### **3. Application of this Law**

Except as provided by any other law, this Law does not apply to the powers, functions, duties and responsibilities of the Ombudsman Commission under Division III.2 (leadership code) of the Constitution.

### **PART II - CONSTITUTION, ETC., OF THE COMMISSION**

#### **4. Qualifications for appointment**

- (1) A person is not eligible for appointment as the Chief Ombudsman unless he is, in the opinion of the Committee, a person of integrity, independence of mind, resolution and high standing in the community.
- (2) One of the Ombudsmen shall have such professional accountancy qualifications and experience as, in the opinion of the Committee, is appropriate.
- (3) The other Ombudsman shall have such administrative or legal qualifications and experience as, in the opinion of the Committee, is appropriate.

## **5. Term of office**

- (1) Subject to Subsection (2), a member of the Commission shall be appointed-
- (a) in the case of any citizen of Papua New Guinea appointed to office for the first time within 10 years after Independence Day-for a term of three years; and
  - (b) in the case of any other citizen-for a term of six years; and
  - (c) in the case of a non-citizen-for a term of three years,
- and is eligible for re-appointment.
- (2) The first appointments to the Commission shall be arranged so that the terms of each member expires at a different time.

## **6. Conditions of employment**

Subject to Section 229(3) (the Ombudsman Commission) of the Constitution, the salary and other conditions of employment of the members of the Commission shall be as determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving a report from the Public Services Commission.

## **7. 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 body; or
- (c) a member of a Local Government Council or Authority; 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.

## **8. 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
  - (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 of 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.

### **9. 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.

### **10. Retirement**

- (1) Subject to Subsection (2), a person who has attained the age of 55 years shall not be appointed or re-appointed as a member of the Commission and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 55 years.
- (2) The Head of State, acting with, and in accordance with, the advice of the Committee, may, for special reason in a particular case, appoint or re-appoint a person who is over 55 years of age to be a member of the Commission but in no case can any member of the Commission continue to act as a member after he has attained the age of 60 years.

### **11. Acting Chief Ombudsman and acting Ombudsman**

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

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

### **12. Declaration of office**

Before entering upon the duties of their offices, the members of the Commission shall make the Declaration of Office before the Head of State or a person appointed by the Head of State.

## **PART III - FUNCTIONS, ETC., OF THE COMMISSION**

### **13. Functions of the Commission**

For the purposes of Section 219(1)(a) (functions of the Commission) of the Constitution the functions of the Commission, in addition to the functions specified in Section 219(1)(b), (c), (d) and (e) (functions of the Commission) of the Constitution, are to investigate, on its own initiative or on complaint by a person affected, any conduct on the part of-

- (a) any State Service or a member of any State Service; or
- (b) any governmental body, or an officer or employee of a governmental body; or
- (c) any other service or body referred to in Section 219(a)(functions of the Commission) of the Constitution that the Head of State, acting with, and in accordance with, the advice of the National Executive Council, by notice in the National Gazette, declares to be a service or body for the purposes of this section.

### **14. Procedures of the Commission**

- (1) The Commission shall meet at such times and places as are fixed by the Chief Ombudsman.

- (2) The Chief Ombudsman shall preside at all meetings of the Commission.
- (3) For the purposes of conducting an inquiry under this Law, the quorum at a meeting of the Commission is two.
- (4) All matters before a meeting of the Commission shall be decided in accordance with the majority of votes.
- (5) In the event of an equality of votes on a matter, the Chief Ombudsman has a casting, as well as a deliberative, vote.
- (6) The Commission shall cause minutes of its meetings to be kept.
- (7) Subject to this Law, the procedures of the Commission are as determined by it.

#### **15. Delegation**

- (1) The Commission may, with the prior approval of the Prime Minister, by instrument in writing under the hand of the Chief Ombudsman, delegate to any member or officer of the Commission all or any of its powers and functions (other than this power or function or any prescribed power or function) so that the delegated powers and functions may be exercised and performed by the delegate in relation to the matters or class of matters specified in the instrument of delegation.
- (2) Every delegation under Subsection (1) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Commission.

### **PART IV - COMPLAINTS AND PROCEEDINGS**

#### **16. Complaints**

- (1) Any person may make a complaint to the Commission concerning any matter that is within the jurisdiction of the Commission.
- (2) A letter to the Commission from a person in custody, or confined in a hospital or in an institution under the control of a governmental body shall not be opened by any person other than a member of the Commission or a person authorized by the Commission, and the person in charge of the place where the correspondent is in custody or is confined shall make all facilities available that may be necessary to have the letter properly forwarded.

Penalty: K1,000.00 or imprisonment for 12 months.

- (3) The Commission shall investigate the subject of any complaint received by it, other than a complaint that relates to a matter outside its jurisdiction, unless, in its deliberate judgement, it decides not to do so because-
  - (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
  - (b) it is not within the jurisdiction of the Commission; or
  - (c) the complainant has available to him another remedy or channel of complaint that he could reasonably be expected to use; or
  - (d) the complainant has not a sufficient interest in the subject of the complaint; or
  - (e) the complaint has been too long delayed to justify an investigation; or
  - (f) it has before it other matters more worthy of its attention; or
  - (g) its resources are insufficient for adequate investigation,
 and may defer or discontinue an investigation for any of the same reasons.

- (4) No decision by the Commission to decline to investigate or to defer or discontinue, an investigation into the subject of a complaint affects the Commission's power to inquire generally into a matter on its own initiative.

### **17. Proceedings of the Commission**

- (1) Before investigating any matter within its jurisdiction, the Commission shall inform the responsible person of its intention to make the investigation.
- (2) Every investigation by the Commission under this Law shall be conducted in private.
- (3) The Commission may hear or obtain information from any person who the Commission considers can assist and may make whatever inquiries it thinks fit.
- (4) Nothing in this Law compels the Commission to hold any hearing and no person is entitled as of right to be heard by the Commission except that-
- (a) where a report of the Commission may affect a State Service, provincial government body or statutory body, the Commission shall provide reasonable opportunity for the Permanent Head of that service or the statutory head of that body, as the case may be, to comment on the subject of the investigation; and
  - (b) the Commission shall not make any comment in its report that is adverse to or derogatory of any person without-
    - (i) providing him with reasonable opportunity of being heard; and
    - (ii) fairly setting out his defence in its report.
- (5) The Commission shall, in its discretion, at any time, during or after any investigation, consult any Minister who is concerned in the matter of the investigation.
- (6) On the request of any Minister in relation to any investigation, or in any case where any investigation relates to any recommendation made to a Minister, the Commission shall consult that Minister after making the investigation and before forming a final opinion on the matter it has investigated.
- (7) If, during or after an investigation, the Commission is, after considering any defence lodged by or on behalf of the officer or employee concerned, of the opinion that there has been a breach of duty or misconduct on the part of any officer or employee of any State Service, provincial government body, local government body or statutory body, it shall refer the matter, together with its report on the matter, to the Permanent Head of that service or the statutory head of that body, as the case requires, and shall send a copy of its report and any defence lodged to the responsible Minister.

### **18. Evidence**

- (1) Subject to the provisions of this section and of Section 20, the Commission may from time to time require any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission to furnish to it that information and to produce any documents, papers or things that, in the opinion of the Commission, relate to any matter being investigated by it and that may be in the possession or control of that person.
- (2) Subsection (1) applies whether or not-
- (a) the person is an officer, employee or member of any State Service, provincial government body, local government body or statutory body; and
  - (b) the documents, papers or things referred to in that subsection are in the custody or under the control of any State Service, provincial government body, local government body or statutory body.

- (3) The Commission may, by instrument in writing, summon any person who in its opinion is able to give any information relating to any matter that is being investigated by the Commission, to attend the Commission at a time and place specified in the summons for examination by it on oath or affirmation.
- (4) The Commission may administer on oath or affirmation to a person appearing as a witness before the Commission whether the witness has been summoned or appears without being summoned, and may examine the witness on oath or affirmation.
- (5) A witness attending before the Commission has the same privileges and is subject to the same penalties in relation to the giving of information, the answering of questions and the production of documents, papers and things as a witness before the National Court.
- (6) Except on the trial of any person for perjury in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of any inquiry by or any proceedings before the Commission is admissible in evidence against any person in any court or at any inquiry or any other proceedings, and no evidence in respect of proceedings before the Commission shall be given against any person.
- (7) Where any person is required by the Commission to attend before it for the purposes of this section, the person is entitled to the same fees, allowances and expenses as if he were a witness in the National Court.

#### **19. Disclosure of certain matters not to be required**

- (1) Where the Prime Minister, after consultation with the Chief Ombudsman, certifies that the giving of any information or the answering of any question or the production of any documents or papers or things likely to-
  - (a) 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
  - (b) involve the disclosure of proceedings, deliberations or decisions of the National Executive Council, or of any committee of that Council which the Prime Minister certifies relate to matters of a secret or confidential nature, disclosure of which would be injurious to the public interest, the Commission shall not require the information or answer to be given or, as the case may be, the document, paper or thing to be produced.
- (2) Subject to Subsection (1), any law that authorizes or requires the withholding of any document, paper or thing, or the refusal to answer any question, on the ground that the disclosure of the document, paper or thing or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Commission.

#### **20. Members, 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 to properly investigate the matter before it or establish grounds for its conclusions 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.

## **21. Preservation of secrecy**

- (1) The Commission may direct that any evidence given before it, or any document, paper or thing produced to it, be not published.
- (2) Any person who publishes or discloses to any person-
  - (a) any evidence given before 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: K1,000.00 or imprisonment for 12 months, or both.

## **22. Procedure after investigation**

- (1) The succeeding provisions of this section apply in every case where the Commission, after making an investigation under this Law, is of the opinion that-
  - (a) the conduct, the subject of the investigation, was wrong; or
  - (b) the law or administrative practice, the subject of the investigation, or any other law or administrative practice, is defective; or
  - (c) the practice, the subject of the investigation, is discriminatory within the meaning of any law prohibiting such practices.
- (2) If in any case to which this section applies the Commission is of the opinion that any service, body, person or other appropriate authority should-
  - (a) consider the matter further; or
  - (b) take certain specific action; or
  - (c) modify or cancel any administrative act; or
  - (d) alter any regulation or ruling; or
  - (e) explain more fully any administrative act; or
  - (f) do any other thing,

the Commission shall report its opinion, and the reasons for its opinion, to the Minister responsible for the relevant service, body or person and to the Permanent Head or statutory head responsible for the service, body or person, and may refer the matter to the Public Prosecutor if action by him is warranted and may make such recommendations as it thinks fit.

- (3) If the Commission so requests, the responsible Minister, Permanent Head or statutory head, as the case may be, shall, within such period as is specified by the Commission, notify the Commission as to the steps (if any) that he proposes to take to give effect to its recommendations.
- (4) Where the Commission is of the opinion that an administrative action has produced unfair or objectionable results and that that action was caused wholly or partly by legislation, the Commission shall forward a report on the matter to-
  - (a) in the case of National legislation-the Parliament; and



- (b) in the case of legislation of a provincial government body-the relevant provincial government body; and
- (c) in the case of local government legislation-the relevant local government body.

**23. Publication of results of investigations**

- (1) The Commission may, in its discretion, publish the results of any investigation carried out by it by forwarding a copy of its conclusions, recommendations and suggestions to-
  - (a) the Prime Minister; and
  - (b) the Minister responsible for the National Public Service; and
  - (c) the Chairman of any parliamentary committee; and
  - (d) the Speaker, who shall present it to the Parliament within eight sitting days of the Parliament; and
  - (e) the Minister responsible for the National Legal Administration; and
  - (f) the Chief Justice; and
  - (g) the Chief Magistrate; and
  - (h) the Chairman of the Public Services Commission; and
  - (i) the head of any provincial government body; and
  - (j) any other person holding an official position as the Commission considers appropriate, or any of them.
- (2) The Commission shall, unless in its deliberate judgement, it considers that to do so may 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), forward a copy of its conclusions, recommendations and suggestions to the person on whose complaint the investigation was carried out.
- (3) Where the Commission publishes an opinion that is adverse to or derogatory of any service, body or person, it shall, unless it has obtained the consent of the responsible person to do otherwise, include in the document published the substance of any statement the responsible person may have made in explanation of past difficulties, or present rejection of the Commission's recommendations.

**24. Proceedings not to be questioned or to be subject to review**

No proceeding of the Commission shall be held bad for want of form, and, except on the ground of lack of jurisdiction, no proceeding or decision of the Commission shall be challenged, reviewed, quashed or called into question in any court.

**PART V - THE SERVICE OF THE COMMISSION**

**25. Appointment of officers**

- (1) The Commission-
  - (a) shall appoint-
    - (i) a Counsel to the Commission; and
    - (ii) a Secretary to the Commission; and

- (b) within the limit of funds lawfully available to it, may appoint such other officers as, in its opinion, are necessary for the efficient performance of the functions of the Commission.
- (2) The offices of the Commission constitute the Service of the Commission.
- (3) Subject to this Part and to the Regulations, officers hold office on such terms and conditions as the Commission after consultation with the Public Services Commission, fixes.
- (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).
- (5) The provisions of Section 115 of the pre-Independence law known as the Public Service (Interim Arrangements) Act 1973 apply in relation to offices in the Service of the Commission as if they had been specifically included in that section.

## **26. Control of Service**

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

## **27. Regulations for the Service of the Commission**

The Regulations may make provision in relation to the Service of the Commission and in particular, may-

- (a) 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, resignation, retrenchment or death.

## **28. 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 so appointed shall be employed on such terms and conditions as the Commission determines.

## **PART VI - FINANCE**

### **29. Application of Public Bodies (Financial Administration) Act**

The pre-Independence law known as the *Public Bodies (Financial Administration) Act* 1969 applies to and in relation to the Commission subject to the exceptions and modifications specified in Schedule 2.

## **PART VII - OFFENCES**

### **30. Failure to attend or produce documents**

A person who, having been summoned to attend the Commission, fails without reasonable excuse, the burden of proof of which lies on him, to attend the Commission or to produce any documents, books or writings in his custody or control that he is required by the summons to produce, is guilty of an offence.

Penalty: K500.00 or imprisonment for three months.

**31. Refusing to be sworn or give evidence**

A person appearing as a witness before the Commission who refuses to be sworn or to make an affirmation or to answer any questions relevant to the inquiry put to him by a member of the Commission, or having attended leaves the Commission without the permission of a member of the Commission, is guilty of an offence.

Penalty: K500.00 or imprisonment for three months.

**32. 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: K500.00 or imprisonment for three months.

**33. Giving false evidence**

A person appearing as a witness before the Commission, who wilfully gives false evidence, is guilty of perjury and is liable to prosecution and punishment accordingly.

**34. Prosecution for offences**

Proceedings for an offence under this Law-

- (a) shall be brought in the National Court; and
- (b) may not be brought against any person except with the consent in writing of the Commission.

**PART VIII - MISCELLANEOUS****35. Privilege**

- (1) A member of the Commission or an officer or employee 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 Law.
- (2) A member of the Commission or an officer or employee 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.

**36. Power of entry**

- (1) For the purposes of this Law, but subject to this section, a member of the Commission may, at any time, enter upon any premises occupied by any State Service, provincial government body, local government body or statutory body over whom it has jurisdiction and inspect the premises and, subject to Sections 18 and 19 carry out in the premises any investigation that is within its jurisdiction.
- (2) Before entering upon any premises the member of the Commission shall notify the Permanent Head or statutory head or other person in charge of the premises.
- (3) The Prime Minister may after consultation with the Chief Ombudsman, from time to time, exclude the operation of Subsection (1) to any premises if he is satisfied that the exercise of the powers conferred by this section is likely to 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).

**37. Regulations**

The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make regulations, not inconsistent with this Law, prescribing all matters that by this Law are required or permitted 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 K500.00 and default penalties not exceeding K10.00 for offences against or contraventions of any regulations so made.

**38. Savings**

The provisions of this Law are in addition to the provisions of any other enactment, subordinate enactment or any rule of law under which any remedy or right of appeal or objection is provided for any person or any procedure is provided for the inquiry into or investigation of any matter, and nothing in this Law limits or affects any such remedy or right of appeal or objection or procedure.

**SCHEDULES*****SCHEDULE 1.*****Sec. 21.****PART I**

Oath and Affirmation of Secrecy to be taken or made by Members of the Commission

**OATH**

I, . . . , a member of the Ombudsman Commission, 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 Ombudsman Commission, 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 a member of the Commission, except under compulsion or obligation of law or as provided by law.

**PART II**

Oath and Affirmation of Secrecy to be taken or made by officers and employees of the Commission.

**OATH**

I, . . . , (an officer or employee of the Ombudsman Commission, as the case requires) 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, . . . , (an officer or employee of the Ombudsman Commission, as the case requires) 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.

**SCHEDULE 2.****Sec. 29.**

*Exception and Modifications to the Public Bodies (Financial Administration) Act 1969.*

<i>Provision</i>	<i>Modification</i>
Section 8	Not applicable.
Section 10	Not applicable.
Section 11	Not applicable.
Section 13	Not applicable.
Section 15	Not applicable.
Section 16	Not applicable.
Section 17	(a) applies only to financial statements.  (b) applies as if references to Head of State were references to the Prime Minister.



**INDEPENDENT STATE OF  
PAPUA NEW GUINEA**

***DISCRIMINATORY PRACTICES ACT***

Being an Act to prohibit certain discriminatory practices, and for other purposes.

**1. Interpretation**

In this Act, unless the contrary intention appears-

"discriminatory practice" means discrimination either of an adverse or of a preferential kind practiced by a person or group of persons against or in favour of another person or group of persons for reasons only of colour, race or ethnic, tribal or national origin, and in particular includes-

- (a) the setting aside of portion of any premises, vessel, aircraft or vehicle the subject of a licence for the exclusive use of persons or a class of persons of a certain colour, race or ethnic, tribal or national origin; and
- (b) the failure to attend to persons in the order that those persons enter or approach any premises, vessel, aircraft or vehicle the subject of a licence; and
- (c) the selling or buying of goods at different prices or on different terms to different persons or classes of persons; and
- (d) a course of conduct which-
  - (i) distinguishes between persons or classes of persons of differing colours, races or ethnic, tribal or national origins; and
  - (ii) may reasonably be expected to result in mental distress or suffering by a person or a member of that class of persons;

"licence" means-

- (a) a licence under the Liquor (Licensing) Act; or
- (b) a licence under the Restaurants (Licensing) Act; or
- (c) a trader's licence or pedlar's licence under the Licences Act (T.N.G.); or
- (d) a licence under the Agents for Natives Regulation (T.N.G.); or
- (e) a licence to keep a place of entertainment under the Places of Entertainment Regulation (T.N.G.); or
- (f) a licence for a place of public entertainment under the Places of Entertainment Act (Papua); or
- (g) a licence under the Trading Act; or
- (h) a licence under the Sale of Meat Act; or
- (i) a permit or special permit under the Copra Act; or
- (j) a registration under Section 40 or 44 of the Cocoa Industry Act; or
- (k) an exemption under Section 6 of the Transactions with Natives Act 1958 (Adopted); or
- (l) a licence under the Public Health (Barbers' Shops) Regulation; or

- (m) a motor omnibus licence, public motor vehicle licence, private hire car licence, or taxi-cab licence within the meaning of the Motor Traffic Act; or
- (n) any other prescribed licence, permit or authority to buy, sell or deal or trade in goods, and, where a business licensing rule has been made under the Business Licences Act 1971, providing for a business licence that is the equivalent of a licence, permit, registration, exemption or authority referred to in the preceding provisions of this definition, includes that business licence;

"meeting" means a meeting held for the purpose of the discussion of matters of public interest or for the purpose of the expression of views on such matters;

"public meeting" includes a meeting in a public place, and a meeting that the public or any section of it are permitted to attend, whether on payment or otherwise;

"public place" means any highway, public park or garden, beach or public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, and includes any open space to which, for the time being, the public have access, whether on payment or otherwise;

"publish or distribute" means publish or distribute to the public at large or to any section of the public not consisting exclusively of members of an association of which the person publishing or distributing is a member;

"written matter" includes any writing, sign or visible representation (whether in the form of words, photographs, drawings or otherwise).

## **2. Prohibition of discrimination**

- (1) The holder of a licence who without reasonable excuse, (proof of which is on him) carries out a discriminatory practice, or causes or permits a discriminatory practice to be carried out, in or in connexion with or incidental to-
  - (a) the business the subject of the licence; or
  - (b) the use of, or on, any premises, vessel, aircraft or vehicle the subject of the licence or used by virtue of the licence for the purposes of the business,

is guilty of an offence.

Penalty: A fine not exceeding K200.00.

- (2) An offence against Subsection (1) shall not be deemed to have been committed where the conduct in question was required for the purpose of complying with a law.

## **3. Offences on licensed premises**

A person who, in or on premises the subject of a licence-

- (a) acts in a threatening, abusive, insulting, provocative or offensive manner towards a person of a different colour, race or ethnic, tribal or national origin as such; or
- (b) incites or endeavours to incite another person to so act,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding two months.

## **4. Incitement to racial hatred, etc**

A person who with intent to stir up hatred, ridicule or contempt against any section of the public distinguished by colour, race or ethnic, tribal or national origin-

- (a) publishes or distributes any written matter that is threatening, abusive, insulting, provocative or offensive; or

- (b) uses in any public place or at any public meeting words or behaviour that are or is threatening, abusive, insulting, provocative or offensive,

being matter, words or behaviour likely to stir up hatred, ridicule or contempt against that section on grounds of colour, race or ethnic, tribal or national origin, is guilty of an offence.

Penalty: On summary conviction-a fine not exceeding K400.00 or imprisonment for a term not exceeding six months, or both. On conviction on indictment-a fine not exceeding K2,000.00, or imprisonment for a term not exceeding two years, or both.

#### **5. Prosecutions only with consent**

A prosecution for an offence against Section 2, 3 or 4 shall not be commenced without the consent of the Minister.

#### **6. Consequences of conviction**

- (1) Where a person is convicted of an offence against Section 2, 3 or 4 the court that convicts him may-
- (a) suspend for such time as it thinks proper or cancel all or any licences held by him; and
  - (b) disqualify him from holding all or any licences during such period as it thinks proper.
- (2) A conviction for an offence against Section 2, 3 or 4 is good ground for the making of an order under Section 21 of the Native Employment Act 1958 (Adopted).

#### **7. Offences in relation to complaints, etc**

A person who knowingly makes, or causes, permits or procures to be made, a false statement in an information for an offence against Section 2, 3 or 4 is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

#### **8. Regulations**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

