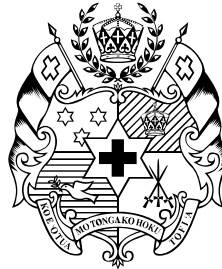


**Act No. 13 of 2007**



*Tonga*

**ANTI-CORRUPTION COMMISSIONER  
ACT 2007**

**Act 13 of 2007**





## ANTI-CORRUPTION COMMISSIONER ACT 2007

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# ANTI-CORRUPTION COMMISSIONER ACT 2007

Act No. 13 of 2007

## AN ACT TO ESTABLISH THE OFFICE OF THE ANTI-CORRUPTION COMMISSIONER AND TO DEFINE HIS FUNCTIONS AND TO PROVIDE FOR RELATED MATTERS

I assent,  
George Tupou V  
13 September 2007

Commencement [in force on assent and publication]

### PART 1 - PRELIMINARY

#### 1 Short title

This Act may be cited as the Anti-Corruption Commissioner Act 2007.

#### 2 Interpretation

In this Act, unless the contrary intention appears —

“**Commissioner**” means the Anti-Corruption Commissioner established and appointed under this Act;

“**Commissioner’s investigator**” means an officer of the Commission who is designated by the Commissioner as an investigator and who is issued by the Commissioner with means of identification as such an investigator.

“**compulsory examination**” means a compulsory examination under this Act;

“**conduct**” includes neglect, failure and inaction;

“**corrupt conduct**” has the meaning given by section 6;

“**investigate**” includes examining;

“**investigation**” means an investigation under this Act, and (without limitation) includes a preliminary investigation referred to under section 15;

“**officer of the Commissioner**” means —

- (a) a member of staff of the Commissioner; or
- (b) a person engaged by the Commissioner under section 80 or 81;

“**premises**” includes any structure, building, aircraft, vehicle, vessel and place (whether built on or not), and any part thereof;

“**public authority**” includes the following —

- (a) a Government Department;
- (b) a statutory body or public enterprise;
- (c) the Police Force;
- (d) a public body, or
- (e) the holder of a public office or authority;

“**public inquiry**” means a public inquiry under this Act;

“**public official**” means an individual having public official functions or acting in a public official capacity, and includes any of the following:

- (a) a Minister of the Crown;
- (b) a member of the Legislative Assembly;
- (c) a person employed by the Legislative Assembly;
- (d) a judge, a magistrate or the holder of any other judicial office;
- (e) an officer or temporary employee of the Public Service;
- (f) an individual who constitutes or is a member of a public authority;
- (g) a person in the service of the Crown or of a public authority;
- (h) a member of the Police Force;
- (i) the holder of an office declared by the regulations to be an office within this definition;
- (j) an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of, a public authority or any person or body described in any of the foregoing paragraphs;
- (k) estate holders when exercising statutory functions;



“**search warrant**” means a search warrant issued under this Act.

### **3 Public Interest to be paramount**

The Commissioner shall direct its attention to serious and systematic corrupt conduct and take into account the responsibility and role of other public authorities and public officials in the prevention of corrupt conduct.

### **4 Commissioner**

- (1) A public authority with the name of the Anti-Corruption Commissioner is established.
- (2) A reference in this Act to a compulsory examination or public inquiry before the Commissioner or anything done or omitted by, to or in relation to the Commissioner includes a reference to a compulsory examination or public inquiry before, or a thing done or omitted by, to or in relation to another officer of the Commissioner having authority in the circumstances.
- (3) The Public Service Act 2002 does not apply to the Commissioner.

### **5 Appointment**

- (1) His Majesty in Privy Council shall appoint an Anti-Corruption Commissioner.
- (2) The Judicial Services Commission Act 2006 shall apply to the Commissioner, and for the purposes of that Act, the Commissioner shall be deemed to be a judicial officer.
- (3) Before entering upon the exercise of the duties of his office, the Commissioner shall take the following oath in the presence of Cabinet —

“I solemnly swear before God that I will be truly loyal to His Majesty King George Tupou V, that I will perform truly and with impartiality my duties as Anti-Corruption Commissioner in accordance with the Constitution and the laws of the Kingdom of Tonga and I will not, except according to law, divulge any information which I shall receive in the execution of my duties.”
- (4) If the Commissioner is not a Tongan subject, he shall take the following oath in lieu of the foregoing —

“I swear in the presence of God that I will perform truly and with impartiality my duties as Anti-Corruption Commissioner in accordance with the Constitution and the laws of the Kingdom of Tonga and I will not, except according to law, divulge any information which I shall receive in the execution of my duties.”

- (5) The Commissioner has and may exercise the functions conferred or imposed on him by or under this or any other Act.

## 6 Corrupt conduct

- (1) Subject to section 7(2) corrupt conduct is —
- (a) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his official functions;
  - (b) any conduct of any person (including a public official or, in the case of (ii) or (iii) below, a former public official) that —
    - (i) adversely affects or could adversely affect, either directly or in directly, the dishonest or partial exercise of an official function by a public official, a group or body of public officials or a public authority;
    - (ii) involves a breach of public trust; or
    - (iii) involves the misuse of information or material that he has acquired in the course of his official functions, whether or not for his benefit or for the benefit of any other person; or
    - (iv) involves any of the matters listed in Schedule 2.
- (2) Conduct may amount to corrupt conduct under this section even though it occurred wholly or in part prior to the commencement of this Act and whether or not the person or persons involved are no longer public officials.
- (3) Conduct committed by or in relation to a person who was not a public official at the time may amount to corrupt conduct under this section if it affects in anyway whatsoever the exercise of his official functions after becoming a public official.
- (4) Conduct may amount to corrupt conduct under this section even though it occurred outside the Kingdom.

## 7 Limitation on nature of corrupt conduct

- (1) For the purposes of this section —
- “**applicable code of conduct**” means, in relation to —
- (a) a Minister of the Crown, a ministerial code of conduct prescribed for the purposes of this section by regulations; or
  - (b) a member of the Legislative Assembly, a code of conduct adopted for the purposes of this section by resolution of the Legislative Assembly;
- “**criminal offence**” means a criminal offence under the law of the Kingdom;

“**disciplinary offence**” includes any misconduct, irregularity, neglect of duty, breach of discipline or other matter that constitutes or may constitute grounds for disciplinary action under any law.

- (2) Notwithstanding section 6, conduct does not amount to corrupt conduct unless it could constitute or involve —
  - (a) a criminal offence;
  - (b) a disciplinary offence;
  - (c) reasonable grounds for dismissing, dispensing with the services of or otherwise terminating the services of a public official; or
  - (d) in the case of conduct of a Minister of the Crown or a member of the Legislative Assembly, a substantial breach of an applicable code of conduct.
- (3) It is no defence that proceedings relating to subsection (1) can no longer be brought or continued.
- (4) Subject to subsection (5), conduct of a Minister of the Crown or a member of the Legislative Assembly which falls within the description of corrupt conduct in section 6 is not excluded by this section if it is conduct that would cause a reasonable person to believe that it would bring the integrity of the office concerned or of the Legislative Assembly into serious disrepute.
- (5) Without otherwise limiting the matters that it can under section 51 include in a report under section 52, the Commissioner is not authorised to include a finding or opinion that a specified person has, by engaging in conduct of a kind referred to in subsection (4), engaged in corrupt conduct, unless the Commissioner is satisfied that the conduct constitutes a breach of a law (apart from this Act) and the Commissioner identifies that law in the report.
- (6) Where the Commissioner is of the opinion that its findings on any investigation warrant consideration by the Attorney General as to whether any criminal proceedings should be instituted thereon, it shall send the report of the investigation to the Attorney General together with all supporting documentation and evidence.
- (7) The Attorney General may request from the Commissioner any information regarding any matter which he is prosecuting or which he intends to prosecute after referral from the Commissioner.

## 8 Complaints

- (1) Any person may make a complaint to the Commissioner about a matter that concerns or may concern corrupt conduct.
- (2) The Commissioner may —

- (a) investigate a complaint; or
  - (b) discontinue an investigation of a complaint.
- (3) The superintendent of the prison shall, if a prisoner informs him that the prisoner wishes to make a complaint under this section relating to a prison official —
- (a) take all steps necessary to facilitate the making of the complaint; and
  - (b) send immediately to the Commissioner, unopened, any written matter addressed to the Commissioner.

## **9 Duty to notify Commissioner**

- (1) A public official is under a duty to report to the Commissioner any matter that the officer suspects on reasonable grounds concerns or may concern corrupt conduct notwithstanding any duty of secrecy or other restriction on disclosure.
- (2) The Commissioner may issue guidelines as to what matters need or need not be reported.

# **PART 2 - FUNCTIONS OF COMMISSIONER**

## **DIVISION 1 - FUNCTIONS GENERALLY**

### **10 Principal Functions**

- (1) The function of the Commissioner shall be to investigate instances of alleged or suspected corrupt conduct referred to it by any person or authority or which has come to its attention whether by complaint or otherwise and to take such steps as may be necessary for the eradication or suppression of corrupt conduct.
- (2) Without prejudice to the generality of subsection (1) it shall be the function of the Commissioner —
  - (a) to examine the practices and procedures of government ministries, departments and other public bodies in order to secure a revision of those practices and procedures which in the opinion of the Commissioner may lead to corrupt conduct and to advise the heads of such ministries, departments and other public bodies thereon;
  - (b) to instruct, advise, and assist any person or authority on ways in which corrupt conduct may be reduced or eliminated;
  - (c) to educate the public against the evils of corrupt conduct; and
  - (d) to enlist and foster public support in combating corrupt conduct.

## **11 Co-operation with other agencies**

- (1) The Commissioner shall work in co-operation with law enforcement agencies including the Attorney General, the Auditor General, the Police Commander and such other persons and bodies as the Commissioner thinks appropriate.
- (2) If the Commissioner specifies that information is confidential, it is subject to the secrecy provisions under this Act.

## **12 Court proceedings**

- (1) Notwithstanding any proceedings that may be under investigation or may be in or before any court, tribunal, or other authority, the Commissioner may —
  - (a) commence, continue, discontinue or complete any investigation;
  - (b) furnish reports in connection with any investigation;
  - (c) do all such acts and things as are necessary or expedient for those purposes.
- (2) If the proceedings are proceedings for an indictable offence and are conducted by or on behalf of the Crown, the Commissioner shall —
  - (a) ensure that the accused's right to a fair trial is not prejudiced;
  - (b) ensure that, as far as practicable, the investigation is conducted in private during the currency of the proceedings;
  - (c) give directions restricting publication of evidence; and
  - (d) defer making a report to the Legislative Assembly in relation to the investigation during the currency of the proceedings.

## **13 Incidental powers**

The Commissioner has power to do all things necessary to be done for or in connection with, or reasonably incidental to, the exercise of his functions.

### **DIVISION 2 - INVESTIGATIONS**

## **14 Investigations generally**

- (1) The Commissioner may —
  - (a) conduct an investigation on its own initiative, on a complaint, report or on a reference made to it even though no particular public official or other person has been implicated;
  - (b) in considering whether or not to conduct, continue or discontinue an investigation, have regard to such matters as it thinks fit, including whether or not (in the Commissioner's opinion) —

- (i) the subject-matter of the investigation is trivial;
  - (ii) the conduct concerned occurred at too remote a time to justify investigation; or
  - (iii) if the investigation was initiated as a result of a complaint, the complaint was frivolous, vexatious or not in good faith.
- (2) The Commissioner shall inform the complainant or officer who made the report of its decision and the reasons for it, in writing.

## **15 Preliminary investigations**

A preliminary investigation may be made for the purpose of assisting the Commissioner —

- (a) to discover or identify conduct that might be made the subject of a more complete investigation under this Act; or
- (b) to decide whether to make particular conduct the subject of a more complete investigation under this Act.

## **16 Power to obtain information**

- (1) The Commissioner may, by notice in writing served on a public authority or public official, require the authority or official to produce a statement of information.
- (2) A notice under this section shall —
- (a) specify or describe the information concerned;
  - (b) fix a time and date for compliance;
  - (c) specify the person to whom the production is to be made; and
  - (e) provide that the requirement may be satisfied by some other person acting on behalf of the public authority or public official.

## **17 Power to require attendance and obtain documents**

The Commissioner may, by notice in writing served on a person (whether or not a public authority or public official), require the person to —

- (a) attend, at a time and place specified in the notice, before a person (being the Commissioner or any other officer of the Commissioner) specified in the notice; and
- (b) produce at that time and place to the person so specified any document or other thing specified in the notice.

**18 Power to enter public premises**

- (1) The Commissioner or an officer authorised in writing by it may in pursuance of an investigation under this Act —
  - (a) enter and inspect any premises occupied or used by a public authority or public official in that capacity;
  - (b) inspect any document or other thing in or on the premises;
  - (c) take copies of any document in or on the premises; and
  - (d) remove any computer or device containing electronic information.
- (2) The public authority or public official shall make available to the Commissioner or authorised officer such facilities as are necessary to enable the powers conferred by this section to be exercised.

**19 Privilege as regards information, documents**

- (1) A person shall comply with the requirement under this Act to produce any statement, information, document or other thing notwithstanding —
  - (a) any rule which in proceedings in a court of law might justify an objection to compliance with a like requirement on grounds of public interest;
  - (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law; or
  - (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

**20 Privilege as regards entry on public premises**

The powers of entry, inspection or copying under this Act may be exercised notwithstanding —

- (a) any rule of law which, in proceedings in a court of law, might justify an objection to an inspection of the premises or to production of the document or other thing on grounds of public interest;
- (b) any privilege of a public authority or public official in that capacity which the authority or official could have claimed in a court of law; or
- (c) any duty of secrecy or other restriction on disclosure applying to a public authority or public official.

**21 Injunctions**

- (1) The Commissioner, may apply for an injunction restraining any conduct in which a person (whether or not a public authority or public official) is engaging or in which such a person appears likely to engage, if the conduct is the subject of, or affects the subject of, an investigation.
- (2) The Commissioner shall not be required, as a condition for the granting of an injunction, to give any undertaking as to damages.

**22 Exercisable powers**

Powers may be exercised under this Division in relation to an investigation whether or not a compulsory examination or public inquiry before the Commissioner is being held for the purposes of the investigation.

**DIVISION 3 - COMPULSORY EXAMINATION AND INQUIRIES****23 Compulsory examinations**

- (1) The Commissioner may, if it is satisfied that it is in the public interest, conduct a compulsory examination which shall be conducted by the Commissioner or by an officer of the Commissioner.
- (2) A person required to attend a compulsory examination is entitled to be informed, before the compulsory examination, of the nature of the allegation or complaint being investigated.
- (3) A compulsory examination is to be conducted in private, and with as little emphasis on an adversarial approach as possible.
- (4) The Commissioner may advise a person required to attend a compulsory examination of any findings it has made or opinions it has formed as a result of the compulsory examination.

**24 Public inquiries**

- (1) The Commissioner may, if it is satisfied that it is in the public interest, conduct a public inquiry.
- (2) Factors to be taken into consideration in determining the public interest may include the following —
  - (a) the benefit of exposing corrupt conduct;
  - (b) the seriousness of the allegation or complaint;
  - (c) any risk of undue prejudice to a person's reputation;
  - (d) whether the public interest in exposing the matter is outweighed by the public interest in preserving the privacy of the persons concerned.



- (3) A public inquiry is to be conducted by the Commissioner or by an officer of the Commissioner.
- (4) The person presiding shall —
  - (a) announce the general scope and purpose of the inquiry;
  - (b) inform the person required to attend before the inquiry —
    - (i) of the general scope and purpose of the public inquiry; and
    - (ii) the nature of the allegation or complaint being investigated.
- (5) A failure to comply with subsection (4) shall not invalidate or otherwise affect the public inquiry.
- (6) Notwithstanding subsection (1), the Commissioner may decide to hold part or all of the inquiry in private if it considers this to be in the public interest.

## **25 Directions to appear**

The Commissioner may give directions as to the persons who may be present at a compulsory examination or any part of a public inquiry that is held in private.

## **26 Right of appearance**

The Commissioner may authorise a person to appear at the public inquiry or a specified part of the public inquiry if it is satisfied that such person has a direct interest.

## **27 Legal representation**

- (1) The Commissioner may allow representation by a law practitioner at the compulsory examination or public inquiry of —
  - (a) a person giving evidence at the compulsory examination or public inquiry; or
  - (b) a person with a direct interest.
- (2) A law practitioner appointed by the Commissioner to assist it may appear before the Commissioner.

## **28 Evidence and procedure**

- (1) The Commissioner is not bound by the procedural and evidential rules of a court of law.
- (2) The Commissioner shall exercise its functions with as little formality and technicality as is possible and may conduct compulsory examinations and

public inquiries with little emphasis on an adversarial approach and accept written submissions.

## **29 Examination and cross-examination**

A law practitioner authorised to appear at a compulsory examination or public inquiry, may, with the leave of the Commissioner, examine or cross-examine any witness on any relevant matter.

## **30 Power to summon witnesses and take evidence**

- (1) The Commissioner may summon a person to appear before the Commissioner at a compulsory examination or public inquiry at a time and place named in the summons to give evidence on oath and produce such documents or other exhibits as are referred to in the summons.
- (2) A witness who has been summoned to attend before the Commissioner shall unless prevented by sickness —
  - (a) report daily unless excused from attendance by the person presiding at the compulsory examination or public inquiry; and
  - (b) be taken to have failed to appear before the Commissioner in obedience to the summons if, without leave of the person presiding, he fails to appear or leaves without being excused or released.

## **31 Arrest of witness**

- (1) The Commissioner may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness if —
  - (a) the witness fails without lawful excuse to attend in answer to the summons; or
  - (b) it is satisfied by evidence on oath or affirmation that it is probable that a person whose evidence is relevant to an investigation under this Act —
    - (i) will not attend before the Commissioner to give evidence without being compelled to do so; or
    - (ii) is about to leave the Kingdom.
- (2) The Commissioner is authorised to administer an oath or affirmation for the purposes of this section.
- (3) A warrant under this section shall authorise the arrest of the witness and his being promptly brought before the Commissioner and detained for that purpose until released by order of the Commissioner or a judge.
- (4) A warrant issued under this section may be executed by any member of the Police Force.

**32 Conditional release of witness**

- (1) The Commissioner may by order release a witness on the following conditions —
  - (a) that the witness report to the Commissioner in person in accordance with the terms of the order; and
  - (b) the provision of sureties by the witness, the surrender of any passport held by the witness, or a requirement as to where the witness is to live and regular reporting by the witness to the Commissioner.
- (2) The Commissioner may by order amend, revoke or add to those conditions.

**33 Review by Supreme Court**

A witness who has not been released by the Commissioner on conditions may apply to the Supreme Court for a review of the decision or the terms of the conditions.

**34 Privilege of witnesses**

- (1) A witness summoned to attend or appear before the Commissioner at a compulsory examination or public inquiry shall —
  - (a) answer any question relevant to an investigation put to him by the Commissioner or other person presiding; or
  - (b) produce any document or other thing in his custody or control which the witness is required by the summons or by the person presiding to produce;notwithstanding that the answer or production may incriminate or tend to incriminate the witness or be otherwise protected on the grounds of privilege, secrecy or any other restriction on disclosure.
- (2) Evidence from a witness at a compulsory examination or public inquiry before the Commissioner is not admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings.

**35 Attendance of prisoner before Commissioner**

If the Commissioner requires the attendance of a prisoner at a compulsory examination or public inquiry, it may, by order in writing served on the superintendent of the prison in whose custody the prisoner is held, direct the superintendent to produce the prisoner, at the time and place stated in the order.

## DIVISION 4 - SEARCH WARRANTS

### 36 Issue of search warrant

The Commissioner, on application may issue a search warrant if it is satisfied that there are reasonable grounds for doing so.

### 37 Authority conferred by warrant

- (1) A search warrant authorises any member of the Police Force, Commissioner's investigator or any other person, named in the warrant to:
  - (a) enter the premises;
  - (b) search the premises or any person found on the premises for documents or other things connected with any matter that is being investigated under this Act; and
  - (c) seize any such documents or other things found in or on the person or premises and deliver them to the Commission.
- (2) A female shall not be searched except by another female.
- (3) A person executing a search warrant shall produce the warrant for inspection by an occupier of the premises if requested to do so by that occupier.
- (4) A person authorised to enter premises under a search warrant may —
  - (a) use such force as is reasonably necessary for the purpose of entering the premises;
  - (b) if it is reasonably necessary, break open any receptacle in or on the premises for the purposes of the search.

### 38 Use of assistants to execute warrant

- (1) In this section —

“**by day**” means during the period between 6 am and 8 pm on any day.

“**by night**” means during the period between 8 pm on any day and 6 am on the following day.
- (2) A person may execute a search warrant —
  - (a) with the aid of such assistants as the person considers necessary, even though such assistants may not be specified in the warrant; and
  - (b) by day, and shall not execute by night unless specifically authorised by the warrant.

**39 Expiry of warrant**

A search warrant ceases to have effect —

- (a) one month after its issue;
- (b) if it is withdrawn by the person who issued the warrant; or
- (c) when it is executed;

whichever first occurs.

**40 Seizure pursuant to warrant - special provisions**

- (1) If a person in the course of executing a search warrant finds a document or other thing that he believes on reasonable grounds to be evidence that would be admissible in the prosecution of a person for an indictable offence against the law of the Kingdom and that it is necessary to seize the document or other thing in order to prevent its concealment, loss, mutilation or destruction, or its use in committing such an offence, that person may seize the document or other thing for the purposes of this Act and it shall be deemed to have been seized pursuant to a warrant.
- (2) The Commissioner may retain a document or other thing for as long as its retention is reasonably necessary for the purposes of an investigation and if retention of the document or other thing is not, or ceases to be, reasonably necessary for such purposes, he shall cause it to be delivered to —
  - (a) the person who is entitled to possession; or
  - (b) the Attorney General, with a recommendation as to what action should be taken in relation to the document or other thing.

**DIVISION 5 - DISPOSAL OF PROPERTY****41 Disposal of property on application to court**

- (1) The Commissioner may apply to the Supreme Court for an order under this Division in relation to property to which it appears to the Commissioner that no person is lawfully entitled to.
- (2) In determining an application under this section, the court may —
  - (a) order that the property be forfeited to the Crown;
  - (b) make any necessary incidental or ancillary orders; or
  - (c) make any other order it deems fit.
- (3) Where the Court orders property to be forfeited to the Crown —
  - (a) if money, it is to be paid to the general revenue; or

- (b) in any other case, it may be sold by or on behalf of the Commissioner at public auction and the proceeds of sale paid to the general revenue; or
  - (c) if the property is not money or is not fit or suitable for sale, or fails to sell at public auction, it is to be disposed of in accordance with the directions of the Commissioner.
- (4) A person who is lawfully entitled to any property that has been dealt with in accordance with this Division may recover from the Treasurer the money or proceeds of sale held by the Treasurer.

## DIVISION 6 – PROTECTION OF WITNESSES

### **42 Protection of witnesses and persons assisting Commissioner**

- (1) If it appears to the Commissioner that the safety of any person assisting the Commissioner may be prejudiced or that such person may be subjected to intimidation or harassment it may make such arrangement as are necessary —
- (a) to protect the safety of any such person; or
  - (b) to protect any such person from intimidation or harassment.
- (2) Any such arrangements may involve the Commissioner directing the Police Commander or a public authority or public official to —
- (a) provide any protection referred to in subsection (1); or
  - (b) provide personnel or facilities or both to assist in providing that protection.
- (3) The Police Commander, or such other authority or public official, is under a duty to comply with any such direction.
- (4) A person who contravenes an order under this section without reasonable excuse commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or fine not exceeding \$10,000 or both.

### **43 Reimbursement of expenses of witnesses**

A witness appearing before the Commissioner shall be paid, in respect of the expenses of the witness's attendance, in accordance with the applicable scale for witnesses in the Supreme Court.

## **PART 3 - REFERRAL OF MATTERS BY COMMISSIONER**

### **44 Referral**

- (1) The Commissioner may —
  - (a) at any stage of investigating a matter, refer the matter to any person or body considered by the Commissioner to be appropriate in the circumstances after appropriate consultation with that person or body;
  - (b) when referring a matter, recommend what action should be taken and the time within which it should be taken; and
  - (c) communicate any information which the Commissioner has obtained during the investigation of conduct connected with the matter.
- (2) Any communication between the Commissioner and a person or body under this section shall be on the understanding that the communication is confidential and the person or body is subject to the secrecy provision of this Act.

### **45 Report to Commissioner**

The Commissioner may, when referring a matter under this Act, require the relevant authority to submit a report or reports in relation to the matter and direct the nature of the report and the time for its submission.

### **46 Responsibility of relevant authority**

A relevant authority shall comply with any requirement or direction of the Commissioner under this Act.

### **47 Reports of Commissioner**

- (1) If the Commissioner is not satisfied that a relevant authority has duly and properly taken action in connection with a matter referred under this Act, the Commissioner shall inform the relevant authority of the grounds of the Commissioner's dissatisfaction and shall give the relevant authority an opportunity to comment within a specified time.
- (2) The Commissioner may submit a report to the Minister for the relevant authority if it is not satisfied with the report and the grounds of dissatisfaction.
- (3) If the Commissioner is still of the opinion that the recommendation should be adopted, the Commissioner may make a report to the Prime Minister if

after considering the Minister's comments it is still not satisfied with the action taken.

#### **48 Revocation of referral or recommendation**

The Commissioner may under this part —

- (a) revoke a referral; or
- (b) revoke or vary a recommendation, requirement or direction of the Commissioner.

#### **49 Referral by Legislative Assembly**

- (1) The Legislative Assembly may, by resolution —
  - (a) refer to the Commissioner any matter which may in its opinion constitute corrupt conduct; and
  - (b) amend or revoke a reference made under this section.
- (2) The Commissioner may investigate a matter referred to it.
- (3) If the Commissioner decides not to investigate such a matter it shall report to the Legislative Assembly the reasons for its decision.

#### **50 Reports on referred matters**

- (1) If the Commissioner investigates under section 49 he shall prepare a report on the investigation in relation to a matter referred to it by the Legislative Assembly and such report shall be furnished to the Speaker.
- (2) A report made under this section shall be furnished as soon as possible after the Commissioner has concluded its involvement in the matter but such report may be deferred if the Commissioner is satisfied that it is desirable to do so in the public interest.

#### **51 Content of reports to Parliament**

- (1) The Commissioner shall include in its report its findings, opinions and recommendations with reasons.
- (2) The report shall include, in respect of each "affected" person, a statement as to whether or not in all the circumstances the Commissioner is of the opinion that consideration should be given to the following —
  - (a) obtaining the advice of the Attorney General with respect to the prosecution of the person for a specified criminal offence;
  - (b) taking action against the person for a specified disciplinary offence;



- (c) taking action against the person as a public official on specified grounds, with a view to dismissing, dispensing with the services of or otherwise terminating the services of the public official.
- (3) An “affected” person is a person described as such in the reference made by the Legislative Assembly or against whom, in the Commissioner's opinion, substantial allegations have been made in the course of or in connection with the investigation concerned.

## **52 Report not to include findings of guilt or recommending prosecution**

- (1) The Commissioner shall not include in a report a statement as to —
- (a) a finding or opinion that a specified person is guilty of committing or is about to commit a criminal offence or disciplinary offence; or
  - (b) a recommendation that a specified person be, or an opinion that a specified person should be, prosecuted for a criminal offence or disciplinary offence.
- (2) A finding or opinion that a person has engaged, is engaging or is about to engage in a specified conduct that constitutes or involves or could constitute or involve corrupt conduct is not a finding or opinion that the person is guilty of or has committed, is committing or is about to commit a criminal offence or disciplinary offence.

## **53 Special reports**

The Commissioner may, at any time, make a special report to the Speaker of the Legislative Assembly on any matter relating to the functions of the Commissioner.

## **54 Annual reports**

- (1) The Commissioner shall, within 3 months after each 30 June, prepare a report of its operations during the year ended on that 30 June and furnish such report to the Prime Minister for tabling in Privy Council and the Legislative Assembly.
- (2) A report by the Commissioner under this section in relation to a year shall include—
- (a) a description of the matters that were referred to it;
  - (b) a description of the matters investigated including the following details —
    - (i) the time interval between the lodging of each complaint and the decision to investigate the complaint;

- (ii) the number of pending investigations;
- (iii) the average time taken to deal with complaints and the actual time taken to investigate any matter;
- (iv) the total number of compulsory examinations and public inquiries conducted during the year;
- (v) the number of days spent during the year in conducting public inquiries;
- (vi) the time interval between the completion of each public inquiry and the furnishing of a report on the matter;
- (c) any recommendations for changes in the laws or for administrative action;
- (d) the general nature and extent of any information furnished under this Act;
- (e) the extent to which its investigations have resulted in prosecutions or disciplinary action;
- (g) the number of search warrants issued;
- (h) a description of its activities during that year in relation to its educational and advisory functions.

## **55 Commissioner's recommendations**

- (1) The Commissioner may furnish to the Speaker of the Legislative Assembly a report setting out a recommendation which it is of the opinion should be adopted and the reasons for his opinion.
- (2) Such a report shall not be furnished until after 21 days from the time a matter is referred to a Minister or an authority for comment or appropriate action under this Act.

## **56 Provisions relating to reports**

- (1) A copy of a report furnished to the Speaker of the Legislative Assembly under this Part shall be laid before the Legislative Assembly within 5 sitting days after it is received by the Speaker.
- (2) The Commissioner may include in a report a recommendation that the report be made public forthwith.

## PART 4 - OFFENCES

### 57 Obstruction

- (1) A person shall not —
  - (a) wilfully obstruct, hinder, resist or threaten the Commissioner, an officer of the Commissioner, a law practitioner or other person authorised to act in the exercise of functions under this Act;
  - (b) refuse or wilfully fail to comply with any lawful requirement under this Act; or
  - (c) wilfully make any false statement to or mislead, or attempt to mislead or an officer of the Commissioner or disrupt a compulsory examination or public inquiry before the Commissioner.
- (2) Any person who contravenes any provision of this section commits an offence and upon conviction be liable to imprisonment not exceeding 2 years or fine not exceeding \$5000 or both.

### 58 Complaints

- (1) A person shall not, in making a complaint under this Act, wilfully make any false statement to or mislead, or attempt to mislead, the Commissioner or an officer of the Commissioner.
- (2) Any person who contravenes this section commits an offence and upon conviction is liable to imprisonment not exceeding 1 year or a fine not exceeding \$2000 or both.

### 59 Offences relating to obtaining information

- (1) A person shall not without reasonable excuse, fail to comply with a notice served on him under this Act.
- (2) Any person who contravenes this section commits an offence and upon conviction is liable to imprisonment not exceeding 1 year or a fine not exceeding \$2000 or both.

### 60 Obstruction of person executing search warrant

- (1) A person shall not, without reasonable excuse, obstruct or hinder a person executing a search warrant.
- (2) Any person who contravenes this section commits an offence and upon conviction is liable to imprisonment not exceeding 1 year or a fine not exceeding \$2000 or both.

**61 Failure to attend**

- (1) A person summoned to appear before the Commissioner at a compulsory examination or public inquiry shall not, without reasonable excuse, fail —
  - (a) to attend before the Commissioner in accordance with the summons;
  - (b) to be sworn or to make an affirmation;
  - (c) to answer any question relevant to an investigation put to the person by the Commissioner or other person presiding at the compulsory examination or public inquiry; or
  - (d) to produce any document or other thing in the person's custody or control which the person is required by the summons or by the person presiding to produce.
- (2) Any person who contravenes any provision of this section commits an offence and upon conviction is liable to imprisonment not exceeding 1 year or a fine not exceeding \$2000 or both.
- (3) It is a defence to a prosecution for failing without reasonable excuse to produce a document or other thing if the defendant establishes that the document or other thing was not relevant to an investigation.

**62 False and misleading evidence**

A person who, at a compulsory examination or public inquiry under this Act gives evidence that is false or misleading in a material particular knowing it to be false or misleading commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

**63 Offences relating to documents**

- (1) A person who, knowing that any computer record, document or other thing is or may be required in connection with an investigation, wilfully deletes it, destroys it or renders it incapable of recovery or identification or, in the case of a document, renders it illegible, indecipherable or unusable, with intent to prevent it from being used in connection with the investigation, is guilty of an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.
- (2) A person who, with intent to delay or obstruct the carrying out by the Commissioner of any investigation:
  - (a) deletes, destroys or alters any computer record, document or other thing relating to the subject-matter of the investigation; or
  - (b) sends or attempts to send, or conspires with any other person to send, out of the Kingdom any such computer record, document or

other thing, or any property of any description belonging to or in the disposition of or under the control of any person whose affairs are the subject-matter of the investigation;

is guilty of an offence and upon conviction be liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

- (3) A person who, with intent to delay or obstruct the carrying out by the Commissioner of any investigation, or with intent to mislead the Commissioner, fabricates any computer record, document or other thing is guilty of an offence, if the computer record, document or other thing is produced in evidence to the Commissioner or is produced in purported compliance with a requirement under section 16 or 17, and upon conviction be liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

#### **64 Procuring false testimony**

A person who procures or causes or attempts or conspires to procure or cause —

- (a) the giving of false testimony at a compulsory examination or public inquiry before the Commissioner; or
- (b) in purported compliance with a notice served on any person under this Act, the furnishing of information that is, to the knowledge of the person so served, false or misleading in a material particular;

commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

#### **65 Bribery of witness**

A person who —

- (a) gives, confers or procures, or promises to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, on or for any person, on any agreement or understanding that any person called or to be called as a witness before the Commissioner will give false testimony or withhold true testimony;
- (b) attempts by any means to induce a person called or to be called before the Commissioner to give false testimony, or to withhold true testimony; or
- (c) asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or herself, or for any other person, on any agreement or understanding that any person will as a witness before the Commissioner give false testimony or withhold true testimony;

commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

## **66 Fraud on witness**

A person who practises any fraud or deceit on, or knowingly makes or exhibits any false statement, representation or writing to any person called or to be called as a witness before the Commissioner with intent to affect the testimony of that person as a witness commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

## **67 Preventing witness from attending**

A person who wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before the Commissioner from attending as a witness or from producing anything in evidence pursuant to a summons to attend commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.

## **68 Injury to witness**

- (1) A person who uses, causes, inflicts or procures, or threatens to use, cause, inflict or procure, any violence, punishment, damage, loss or disadvantage to any person or his immediate family for or on account of —
  - (a) his assisting the Commissioner; or
  - (b) any evidence given by him before the Commissioner;commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.
- (2) A person assisting the Commissioner who may be implicated in the commission of an offence relating to a matter which was investigated, is under investigation or is about to be investigated by the Commissioner, may be granted immunity from any prosecution relating to such matter, by the written notice of the Attorney General, addressed to that person.

## **69 Dismissal of witness or person assisting Commissioner**

- (1) An employer who dismisses any employee from his employment, or prejudices any employee in his employment, for or on account of the employee assisting the Commissioner, commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$10,000 or both.
- (2) In any proceedings for an offence against this section, it lies on the employer to prove that any employee shown to have been dismissed or

prejudiced in his employment was so dismissed or prejudiced for some reason other than the reasons in subsection (1).

## **70 Impersonation of officer of Commissioner**

- (1) A person shall not directly or indirectly represent that he is an officer of the Commissioner unless the person is such an officer.
- (2) Any person who contravenes this section commits an offence and upon conviction is liable to imprisonment not exceeding 1 year or a fine not exceeding \$2000 or both.

## **71 Bribery of officer of Commissioner**

- (1) An officer of the Commissioner shall not ask for, receive or obtain, or agree to receive or obtain, any money, property or benefit of any kind for himself, or for another person —
  - (a) to forego or neglect his duty, or influence him, in the exercise of his functions as an officer of the Commissioner;
  - (b) on account of anything already done or omitted to be done, or to be afterwards done or omitted to be done, by him in the exercise of those functions; or
  - (c) to use, or take advantage of, his position as an officer of the Commissioner in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, another person.
- (2) A person shall not give to, confer upon, or procure for, or promise or offer to give to, confer upon, or procure for, or attempt to procure for, an officer of the Commissioner, or for any other person, any money, property or benefit of any kind —
  - (a) for the person who has those functions to forego or neglect his duty, or to influence him in the exercise of his functions as an officer of the Commissioner;
  - (b) on account of anything already done, or omitted to be done, by him in the exercise of those functions; or
  - (c) for the officer of the Commissioner to use or take advantage of his position as such an officer in order improperly to gain a benefit or advantage for, or facilitate the commission of an offence by, the person first referred to in this subsection.
- (3) Any person who contravenes this section commits an offence and upon conviction is liable to imprisonment not exceeding 3 years or a fine not exceeding \$15,000 or both.

## PART 5 - CONTEMPT OF COMMISSIONER

### 72 Contempt

A person who —

- (a) having been served with a summons to attend before the Commissioner as a witness, fails to attend in obedience to the summons;
- (b) having been released on condition that the person appear and report himself before the Commissioner, fails so to appear and report;
- (c) having been served with a summons to attend before the Commissioner, fails to produce any document or other thing in the person's custody or control that the person is required by the summons to produce;
- (d) being called or examined as a witness before the Commissioner, refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question put to the person by the Commissioner or an officer of the Commissioner;
- (e) wilfully threatens or insults —
  - (i) the Commissioner or an officer of the Commissioner;
  - (ii) a law practitioner appointed to assist the Commissioner as counsel;
  - (iii) any witness or person summoned to attend before the Commissioner; or
  - (iv) a law practitioner or other person authorised to appear before the Commissioner;
- (f) misbehaves before the Commissioner; or
- (g) interrupts or obstructs any proceedings before the Commissioner;

is guilty of contempt of the Commissioner.

### 73 Punishment of contempt

- (1) Any contempt of the Commissioner under this Act may be punished in accordance with this section.
- (2) The Commissioner may present to the Supreme Court a certificate called a “contempt of the Commissioner certificate” in which the Commissioner sets out the facts that constitute the alleged contempt and such a certificate is prima facie evidence of the matters certified.



- (3) If the Commissioner presents a contempt of the Commissioner certificate to the Supreme Court —
  - (a) the Supreme Court shall thereupon inquire into the alleged contempt;
  - (b) after hearing any witnesses who may be produced against or on behalf of the person charged with the contempt, and after hearing any statement that may be offered in defence, the Supreme Court may punish or take steps for the punishment of the person in like manner and to the like extent as if the person had committed that contempt in or in relation to proceedings in the Supreme Court.

#### **74 Contempt provisions**

- (1) In the case of any alleged contempt of the Commissioner, the Commissioner may summon the offender to appear before the Commissioner at a time and place named in the summons to show cause why the offender should not be dealt with for contempt and the summons is to set out the details of the alleged contempt.
- (2) If the offender fails to attend before the Commissioner in obedience to the summons, and no reasonable excuse to the satisfaction of the Commissioner is offered for the failure, the Commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the Commissioner.
- (3) The Commissioner may issue a warrant to arrest the offender while the offender is before the Commissioner and to bring the offender before the Supreme Court.
- (4) The warrant accompanied by the contempt of the Commissioner certificate is sufficient authority to detain the offender in a prison or elsewhere, pending the offender's being brought before the Supreme Court.
- (5) The Commissioner may revoke the warrant at any time before the offender is brought before the Supreme Court.

#### **75 Conditional release of offender**

- (1) The Commissioner may by order release with conditions an offender detained under this Act at any time before the offender is brought before the Supreme Court subject to the condition that the offender appear before the Supreme Court.
- (2) The Commissioner may by order amend, revoke or add to those conditions.

**76 Review by Supreme Court**

- (1) An offender who has not been released by the Commissioner whose release under that section is subject to one or more conditions may apply to the Supreme Court for a review of the decision not to release or failure to release the offender or of the terms of one or more of those conditions.
- (2) The Supreme Court may affirm or set aside a decision by the Commissioner not to release the offender or any condition imposed by the Commissioner on the release of the offender and may make any order that the Commissioner may make in relation to the detention or release of the offender and such an order shall be deemed to be an order of the Commissioner.

**77 Act or omission that is both an offence and contempt**

An act or omission may be punished as a contempt of the Commissioner even though it could be punished as an offence and the offender is not liable to be punished twice.

**78 Seconded police officers**

- (1) In this section —  
“**seconded police officer**” means —
  - (a) a member of the Police Force of the Kingdom; or
  - (b) a member of the Police Force of any country;who is seconded or otherwise engaged to assist the Commissioner.
- (2) A Commissioner’s investigator who is a seconded police officer has and may exercise all the functions that a police officer of the rank of constable duly appointed under the Police Act (Cap 35) has and may exercise under any law of the Kingdom, including this Act.
- (3) This section does not operate to subject a Commissioner’s investigator to the control and direction of the Police Commander or any other police officer when acting in the person's capacity as an officer of the Commissioner.

## PART 6 - MISCELLANEOUS

### 79 Legislative Assembly to make necessary appropriation

The Legislative Assembly shall make the necessary appropriation from the public fund of the Kingdom for the efficient carrying out of the functions and operations of the Commissioner under this Act.

### 80 Appointment of staff

The Commissioner may appoint a Director of Corruption Investigation and a Director of Leadership Code and Prevention and such other persons as may be necessary to enable the Commissioner to exercise its functions.

### 81 Arrangements for use of services of other staff

(1) The Commissioner may —

- (a) with the approval of the Minister responsible for the department or authority concerned; and
- (b) on such terms and conditions as may be approved by the Attorney General;

arrange for the use by secondment or otherwise of the services of any staff or facilities of a government department or public authority.

(2) The Commissioner may —

- (a) with the approval of the Minister of Police; and
- (b) on such terms and conditions as may be approved by the Attorney General;

arrange for one or more police officers to be made available to perform services for the Commissioner.

(3) The Commissioner may terminate an arrangement under subsection (1) or (2) at any time, and no appeal or other proceedings may be brought, in respect of the termination, by or on behalf of the person concerned.

(4) After the termination of such an arrangement —

- (a) no disciplinary proceedings or disciplinary action may, in accordance with the procedures applicable to his principal employment, be taken against the former member in connection with any act or omission committed while a member of staff of the Commissioner;
- (b) any such act or omission shall, for the purposes of paragraph (a), be taken to have been committed by the former member in the course of or during his principal employment; and

- (c) no court or tribunal may make an order reinstating or having the effect of reinstating the former member as a member of staff of the Commissioner.

## **82 Delegation**

- (1) The Commissioner may delegate any of its functions.
- (2) The following functions may not be delegated —
  - (a) a power of delegation under this section;
  - (b) a function of making a report under this Act;
  - (c) the power to issue a warrant for the arrest of a person;
  - (d) the power to issue search warrants;
  - (e) the power to certify that a specific divulge of information is necessary in the public interest.

## **83 Service of documents**

For the purposes of this Act, service of a document on a person may be effected —

- (a) on a natural person —
  - (i) by delivering it to the person personally;
  - (ii) by leaving it at, or by sending it by pre-paid post to, the residential or business address of the person last known to the person serving the document; or
- (b) on a body corporate, by leaving it at, or by sending it by pre-paid post to, the head office, a registered office or a principal office of the body corporate.

## **84 Protection from liability**

- (1) No matter or thing done by the Commissioner or any person acting under the direction of the Commissioner shall, if the matter or thing was done in good faith for the purpose of executing this or any other Act, subject the Commissioner or a person so acting personally to any action, liability, claim or demand.
- (2) A law practitioner assisting the Commissioner or representing a person before the Commissioner has the same protection, immunity and privileges as he has in appearing for a party in proceedings in the Supreme Court.
- (3) Subject to this Act, a person summoned to attend or appear before the Commissioner as a witness, or producing a document or other thing to the

Commissioner, has the same protection as a witness in proceedings in the Supreme Court.

- (4) No criminal or civil liability shall attach to any person for compliance, or purported compliance in good faith, with any requirement made under this Act.
- (5) In particular, if a person gives any statement of information or produces any document or other thing under this Act, no civil liability shall attach to the person for doing so, whether that liability would arise under a contract or otherwise.

## **85 Disclosure of pecuniary interests and other matters**

Officers of the Commissioner shall —

- (a) disclose all or any of the following pecuniary interests or other matters —
  - (i) real or personal property;
  - (ii) income;
  - (iii) gifts;
  - (iv) financial or other contributions to any travel;
  - (v) shareholdings or other beneficial interests in corporations;
  - (vi) partnerships;
  - (vii) trusts;
  - (viii) positions (whether remunerated or not) held in, or membership of, corporations, unions, professional associations or other organisations or associations;
  - (ix) occupations, trades, professions or vocations;
  - (x) debts;
  - (xi) payments of money or transfers of property to relatives or other persons by, or under arrangements made by, officers of the Commission;
  - (xii) any other direct or indirect benefits, advantages or liabilities, whether pecuniary or not, of a kind specified in the regulations;
- (b) prescribing the manner in which, and the times at which, pecuniary interests or other matters shall be disclosed and providing for the verification by statutory declaration or otherwise of any such disclosure; and
- (c) the compilation and maintenance of registers of pecuniary interests or other matters by officers of the Commissioner and the inspection and publication of any such register.

**86 Secrecy**

- (1) This section applies to —
  - (a) a person who is or was an officer of the Commissioner; and
  - (b) a person who is or was a law practitioner appointed to assist the Commissioner or who is or was a person who assists, or performs services for or on behalf of, such a law practitioner in the exercise of the law practitioner's functions as counsel to the Commissioner.
- (2) A person to whom this section applies shall not, directly or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act:
  - (a) make a record of any information; or
  - (b) divulge or communicate to any person any information;being information acquired by the person in the course of, the exercise of the person's functions under this Act.
- (3) Any person who contravenes any provision of this section commits an offence and upon conviction is liable to imprisonment not exceeding 1 year or a fine not exceeding \$2000 or both.
- (4) A person to whom this section applies shall not be required —
  - (a) to produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act; or
  - (b) to divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's functions under this Act,except for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commissioner in the exercise of its functions.
- (5) A person to whom this section applies may divulge any information —
  - (a) for the purposes of and in accordance with this Act;
  - (b) for the purposes of a prosecution or disciplinary proceedings instituted as a result of an investigation conducted by the Commissioner in the exercise of its functions;
  - (c) in accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest; or
  - (d) to any prescribed authority or person.
- (6) An authority or person to whom information is divulged under subsection (5), and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights,

privileges, obligations and liabilities as if he were a person to whom this section applies and had acquired the information in the exercise of functions under this Act.

## **87 Restriction on publication of evidence**

- (1) The Commissioner may direct that —
  - (a) any evidence given before it;
  - (b) the contents of any document, or a description of any thing, produced to the Commissioner or seized under a search warrant issued under this Act;
  - (c) any information that might enable a person who has given or may be about to give evidence before the Commissioner to be identified or located; or
  - (d) the fact that any person has given or may be about to give evidence at a compulsory examination or public inquiry;

shall not be published or shall not be published except in such manner, and to such persons, as the Commissioner specifies.

- (2) The Commissioner shall not give a direction under this section unless satisfied that the direction is necessary or desirable in the public interest.
- (3) A person who makes a publication in contravention of a direction given under this section commits an offence and upon conviction is liable to imprisonment not exceeding 1 year or a fine not exceeding \$2000 or both.

## **88 Evidence in criminal proceedings**

- (1) If —
  - (a) a person has been charged with an offence before a court; and
  - (b) the court considers that it is desirable in the interests of justice that particular evidence given before the Commissioner be made available to the person or to a law practitioner representing the person or to the prosecutor;

the court may give to the Commissioner a certificate to that effect.

- (2) The Commissioner may appear before the court for the purpose of making representations concerning the giving of such a certificate.
- (3) On such a certificate being given, the Commissioner shall make the evidence or information available to the court.
- (4) The court may make the evidence or information available to the person charged with the offence concerned, to a law practitioner representing the person charged or to the prosecutor, if the court has examined the

evidence or information and is satisfied that the interests of justice so require.

## 89 Disclosures prejudicing investigations

- (1) A person who is required —
  - (a) by a notice under this Act to produce a statement of information or to attend and produce a document or other thing; or
  - (b) by a summons to give evidence or to produce a document or other thing,shall not disclose any information about the notice or summons that is likely to prejudice the investigation to which it relates.
- (2) Any person who contravenes any provision of this section commits an offence and upon conviction is liable to imprisonment not exceeding 1 year or a fine not exceeding \$2000 or both.
- (3) A person does not contravene this section if —
  - (a) the disclosure is made to an employee, agent or other person in order to obtain information to comply with the notice or summons and the employee, agent or other person is directed not to inform the person to whom the information relates about the matter;
  - (b) the disclosure is made to obtain legal advice or representation in relation to the notice or summons; or
  - (c) the disclosure is made for the purposes of, or in the course of, legal proceedings.
- (4) A reference in this section to the disclosure of any information about a notice or summons includes a reference to —
  - (a) a disclosure about the existence or nature of the notice or summons or of the investigation to which it relates; and
  - (b) a disclosure of any information to a person from which the person could reasonably be expected to infer the existence or nature of the notice or summons or of the investigation to which it relates.

## 90 Regulations

The Commissioner may with the consent of Cabinet make Regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.



**91 Act binds Crown**

This Act binds the Crown.

Passed by the Legislative Assembly this 28th day of August 2007.

**SCHEDULE 1****PROVISIONS RELATING TO COMMISSIONER**

(Section 5)

**1 Eligibility for appointment**

- (1) A person is not eligible to be appointed as Commissioner or to act in that office unless the person is qualified to be appointed as a Judge of the Supreme Court.
- (2) A person is not eligible to be appointed as Commissioner if the person is a member of the Legislative Assembly.

**2 Acting Commissioner**

- (1) His Majesty's Cabinet may, from time to time, appoint a person to act in the office of Commissioner during the illness or absence of the Commissioner, and the person, while so acting, has all the functions of the Commissioner and shall be taken to be the Commissioner.
- (2) For the purposes of this clause, a vacancy in the office of Commissioner shall be regarded as an absence from office of Commissioner.

**3 Commissioner may hold another office**

The office of the Commissioner is a full-time position, provided that this provision does not prevent the Commissioner from holding any other public office at the same time.

**4 Terms of office**

Subject to this Schedule, the Commissioner shall hold office for such term not exceeding 5 years as may be specified in the instrument of appointment, but is eligible for re-appointment with a maximum of two terms.

**5 Remuneration**

- (1) The Commissioner shall be paid the same remuneration and accorded such other entitlements as a judge of the Supreme Court.

- (2) Remuneration is payable out of the public fund, which is accordingly appropriated to the necessary extent.

## **6 Vacancy in office**

- (1) The office of Commissioner becomes vacant if the holder —
- (a) dies;
  - (b) completes a term of office and is not re-appointed;
  - (c) resigns the office by instrument in writing addressed to the Prime Minister; or
  - (d) becomes bankrupt.
- (2) The Commissioner may be removed from office by His Majesty in Privy Council for misconduct.

## **7 Filling of vacancy**

If the office of Commissioner becomes vacant, a person shall, subject to this Act, be appointed to fill the vacancy.

## **8 Public Service Act 1998**

The Public Service Act 1998 does not apply to the appointment of the Commissioner and the holder of that office is not, as holder, subject to that Act.

**SCHEDULE 2**

(Section 6)

**MATTERS INVOLVING CORRUPT CONDUCT**

- (a) official misconduct including, breach of trust, fraud in office, misfeasance in public office, nonfeasance, malfeasance, oppression, extortion or imposition;
- (b) bribery;
- (c) blackmail;
- (d) obtaining or offering secret commissions;
- (e) fraud;
- (f) theft;
- (g) wilful damage of public property;
- (h) perverting the course of justice;
- (i) embezzlement;
- (j) election bribery;
- (k) election funding offences;
- (l) election fraud;
- (m) treating;
- (n) tax evasion;
- (o) revenue evasion;
- (p) currency violations;
- (q) illegal drug dealings;
- (r) illegal gambling;
- (s) obtaining financial benefit by vice engaged in by others;
- (t) bankruptcy and company violations;
- (u) harbouring criminals;
- (v) forgery;
- (w) treason or other offences against the Sovereign;
- (x) homicide or violence;
- (y) matters of the same or a similar nature to any listed above;
- (z) any conspiracy or attempt in relation to any of the above.