

No. 906 of 9998.

Organic Law on the Duties and Responsibilities of Leadership.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Organic Law on the Duties and Responsibilities of Leadership.

ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Definitions.
 - “associate”
 - “benefit”
 - “constitutional office-holder”
 - “foreign enterprise”
 - “other authority”
 - “person to whom this Law applies”
 - “prohibited interest, benefit or property”
 - “the Ombudsman Commission”
 - “tribunal”
2. Application of other laws.
3. Non-derogation, etc., of Organic Law on the Ombudsman Commission.

PART II – RESPONSIBILITIES OF LEADERSHIP.

4. Statement of income, etc.
5. Use of office for personal benefit, etc.
6. Personal interest.
7. Company directorships, etc.
8. Shareholdings.
9. Engaging in other paid employment.
10. Interests in contracts.
11. Acceptance, etc., of bribes.
12. Acceptance, etc., of loans, etc.
13. Misappropriation of funds of Papua New Guinea.
14. Personal advantage not to be gained from official information.
15. Disclosure of interest before debate or voting.
16. Agents, etc.

PART III – INVESTIGATIONS.

17. Functions of the Ombudsman Commission.
18. Complaints.

19. Appointment of investigating authorities.
20. Proceedings of the Commission.
21. Production of documents, etc.
22. Disclosure of certain matters not to be required.
23. Failure to co-operate.

PART IV – PROHIBITED INTERESTS, ETC.

24. Declaration of prohibited interests, etc.
25. Seeking, etc., prohibited interest, etc.
26. Commission may order forfeiture, etc., of prohibited interest, etc.

PART V – ENFORCEMENT.

27. Tribunals.
 - “the appropriate authority”
 - “the appropriate tribunal”
28. Suspension.
29. Application of Section 21 to tribunals.
30. Effect of proceedings.

PART VI – OFFENCES.

31. Failure to attend or produce documents.
32. Refusing to be sworn or give evidence.
33. Contempt of the Commission, etc.
34. Giving false evidence.
35. Offences in relation to certain matters done after ceasing to hold office.
36. Prosecution for offences.

PART VII – MISCELLANEOUS.

37. Privilege.
38. Protection to witnesses, etc.
39. Witnesses’ expenses.
40. Reimbursement of accountancy fees in relation to annual statement.
41. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Organic Law on the Duties and Responsibilities of Leadership,

Being an Organic Law to implement Division III.2 (*leadership code*) of the *Constitution*.

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 connections of each of them (including any business connections 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 1974*; or
- (e) an incorporated Land Group recognized under the *Land Groups Act 1974*,

where the Minister has obtained the permission of the Ombudsman Commission.

(3) 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.

(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 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—

s. 16.

Organic Law on the Duties and Responsibilities of Leade 9998

- (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, Governor, 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; or
- (d) a Local-level Government or Local-level Government Special Purposes 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 CO-OPERATE.

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.

s. 26.

Organic Law on the Duties and Responsibilities of Leade 9998

(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)¹ ²The 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.

¹ Section 27(8) amended by *Organic Law on the Duties and Responsibilities of Leadership (Amendment No. 1-Penalties)*.

² Section 27(8) amended by *Organic Law on the Duties and Responsibilities of Leadership (Amendment No. 1-Penalties)*.

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.