



ANTI-CORRUPTION BILL 2016

(NO. 3 OF 2016)



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BILL

Entitled

AN ACT TO COMBAT CORRUPTION, PROVIDE FOR THE ESTABLISHMENT AND OPERATION OF THE SOLOMON ISLANDS INDEPENDENT COMMISSION AGAINST CORRUPTION, AND FOR RELATED PURPOSES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

ANTI-CORRUPTION BILL 2016

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ANTI-CORRUPTION BILL 2016

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Anti-Corruption Act 2016*.

2 Commencement

This Act commences on the day appointed by the Minister by *Gazette* notice.

3 Interpretation

In this Act:

“associate”, of a person, means:

- (a) a nominee, employee or agent of the person; or
- (b) a firm of which the person, or a nominee of the person, is a partner or other executive officer; or
- (c) a body corporate of which the person, or a nominee of the person, is a director or other executive officer; or
- (d) a trustee of a trust:
 - (i) created by the person; or
 - (ii) in which the person has contributed assets that amount at any time to at least 20% of the total value of assets of the trust;

“authorised officer” means:

- (a) the Director-General; or
- (b) a person appointed under section 24(1);

“chairperson” means the chairperson of the Commission appointed under section 10(1)(a);

“Commission” means the Solomon Islands Independent Commission Against Corruption established by section 6;

“Commission member” means a member of the Commission appointed under section 10(1);

“corruption” means conduct that constitutes a corruption offence;

“corruption complaint” means a complaint of corruption by a person;

“corruption investigation” means an investigation into a suspected corruption offence conducted under Part 4, Division 3;

“corruption offence” means an offence:

- (a) under Part X of the *Penal Code* (Cap. 26); or
- (b) an offence of bribery under another written law; or
- (c) an offence prescribed to be a corruption offence by an Act;

“deputy chairperson” means the deputy chairperson of the Commission appointed under section 10(1)(b);

“Director-General” means the Director-General of the Commission appointed under section 23(1);

“financial institution” means a financial institution as defined in section 2 of the *Central Bank of Solomon Islands Act 2012*;

“integrity officer” means a person designated to be an integrity officer under section 32;

“Leadership Code Commission” means the Leadership Code Commission established by section 5 of the *Leadership Code (Further Provisions) Act 1999*;

“misconduct in office” means misconduct in office as defined in section 2 of the *Leadership Code (Further Provisions) Act 1999*;

“Provincial Assembly” means a Provincial Assembly established by section 7 of the *Provincial Government Act 1997*;

“Public Service Commission” means the Public Service Commission for Solomon Islands established by section 115 of the Constitution;

“relative”, of a person, means any of the following, whether by birth, adoption, custom or marriage:

- (a) the person’s spouse, including a de facto spouse;
- (b) the person’s brother or sister;
- (c) the brother or sister of the person’s spouse;
- (d) the person’s parent, grandparent, child, grandchild, uncle, aunt, cousin, nephew or niece;

“staff member”, of the Commission, means a staff member mentioned in section 25.

4 Act binds Crown

This Act binds the Crown.

5 Objects of Act

The object of this Act is to combat corruption in Solomon Islands in all its forms by:

- (a) establishing the Solomon Islands Independent Commission Against Corruption to prevent, investigate and prosecute corruption offences; and
- (b) establishing a system for receiving and managing complaints about potential corruption engaged in by persons in the public or private sector; and
- (c) introducing measures to prevent corruption, including raising public awareness about the effects and prevention of corruption.

Part 2 Solomon Islands Independent Commission Against Corruption

Division 1 Establishment

6 Solomon Islands Independent Commission Against Corruption established

- (1) The Solomon Islands Independent Commission Against Corruption is established.
- (2) The Commission is a body corporate with perpetual succession.

7 Functions and powers

The Commission has the following powers and functions:

- (a) to determine the appropriate action to take on conclusion of corruption investigations;
- (b) to prosecute corruption offences with the consent of the Director of Public Prosecutions;
- (c) to prevent corruption through its functions under Part 3;
- (d) to direct the Director-General in the operation of the Commission;
- (e) any other powers and functions conferred on it by this or any other Act.

8 Independence

Except as provided for in this or another Act, the Commission is not subject to the direction or control of the Minister or any other person in the exercise of its powers or the performance of its functions.

9 Liaison with other bodies

In the exercise of its powers and the performance of its functions, the Commission must liaise and cooperate with the following office holders and bodies as appropriate:

- (a) the Ombudsman;

- (b) the Leadership Code Commission;
- (c) the Public Service Commission;
- (d) the Auditor-General;
- (e) the Police Force;
- (f) the Director of Public Prosecutions;
- (g) the Electoral Commission established by section 57 of the Constitution;
- (h) the Political Parties Commission established by section 4 of the *Political Parties Integrity Act 2014*.

Division 2 Constitution and membership

10 Membership

- (1) The Commission consists of the following members appointed by the Governor-General by *Gazette* notice:
 - (a) a chairperson;
 - (b) a deputy chairperson;
 - (c) 4 other members.
- (2) The deputy chairperson has all the powers and functions of the chairperson at any time the chairperson is unable to exercise those powers or perform those functions.
- (3) The membership of the Commission must:
 - (a) include at least 2 persons of each gender; and
 - (b) include at least one person who is qualified or experienced in accounting or financial management; and
 - (c) represent a reasonable geographical spread of the provinces of Solomon Islands.

- (4) The Governor-General may appoint a person to be a Commission member only if the person has been nominated by a committee (the “**nominating committee**”) consisting of the following:
- (a) the Speaker of Parliament, who is chairperson of the nominating committee;
 - (b) the Leader of the Official Opposition appointed under section 66(1) of the Constitution;
 - (c) the Deputy Prime Minister;
 - (d) the Attorney-General;
 - (e) the Chairman of the Public Service Commission.
- (5) The nominating committee may only nominate person to be a Commission member if the person meets the following eligibility criteria for membership:
- (a) the nominating committee is satisfied that the person:
 - (i) is a person of high integrity and is capable of exercising diligence, sound judgment, confidentiality and impartiality in the performance of their functions; and
 - (ii) has knowledge and experience relevant to the prevention of corruption and a sound knowledge of the culture and values of Solomon Islands; and
 - (iii) has the physical and mental capacity to perform his or her functions as a member;
 - (b) the person is not any of the following:
 - (i) a member of Parliament or a Provincial Assembly;
 - (ii) a member of a local government council established under section 3 of the *Local Government Act (Cap. 117)* or the Honiara City Council established by section 4 of the *Honiara City Act 1999*;
 - (iii) a member of a political party registered under section 25 of the *Political Parties Integrity Act 2014*;

- (iv) insolvent or an undischarged bankrupt;
 - (v) a person convicted:
 - (A) in Solomon Islands, of a corruption offence or an offence carrying a potential penalty of 5 or more years imprisonment; or
 - (B) outside Solomon Islands, of an offence that would be a corruption offence or an offence carrying a potential penalty of 5 or more years imprisonment if committed in Solomon Islands;
 - (vi) a person convicted within the previous 5 years:
 - (A) in Solomon Islands, of an offence carrying a potential penalty of imprisonment; or
 - (B) outside Solomon Islands, of an offence that would carry a potential penalty of imprisonment if committed in Solomon Islands;
 - (vii) a person the Leadership Code Commission has determined has engaged in misconduct in office in relation to conduct engaged in within the previous 5 years.
- (6) In addition, the nominating committee may only nominate a person to be chairperson of the Commission if the person is qualified for appointment as a judge of the High Court.

11 Duration of appointment

- (1) A Commission member holds office for 5 years or the shorter period specified in the instrument of appointment.
- (2) A person may be re-appointed to be a Commission member for a further single term of up to 5 years, served either consecutively or after a break in service.

12 Vacation of office

- (1) A person ceases to be a Commission member if:
 - (a) the person ceases to be eligible for membership under section 10(5)(b); or
 - (b) the person's appointment is terminated under subsection (2).
- (2) The Governor-General may terminate the appointment of a Commission member by *Gazette* notice:
 - (a) on the ground of physical or mental inability to satisfactorily perform the duties of the office; or
 - (b) if the Governor-General is satisfied the member has failed to comply with section 21.
- (3) The exercise of a power or the performance of a function by the Commission is not affected only by a vacancy in its membership.

13 Oath of office

Each Commission member must make the oath or affirmation specified in the Schedule, Part 1, before the Governor-General before performing functions or exercising powers under this Act.

14 Remuneration and conditions of members

The remuneration and other conditions of service of Commission members are as prescribed by regulation.

Division 3 Procedures of Commission

15 Procedures

Subject to this Act, the Commission may determine its own procedures.

16 Meetings

The chairperson may convene a meeting of the Commission at any time, but must convene a meeting at least once each month.

17 Quorum at meetings

Subject to section 22(1)(b), the quorum for a meeting of the Commission is the chairperson (or the deputy chairperson if the chairperson is absent) plus 2 other members.

18 Presiding member at meetings

A meeting of the Commission must be presided over by:

- (a) the chairperson; or
- (b) in the absence of the chairperson, the deputy chairperson.

19 Voting at meetings

- (1) A decision at a meeting of the Commission must be determined by the majority vote of Commission members present and voting.
- (2) If there is an equality of votes, the member presiding at the meeting has a casting vote.

20 Minutes of meetings

The Commission must keep accurate and detailed minutes of its meetings, including reasons for all its decisions.

21 Disclosure of interest

- (1) This section applies if a Commission member has a personal interest in a matter being considered, or about to be considered, by the Commission.
- (2) The member must disclose the following to the other members as soon as practicable after the relevant facts come to the member's knowledge:
 - (a) the nature and extent of the interest;
 - (b) how the interest relates to the matter mentioned in subsection (1).

- (3) If the relevant facts come to the member's knowledge at a time when the Commission is not meeting, the member must:
 - (a) make the disclosure mentioned in subsection (2) by written notice to each other member; and
 - (b) table a copy of the notice at the next meeting of the Commission.
- (4) The disclosure must be recorded in the minutes of the meeting at which, or before which, the disclosure is made.
- (5) The member need not disclose an interest if the interest is an interest shared with the public generally or a section of the public.
- (6) For this section, a member has a personal interest in a matter if the member:
 - (a) has a direct or indirect financial interest in the matter; or
 - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the member from exercising independent judgment about the matter.

22 Effect of personal interest

- (1) If a Commission member has a personal interest in a matter that is required to be disclosed under section 21:
 - (a) the member must not take part in any deliberation or decision of the Commission about the matter; and
 - (b) the member must be disregarded for the purpose of constituting the quorum of the Commission for the deliberation or decision.
- (2) However, a failure by the member to disclose the interest in the matter does not, on its own, invalidate any decision of the Commission about the matter.

Division 4 Staff and authorised officers of Commission

23 Director-General

- (1) The Judicial and Legal Services Commission established by section 117 of the Constitution must appoint a person to be Director-General of the Commission.
- (2) A person may only be appointed to be Director-General if the person:
 - (a) is qualified to practise as a legal practitioner in Solomon Islands; and
 - (b) has practised as a legal practitioner, in Solomon Islands or another country, for at least 5 years; and
 - (c) has sufficient experience in management to manage the operations of the Commission effectively.
- (3) The Director-General has the following powers and functions:
 - (a) to manage the day to day operations of the Commission, including managing its staff members;
 - (b) to appoint and direct authorised officers in the exercise of their powers and the performance of their functions;
 - (c) to decide whether to conduct corruption investigations, including conducting preliminary investigations of corruption complaints if necessary;
 - (d) to direct the conduct of and report to the Commission on the outcome of corruption investigations;
 - (e) any other powers and functions conferred on the Director-General by this or any other Act.
- (4) The Director-General is subject to the directions of the Commission.

24 Authorised officers

- (1) The Director-General may appoint the following to be an authorised officer to conduct corruption investigations under this Act:

- (a) a staff member of the Commission;
 - (b) a police officer.
- (2) For the conduct of corruption investigations:
- (a) an authorised officer has the powers and functions specified in this or any other Act; and
 - (b) in addition, an authorised officer who is a police officer has the powers he or she holds as a police officer while acting in the capacity of an authorised officer.
- (3) An authorised officer, including an authorised officer who is a police officer, is subject to the directions of the Director-General in the exercise of their powers and the performance of their functions as an authorised officer.
- (4) The chairperson must issue each authorised officer an identity card stating the officer's name and that they are an authorised officer.
- (5) The identity card must:
- (a) show a recent photograph of the officer; and
 - (b) show the card's date of issue and expiry; and
 - (c) be signed by the officer.
- (6) An authorised officer exercising a power or performing a function under this Act in relation to a person must, if asked by the person, produce the officer's identity card for the person's inspection.
- (7) A person who ceases to be an authorised officer must return the person's identity card to the Commission within 21 days after the cessation.

Maximum penalty: 1000 penalty units.

25 Staff members of the Commission

- (1) The Minister and the Public Service Commission must ensure the Commission is provided with the staff necessary to enable it to properly exercise its powers and perform its functions.

- (2) The staff members of the Commission are public officers subject to the directions of the Director-General in the performance of their functions.

26 Oath of office

Each authorised officer and staff member of the Commission must make the oath or affirmation specified in the Schedule, Part 2, before the chairperson before performing functions or exercising powers under this Act.

Division 5 Finance and administrative matters

27 Funds of the Commission

For the purposes of the *Public Financial Management Act 2013*:

- (a) the Commission is taken to be a Government agency, with a head of revenue and expenditure in the national budget prepared in accordance with that Act; and
- (b) the Director-General is the accountable officer for the Commission, as the person in charge of the day to day operations of the Commission.

28 Annual report

- (1) The chairperson must prepare and give to the Minister a report on the performance of the Commission's functions during each financial year, including the following:
- (a) statistical information (that does not identify individuals) on the corruption complaints received, the investigations undertaken and the outcome of investigations during the year;
 - (b) a report on corruption prevention activities conducted by the Commission during the year;
 - (c) the Commission's accounts for the financial year, as prepared in accordance with the requirements of the *Public Financial Management Act 2013*.
- (2) The report must be given to the Minister by 31 March following the end of the financial year.

- (3) The Minister must table a copy of the report in Parliament within 12 sitting days after the Minister receives it.

Part 3 Corruption prevention

29 Corruption prevention – role of Government

- (1) The Government must ensure that the prevention of corruption is considered in the formulation of legislation and the policies, programs and procedures of public bodies.
- (2) In doing so, the Government must consult the Commission, civil society and the private sector.
- (3) The Government must cooperate with international organisations seeking to prevent corruption in any way that is consistent with Solomon Islands law.

30 Corruption prevention – role of Minister

- (1) The Minister must, within 6 months after the commencement of this Act, issue a national Anti-Corruption Strategy that identifies strategies for the following:
 - (a) creating a political and cultural environment that discourages corruption;
 - (b) creating awareness and understanding of the harm corruption does to the economy and the community;
 - (c) strengthening the partnership between the Government, civil society and the private sector to combat corruption;
 - (d) avoiding opportunities for corruption in the public sector, including in the procurement of goods and services, the issuing of licences and permits, and decision-making generally;
 - (e) enhancing the central role of the Commission in investigating and prosecuting corruption;
 - (f) increasing the role of each Provincial Government in combatting corruption;

- (g) providing resources to implement the Anti-Corruption Strategy.
- (2) The Minister must make the Anti-Corruption Strategy publically available and table it in Parliament as soon as practicable after it is issued.
- (3) The Minister must:
 - (a) review the Anti-Corruption Strategy on a regular basis to ensure that it is and continues to be an effective tool in combatting corruption; and
 - (b) report to Parliament at least once each year on the implementation of the Anti-Corruption Strategy.
- (4) The Minister must consult the Commission in formulating and reviewing the Anti-Corruption Strategy.
- (5) The Minister may require any other Minister whose responsibilities include implementation of part of the Anti-Corruption Strategy to report to the Minister on that implementation.

31 Corruption prevention – role of Commission

To prevent corruption, the Commission must:

- (a) conduct programs to raise public awareness about corruption and its effects, including how corruption can be prevented; and
- (b) review legislation and the policies, programs and procedures of public bodies to identify ways in which opportunities for corruption can be reduced; and
- (c) provide advice and issue guidelines to public and private bodies about ways to prevent and detect corruption; and
- (d) provide training, or assist organisations to provide training, to officers and staff in the public and private sectors about corruption and its effects, including how corruption can be prevented.

32 Integrity officers

- (1) Each public body must designate a person to be its integrity officer.
- (2) The functions of an integrity officer are as follows:
 - (a) to take measures to implement any advice or guidelines given to the public body by the Commission under section 31;
 - (b) to create awareness within the public body of the role of the Commission and the process for making a corruption complaint;
 - (c) to receive corruption complaints about conduct within the public body and refer them to the Commission;
 - (d) to initiate corruption complaints about conduct within the public body if necessary;
 - (e) any other functions conferred on the officer by this or any other Act or by the Commission.
- (3) An integrity officer may hold another position within the public body and need not receive additional remuneration for being an integrity officer.
- (4) The Commission must provide training to integrity officers in the performance of their functions.

Part 4 Investigating and prosecuting corruption

Division 1 Making and receiving corruption complaints

33 Making a corruption complaint

- (1) A corruption complaint may be made by any person to the Commission, either directly or through an integrity officer.
- (2) The complaint may initially be made orally or in writing, but if it is made orally it must be reduced to writing:
 - (a) if it is made to an integrity officer – by the integrity officer; or

(b) if it is made to the Commission – by a staff member of the Commission.

(3) The written complaint must:

(a) be signed by the complainant; and

(b) identify the complainant, unless the complainant requests to remain anonymous.

34 Further information

The Director-General may request a complainant to give further information about a corruption complaint, either orally or in writing.

35 Register of complaints

The Director-General must keep a register of corruption complaints containing the following information for each complaint received:

(a) the date the complaint was made;

(b) the name of the complainant (unless the complainant has requested to remain anonymous);

(c) whether the complaint was made orally or in writing;

(d) any other prescribed details.

Division 2 Initial action in response to corruption complaint

36 How complaint may be dealt with

The Director-General must examine each corruption complaint received by the Commission and do any of the following:

(a) dismiss the complaint under section 38;

(b) begin a corruption investigation into the conduct complained of under section 40;

- (c) refer the complaint to another person or body if the Director-General considers that it warrants investigation or action by the other person or body (whether or not the Director-General is also beginning a corruption investigation).

37 Preliminary investigation of complaint

- (1) The Director-General may make a preliminary investigation of a corruption complaint before deciding what action to take in relation to it.
- (2) The Director-General may, if he or she considers it necessary to do so, refer the matter to an authorised officer to conduct the preliminary investigation.
- (3) Any evidence or information obtained in the course of conducting the preliminary investigation may be used in any later investigation or consideration of the complaint under this Act.

38 Summary dismissal of complaint

The Director-General may dismiss a corruption complaint without investigating it if:

- (a) further information is not given as requested under section 34 and there is insufficient information to investigate the complaint further; or
- (b) the Director-General considers the complaint to be vexatious, misconceived, frivolous or lacking in substance; or
- (c) the conduct complained about has been the subject of a previous complaint that has been dealt with under this Act; or
- (d) the conduct complained about is the subject of a corruption complaint made by another person; or
- (e) the complaint cannot be dealt with under this Act.

39 Report to Commission

At each meeting of the Commission, the Director-General must report to the Commission on:

- (a) the complaints received since the previous meeting of the Commission; and
- (b) the action taken under this Division in response to each complaint; and
- (c) the reason for that action; and
- (d) the status of any corruption investigations underway.

Division 3 Corruption investigations

40 Decision to begin corruption investigation

- (1) The Director-General must begin a corruption investigation if the Director-General considers that there is reason to suspect that a corruption offence has been committed.
- (2) The Director-General may begin the investigation:
 - (a) in response to a corruption complaint; or
 - (b) on his or her own initiative on the basis of information received from another source.

41 Informing subject of investigation

As soon as practicable after beginning a corruption investigation, the Director-General must give each person whose conduct is being investigated written notice of the investigation:

- (a) detailing the alleged conduct being investigated; and
- (b) inviting the person to provide a written response to the allegations before a specified date.

42 Conduct of investigation

- (1) The Director-General must designate one or more authorised officers to conduct a corruption investigation.
- (2) An authorised officer is subject to the directions of the Director-General in the conduct of the investigation.

43 Request for information and documents

- (1) An authorised officer conducting a corruption investigation may in writing request a person to do any of the following for the purpose of assisting with the investigation:
 - (a) provide specified information to the officer in writing before a specified date; or
 - (b) produce specified documents to the officer before a specified date; or
 - (c) attend an oral examination before the officer on a specified date.
- (2) The person commits an offence if the person fails to comply with the request.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

- (3) A person is entitled to be accompanied to an oral examination, at his or her own expense, by a legal practitioner.
- (4) A complete written record of an oral examination must be made and:
 - (a) signed by the person examined; or
 - (b) if the person refuses to sign it, the reasons for the refusal recorded by the authorised officer.

44 Statement of assets

- (1) For the purpose of a corruption investigation, the Director-General may in writing request any of the following persons to provide a statutory declaration as specified in subsection (2):
 - (a) a person suspected of having committed a corruption offence;
 - (b) a relative or associate of the person.
- (2) The statutory declaration must:

- (a) identify all property in Solomon Islands or elsewhere in which the person making the declaration has a legal or equitable interest; and
 - (b) state the date on which each item identified was acquired and how it was acquired; and
 - (c) identify all property sent out of Solomon Islands or disposed of by the person since a specified date; and
 - (d) give an estimate of value and location of each item mentioned in paragraphs (a) and (c), and if any item has been disposed of, to whom; and
 - (e) setting out all the person's sources of income.
- (3) The Director-General may also in writing request a financial institution to provide copies of the financial records of a person required to give a statutory declaration under subsection (1).
- (4) A person commits an offence if the person fails to comply with a request under subsection (1) or (3).

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

45 Referral of matter during investigation

The Director-General may refer any matter that comes to his or her attention during a corruption investigation to another person or body if the Director-General considers that the matter warrants investigation or action by the other person or body.

46 Report of investigation

- (1) After a corruption investigation has been completed, the Director-General must:
- (a) consider the information gathered during the investigation; and
 - (b) prepare a report of the findings of the investigation, including a recommendation of the action the Commission should take in response to the findings of the investigation.

- (2) The Director-General must circulate the report to the Commission members as soon as practicable for consideration at the next meeting of the Commission.

47 Decision on conclusion of investigation

- (1) After considering the report of a corruption investigation and the recommendations contained in it, the Commission must decide to:
 - (a) take no further action in relation to the matter; or
 - (b) seek the consent of the Director of Public Prosecutions to commence a prosecution under section 48 if the Commission considers that the investigation has established sufficient evidence of the commission of a corruption offence; or
 - (c) refer any matter mentioned in the report to another person or body if the Commission considers that the matter warrants investigation or action by the other person or body (whether or not the Commission is also commencing a prosecution for a corruption offence).
- (2) The Director-General must give each person whose conduct was the subject of the corruption investigation written notice of the Commission's decision, within 14 days after it is made.

Division 4 Prosecuting corruption offences

48 Power of Commission to prosecute

With the consent of the Director of Public Prosecutions, the Commission may institute and undertake criminal proceedings against a person for the alleged commission of a corruption offence.

Part 5 General offences

49 Misleading information or document

- (1) A person commits an offence if:
 - (a) the person gives information to an integrity officer, authorised officer, the Director-General or the Commission; and

(b) the person knows the information is misleading.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

(2) A person commits an offence if:

(a) the person gives a document to an integrity officer, authorised officer or the Commission; and

(b) the person knows the document contains misleading information.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

(3) Subsection (2) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the attention of the integrity officer, authorised officer, Director-General or Commission; and

(b) to the extent to which the person can reasonably do so – gives the integrity officer, authorised officer, Director-General or Commission the information necessary to remedy the misleading aspect of the document.

(4) In this section:

“misleading information” means information that is misleading in a material particular or because of the omission of a material particular.

50 Impersonating an authorised officer

A person must not falsely represent, by words or conduct, that the person is an authorised officer.

Maximum penalty: 20,000 penalty units or imprisonment for 2 years, or both.

51 Obstructing or threatening an authorised officer

A person must not obstruct or threaten an authorised officer acting in an official capacity.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

52 Confidentiality of information

(1) A person commits an offence if the person:

(a) obtains information while exercising a power or performing a function as any of the following:

- (i) a Commission member;
- (ii) the Director-General;
- (iii) an authorised officer;
- (iv) a staff member of the Commission;
- (v) an integrity officer; and

(b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

(2) Subsection (1) does not apply if the person discloses the information:

- (a) for the exercise of the person's powers or the performance of the person's functions; or
- (b) for the administration of this Act; or
- (c) with the consent of the person to whom the information relates; or
- (d) for legal proceedings arising out of the operation of this Act.

Part 6 Miscellaneous matters

53 Protection from liability

A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as:

- (a) a Commission member; or
- (b) the Director-General; or
- (c) an authorised officer; or
- (d) a staff member of the Commission; or
- (e) an integrity officer.

54 Delegation

The Director-General may delegate any of his or her powers and functions under this or any other Act to a staff member of the Commission.

55 Regulations

- (1) The Minister may make regulations under this Act.
- (2) Without limiting subsection (1), the regulations may do any of the following:
 - (a) prescribe details of corruption complaints that must be recorded in the register kept under section 35;
 - (b) prescribe remuneration and other conditions of service of Commission members.

Part 7 Amendments

Division 1 Amendment of Penal Code

56 Penal Code amended

This Division amends the *Penal Code* (Cap. 26).

57 Amendment of section 2

- (1) Section 2 is amended by deleting “punishable under another Act” and substituting “punishable as a criminal offence under another Act”.
- (2) Section 2 is amended by deleting “he shall not be punished” and substituting “the person cannot be convicted of a criminal offence”.

58 Amendment of section 4

- (1) Section 4 is amended by deleting the definition “**person employed in the public service**”.
- (2) Section 4 is amended by inserting (in alphabetical order) the following definitions:

“**benefit**”, for Part X, means any advantage and is not limited to property;

“**foreign government body**” means:

- (a) the government of a foreign country or part of a foreign country; or
- (b) an entity owned or administered by the government of a foreign country or part of a foreign country;

“**foreign public official**” means a person who:

- (a) is an employee or official of a foreign government body; or
- (b) performs work for a foreign government body under a contract; or

- (c) holds an office of an administrative, executive, legislative or judicial nature, whether appointed or elected, in a foreign government body; or
- (d) is an employee or official of a public international organisation; or
- (e) performs work for a public international organisation under a contract;

“public international organisation” means an organisation, or part of an organisation, whose members are any of the following:

- (a) countries, or parts of countries;
- (b) governments of countries, or parts of countries;
- (c) other public international organisations;

“public official” has the meaning given in section 4A.”

59 New section 4A

The following section is inserted after section 4:

“4A Meaning of “public official”

- (1) A ***“public official”*** is any of the following:
 - (a) the Governor-General;
 - (b) a member of Parliament, including a Minister or the Prime Minister;
 - (c) the Speaker of Parliament;
 - (d) a person who holds an office established by a written law, including the Constitution;
 - (e) a Judge, Magistrate, justice of a local court or anyone else holding a judicial office;
 - (f) a person who holds a position in a public body or a body established by a written law;

- (g) a person who holds an office mentioned in section 127(2) of the Constitution;
 - (h) a person who holds any other position that is remunerated from the Consolidated Fund.
- (2) A person who holds a position or office mentioned in subsection (1) is a public official whether the person holds the office or position:
- (a) on a permanent, temporary or acting basis; or
 - (b) on a paid or unpaid basis; or
 - (c) as an employee, a contractor or otherwise.”

60 Amendment of section 20

Section 20 is amended by deleting all the words from “A person” to “other law” and substituting “A person cannot be convicted of more than one criminal offence (either under this Code or another written law)”.

61 Amendment of section 43

Section 43 is amended by deleting “91, 92, 93, 117, 118 and 374” and substituting “92, 93, 94, 94A, 117 and 118”.

62 Repeal and replacement of sections 91 to 94

Sections 91 to 94 are repealed and replaced with the following:

“91 Cooperation between agencies

Despite anything contained in another written law, for the purpose of investigating and prosecuting offences against this Part, the following agencies may share information with each other:

- (a) the Office of the Auditor-General;
- (b) the Office of the Ombudsman;
- (c) the Leadership Code Commission established by section 5 of the *Leadership Code (Further Provisions) Act 1999*;
- (d) the Police Force;

- (e) the Office of the Commissioner of Inland Revenue appointed under section 106 of the *Income Tax Act* (Cap. 123);
- (f) the Financial Intelligence Unit of the Central Bank of Solomon Islands;
- (g) the Customs and Excise Division of the Ministry of Finance and Treasury;
- (h) the Solomon Islands Independent Commission Against Corruption established by section 6 of the *Anti-Corruption Act 2016*.

92 Bribery of public official

- (1) A person commits an offence if:
 - (a) the person directly or indirectly promises, offers or gives a benefit to a public official or another person; and
 - (b) the person does so with the intention of influencing the public official to:
 - (i) carry out, or not carry out, his or her official duties; or
 - (ii) carry out his or her official duties in a particular way; or
 - (iii) direct another person to carry out, or not carry out, official duties; or
 - (iv) direct another person to carry out official duties in a particular way.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both.

- (2) A public official commits an offence if:
 - (a) the public official directly or indirectly solicits, accepts or receives a benefit for himself or herself, or another person; and
 - (b) the public official does so with the intention that he or she will be influenced to:

- (i) carry out, or not carry out, his or her official duties; or
- (ii) carry out his or her official duties in a particular way; or
- (iii) direct another person to carry out, or not carry out, official duties; or
- (iv) direct another person to carry out official duties in a particular way.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both.

- (3) It is a defence to a prosecution for an offence against this section if the defendant proves that the defendant promised, offered, gave, solicited, accepted or received the benefit:
 - (a) in accordance with custom; and
 - (b) openly, in the course of a traditional exchange of gifts; and
 - (c) for the benefit of a community or group of people and not for an individual.

93 Bribery of foreign public official

- (1) A person commits an offence if:
 - (a) the person directly or indirectly promises, offers or gives a benefit to a foreign public official or another person; and
 - (b) the person does so with the intention of influencing the foreign public official to:
 - (i) carry out, or not carry out, his or her official duties; or
 - (ii) carry out his or her official duties in a particular way; or
 - (iii) direct another person to carry out, or not carry out, official duties; or

- (iv) direct another person to carry out official duties in a particular way.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both.

- (2) It is a defence to a prosecution for an offence against subsection (1) if the defendant proves that the defendant promised, offered or gave the benefit:

- (a) in accordance with custom; and
- (b) openly, in the course of a traditional exchange of gifts.

- (3) A foreign public official commits an offence if:

- (a) the foreign public official directly or indirectly solicits, accepts or receives a benefit for himself or herself, or another person; and
- (b) the foreign public official does so with the intention that he or she will be influenced to:
 - (i) carry out, or not carry out, his or her official duties; or
 - (ii) carry out his or her official duties in a particular way; or
 - (iii) direct another person to carry out, or not carry out, official duties; or
 - (iv) direct another person to carry out official duties in a particular way.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both.

94 Bribery to obtain benefit for commercial organisation

- (1) In this section:

“commercial organisation” means:

- (a) a body incorporated under a law of Solomon Islands that carries on business in Solomon Islands or another country; or

- (b) another body corporate (wherever incorporated) that carries on business in Solomon Islands; or
 - (c) a partnership formed under a law of Solomon Islands that carries on business in Solomon Islands or another country; or
 - (d) another partnership (wherever formed) that carries on business in Solomon Islands.
- (2) A commercial organisation commits an offence if:
- (a) a person engaged by the organisation commits an offence against section 92 or 93; and
 - (b) the person does so with the intention of obtaining a benefit for the organisation.

Maximum penalty: 1.000,000 penalty units.

- (3) It is a defence to a prosecution for an offence against subsection (2) if the organisation proves that:
- (a) at the time the person committed the offence against section 92 or 93, the organisation was implementing adequate procedures designed to prevent the commission of such offences; and
 - (b) the person was not acting:
 - (i) with the implied or express authority of an executive officer of the organisation; or
 - (ii) in accordance with any generally accepted practice within the organisation.

94A Abuse of public office

- (1) A public official commits an offence if:
- (a) the public official:
 - (i) acts contrary to his or her official duties; or
 - (ii) uses any information the official has obtained in his or her capacity as a public official; or

- (iii) directs another person to act contrary to his or her official duties; and
- (b) the public official does so with the intention of:
 - (i) obtaining a benefit for himself or herself, or another person; or
 - (ii) causing detriment to another person.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both.

(2) A person commits an offence if:

- (a) the person has ceased to be a public official in a particular capacity; and
- (b) the person uses any information the person obtained in that capacity; and
- (c) the person does so with the intention of:
 - (i) obtaining a benefit for himself or herself, or another person; or
 - (ii) causing detriment to another person.

Maximum penalty: 150,000 penalty units or imprisonment for 15 years, or both."

63 Amendment of sections 101, 129 and 130

Sections 101, 129 and 130 are amended by deleting each reference to "person employed in the public service" and substituting "public official".

64 Amendment of section 273

Section 273(b) is amended by deleting "employed in the public service of Her Majesty" and substituting "a public official".

65 Amendment of section 349

Section 349 is amended by deleting “employed in the public service” and substituting “a public official”.

66 Repeal of Part XXXVIII

Part XXXVIII is repealed.

Division 2 Consequential amendments

Subdivision 1 Amendment of Companies Act 2009

67 Sections 76 and 77 amended

Sections 76(1)(b) and 77(1)(b) of the *Companies Act 2009* are amended by deleting “91” and substituting “92”.

Subdivision 2 Amendment of Telecommunications Act 2009

68 Section 11 amended

Section 11 of the *Telecommunications Act 2009* is amended by deleting “Parts X and XXXVIII” and substituting “Part X”.

Schedule Oaths and affirmations

Part 1 Oath or affirmation for Commission member

section 13

I,, [swear][affirm] that I will well and truly serve Her Majesty, Queen Elizabeth the Second, Her heirs and successors in the office of [chairperson][member] of the Solomon Islands Independent Commission Against Corruption, and that I will exercise the powers and functions of my office honestly, faithfully and diligently without favour or affection, malice or ill-will and I will not, except in accordance with the provisions of the *Anti-Corruption Act 2016*, divulge any information received by me in the performance of my functions to any person.

[So help me God].

Sworn before:

Date:

Part 2 Oath or affirmation for Director-General authorised officer or staff member

section 26

I,, [swear][affirm] that I will exercise the powers and functions of my office as [Director-General][a staff member][an authorised officer] of the Solomon Islands Independent Commission Against Corruption honestly, faithfully and diligently without favour or affection, malice or ill-will and I will not, except in accordance with the provisions of the *Anti-Corruption Act 2016*, divulge any information received by me in the performance of my functions to any person.

[So help me God].

Sworn before:

Date:

ANTI-CORRUPTION BILL 2016

OBJECTS AND REASONS

The object of the Anti-Corruption Bill is to give legislative effect to the United Nations Convention Against Corruption (UNCAC) by:

- creating new corruption offences to capture the full range of corrupt practices that may occur within the public sector or in the interaction between the public and private sectors;
- providing for the investigation and prosecution of corruption offences;
- establishing the Solomon Islands Independent Commission Against Corruption; and
- introducing a wide range of measures to prevent corruption, including a national Anti-Corruption Strategy, public awareness activities about the effects and prevention of corruption, and assistance to public and private bodies in the prevention of corruption.

The reasons for the Bill are that:

- corruption in Solomon Islands appears to be widespread;
- corruption undermines development and sustains poverty, inhibits economic growth, drives political instability, enables the unsustainable use of natural resources, impacts the delivery of services and undermines good governance and the rule of law.

Solomon Islands acceded to UNCAC in January 2012 and is internationally obligated to have laws in place to implement the Convention. In 2014, the UN Office on Drugs and Crime conducted a Review of Solomon Islands' compliance with the UNCAC. It showed deficiencies in several areas of law and administration, in particular as regards the scope of the existing laws and their effectiveness in preventing corruption.

The Government has accepted most of the recommendations in the UN Review, and the Anti-Corruption Unit in the Office of the Prime Minister

and Cabinet has developed a policy on Anti-Corruption, one component of which is this Bill.

There are existing corruption offences in the Penal Code, but they do not cover the range of conduct that constitutes corruption adequately, and they are not well expressed or well understood. The Bill creates new offences of bribery and abuse of office. These offences apply to both the actions of public officers and actions of individuals and private sector organisations in their interaction with public officers.

The UN Review also recommended that Solomon Islands should have an institution dedicated to the prevention, investigation and prosecution of corruption. This will be achieved by the establishment of the Solomon Islands Independent Commission Against Corruption (SIICAC) by the Bill. The Commission will be independent, with its own finances and staff, and will have extensive powers of investigation of corruption offences. It will also have the power to instigate prosecutions with the consent of the Director of Public Prosecutions.

The Bill seeks to ensure that the new Commission liaises with existing bodies that deal with public maladministration (the Ombudsman) and misconduct in public office (the Leadership Code Commission) and amends the Penal Code to require various agencies to liaise with one another and share information for the purpose of investigating and prosecuting corruption offences.

HON. MANASSEH SOGAVARE
PRIME MINISTER

ANTI-CORRUPTION BILL 2016
EXPLANATORY MEMORANDUM

PART 1 PRELIMINARY MATTERS

Clause 1 provides for the short title of the Act.

Clause 2 allows the Minister to appoint a date for the Act to commence.

Clause 3 defines terms used in the Act. A key definition is “**corruption offence**”, which is an offence against Part X of the Penal Code (Cap. 26), an offence of bribery under another written law (there are several offences of bribery under various Solomon Islands laws) or an offence prescribed to be a corruption offence by an Act of Parliament. The Commission’s jurisdiction to investigate and prosecute offences is limited to corruption offences.

Clause 4 provides that the Act binds the Crown, which is appropriate as the Government has numerous obligations under the Act.

Clause 5 lists the objects of the Act, which are to combat corruption by:

- establishing the Solomon Islands Independent Commission Against Corruption to prevent, investigate and prosecute corruption offences
- establishing a system for receiving and managing complaints about corruption
- introducing measures to prevent corruption

**PART 2 SOLOMON ISLANDS INDEPENDENT COMMISSION
 AGAINST CORRUPTION**

Division 1 Establishment

Clause 6 establishes the Solomon Islands Independent Commission Against Corruption (“the Commission”) as a body corporate with perpetual succession. Section 39 of the *Interpretation and General Provisions Act* (Cap. 85) specifies the general powers of a body corporate established by an Act, and applies to the Commission.

Clause 7 provides for the specific powers and functions of the Commission, which are:

- to determine the action to take on receiving a report of a corruption investigation carried out by authorised officers of the Commission
- to prosecute corruption offences with the consent of the Director of Public Prosecutions
- to prevent corruption through public awareness programs, providing assistance, training and guidelines to public and private bodies and reviewing legislation and government policies, programs and procedures
- to direct the Director-General in the operation of the Commission
- any other powers or functions given to the Commission by any Act

Clause 8 specifies that the Commission is not subject to the direction and control of the Minister or any other person, subject to any exceptions specified in an Act. One example of such an exception is that the Commission must seek the consent of the Director of Public Prosecutions before starting a prosecution for a corruption offence.

Clause 9 requires the Commission to liaise and cooperate with various office holders and public bodies. This is designed to ensure that the investigation of corruption, maladministration, misconduct in office, misuse of public funds and other matters is not hindered by a lack of cooperation between the responsible agencies.

Division 2 Memberships

Clause 10 provides for the membership of the Commission, which consists of 6 members, including a chairperson and deputy chairperson, appointed by the Governor-General. These members are appointed from nominations made by a nominating committee, and the provision specifies the eligibility criteria for nomination.

Clause 11 provides that a Commission member holds office for up to 5 years and can be reappointed for a single further term.

Clause 12 specifies the circumstances in which a person ceases to be a Commission member. A person automatically ceases to be a member if the person ceases to be eligible for membership under clause 10. In addition, the Governor-General can terminate a member's appointment in specified circumstances.

Clause 13 requires Commission members to make an oath or affirmation before assuming office.

Clause 14 provides for the remuneration and allowances of the Commission to be prescribed by regulation.

Division 3 Procedures of Commission

Clause 15 allows the Commission to determine its own procedures unless they are otherwise specified in the Act.

Clause 16 requires the chairperson to convene a meeting of the Commission at least once a month.

Clause 17 specifies that the quorum for a meeting of the Commission is the presiding member plus 2 others.

Clause 18 requires a meeting of the Commission to be presided over by the chairperson or, in the absence of the chairperson, the deputy chairperson.

Clause 19 provides that a decision of the Commission is made by a majority vote, and that the presiding member has the deciding vote in the event of an equality of votes.

Clause 20 requires the Commission to keep accurate and detailed minutes of its meetings, including the reasons for its decisions.

Clause 21 requires a member disclose any conflict of interest in relation to a matter to be considered by the Commission.

Clause 22 provides that a member with a conflict of interest must not take part in any deliberation or decision of the Commission in relation to the matter.

Division 4 Staff and authorised officers of Commission

Clause 23 provides for the appointment and role of the Director-General of the Commission. The Director-General must be a legal practitioner of at least 5 years experience, who is appointed by the Judicial and Legal Services Commission. The Director-General is responsible for managing the day to day operations of the Commission, including its staff, appointing

and directing authorised officers, assessing complaints and other information to determine whether to conduct a corruption investigation and reporting to the Commission on the outcome of investigations. The Director-General is subject to the directions of the Commission.

Clause 24 provides for the appointment of authorised officers. The Director-General may appoint a staff member of the Commission or a police officer to be an authorised officer. Under the definition of “**authorised officer**” in clause 3, the Director-General is also an authorised officer.

All authorised officers have certain powers specified in the Act, such as the power to request information or documents during an investigation, and the power to require a person to attend an oral examination. However, police officers who are appointed as authorised officers will also retain their powers as police officers. This means they can exercise powers of entry and seizure in accordance with the *Police Act 2013* for the purpose of a corruption investigation. It is appropriate for such powers to be limited to police officers, as they have the appropriate training. Other authorised officers will essentially conduct desk-based investigations, utilising the powers specified in Part 4, Division 3 of the Bill. All authorised officers, including police officers, will be subject to the directions of the Director-General while acting as authorised officers.

Clause 25 requires the Minister and the Public Service Commission to provide adequate staff to the Commission. Staff members are public officers subject to the direction of the Director-General in the day to day performance of their functions.

Division 5 Finance and administrative matters

Clause 27 deems the Commission to be a Government agency for the purposes of the *Public Financial Management Act 2013*. This means the Commission is subject to the reporting and accounting requirements of that Act and receives its own head of revenue and expenditure in the national budget. This is designed to ensure the Commission has the maximum degree of financial autonomy possible for an agency funded out of the Consolidated Fund.

Clause 28 requires the chairperson to report to the Minister annually on the performance of the Commission's functions during the previous financial year. The Minister is then required to table the report in Parliament.

PART 3 CORRUPTION PREVENTION

Part 3 outlines the ways in which the Government, the Minister and the Commission can prevent corruption through a range of measures.

Clause 29 requires the Government consult with the Commission, civil society and the private sector in ensuring that the prevention of corruption is considered in the formulation of legislation and the policies, programs and procedures of public bodies. It also requires the Government to cooperate with international organisations in the prevention of corruption, to the extent that it can do so within Solomon Islands law.

Clause 30 requires the Minister to issue a national Anti-Corruption Strategy. The strategy must be publicised and tabled in Parliament, and reviewed on a regular basis. The Minister must consult the Commission in formulating and reviewing the strategy.

Clause 31 requires the Commission to conduct public awareness programs about corruption, review legislation and the policies, programs and procedures of public bodies to identify ways in which corruption can be prevented and advise and provide training to the public and private sector in the prevention and detection of corruption.

Clause 32 requires all public bodies to designate an integrity officer. This can be an existing staff member and the officer need not receive additional remuneration for performing the functions of integrity officer. Integrity officers are the first point of contact within a public body for a person who wishes to make a corruption complaint about conduct within the body. They also have a role in creating awareness within the public body about the role of the Commission and the process of making a complaint. This is designed to ensure the Commission is as accessible as possible.

PART 4 INVESTIGATING AND PROSECUTING CORRUPTION

Division 1 Making and receiving corruption complaints

Clause 33 allows any person to make a corruption complaint to the Commission. A corruption complaint is defined in clause 3 as a complaint of conduct that constitutes a corruption offence. They can make the complaint directly to the Commission or through an integrity officer. A complaint can be made orally or in writing, but if it is made orally it must be reduced to writing by an integrity officer or staff member of the

Commission and signed by the complainant. However, a complainant can request to remain anonymous.

Clause 34 allows the Director-General to seek further information from a complainant.

Clause 35 requires the Director-General to keep a register of corruption complaints. This ensures all corruption complaints are on an official record and the Director-General is accountable to the Commission for dealing with each complaint that is received.

Division 2 Initial action in response to corruption complaint

Clauses 36 to 38 specify how the Director-General can deal with a corruption complaint. There are 3 options:

1. The Director-General can dismiss the complaint without investigating it if any of the following circumstances apply:
 - there is insufficient information to investigate and the complainant has not responded to a request for further information
 - the complaint is vexatious, frivolous, misconceived or lacking in substance
 - another complaint has been made about the same conduct (that is, the substance of the complaint has already been dealt with or is being dealt with)
 - the complaint cannot be dealt with under the Act because, for example, it is not a complaint about corruption and there is no other appropriate authority to refer the complaint to
2. The Director-General can refer the complaint to another body or person if it warrants investigation or action by the other person. The Director-General can do this even if he or she is also beginning a corruption investigation into all or part of the complaint. For example, if the entire complaint relates to maladministration rather than corruption, the Director-General can refer the entire complaint to the Ombudsman and not investigate it. If the complaint involves some conduct that may be a criminal offence other than a corruption offence, and other conduct that may be a corruption offence, the Director-General can refer the relevant part of the complaint that may involve another criminal offence to the

Commissioner for Police, and start a corruption investigation into the conduct that may constitute a corruption offence. This ensures that all or part of a complaint does not “fall through the cracks” simply because it does not involve corruption.

3. The Director-General can begin a corruption investigation if he or she considers there is reason to suspect that a corruption offence has been committed.

Before deciding how to deal with a complaint, the Director-General may (but is not required to) conduct a preliminary investigation of the complaint, including by assigning an authorised officer to conduct the investigation. Any evidence gathered in the preliminary investigation can be used in a later corruption investigation.

Clause 39 requires the Director-General to report to the Commission on complaints received, how they were dealt with and the status of any ongoing corruption investigations. This ensures the Director-General is accountable for his or her action in response to complaints. This obligation is in addition to the obligation to report to the Commission on the outcome of each corruption investigation under clause 46.

Division 3 Corruption investigations

Clause 40 requires the Director-General to begin a corruption investigation if he or she considers there is reason to suspect that a corruption offence has been committed. This applies whether the Director-General is acting on information received in a corruption complaint or in any other way.

Clause 41 requires the Director-General to inform a person whose conduct is being investigated of the investigation and invite the person to provide a written response to the relevant allegations. The person can also be compelled to provide information under clauses 43 and 44.

Clause 42 requires the Director-General to designate one or more authorised officers to conduct a corruption investigation. The extent of each authorised officer’s powers will depend on whether they are a police officer or not – officers with the appropriate powers will be assigned to conduct the appropriate parts of each investigation (see clause 24).

Clause 43 empowers any authorised officer to request a person to assist a corruption investigation by providing written information or documents, or

attending an oral examination. It is an offence to fail to comply with such a request.

Clause 44 empowers the Director-General to request a statement of assets from a person suspected of having committed a corruption offence, or a relative or associate of such a person. "Relative" and "associate" are defined broadly in clause 3. The Director-General can also request a financial institution to provide financial records of a person required to give a statement of assets. Such a financial institution will be protected from liability for complying with the request under the proposed accompanying whistleblowers protection legislation. It is an offence to fail to comply with a request under this clause.

Clause 45 allows the Director-General to refer any matter that comes to his or her attention during a corruption investigation to another body or person if it warrants investigation or action by the other person. This does not prevent the continuation of the corruption investigation.

Clause 46 requires the Director-General to prepare a report of each corruption investigation completed, including a recommendation on the action the Commission should take in response to the report. This report must be circulated to the Commission members as soon as practicable for consideration at the next meeting of the Commission (that is, it should be circulated before the meeting so members can consider it and make a decision on what action to take at the next meeting).

Clause 47 requires the Commission to make a decision on its response to the report of a corruption investigation. There are 3 options:

1. The Commission can take no further action – this would apply if the Commission considers that no corruption offence has been committed, and there is nothing in the report that warrants investigation by another body.
2. The Commission can seek the consent of the Director of Public Prosecutions to commence a prosecution for a corruption offence.
3. The Commission can refer any matter mentioned in the report to another body or person if it warrants investigation or action by the other person.

The Commission is required to give each person whose conduct was investigated notice of its decision.

Division 4 Prosecuting corruption offences

Clause 48 allows the Commission to commence and undertake a prosecution for a corruption offence with the consent of the Director of Public Prosecutions. The Director of Public Prosecutions retains his or her constitutional power to commence a prosecution.

PART 5 GENERAL OFFENCES

Clause 49 makes it an offence to give misleading information or documents to an integrity officer, authorised officer, the Director-General or the Commission. This targets not only information given during a corruption investigation, but also information given in a corruption complaint, to guard against malicious and false complaints being made.

Clause 50 makes it an offence to impersonate an authorised officer.

Clause 51 makes it an offence to obstruct an authorised officer. There are separate offences for failing to comply with a request for information under clauses 43 and 44. This offence deals with any other type of obstruction.

Clause 52 makes it an offence for a person exercising powers or performing functions under the Act to disclose information obtained in the course of their duties. This ensures corruption complaints, information gathered during investigations and deliberations of the Commission will remain confidential.

PART 6 MISCELLANEOUS MATTERS

Clause 53 protects a person from civil and criminal liability for anything done in good faith while exercising powers or performing functions under the Act.

Clause 54 allows the Director-General to delegate powers and functions to any staff member of the Commission.

Clause 55 is the general regulation-making power.

PART 7 AMENDMENTS

Division 1 Amendment of Penal Code

This Division amends the Penal Code (Cap. 26) to create new offences of bribery and abuse of office, and makes related amendments.

Clause 56 specifies that the Division amends the Penal Code (Cap. 26).

Clause 57 amends section 2 to clarify that the rule against double jeopardy protects a person only from being punished for more than one crime for the same conduct – the person could be punished for a crime and also subject to civil, administrative or disciplinary action for the relevant conduct.

Clauses 58 and 59 amend the Code to create new definitions for the purpose of the corruption offences in Part X. This includes new definitions of terms such as “*benefit*”, and “*public official*”, which are key concepts in the bribery and abuse of office offences.

Clause 60 amends section 20 to clarify that the rule against double jeopardy protects a person only from being punished for more than one crime for the same conduct, not from other civil, administrative or disciplinary action.

Clause 61 makes a consequential amendment to a cross-reference in section 43, as a result of the addition of new offences and the repeal of section 134.

Clause 62 repeals outdated and inadequate offences and replaces them with comprehensive new offences of bribery and abuse of office.

Bribery: it is an offence:

- for a person to bribe or offer a bribe to a public official or a foreign public official
- for a public official or a foreign public official to solicit or accept a bribe

These offences apply regardless of whether:

- the person offering or giving the bribe, or from whom the official is seeking or receives the bribe, is an individual or a private or public sector body
- the bribe is offered, given, sought or received so the official will:
 - carry out (or direct another person to carry out) their duties in a particular way; or
 - simply so the official will carry out (or direct another person to carry out) their duties at all (that is, a facilitation payment or

“speed” money)

If a person engaged by a private sector body commits a bribery offence to gain a benefit for the private sector body (for example, to secure a contract), the private sector body also commits an offence unless the body can prove that it took reasonable steps to prevent the commission of such offences and the person was not acting with the authority of the organisation. The onus is on the private sector body to prove this.

Abuse of office: it is an offence for a public official to act contrary to his or her official duties (or direct another person to do so) or use information gained in an official capacity in order to obtain a benefit for the official or another person or cause detriment to another person. The offence of using information to gain benefit or cause detriment extends to former public officials.

Clauses 63 to 65 make consequential amendments to provisions that refer to persons employed in the public service. This term has been replaced by the new definition of “public official”.

Clause 66 repeals Part XXXVIII, which contains offences that are replaced by the new corruption offences inserted into Part X. All corruption offences are now contained in Part X.

Division 2 Consequential amendments

Clause 67 makes consequential amendments to provisions of the *Companies Act 2009* that refer to provisions of the Penal Code that have been replaced.

Clause 68 makes a consequential amendment to the *Companies Act 2009* that refer to provisions of the Penal Code that have been replaced.

SCHEDULE OATHS AND AFFIRMATIONS

The Schedule prescribes the oath or affirmation that each Commission member, staff member, authorised officer and the Director-General must make before assuming office.

Honiara, Solomon Islands
Printed under the authority of the
Solomon Islands Government

Printed by Pacific Printers Limited