



ANTI-CORRUPTION BILL 2017

(NO. 11 OF 2017)



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A

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 2017

TABLE OF PROVISIONS

PART 1	PRELIMINARY MATTERS.....	1
1	Short title	1
2	Commencement	1
3	Interpretation	1
4	Act binds Crown	3
5	Objects of Act	3
6	Application of Act	3
PART 2	SOLOMON ISLANDS INDEPENDENT COMMISSION AGAINST CORRUPTION	4
Division 1	Establishment	4
7	Solomon Islands Independent Commission Against Corruption established	4
8	Functions and powers	4
9	Independence	4
10	Liaison with other bodies	5
Division 2	Composition and membership	5
11	Membership	5
12	Duration of appointment	7
13	Vacation of office	8
14	Oath of office	8
15	Remuneration and conditions of members	8
Division 3	Procedures of Commission	8
16	Procedures	8
17	Meetings	8
18	Quorum at meetings	9
19	Presiding member at meetings	9
20	Voting at meetings	9
21	Minutes of meetings	9
22	Disclosure of interests generally	9

23	Disclosure of interest in matter being considered	9
24	Effect of personal interest	10
Division 4	Staff and authorised officers of Commission	11
25	Director-General	11
26	Authorised officers	12
27	Staff members of the Commission	13
28	Oath of office	13
Division 5	Finance and administrative matters	13
29	Funds of the Commission	13
30	Annual report	13
PART 3	CORRUPTION PREVENTION	14
31	Corruption prevention – role of Government	14
32	Corruption prevention – role of Minister	14
33	Corruption prevention – role of Commission	16
34	Integrity officers	16
PART 4	INVESTIGATING AND PROSECUTING CORRUPTION.....	17
Division 1	Making and receiving corruption complaints	17
35	Making a corruption complaint	17
36	Further information	17
37	Register of complaints	17
Division 2	Initial action in response to corruption complaint	18
38	How complaint may be dealt with	18
39	Preliminary investigation of complaint	18
40	Summary dismissal of complaint	18
41	Report to Commission	19
Division 3	Corruption investigations	19
42	Decision to begin corruption investigation	19
43	Conduct of investigation	20

44	Request for information and documents	20
45	Statement of assets	21
46	Referral of matter during investigation	22
47	Report of investigation	22
48	Decision on conclusion of investigation	22
Division 4	Prosecuting corruption offences	23
49	Power of Commission to prosecute	23
50	Recommendation for restraining order application	23
Part 5	General offences	23
51	Misleading information or document	23
52	Impersonating an authorised officer	24
53	Obstructing or threatening an authorised officer	25
54	Confidentiality of information	25
PART 6	MISCELLANEOUS MATTERS	26
55	Protection from liability	26
56	Delegation	26
57	Regulations	26
PART 7	AMENDMENTS	27
Division 1	Amendment of Penal Code	27
58	Penal Code amended	27
59	Amendment of section 2	27
60	Amendment of section 4	27
61	New section 4A	28
62	Amendment of section 20	29
63	Amendment of section 43	29
64	Repeal and replacement of sections 91 to 94	29
65	Amendment of sections 101, 129 and 130	34
66	Amendment of section 273	34
67	Amendment of section 349	35
68	Repeal of section 375	35

Division 2	Consequential amendments	35
Subdivision 1	Amendment of Companies Act 2009	35
69	Sections 76 and 77 amended	35
Subdivision 2	Amendment of Telecommunications Act 2009	35
70	Section 11 amended	35
Schedule	Oaths and affirmations	36

ANTI-CORRUPTION BILL 2017

PART 1 PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Anti-Corruption Act 2017*.

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;

“authorised officer” means:

- (a) the Director-General; or
- (b) a person appointed under section 26(1);

“chairperson” means the chairperson of the Commission appointed under section 11(1)(a);

“Commission” means the Solomon Islands Independent Commission Against Corruption established by section 7;

“Commission member” means a member of the Commission appointed under section 11(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 11(1)(b);

“Director-General” means the Director-General of the Commission appointed under section 25(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 34;

“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 27.

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.

6 Application of Act

- (1) This Act does not apply in relation to conduct that occurred before this Act commenced.

- (2) Without limiting subsection (1), the Commission's powers under Part 4 do not apply in relation to conduct that occurred before this Act commenced.

PART 2 SOLOMON ISLANDS INDEPENDENT COMMISSION AGAINST CORRUPTION

Division 1 Establishment

7 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.

8 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.

9 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.

10 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 Composition and membership

11 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 must appoint each Commission member in accordance with the nomination made by a committee (the ***“nominating committee”***) consisting of the following:
 - (a) the Chairman of the Law Reform Commission, who is chairperson of the nominating committee;
 - (b) a judge of the High Court nominated by the Chief Justice;
 - (c) the Chairman of the Public Service Commission;
 - (d) the President of the National Council of Women;
 - (e) the General Secretary of the Solomon Islands Christian Church Association.
- (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 any other offence carrying a potential penalty of a fine of at least \$200 or at least 6 months imprisonment; or
 - (B) outside Solomon Islands, of an offence that would be a corruption offence or an offence carrying a potential penalty of a fine of at least \$200 or at least 6 months imprisonment if committed in Solomon Islands;
 - (vi) 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 for appointment or re-appointment as chairperson of the Commission if the person is qualified at the time of the nomination for appointment as a judge of the High Court.

12 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.

13 Vacation of office

- (1) A person ceases to be a Commission member if:
 - (a) the person ceases to be eligible for membership under section 11(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 22.
- (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.

14 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.

15 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

16 Procedures

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

17 Meetings

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

18 Quorum at meetings

Subject to section 24(1)(b), the quorum for a meeting of the Commission is the member presiding at the meeting plus 2 other members.

19 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; or
- (c) in the absence of the chairperson and the deputy chairperson, another member elected by the members present.

20 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.

21 Minutes of meetings

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

22 Disclosure of interests generally

- (1) Each Commission member must give the chairperson and the Director-General a copy of all disclosures made to the Leadership Code Commission under Part II of the *Leadership Code (Further Provisions) Act 1999*.
- (2) The Director-General must keep a register of all disclosures by Commission members under this section.

23 Disclosure of interest in matter being considered

- (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.

24 Effect of personal interest

- (1) If a Commission member has a personal interest in a matter that is required to be disclosed under section 22:
 - (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

25 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.

26 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 and the chairperson.
- (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.

27 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.

28 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

29 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.

30 Annual report

- (1) The chairperson must prepare and give to the Minister and the Speaker of Parliament 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

31 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.

32 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 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 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.
- (6) The Minister may appoint a steering committee consisting of representatives from civil society, the private sector, and the public sector to assist in reviewing and reporting on the implementation of the anti-corruption strategy and whether it needs to be modified or amended to continue to be an effective tool in combating corruption.
- (7) If a national anti-corruption strategy is in place on the date this Act commences, the Minister must, within 6 months after that date:
 - (a) review and revise the strategy in consultation with the Commission to ensure it meets the requirements of subsection (1); and
 - (b) make the strategy publically available and table it in Parliament in accordance with subsection (2).

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.

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 33;
 - (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

35 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 that his or her identity be kept confidential.

36 Further information

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

37 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

38 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 40;
- (b) begin a corruption investigation into the conduct complained of under section 42;
- (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).

39 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.

40 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 36 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.

41 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

42 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.

43 Conduct of investigation

- (1) The Director-General must designate in writing 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.

44 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;
 - (b) produce specified documents to the officer before a specified date;
 - (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.
- (5) An oral examination may be conducted in person or remotely, using telephone, video link, Internet connection or any similar means of remote communication.

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 the value and location of each item mentioned in paragraphs (a) and (c), and if any item has been disposed of, to whom; and
 - (e) set out all the person's sources of income; and
 - (f) identify all gifts with a value exceeding \$1000 received by the person during a specified period, including the source of the gift; and
 - (g) set out all the person's liabilities.
- (3) The requirement under paragraph (f) to identify gifts applies in addition to any requirement under paragraphs (a), (b) or (c) to identify a gift held or disposed of (regardless of its value), and its source.
- (4) 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).
- (5) A person commits an offence if the person fails to comply with a request under subsection (1) or (4).

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

- (5) A financial institution that is requested to provide the financial records of person under subsection (4) commits an offence if the institution:
- (a) discloses, directly or indirectly, to the person that the request has been made or that records have been provided in response to the request; or
 - (b) discloses, directly or indirectly, any information to the person from which the person could be reasonably expected to infer that the request has been made or that records have been provided in response to the request.

Maximum penalty: 50,000 penalty units.

46 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.

47 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.

48 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 49 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

49 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.

50 Recommendation for restraining order application

If the Commission considers that an investigation has established evidence of the commission of a corruption offence by a person, the Commission may recommend to the Director of Public Prosecutions that an application for a restraining order be made in relation to the person under the *Money Laundering and Proceeds of Crime Act 2002*.

PART 5 GENERAL OFFENCES

51 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.

52 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.

53 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.

54 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

55 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.

56 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.

57 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 37;
 - (b) prescribe remuneration and other conditions of service of Commission members.

PART 7 AMENDMENTS

Division 1 Amendment of Penal Code

58 Penal Code amended

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

59 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”.

60 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.”

61

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."

62 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)".

63 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".

64 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 7 of the *Anti-Corruption Act 2017*;
- (i) the Internal Audit Office established under section 19 of the *Public Financial Management Act 2013*.

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 had in place 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."

65 Amendment of sections 100, 101, 129 and 130

Sections 100, 101, 129 and 130 are amended by deleting each reference to "person employed in the public service" and substituting "public official".

66 Amendment of section 273

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

67 Amendment of section 349

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

68 Repeal of section 375

Section 375 is repealed.

Division 2 Consequential amendments

Subdivision 1 Amendment of Companies Act 2009

69 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

70 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 14

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 2017*, 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 28

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 2017*, 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 2017

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 2017

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

Clause 6 limits the application of the Act to conduct occurring after its commencement.

PART 2 SOLOMON ISLANDS INDEPENDENT COMMISSION AGAINST CORRUPTION

Division 1 Establishment

Clause 7 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 8 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 9 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 10 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 11 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 12 provides that a Commission member holds office for up to 5 years and can be reappointed for a single further term.

Clause 13 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 11. In addition, the Governor-General can terminate a member's appointment in specified circumstances.

Clause 14 requires Commission members to make an oath or affirmation before assuming office.

Clause 15 provides for the remuneration and allowances of the Commission to be prescribed by regulation.

Division 3 Procedures of Commission

Clause 16 allows the Commission to determine its own procedures unless they are otherwise specified in the Act.

Clause 17 requires the chairperson to convene a meeting of the Commission at least once a month.

Clause 18 specifies that the quorum for a meeting of the Commission is the presiding member plus 2 others.

Clause 19 requires a meeting of the Commission to be presided over by the chairperson or, in the absence of the chairperson, the deputy chairperson.

Clause 20 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 21 requires the Commission to keep accurate and detailed minutes of its meetings, including the reasons for its decisions.

Clause 22 requires a member to make the same disclosures to the chairperson and the Director-General as are required to be made to the Leadership Code Commission so that a register of interest is established.

Clause 23 requires a member disclose any conflict of interest in relation to a matter to be considered by the Commission.

Clause 24 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 25 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 26 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 27 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.

Clause 28 requires authorised officers and staff members of the Commission to subscribe and oath or affirmation before commencing duties.

Division 5 Finance and administrative matters

Clause 29 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 30 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 31 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 32 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 33 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 34 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 35 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 36 allows the Director-General to seek further information from a complainant.

Clause 37 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 38 to 40 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 41 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 47.

Division 3 Corruption investigations

Clause 42 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 43 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 44 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 45 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 46 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 47 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 48 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 49 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.

Clause 50 allows the Commission to recommend to the Director of Public Prosecutions that a restraining order application be made under the *Money Laundering and Proceeds of Crime Act 2002*, to prohibit disposal of assets.

PART 5 GENERAL OFFENCES

Clause 51 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 52 makes it an offence to impersonate an authorised officer.

Clause 53 makes it an offence to obstruct an authorised officer. There are separate offences for failing to comply with a request for information under clauses 44 and 45. This offence deals with any other type of obstruction.

Clause 54 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 55 protects a person from civil and criminal liability for anything done in good faith while exercising powers or performing functions under the Act.

Clause 56 allows the Director-General to delegate powers and functions to any staff member of the Commission.

Clause 57 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 58 specifies that the Division amends the Penal Code (Cap. 26).

Clause 59 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 60 and 61 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 62 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 63 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 64 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 65 to 67 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 68 repeals section 375, which contains an offence that is replaced by the new corruption offences inserted into Part X.

Division 2 Consequential amendments

Clause 69 makes consequential amendments to provisions of the *Companies Act 2009* that refer to provisions of the Penal Code that have been replaced.

Clause 70 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.