

ACCOUNTABILITY AND TRANSPARENCY COMMISSION BILL 2025
(BILL NO. 6 OF 2025)

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BILL NO. 6 OF 2025

A BILL

FOR AN ACT TO PROVIDE FOR MATTERS FOR THE PURPOSES OF THE
ACCOUNTABILITY AND TRANSPARENCY COMMISSION AND OTHER
MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY

Short title and commencement

1.—(1) This Act may be cited as the Accountability and Transparency Commission Act 2025.

(2) This Act comes into force on a date or dates appointed by the Minister by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires—

“applicant” means a person who has received a notice of response under section 17 of the Access to Information Act 2025;

“associate” has the same meaning as in the Code of Conduct Act 2025;

“ATI Unit” has the same meaning as in the Access to Information Act 2025;

- “chairperson” means a person holding the office of chairperson for the time being and appointed under subsection 121(2) of the Constitution;
- “codes of conduct” has the same meaning as in the Code of Conduct Act 2025;
- “Commission” means the Accountability and Transparency Commission established under subsection 121(1) of the Constitution;
- “complaint” means a complaint made under section 24 or section 25;
- “complaint resolution process” means a process by which the chairperson may seek an agreed resolution of a complaint under section 38;
- “complainant” means a person who makes a complaint under section 24 or section 25;
- “conciliation” means a complaint resolution process referred to in section 45;
- “day” means a day that is not a Saturday, Sunday or public holiday;
- “declaration” has the same meaning as in the Code of Conduct Act 2025;
- “executive office holder” has the same meaning as in the Code of Conduct Act 2025;
- “improper conduct” has the meaning in section 3;
- “improper conduct complaint” means a complaint that the chairperson under section 35(3) holds a reasonable belief relates to improper conduct, but does not include a complaint that the chairperson in the course of an investigation determines does not relate to improper conduct;
- “investigation hearing notice” means a notice given under section 60;
- “legal practitioner” has the same meaning as in the Legal Practitioners Act 2009;
- “member” means a person holding the office of member for the time being and appointed under subsection 121(2) of the Constitution;
- “office holder” has the same meaning as in the Code of Conduct Act 2025;
- “officer” means a person employed as a member of the staff of the Commission under section 11;
- “Parliamentary office holder” has the same meaning as in the Code of Conduct Act 2025;
- “party”, in relation to a complaint, means—
- (a) the complainant; or
 - (b) any executive office holder, office holder, Parliamentary office holder about whom a complaint about a code of conduct matter is made under section 24; or

(c) a public servant about whom a complaint about a request for information matter is made under section 25; or

(d) a public agency about whom a complaint about a request for information matter is made under section 25;

“public agency” has the same meaning as in the Access to Information Act 2025;

“public entity” has the same meaning as in the Code of Conduct Act 2025;

“public prosecutor” means the Director of Public Prosecutions and any person appointed by the Director of Public Prosecutions to be a prosecutor or to prosecute any particular case;

“public record” has the same meaning as in the Access to Information Act 2025;

“request” means a request for access to a public record made under section 7 of the Access to Information Act 2025; and

“whistleblower” means a person who makes an improper conduct complaint.

Meaning of improper conduct

3.—(1) For the purposes of this Act, improper conduct means—

(a) corrupt conduct; or

(b) conduct of an executive office holder, office holder, Parliamentary office holder, engaged in by the executive office holder, office holder, Parliamentary office holder, in his or her capacity as a executive office holder, office holder, Parliamentary office holder that constitutes—

(i) a criminal offence; or

(ii) serious professional misconduct; or

(iii) dishonest performance of public functions; or

(iv) an intentional or reckless breach of public trust; or

(v) an intentional or reckless misuse of information or material acquired in the course of the performance of the functions of the executive office holder, office holder, Parliamentary office holder or public entity; or

(vi) a substantial mismanagement of public resources; or

(vii) a substantial risk to the health or safety of one or more persons; or

(viii) a substantial risk to the environment; or

(c) conduct of any person that—

(i) adversely affects the honest performance by an executive office holder, office holder, Parliamentary office holder of his or her functions as an executive office holder, office holder, Parliamentary office holder; or

- (ii) is intended to adversely affect the effective performance or exercise by an executive office holder, office holder, Parliamentary office holder of the functions or powers of the executive office holder, office holder, Parliamentary office holder and results in the person, or an associate of the person, obtaining—
 - A. a licence, permit, approval, authority or other entitlement under any Act or subsidiary legislation; or
 - B. an appointment to a statutory office or as a member of a board of any public entity under any Act or subsidiary legislation; or
 - C. a financial benefit or real or personal property; or
 - D. any other direct or indirect monetary or proprietary gain—
 - that the person or associate would not have otherwise obtained;
 - or
- (iii) adversely affects the honest performance of a function or exercise of a power under the Access to Information Act 2025;

(d) conduct of any person that could constitute a conspiracy or attempt to engage in any of the conduct referred to in paragraph (a), (b) or (c);

(2) Despite subsection (1), conduct that is trivial does not constitute improper conduct for the purposes of this Act.

Objectives

4. The objectives of this Act are—

- (a) to provide for the making of a complaint regarding a request or a contravention of a code of conduct;
- (b) to assist complainants and public agencies to resolve disputes relating to the handling of requests made under the Access to Information Act 2025;
- (c) to assist complainants and executive office holders, office holders, Parliamentary office holders to resolve disputes relating to standards of conduct and declarations made under the Code of Conduct Act 2025;
- (d) to provide for the investigation of complaints about requests or about code of conduct matters;
- (e) to provide for the review of a request decision made under the Access to Information Act 2025 and the making of a fresh decision;
- (f) to provide for the referral of certain complaints to a disciplinary body, the public prosecutor or other investigating body as the case requires;
- (g) to provide protection to a whistleblower who makes an improper conduct complaint;

- (h) to provide for the protection of complainants and participants in the complaint making and handling process;
- (i) to make preliminary findings of fact in relation to complaints and to refer certain adverse findings to disciplinary bodies, the public prosecutor and other bodies as required; and
- (j) to monitor the compliance of any person who is subject to a code of conduct with the standards that apply to that person.

Act to bind the State

5. This Act binds the State.

**PART 2— ACCOUNTABILITY AND TRANSPARENCY COMMISSION—
FUNCTIONS, RESPONSIBILITIES, JURISDICTION, AUTHORITY AND
POWERS**

Functions and responsibilities of the chairperson

6.—(1) For the purposes of section 121(8) of the Constitution, the chairperson of the Commission has the following functions and responsibilities—

- (a) to review request decisions and make fresh decisions;
- (b) to receive and assess complaints regarding the handling of requests, decisions made about requests, and to deal with those complaints by—
 - (i) requesting further information from complainants or interviewing complainants regarding complaints and attempting early resolution of complaints in any manner and using any means that the chairperson considers appropriate;
 - (ii) making decisions whether or not to deal with a complaint;
 - (iii) seeking agreement with complainants on the description of complaints and altering or varying formal descriptions of complaints with the agreement of the complainant;
 - (iv) requesting more information from complainants, other parties or public entities that the chairperson believes have relevant information;
 - (v) dividing or concurrently dealing with complaints and making decisions on how to handle complaints;
 - (vi) making decisions whether or not complaints are improper conduct complaints;
 - (vii) making decisions to not deal with or cease to deal with complaints if the chairperson is satisfied that one of the reasons under section 31 has been met;

- (viii) accepting undertakings from parties to complaints and to require a party to report to the chairperson on the implementation of an undertaking;
- (ix) attempting early resolution of complaints with the complainants or parties to complaints;
- (x) conducting complaint resolution processes for a complaint and conducting conciliation processes for the whole or a part of complaints;
- (c) to conduct investigations of complaints about requests if the chairperson reasonably believes that the complaint should be investigated;
- (d) to conduct an own initiative investigation of an improper conduct complaint about a request for information matter in certain circumstances;
- (e) to establish and keep a register of declarations made under the Code of Conduct Act 2025;
- (f) to publish a public register of declarations in accordance with the Code of Conduct Act 2025;
- (g) to provide information and training to public entities and public servants about their responsibilities in handling complaints and investigations about requests and code of conduct matters;
- (h) to provide training to public servants on the protection of complainants and whistleblowers;
- (i) to provide information to the public about the measures the chairperson may take to protect the public from contravention of the codes of conduct;
- (j) to provide advice to the Attorney-General in relation to the operation of codes of conduct and compliance with any code of conduct;
- (k) to conduct and support research in respect of complaint handling and matters relevant to improve the handling of code of conduct matters;
- (l) to delegate functions, powers and responsibilities to members and officers as appropriate and in accordance with this Act;
- (m) to authorise persons to exercise powers under this Act;
- (n) to publish guidelines, reports and submit annual reports to the Parliament; and
- (o) any other function or responsibility conferred on the chairperson by this or any other Act.

(2) The chairperson has all the powers that are necessary or convenient to perform his or her functions and responsibilities under this or any other Act.

Jurisdiction, authority and powers of the chairperson

7. For the purposes of section 121(9) of the Constitution, the chairperson of the Commission has the following jurisdiction, authority and powers—

- (a) to receive and assess complaints regarding compliance with a code of conduct and to deal with those complaints by—
 - (i) requesting further information from complainants or interview complainants regarding complaints and attempting early resolution of complaints in any manner and using any means that the chairperson considers appropriate;
 - (ii) making decisions whether or not to deal with complaints;
 - (iii) seeking agreement with complainants on the description of complaints and altering or varying formal description of complaints with the agreement of complainants;
 - (iv) requesting more information from complainants, other parties or public entities that the chairperson believes have relevant information;
 - (v) dividing or concurrently dealing with complaints and making decisions on how to deal with complaints;
 - (vi) making decisions whether or not a complaint is an improper conduct complaint;
 - (vii) making decisions to not deal with or cease to deal with complaints if the chairperson is satisfied that one of the reasons under section 31 has been met;
 - (viii) accepting undertakings from parties to complaints and requiring parties to report to the chairperson on the implementation of undertakings;
 - (ix) providing advice on the options available to resolve complaints and attempting early resolution of complaints with complainants or parties to complaints;
 - (x) conducting complaint resolution processes for complaints and conducting conciliation processes for the whole or a part of complaints;
- (b) to conduct investigations of complaints about code of conduct matters if the chairperson reasonably believes that the complaints should be investigated; and
- (c) to conduct own initiative investigations of improper conduct complaints about code of conduct matters in certain circumstances.

Independence of the Commission

8.—(1) The chairperson, a member or an officer in carrying out a function, responsibility or power under this Act must—

- (a) act in a fair, impartial and independent manner;
- (b) act in the public interest;
- (c) encourage complainants and parties to participate in the complaint process or investigation, as the case requires;
- (d) seek to review decisions and resolve complaints promptly;
- (e) act in a manner that is transparent, accountable and consistent;
- (f) act in an efficient, effective and flexible manner that avoids unnecessary formality; and
- (g) act in a consultative and collaborative manner to the extent that is consistent with the carrying out of a function, responsibility or power.

(2) The chairperson, a member or an officer in carrying out a function, responsibility or power under this Act must not be subject to the direction or control of the Minister or any other person, except by a court of law or as prescribed by any other Act.

Delegation by chairperson

9.—(1) The chairperson, by instrument, may delegate to a member or to a class of that person any function and responsibility under this Act except—

- (a) any function and responsibility referred to in section 35(3) or
- (b) this power of delegation.

(2) The chairperson, by instrument, may delegate to an officer who has the necessary knowledge and skills any function and responsibility under Parts 3, 4, 5, 6 and 7 of this Act.

Chairperson, members and officers must maintain confidentiality

10. A person who is or was the chairperson, a member or an officer must not knowingly disclose any information acquired by the person by reason of being a chairperson, a member, an officer in the course of the performance of functions and responsibilities under this Act or any other Act, except—

- (a) for the performance of the functions and responsibilities of the chairperson, the member or the officer under this Act or any other Act;
- (b) if it is necessary to do so for the purposes of producing a document or giving evidence to a court in the course of a proceeding under this Act or any other Act;
- (c) if the information is in the public domain at the time of the disclosure, other than as a result of a disclosure that the person knows or ought to have known was unlawful; or

(d) as is otherwise authorised or required under this Act or any other Act.

Penalty: A fine not exceeding \$10,000 or imprisonment for a term not exceeding 5 years or both.

Staff of the Commission

11.—(1) There may be employed any members of the public service that are necessary to enable the chairperson to perform any functions and responsibilities.

(2) The chairperson may, from time to time, enter into an agreement or arrangement for the use of the services of any person with suitable qualifications or experience to assist the chairperson in the performance of his or her functions and responsibilities under this Act.

(3) An agreement or arrangement under subsection (2) may be on any terms and conditions that the chairperson is satisfied are appropriate.

(4) The chairperson may, with the approval of the Minister responsible for the public service, make use of the services, facilities or officers of the public service.

PART 3—REVIEW OF DECISIONS

Application to chairperson for review

12.—(1) Subject to this section an applicant may apply to the chairperson for review of—

- (a) a decision of the ATI Unit or a public agency refusing to grant the request for access to a public record in accordance with a request;
- (b) a decision of the ATI Unit or a public agency refusing to grant the request for access to a public record that is claimed to be exempt;
- (c) a decision of the ATI Unit or a public agency refusing to grant the request for access to a public record that it is claimed a limitation applies to;
- (d) a decision of the ATI Unit or a public agency refusing to grant access to a public record or refusing to amend a public record; and
- (e) a decision as to the amount of a charge that is required to be paid before access to a public record is granted, whether or not the charge has already been paid by the applicant.

(2) An application for review of a decision cannot be made under this section by an applicant if a fresh decision has been made by the ATI Unit or a public agency under section 20, and the applicant has accepted the fresh decision.

(3) On the hearing of an application for review the chairperson has the same powers as the ATI Unit or a public agency, including the power to decide that access should be granted to an exempt document, where the chairperson is of the opinion that the public interest requires that access to the public record should be granted under this Act.

(4) The chairperson may refuse to review a decision of the ATI Unit or a public agency to refuse the request of an applicant for access to a public record, if the chairperson is satisfied that it has previously reviewed a decision of the ATI Unit or the public agency to refuse access to the same public record or the same information.

Time for applying for review

13. An application to the chairperson under section 12 for review of a decision must be made within 60 days from the day on which a notice of response on the request is given to the applicant.

Parties to review

14. The parties to a review under this Part are—

- (a) the applicant; and
- (b) the public agency whose decision is being reviewed; and
- (c) the ATI Unit, if its decision is being reviewed.

Chairperson may review a request decision

15. Subject to this Part, the chairperson may determine to review a decision that is the subject of an application for review made under section 12.

Chairperson may determine not to review a request decision

16.—(1) The chairperson may determine not to accept an application for review made under section 12 or dismiss a review at any stage if—

- (a) the application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith;
- (b) the applicant has failed to co-operate with the review without reasonable excuse;
- (c) the chairperson considers that the review is not appropriate in the circumstances; or
- (d) the chairperson is unable to contact the applicant following reasonable attempts to do so.

(2) The chairperson may dismiss a review if the applicant agrees in writing to the review being dismissed.

(3) The chairperson must give notice to the applicant and the public agency or the ATI Unit if the chairperson decides to not accept an application for review or to dismiss a review.

(4) The notice must set out the reasons for the decision.

Procedure on review

17.—(1) The chairperson must conduct a review in a timely, efficient and fair manner, with as little formality and technicality as possible.

(2) The chairperson must give each party to the review a reasonable opportunity to make submissions in writing in relation to the review.

(3) Subject to this section, the chairperson is bound by the rules of natural justice in conducting a review.

- (4) The chairperson may rely on advice and assistance provided by an officer in—
- (a) making preliminary inquiries in relation to a review;
 - (b) conducting a review; and
 - (c) making a fresh decision on review.

Preliminary inquiries

18. The chairperson may make preliminary inquiries and consult with the parties to the review to determine—

- (a) the material facts and issues in relation to the review; and
- (b) whether the matter can be resolved informally.

Chairperson may issue notice to produce or attend

19. During a review under this Part, the chairperson may issue a notice to produce or attend on an information officer of a public agency or an officer of the ATI Unit.

Referral back to public agency for reconsideration

20.—(1) This section applies if—

- (a) the chairperson has done any of the following—
 - (i) made preliminary inquiries under section 18;
 - (ii) issued a notice to produce or attend under section 19; and
- (b) it appears reasonably likely to the chairperson that the ATI Unit or the public agency will be able to make a fresh decision in a way that is satisfactory to the applicant and in accordance with law.

(2) The chairperson, with the agreement of the applicant, may refer the matter that is the subject of the application back to the public agency or the ATI Unit for reconsideration in accordance with this section.

(3) The fresh decision must be made within 28 days after the referral under subsection (2) unless the public agency or the ATI Unit agree in writing to another period.

(4) The public agency or the ATI Unit must notify the chairperson within 3 days after the end of the period referred to in subsection (3) that—

- (a) a fresh decision has been made; or
- (b) a fresh decision has not been made.

(5) If the public agency or the ATI Unit makes a fresh decision, the public agency or the ATI Unit must—

- (a) revoke the earlier decision; and
- (b) inform the applicant, when notifying him or her of the fresh decision, of the requirements of subsection (6) and the effect of subsection (7).

(6) Within 28 days after being notified of the fresh decision by the public agency or the ATI Unit, the applicant must advise the chairperson in writing whether the applicant agrees or does not agree with the decision.

(7) If the applicant fails to advise the chairperson under subsection (6) within the period specified in that subsection, the applicant is taken to agree with the fresh decision.

Procedure after reconsideration

21.—(1) If an applicant agrees with a fresh decision under section 20, the chairperson must dismiss the review.

(2) If the applicant does not agree with the fresh decision, the chairperson must complete the review on the basis of the fresh decision within 30 days after the date that the applicant advises the chairperson under section 20(6) that the applicant does not agree with the fresh decision.

(3) A review cannot be completed under this section in relation to a fresh decision if the decision is to refuse to grant access to a public record on the basis that the document is claimed to be exempt on the basis of national security, defence or international relations.

Informal resolution of review

22.—(1) If the chairperson determines that it is reasonably possible to resolve the matter that is the subject of the review informally, the chairperson must take reasonable steps to resolve the matter.

(2) If the matter is resolved informally, the chairperson must record the outcome in writing.

(3) Informal resolution of a matter under subsection (1) is not a decision on the review for the purposes of this Act.

Decision on review

23.—(1) After conducting a review of a decision of a public agency or the ATI Unit, the chairperson must make a fresh decision on the original request.

(2) The decision of the chairperson has the same effect as a decision of the public agency or the ATI Unit.

(3) The chairperson must give the parties notice in writing of the decision setting out the reasons for the decision.

PART 4—MAKING A COMPLAINT

Making a complaint about a code of conduct matter

24.—(1) A person may make a complaint to the chairperson about any of the following—

- (a) an alleged contravention of a code of conduct by a person who is subject to that code of conduct;
- (b) the failure to perform an undertaking given about a code of conduct matter.

(2) A complaint made under subsection (1) may be made in the iTaukei, Hindi or English languages.

Making a complaint about a request

25.—(1) A person may make a complaint to the chairperson about any of the following—

- (a) the unreasonable handling of a request for access to a public record that is inconsistent with the requirements of the Access to Information Act 2025;
- (b) the unreasonable failure of a public entity in the handling a request for access to a public record;
- (c) a failure to perform an undertaking given about a request for a public record.

(2) A complaint made under subsection (1) may be made in the iTaukei, Hindi or English languages.

Time for making a complaint

26.—(1) A person is not entitled to make a complaint to the chairperson under subsections 24(1) or 25(1)—

- (a) more than 12 months after the alleged contravention of the code of conduct;
- (b) more than 12 months after the making of a request for a public record under the Access to Information Act 2025; or
- (c) if the complaint is about a failure to perform an undertaking within the fixed time, more than 12 months after the expiry of that fixed time.

(2) Despite subsection (1), the chairperson may deal with a complaint lodged after the end of the 12 month period if the chairperson is satisfied that the circumstances of the case so require.

Complaint may be either oral or in writing

27.—(1) A complaint made to the chairperson may be made either orally or in writing.

Note

A complaint may be made by an electronic communication within the meaning of the Electronic Transactions Act 2008.

(2) A person who makes an oral complaint must confirm the complaint as recorded in writing using the iTaukei, Hindi or English language, by the chairperson under section 28 as soon as practicable.

(3) The chairperson may waive the requirement for a person to comply with subsection (2), if the chairperson is satisfied that it is appropriate to do so in the circumstances.

(4) The chairperson must make a written record of any waiver given under subsection (3).

Recording of complaint

28.—(1) If a complaint is made to the chairperson, the chairperson must make a written record on receiving the complaint.

(2) A written record made under subsection (1) must include the date that the complaint was received by the chairperson.

Officer to assist person to make complaints

29.—(1) An officer must give reasonable assistance to a person who is making or confirming a complaint to the chairperson.

(2) The officer, in giving reasonable assistance to a person, may assist the person to identify the parties to the complaint.

PART 5—HANDLING A COMPLAINT

Decision whether to deal with complaint

30.—(1) The chairperson must decide whether or not to deal with a complaint made to him or her.

(2) A decision must be made under subsection (1)—

- (a) as soon as practicable after the complaint is made; or
- (b) if the chairperson has attempted an early resolution of the complaint under section 38 and the complaint is not resolved, as soon as practicable after the failure to resolve the complaint.

(3) As soon as possible after making a decision under subsection (1), the chairperson must give written notice of that decision to the complainant.

Grounds for not dealing with complaints

31. The chairperson may refuse to deal, or cease to deal, with a complaint if—

- (a) the chairperson is satisfied that the complaint is frivolous, vexatious, misconceived, lacking in substance or otherwise does not warrant action;
- (b) the chairperson is satisfied that the complaint is not made in good faith;
- (c) the chairperson is satisfied that the complaint is made for an improper purpose;
- (d) the complainant does not comply with a request for more information under section 33 and the chairperson believes that it is not in the public interest to deal with the complaint;
- (e) the chairperson is satisfied that there is no reasonable prospect of resolving the complaint by the conduct of a complaint resolution process and the chairperson does not believe the complaint should be investigated;
- (f) the subject matter of the complaint comes within the jurisdiction of a court, tribunal or other body;

- (g) the subject matter of the complaint—
 - (i) is before a court, tribunal or other body; or
 - (ii) has been determined by a court, tribunal or other body and does not raise a new matter that, the chairperson believes, ought to be dealt with by the chairperson;
- (h) the relevant party who was the subject of the complaint has taken action that the chairperson is satisfied has resolved the complaint;
- (i) the chairperson is satisfied that—
 - (i) reasonable attempts have not been made to seek to resolve the complaint with the party who is the subject of the complaint; and
 - (ii) it is reasonable and appropriate to seek to resolve the complaint with the relevant party; or
- (j) the complaint has been withdrawn under this Part.

Formal description of complaint

32.—(1) As soon as possible after a decision is made under section 30 to deal with a complaint, the chairperson must seek the agreement of the complainant to a description of the complaint.

(2) The chairperson may decide not to deal with a complaint if agreement about the description of the complaint is not reached within 10 days after the chairperson seeks agreement, or any longer period as determined by the chairperson.

(3) The chairperson must give written notice of a decision under subsection (2) to the complainant as soon as possible after the decision is made.

(4) The chairperson, with the agreement of the complainant, may alter or vary the formal description of a complaint.

Chairperson may request more information

33. In order to determine how to deal with a complaint, the chairperson may request more information from—

- (a) the complainant; or
- (b) any party to the complaint; or
- (c) any other person whom the chairperson reasonably believes has relevant information.

Chairperson may divide or concurrently deal with complaints

34.—(1) The chairperson may divide a complaint at any time—

- (a) into 2 or more complaints if the chairperson believes it is in the interests of the person who made the complaint; or

- (b) into a part that may be dealt with under this Act, and a part that is or may be the subject of a complaint, investigation under a relevant law, for the purposes of referring that part of the complaint to the person or body responsible for dealing with the matter under that law.

(2) The chairperson may concurrently deal with 2 or more complaints, whether or not there is more than one complainant, if the chairperson believes that—

- (a) the complainant or complainants are not disadvantaged; and
- (b) the party's rights are not adversely affected.

(3) If the chairperson acts under this section the chairperson must give written notice to any relevant complainant or party to the complaint of the action taken as soon as possible after taking it.

Chairperson decision on how to deal with complaints

35.—(1) The chairperson must at the same time as, or as soon as possible after, giving a copy of the formal description of a complaint to any party under section 32, make a decision under subsection (2) on how the complaint should be dealt with.

(2) Subject to subsection (3), the chairperson may decide—

- (a) that the complaint is to be the subject of a complaint resolution process if the parties agree to participate in that process; or
- (b) that the complaint is to be the subject of a complaint investigation.

(3) If the chairperson holds a reasonable belief that the conduct that forms the complaint is improper conduct, then the complaint must be the subject of a complaint investigation.

(4) The chairperson must give written notice of any decision under this section to the parties, as soon as possible after making the decision.

Withdrawal of complaint

36. A complainant may withdraw a complaint at any time after making it by written notice given to the chairperson.

Effect of withdrawal of complaint

37. If a complaint has been withdrawn the chairperson may proceed with the complaint under this Act if—

- (a) the chairperson reasonably believes that it is in the public interest to do so;
- (b) the chairperson reasonably believes that the complaint involves a contravention of a code of conduct; or
- (c) the chairperson reasonably believes that the complaint may have been withdrawn because of victimisation, coercion, duress or intimidation.

PART 6—COMPLAINT RESOLUTION PROCESS

Complaint resolution process

38.—(1) If the chairperson makes a decision under subsection 35(2)(a), the chairperson may seek an agreed resolution to the complaint by either or both of the following processes—

- (a) by the parties identifying the issues in dispute and by the chairperson promoting discussion or negotiation of the complaint between the parties; or
- (b) a process of negotiation between the parties in which the chairperson proposes options for resolution of the issues and proposes terms for agreement (“conciliation”).

(2) The chairperson must decide the manner in which the complaint resolution process is to be conducted.

(3) In deciding how to conduct the complaint resolution process, the chairperson must prefer the least formal action that is appropriate in the circumstances of the complaint.

Notice of complaint resolution process

39.—(1) The chairperson must give written notice of any decision under section 38 to the parties, as soon as possible after making the decision.

(2) A notice of decision under section 38 must set out—

- (a) the complaint resolution process that the chairperson has decided is to be applied in respect of the complaint;
- (b) the manner in which the complaint resolution process is to be conducted; and
- (c) if a conciliation is to be conducted—
 - (i) the date that the conciliation is proposed to commence;
 - (ii) the whole or part of the complaint to be the subject of a conciliation;
 - (iii) the chairperson’s powers in the conduct of a conciliation;
 - (iv) the obligation of the parties to produce documents in accordance with section 46; and
 - (v) the offences under sections 46(3) and 48.

(3) A notice under subsection (2) must be given in a reasonable time before any time fixed by the notice for anything to be done, having regard to—

- (a) the complexity of the complaint; and
- (b) ensuring that appropriate time is given for preparation by the parties.

Withdrawal of agreement to complaint resolution process

40. If at any time during the conduct of a complaint resolution process, a party to the complaint withdraws or no longer agrees to participate in the process, the chairperson may—

- (a) cease the complaint resolution process and, if the chairperson believes it necessary commence a complaint investigation; or
- (b) decide to take no further action in respect of the complaint.

Party may be required to respond

41.—(1) In a complaint resolution process, the chairperson, by written notice, may require the public entity, executive office holder, office holder or Parliamentary office holder, ATI Unit or a public agency to give a written response to each issue raised in the complaint.

(2) In a notice under subsection (1) the chairperson must specify the time within which the response must be given, which must be no more than 20 days after the notice is given.

(3) A party to a complaint who contravenes this section commits a summary offence and is liable on conviction to a fine not exceeding—

- (a) in the case of an individual, \$5,000; or
- (b) in the case of a body corporate, \$15,000.

Chairperson power to extend time limit

42. In a complaint resolution process, the chairperson may extend the time within which a person must comply with a written notice given by the chairperson under section 41.

Outcome of complaint resolution process

43.—(1) If agreement is reached in a complaint resolution process on the resolution of the complaint that is the subject of the process, the chairperson must—

- (a) make a written record of the agreement; and
- (b) give a copy of the written record to each party.

(2) If a public agency, the ATI Unit or person gives an undertaking to the chairperson in the course of a complaint resolution process, the chairperson must make a written record of the undertaking that is signed by the public agency, the ATI Unit or the person.

(3) If agreement on the resolution of a complaint is not reached in a complaint resolution process, the chairperson may—

- (a) decide to take no further action in respect of the complaint; or
- (b) conduct an investigation into the complaint.

(4) If the chairperson makes a decision under subsection 3(a), the chairperson must give written notice of the reasons for that decision to the parties.

Reporting on undertakings to the chairperson

44.—(1) If, in a complaint resolution process, as part of resolving the complaint, a public agency, the ATI Unit or person gives an undertaking to the chairperson, the chairperson may require the public agency, ATI Unit or the person to report to the chairperson on the implementation of the undertaking within the time fixed by the chairperson.

(2) The time fixed by the chairperson under subsection (1) must not be more than 12 months after the undertaking is given to the chairperson.

(3) The public entity or the person to whom a requirement under subsection (1) has been given and who contravenes that requirement commits a summary offence and is liable on conviction to a fine not exceeding—

- (a) in the case of an individual, \$5,000; or
- (b) in the case of a body corporate, \$15,000.

PART 7—COMPLAINT CONCILIATION PROCESS*Complaint conciliation process*

45. The chairperson must not commence a conciliation of a complaint unless—

- (a) the parties have agreed to participate in the conciliation; and
- (b) a written notice of the conciliation was given to a party before the party agreed to participate in the conciliation.

Public agency, ATI Unit, public entity or the person may be required to produce documents in conciliation

46.—(1) In a conciliation, the chairperson, by written notice, may require the public agency, the ATI Unit or the person to produce to the chairperson any document or other evidence specified in the notice that is held by the public agency, ATI Unit or the person and—

- (a) that forms part of the information that is the subject of the request made by the complainant; or
- (b) that forms part of the matters related to the complaint about compliance with the making of a declaration or the requirements of a code of conduct; or
- (c) that forms part of the information that is the subject of the request for information made by the complainant; or

(2) In a notice under subsection (1) the chairperson must specify the time within which the document or evidence must be produced to the chairperson, which must be no more than 20 days after the notice is given.

(3) The public agency, the ATI Unit or the person to whom a notice is given under subsection (1) and who contravenes that notice commits a summary offence and is liable on conviction to a fine not exceeding—

- (a) in the case of an individual, \$5,000; or
- (b) in the case of a body corporate, \$15,000.

Extension of time to produce documents

47. In a conciliation, the chairperson may extend the time within which a public agency, the ATI Unit or a person must comply with a written notice given by the chairperson under section 46.

Confidentiality of information given or agreement reached in conciliation process

48.—(1) Subject to subsection (2), a party who discloses anything said or done in a conciliation or any agreement reached in a conciliation outside the process, commits a summary offence and is liable on conviction to a fine not exceeding—

- (a) in the case of an individual, \$5,000; or
- (b) in the case of a body corporate, \$15,000.

(2) A party may disclose anything said or done in a conciliation outside the process with the consent of the person to whom the information relates.

(3) Evidence of anything said or done in a conciliation is not admissible in any hearing or proceeding in a court or a tribunal.

(4) This section does not apply to an undertaking given in the course of a conciliation.

Completion of conciliation process

49. On the completion of a conciliation the chairperson must provide written notice to the parties that specifies—

- (a) the date the conciliation ceased; and
- (b) the outcome of the conciliation.

PART 8—INVESTIGATIONS

*Division 1—Conducting an investigation**Conducting an investigation about a complaint*

50. The chairperson may conduct an investigation of a complaint made to the chairperson, if the chairperson reasonably believes that the complaint should be investigated and—

- (a) the complaint is not suitable for a complaint resolution process;
- (b) a complaint resolution process dealing with the complaint has not been successful;
- (c) a complaint is an improper conduct complaint;
- (d) a party to a complaint, without reasonable excuse, fails to participate in a complaint resolution process;
- (e) a party to a complaint does not comply with—
 - (i) a request for more information under section 33;
 - (ii) a notice requiring the party to give a written response under section 41;

- (iii) a notice requiring the production of a document or other evidence under section 46; or
- (f) the subject matter of the complaint is compliance with the requirements of a declaration or a code of conduct.

Power of chairperson to conduct an own initiative investigation

51. The chairperson, on the chairperson’s own initiative, may conduct an investigation if—

- (a) an improper conduct complaint has been made; and
- (b) the complainant withdraws from the improper conduct complaint; and
- (c) the chairperson reasonably believes that it is in the public interest for the improper conduct complaint to be investigated.

Principles applying to all investigations

52.—(1) In an investigation under this Part, the chairperson may carry out any inquiries into the subject matter of the investigation that the chairperson believes are necessary.

(2) In an investigation under this Part the chairperson—

- (a) must act expeditiously and with as little formality as is reasonably possible;
- (b) is bound by the rules of natural justice;
- (c) is not bound by the rules of evidence; and
- (d) before making a decision affecting a person, must give the person an opportunity to make submissions to the chairperson about the decision.

(3) In an investigation under this Part, the chairperson may conduct a hearing.

Requirements if there is no hearing

53. If the chairperson decides not to conduct a hearing in an investigation under this Part, for the purpose of section 52(2)(d) the chairperson—

- (a) may take oral or written submissions;
- (b) may send for persons, documents or other things; and
- (c) must keep a record of all submissions and evidence given before the chairperson and decisions made by the chairperson.

Requirements if there is a hearing

54.—(1) If the chairperson decides to conduct a hearing in an investigation under this Part, the chairperson must at least 10 days before the date on which the hearing is to commence give written notice of the hearing—

- (a) for a complaint investigation, to the parties to the complaint; or
- (b) for any other investigation under this Part, to the executive office holder, office holder or the Parliamentary office holder as the case requires.

(2) A notice under subsection (1) must—

- (a) specify the date on which the hearing is to commence; and
- (b) specify the place at which the hearing is to be held.

Authorised persons and identification

55.—(1) The chairperson may authorise persons to exercise powers under this Act.

(2) The chairperson must issue a document to an authorised person that identifies that person.

(3) A document of identification of an authorised person must contain a photograph of the person.

(4) An authorised person must produce his or her identification for inspection—

- (a) before exercising a power under Division 2; and
- (b) at any time during the exercise of a power under Division 2, if asked to do so.

Division 2—Entry and search under warrant

Search warrants

56.—(1) The chairperson may apply to a magistrate for the issue of a warrant for particular premises, if the chairperson believes on reasonable grounds that there is on the premises evidence that is relevant to an investigation under this Part.

(2) If the magistrate is satisfied by evidence on oath or affirmation or by affidavit, that there are reasonable grounds to believe that there is evidence relevant to the investigation under this Part on the premises, the magistrate may issue a warrant in accordance with the Magistrates Court Act 1944 authorising the chairperson or an authorised person to search for evidence named or described in the warrant.

(3) The magistrate may authorise the person to do any of the following—

- (a) require a document named or described in the warrant to be produced for inspection;
- (b) examine, make copies of or take extracts from a document named or described in the warrant;
- (c) remove a document named or described in the warrant for so long as is necessary to make copies of or take extracts from the document.

(4) A warrant issued under this section must state—

- (a) the purpose for which the search is required and the nature of the investigation under this Part;
- (b) any conditions to which the warrant is subject;
- (c) whether entry is authorised to be made at any time of day or night or during specified hours of the day or night; and

(d) a day, not later than 20 days after the issue of the warrant, on which the warrant ceases to have effect.

(5) A warrant issued under this section must not authorise the person executing the warrant to arrest a person.

Announcement before entry

57. A person who executes a warrant under section 58—

- (a) must announce that the person is authorised by the warrant to enter the premises; and
- (b) if the person has been unable to obtain unforced entry, must give any person at the premises an opportunity to allow entry to the premises.

Details of warrant to be given to occupier

58.—(1) If the occupier is present at the premises where a warrant issued under section 56 is being executed, the person executing the warrant must—

- (a) identify himself or herself to the occupier; and
- (b) give the occupier a copy of the warrant.

(2) If the occupier is not present at the premises where a warrant issued under section 56 is being executed, the person executing the warrant must—

- (a) identify himself or herself to a person at the premises; and
- (b) give the person a copy of the warrant.

Offence to hinder or obstruct person executing warrant

59. A person must not, without reasonable excuse, hinder or obstruct a person who is executing a warrant issued under section 56.

Penalty: In the case of a natural person, \$5,000 or 12 months imprisonment or both. In the case of a body, corporate, \$50,000.

Power to compel production of documents and things or attendance of witnesses

60.—(1) For the purpose of an investigation hearing, the chairperson may serve written notice on a person requiring the person—

- (a) to produce a specified document or thing to the chairperson before a specified time and in a specified manner;
- (b) to attend the investigation hearing at a specified time and place to produce any specified document or thing;
- (c) to attend the investigation hearing at a specified time and place, and from then on from day to day until excused, to give evidence; or
- (d) to attend the investigation hearing at a specified time and place, and from then on from day to day until excused, to give evidence and to produce any specified document or thing.

(2) An investigation hearing notice—

- (a) must be in the prescribed form (if any); and
- (b) must contain the following information—
 - (i) a statement that failure to comply with the notice without reasonable excuse is an offence, and stating the maximum penalty for that offence;
 - (ii) examples of what may constitute a reasonable excuse for failing to comply with the notice;
 - (iii) any other information prescribed in subsidiary legislation.

Offence to fail to comply with investigation hearing notice

61. A person who is served with an investigation hearing notice must not, without reasonable excuse, refuse or fail to comply with the notice.

Penalty: In the case of a natural person, \$5,000 or 12 months imprisonment or both. In the case of a body, corporate, \$50,000.

Variation of investigation hearing notice

62.—(1) A person on whom an investigation hearing notice is served may make a claim at the investigation hearing—

- (a) that the person has or will have a reasonable excuse for failing to comply with the notice; or
- (b) that a document or thing specified in the notice is relevant to the subject matter of the investigation hearing.

(2) If the chairperson is satisfied that the person's claim is made out, the chairperson, by further written notice served on the person, may vary or revoke the investigation hearing notice.

(3) The chairperson, by further written notice served on a person, may, at any time on the chairperson's own initiative, vary or revoke an investigation hearing notice served on the person.

Power to take evidence on oath or affirmation

63.—(1) In an investigation hearing the chairperson may require a person attending the hearing, whether under an investigation hearing notice or otherwise, to give evidence or answer questions on oath or affirmation.

(2) The chairperson, or a member of the Commission or an officer who is authorised to do so, may administer an oath or affirmation to a person for the purposes of subsection (1).

Powers in relation to documents and things

64. The chairperson may—

- (a) inspect any document or thing produced at the investigation hearing;

- (b) retain the document or thing for so long as is reasonably necessary for the purposes of the investigation hearing to which the document or thing is relevant; and
- (c) copy any document or thing produced to the investigation hearing that is relevant to the subject matter of the hearing.

Division 3—Dismissing or discontinuing an investigation

Complaints to the chairperson that do not warrant investigation

65.—(1) The chairperson may in his or her absolute discretion, determine that a complaint does not warrant investigation.

(2) Without limiting subsection (1), the chairperson may determine under that subsection that a complaint does not warrant investigation if, in his or her opinion—

- (a) the subject matter of the complaint is trivial or unrelated to the functions of the chairperson;
- (b) the complaint is frivolous or vexatious;
- (c) the complaint lacks substance or credibility;
- (d) the matter has already been the subject of a complaint which has been investigated or otherwise dealt with;
- (e) the complaint relates to conduct that occurred at too remote a time to justify investigation;
- (f) the complaint was not made genuinely or was made primarily for a mischievous purpose; or
- (g) in all the circumstances the conduct does not warrant investigation.

(3) If a person who makes a complaint has delayed making a complaint by more than 12 months after becoming aware of the conduct or receiving the decision on a request for information, which is the subject of the complaint, the chairperson—

- (a) may require the person to give an explanation to the chairperson for the delay; and
- (b) if not satisfied with the explanation, in the chairperson’s absolute discretion, may decide not to investigate the complaint.

Dismissing certain complaints made to the chairperson

66.—(1) A complaint is dismissed if the chairperson—

- (a) determines under section 65(2) that the complaint does not warrant investigation; or
- (b) determines not to investigate the complaint in accordance with section 65(3).

(2) The chairperson must dismiss a complaint if the matter disclosed is not a matter that the chairperson may investigate.

(3) The chairperson may dismiss a complaint if he or she considers that referring the complaint to another body would prejudice a criminal proceeding, criminal investigation or an investigation by the Commission.

Discontinuance of an investigation

67. The chairperson may discontinue an investigation at any time.

Investigation when other proceedings on foot

68.—(1) The chairperson may commence or continue to investigate a matter despite the fact that any proceedings (whether civil or criminal) are on foot or are commenced in a court or tribunal that relate to, or are otherwise connected with, the subject matter of the complaint.

(2) If the chairperson becomes aware that the proceedings are on foot, or have been commenced, the chairperson or the member must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.

Division 4—Referral of an investigation

Referral complaints to other investigating bodies

69.—(1) The chairperson must refer to a person or body specified in subsection (2) a complaint at any time that, the chairperson or the member considers that—

- (a) the subject matter of the complaint is relevant to the performance of the duties, functions and responsibilities or the exercise of powers of that person or body; and
- (b) it would be more appropriate for the complaint to be investigated by that person or body rather than the Commission.

(2) For the purposes of subsection (1), the following persons and bodies are specified—

- (a) the Chief Commissioner of Police;
- (b) the Constitutional Offices Commission;
- (c) the Privileges Committee;
- (d) the Public Service Commission;
- (e) any other prescribed person or body which has a law enforcement function or an integrity function.

Referral of improper conduct complaints

70.—(1) The chairperson may refer a complaint to a person or body specified in subsection (2) if, at any time the chairperson considers that—

- (a) the subject matter of the complaint amounts to improper conduct; and
- (b) it would be more appropriate for the complaint to be investigated by that person or body rather than the chairperson.

(2) For the purposes of subsection (1) the following persons and bodies are specified—

- (a) the Commissioner of Police;
- (b) the Judicial Services Commission;
- (c) the public prosecutor;
- (d) the Public Service Commission;
- (e) the Privileges Committee;
- (f) the Constitutional Offices Commission.

Referral to disciplinary body

71.—(1) The chairperson must refer to a person or body specified in subsection (2) a complaint, if, at any time, the chairperson considers that—

- (a) the subject matter of the complaint is relevant to the performance of the duties and functions or the exercise of powers of that person or body; and
- (b) it would be more appropriate for the complaint to be investigated by that person or body rather than by the chairperson; and
- (c) a referral under section 69 is not appropriate in the circumstances of the case.

(2) For the purposes of subsection (1), the following persons and bodies are specified—

- (a) the Commissioner of Police;
- (b) the Judicial Services Commission;
- (c) the Public Service Commission;
- (d) the Privileges Committee;
- (e) the Constitutional Offices Commission.

Referrals to prosecutorial bodies

72. If the chairperson considers it appropriate, the chairperson at any time may refer to the public prosecutor any matter or complaint that the chairperson considers is relevant to the performance of the public prosecutor duties and functions or the exercise of prosecutorial powers of the office of the public prosecutor.

Information to be provided with referral

73. The chairperson may provide or disclose to a person or body to which a referral is made under section 69, 70, 71 or 72 any information that the chairperson has in relation to the matter or complaint referred.

Division 5—Abrogation or limitation on privileges

Certain privileges abrogated

74.—(1)—If the chairperson exercises a power for the purpose of investigating a complaint an obligation on the executive office holder, office holder or the Parliamentary office holder to maintain secrecy or comply with a restriction on the disclosure of information imposed by any written law or any rule of law is overridden.

(2) A person is not subject to any criminal, civil, administrative or disciplinary proceedings or actions only because the person has not maintained secrecy or complied with a restriction on the disclosure of information imposed by any written law or any rule of law as referred to in subsection (1).

Privilege against self-incrimination limited

75.—(1) Subject to subsection (2), it is not a reasonable excuse for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part for the investigation of an improper conduct complaint, or by or under a search warrant or investigation hearing notice issued for the investigation of an improper conduct complaint if the giving of the information or the doing of that other thing would tend to incriminate the person.

(2) It is a reasonable excuse for a natural person to refuse or fail to comply with a requirement referred to in subsection (1) that the information, document or other thing might tend to incriminate the person, or make the person liable to a penalty, in relation to—

- (a) proceedings for an offence with which the person has been charged that have not finally been disposed; or
- (b) proceedings for the imposition or recovery of a penalty that have been commenced against the person but not finally disposed of.

Legal professional privilege limited

76.—(1) It is not a reasonable excuse for a person to refuse or fail to give information or do any other thing that the person is required to do by or under this Part for the investigation of an improper conduct complaint, or by or under a search warrant or investigation hearing notice issued for the investigation of an improper conduct complaint, if the giving of the information or the doing of that other thing would be a breach of legal professional privilege or client legal privilege.

(2) Information or a document or other thing does not cease to be the subject of legal professional privilege only because it is given or produced to an investigation of an improper conduct complaint in accordance with a requirement to do so under this Act.

PART 9—RECOMMENDATIONS, ACTIONS AND REPORTS

Outcome of investigation – report of chairperson

77.—(1) On completing an investigation under Part 8 the chairperson must prepare a written report of the investigation.

(2) In the report the chairperson must set out—

- (a) for a complaint investigation, a description of the complaint or improper conduct complaint and any resolution of that complaint;
- (b) any findings in relation to the investigation under Part 8, including whether or not there has been in relation to a request made under the Access to Information Act 2025—
 - (i) in the exercise of a power an improper purpose; or

- (ii) the taking into account of irrelevant grounds or considerations in making a decision;
 - (c) any findings in relation to the investigation under Part 8, including whether or not there has been a contravention of a code of conduct applying to an executive office holder, office holder or Parliamentary office holder;
 - (d) any recommendation of action that the public entity or the executive office holder, the office holder or the Parliamentary office holder, as the case requires, should take to address the findings, and the time within which the action should be taken; and
 - (e) the time within which the public agency, ATI Unit, public entity or the executive office holder, office holder or Parliamentary office holder, as the case requires must give a written response to the report to the chairperson.
- (3) A report must be completed by the chairperson, no later than 30 days after the investigation under Part 8 has concluded.

Adverse findings

78.—(1) If the chairperson proposes to make a finding that is adverse to a person, the chairperson must be satisfied that the person—

- (a) is aware of the matters on which the proposed finding is based; and
 - (b) has had an opportunity, at any time during the course of the investigation, to respond to those matters.
- (2) The chairperson must consider a person's response under subsection (1)(b) if any, before making a finding that is adverse to the person.
- (3) If the chairperson includes a finding that is adverse to a person in its report, the chairperson must fairly set out the person's response under subsection (1)(b) if any, in the report.

Persons to be given a report

79.—(1) The chairperson must—

- (a) give the investigation report to the public agency, ATI Unit, person or the public entity that was the subject of the complaint; or
 - (b) if there is more than one person, public agency, or public entity, give that part of the report that relates to a person, public agency, or a public entity to that person, the public agency or that public entity.
- (2) The chairperson may—
- (a) give all or part of the investigation report to a disciplinary body;
 - (b) give all or part of the investigation report to the employer of a person, if the investigation report is relevant to the person's employment by that employer;

- (c) give all or part of the investigation report to the public prosecutor; or
- (d) give all or part of the investigation report to the complainant.

PART 10—PROTECTION OF COMPLAINANTS AND WHISTLEBLOWERS

Offence for taking detrimental action

80.—(1) A person must not take detrimental action against another person or a whistleblower in reprisal for an improper conduct complaint.

Penalty: In the case of a natural person, \$5,000 or 12 months imprisonment or both. In the case of a body, corporate, \$50,000.

- (2) It is a defence in a proceeding for an offence against subsection (1) if—
 - (a) the chairperson has determined that the complaint is not an improper conduct complaint; and
 - (b) at the time that the person took the detrimental action, the person knew of that determination.

Court orders for detrimental action

81.—(1) If a person is convicted or found guilty of an offence against section 80, the High Court may, in addition to imposing a penalty, order that, within a specified time, the offender pay to the person against whom the detrimental action was taken damages that the court considers appropriate to compensate the person for any injury, loss or damage.

- (2) If—
 - (a) the employer of a person; or
 - (b) someone in the course of employment with, or while acting as an agent of, the employer of a person—

is convicted or found guilty of an offence against section 80 in relation to detrimental action taken against that person, the court may, in addition to imposing a penalty and in addition to any damages ordered under subsection (1), order that the employer reinstate or re-employ the person in his or her former position or, if that position is not available, in a similar position.

- (3) Without limiting the court’s discretion, when making an order under subsection (1), the court may take into account any order made under section 81.

Injunction or order

82. An application for an order or an injunction by the High Court under section 81 may be made by—

- (a) a person who believes that detrimental action has been taken or may be taken against him or her in reprisal for an improper conduct complaint;
- (b) an investigating entity if the investigating entity believes that detrimental action has been taken or may be taken in reprisal for an improper conduct complaint the subject of which is a matter that the investigating entity is authorised to investigate under another Act.

Offence for disclosure of content of improper conduct complaint

83.—(1) This section applies to a person or body—

- (a) to whom an improper conduct complaint has been made;
- (b) who receives an improper conduct complaint in the performance of duties or functions under this Act;
- (c) to whom the chairperson, a member or an officer provides information about the content of an improper conduct complaint to determine whether the complaint is an improper conduct complaint; or
- (d) to whom an improper conduct complaint, or information about the content of an improper conduct complaint, has been disclosed in contravention of subsection (2).

(2) The person or body must not disclose the content, or information about the content, of an improper conduct complaint.

Penalty: In the case of a natural person, \$5,000 or 12 months imprisonment or both. In the case of a body, corporate, \$50,000.

(3) Subsection (2) does not apply if—

- (a) the person or body discloses the content, or information about the content, of the improper conduct complaint—
 - (i) in accordance with a direction or authorisation given by the chairperson who is investigating the improper conduct complaint; or
 - (ii) to the extent necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the improper conduct complaint including a disciplinary process or action; or
- (b) the chairperson has determined that the conduct is not an improper conduct complaint and the person or body discloses the content, or information about the content, of the conduct after that determination.

Offence for disclosure of whistleblower identity

84.—(1) A person or body must not disclose information likely to lead to the identification of a whistleblower.

Penalty: In the case of a natural person, \$5,000 or 12 months imprisonment or both. In the case of a body, corporate, \$50,000.

(2) Subsection (1) does not apply if—

- (a) the whistleblower has given written consent to a person or body to disclose—
 - (i) any information likely to lead to the person's identification; or

(ii) specific information likely to lead to the person’s identification—
and the information is disclosed by the person or body after and in accordance with that consent; or

(b) the chairperson has determined that the conduct is not an improper conduct complaint, and the person or body discloses the information after that determination.

Compellability of chairperson, member or officer

85. A person who is or was the chairperson or a member or an officer is not compellable to give evidence in a court in relation to an investigation under Part 8 unless the court gives leave.

Protection of participants

86. A person who gives information or evidence, or produces a document or thing, to an investigation under Part 8 has the same protection and immunity as a witness has in a proceeding in the High Court.

Protection of people making a complaint

87.—(1) A person who makes a complaint is not personally liable for any loss, damage or injury suffered by another person merely because of the making of the complaint.

(2) A person who produces a document or gives any information or evidence to the chairperson in making a complaint is not personally liable for any loss, damage or injury suffered by another person merely because of the production of the document or the giving of the information or evidence.

(3) Nothing in this section derogates from the protection of a person under section 89.

Representation

88.—(1) A person may be accompanied or represented by another person in relation to any process under this Act.

(2) If the chairperson so authorises, a person may be represented by a legal practitioner in relation to any process under this Act.

(3) A person may be represented by a legal practitioner when the person is—

(a) giving evidence to the chairperson; or

(b) producing documents to the chairperson under an investigation hearing notice.

Non-disclosure of information—investigations

89.—(1) A person must not disclose any information gained by that person in the course of an investigation, except as authorised under this section.

Penalty: In the case of a natural person, \$5,000 or 12 months imprisonment or both.
In the case of a body, corporate, \$50,000.

(2) Despite subsection (1), the chairperson, a member or an officer is authorised and may disclose information to which subsection (1) applies—

- (a) if the chairperson reasonably believes that the disclosure is necessary for or in connection with the administration of this Act; or
- (b) in the following circumstances—
 - (i) the disclosure is for the purposes of any legal proceedings arising out of this Act;
 - (ii) the disclosure is with the written authority of the person to whom the information relates;
 - (iii) the disclosure is for the purposes of a referral made under this Act.

(3) Despite subsection (1), the chairperson is authorised and may disclose information to which subsection (1) applies if the chairperson reasonably believes that the disclosure is necessary to avoid a serious risk to—

- (a) the life, health, safety or welfare of a person; or
- (b) the health, safety or welfare of the public.

Non-disclosure of information—complaint resolution process

90.—(1) A person must not disclose any information gained by that person in the course of a complaint resolution process, except as authorised under this section.

Penalty: In the case of a natural person, \$5,000 or 12 months imprisonment or both. In the case of a body, corporate, \$50,000.

(2) Despite subsection (1), the chairperson, a member or an officer is authorised and may disclose information to which subsection (1) applies if—

- (a) the chairperson reasonably believes that the disclosure is necessary for or in connection with the administration of this Act;
- (b) the disclosure is for the purposes of any legal proceedings arising out of this Act;
- (c) the disclosure is with the written authority of the person to whom the information;
- (d) the disclosure is for the purposes of a referral made under this Act; or
- (e) the chairperson reasonably believes that the disclosure is necessary to avoid a serious risk to—
 - (i) the life, health, safety or welfare of a person; or
 - (ii) the health, safety or welfare of the public.

Non-disclosure of information—given in conciliation process

91.—(1) Each of the following persons must not disclose outside a conciliation any information gained by the person in the conciliation, other than information as to the terms of or about an undertaking given in the conciliation—

- (a) the chairperson; or

(b) any member or officer.

Penalty: In the case of a natural person, \$5,000 or 12 months imprisonment or both. In the case of a body, corporate, \$50,000.

(2) Despite subsection (1), the chairperson, a member or an officer is authorised and may disclose information to which subsection (1) applies if—

- (a) the disclosure is with the written authority of the person to whom the information;
- (b) the disclosure is made by an officer to the chairperson or the member for the purposes of the chairperson’s functions under Part 2; or
- (c) the chairperson reasonably believes that the disclosure is necessary to avoid a serious risk to—
 - (i) the life, health, safety or welfare of a person; or
 - (ii) the health, safety or welfare of the public.

PART 11—GENERAL MATTERS AND REPORTING

Budget and annual plan

92. The Commission’s budget for each financial year is to be determined in consultation with the Parliamentary Committee concurrently with the annual plan under section 93.

Annual plan

93.—(1) Before the beginning of each financial year, the Commission must—

- (a) prepare a draft annual plan describing the Commission’s proposed work program for that financial year; and
- (b) submit the plan to the Parliamentary Committee for its consideration.

(2) After considering the draft annual plan, the Parliamentary Committee—

- (a) must return the plan to the chairperson; and
- (b) may provide to the chairperson any comments regarding the plan, including suggestions of changes to be made to the plan.

(3) As soon as practicable after the passage of the annual appropriation Acts for a financial year and after considering any comments received from the Parliamentary Committee, the chairperson must finalise the annual plan for that financial year.

(4) The chairperson must indicate in the annual plan the nature of any changes suggested by the Parliamentary Committee under subsection (2)(b) that the chairperson has not adopted.

(5) Before the beginning of the financial year to which the annual plan relates, the chairperson must—

- (a) present the annual plan to the Parliamentary Committee; and

- (b) cause the plan to be transmitted to Parliament for it to be laid before Parliament on the day it is received or the next sitting day.

Annual reports

94.—(1) The chairperson in respect of each financial year must prepare a report on the performance of the chairperson’s functions under this Act during the financial year.

(2) The report must include—

- (a) information regarding the frequency of the exercise of the powers and functions of—
 - (i) the chairperson in relation to the review of requests decisions made under the Access to Information Act 2025;
 - (ii) the chairperson in relation to the conduct of complaint resolution processes;
 - (iii) the chairperson in relation to the conciliation of complaints;
 - (iv) the chairperson in relation to agreements and undertakings given in a complaint resolution process;
 - (v) investigations commenced and concluded in relation to complaints about requests for information under the Access to Information Act 2025;
 - (vi) investigations commenced and concluded in relation to complaints about compliance with codes of conduct and declarations required under the Code of Conduct Act 2025; and
 - (vii) investigations that relate to improper conduct complaints;
- (b) any information requested by the Minister to be included in the report; and
- (c) any other information determined by the chairperson.

Giving annual report to Parliament

95.—(1) As soon as practicable after the end of each financial year but not later than 30 November, the chairperson must give a copy of an annual report to the clerk of Parliament.

(2) The clerk of Parliament must cause the report to be laid before Parliament on—

- (a) the day on which it is received; or
- (b) the next sitting day of the Parliament.

Regulations

96. The Minister may make regulations to prescribe matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally achieving the purposes of this Act including—

- (a) procedures for assisting a person to make a complaint and the recording of complaints;

- (b) procedures for the conduct of a complaint resolution process;
- (c) procedures for the conduct of a complaint conciliation;
- (d) procedures for handling information about an improper conduct complaint;
- (e) procedures for protecting the identity of whistleblowers;
- (f) procedures for protecting participants in an investigation;
- (g) the qualifications and training of members who conduct complaint resolution processes, complaint conciliations or investigations; and
- (h) the qualifications and training of officers who conduct or assist with the carrying out of a complaint resolution process or investigation.

Guidelines

97. The chairperson may issue guidelines for the performance of any of the chairperson's responsibilities or functions under this Act.

Directions

98. The chairperson may issue directions for the exercise of any of the chairperson's powers under this Act.

March 2025

ACCOUNTABILITY AND TRANSPARENCY COMMISSION BILL 2025

EXPLANATORY NOTE

(This note is not part of the Bill and is intended only to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Accountability and Transparency Commission (Commission) was established under subsection 121(1). A written law providing for the Commission's authority, functions, responsibilities, jurisdiction and powers is yet to be enacted. This Bill provides for these matters.

2.0 CLAUSES

- 2.1 Clause 1 of the Bill provides for the short title and commencement. If passed by Parliament, the Act will come into force on a date or dates appointed by the Minister by notice in the Gazette.

- 2.2 Clause 2 provides for the interpretation of certain terms in the Bill.

- 2.3 Clause 3 defines improper conduct as corrupt conduct or official misconduct by an executive office holder, office holder, or Parliamentary office holder that involves a criminal offence, serious professional misconduct, dishonest performance of public functions, breach of public trust, misuse of official information, mismanagement of public resources, or significant risk to public health, safety, or the environment.

Clause 3 also includes conduct by any person that adversely affects the honest performance of an official's duties, improperly influences an official for personal gain, or obstructs the execution of powers under the Access to Information Act 2025. It further covers any conspiracy or attempt to engage in such conduct. Clause 3 also clarifies that trivial conduct does not constitute improper conduct under this Act.

- 2.4 Clause 4 states that the objectives of this Act are to allow complaints regarding information requests or code of conduct breaches, assist in resolving disputes under the Access to Information Act 2025 and Code of Conduct Act 2025, and investigate complaints related to information requests, conduct standards, or declarations.

2.5 Clause 5 binds the State to the Bill.

2.6 Clause 6 states that the chairperson of the Accountability and Transparency Commission (*Commission*) has the functions and responsibilities of receiving, assessing, and resolving complaints regarding information requests, including requesting further information, determining whether to proceed with complaints and conducting conciliation or resolution processes.

Clause 6 also empowers the chairperson to investigate complaints, initiate investigations into improper conduct, review and issue fresh decisions on information requests, maintain and publish a public register of declarations under the Code of Conduct Act 2025, and provide training on complaint handling, whistleblower protection, and code of conduct compliance.

Clause 6 further authorises the chairperson of the Commission to advise the Attorney-General on code of conduct matters, conduct research, delegate powers, authorise individuals to exercise powers under the Act, publish reports and guidelines, and carry out any other responsibilities conferred by law. The chairperson has all necessary powers to perform these duties under this or any other Act.

2.7 Clause 7 states that, the chairperson of the Commission has the jurisdiction, authority, and powers to receive, assess, and resolve complaints regarding compliance with a code of conduct. This includes requests for further information, determining whether to proceed with complaints and attempting early resolution through various means.

Clause 7 also empowers the chairperson of the Commission to investigate complaints if deemed necessary, initiate investigations into improper conduct in certain circumstances, and manage complaints through conciliation, division or concurrent handling. Additionally, the chairperson may accept undertakings from parties, require reports on their implementation and provide advice on complaint resolution options. The chairperson may also cease handling complaints if satisfied that a condition under Clause 19 has been met.

2.8 Clause 8 empowers the Commission to carry out its functions, responsibilities, and powers independently, free from ministerial or external control, except by a court of law or as prescribed by this Bill.

Clause 8 also requires the Chairperson to act fairly, impartially, and in the public interest, encourage participation in complaint processes, review decisions and resolve complaints promptly, and maintain transparency, accountability, and consistency. Additionally, it must operate efficiently, flexibly, and without unnecessary formality while adopting a consultative and collaborative approach where appropriate.

- 2.9 Clause 9 gives the chairperson the power to delegate a member or to a class of that person any functions and responsibilities under this Bill except when the chairperson holds reasonable belief that a complaint is one of improper conduct, the power to delegate under this Bill. The chairperson may also delegate to an officer with the necessary knowledge and skills and function and responsibility under Part 3,4,5,6 and 7 of the Bill.
- 2.10 Clause 10 prohibits the Commission from knowingly disclosing information obtained in the course of its duties unless required for performing its functions, already in the public domain (unless unlawfully disclosed), or otherwise authorised by this Bill or any other Act. The penalty for breaching this Clause is a fine up to \$10,000 or imprisonment for up to 5 years.
- 2.11 Clause 11 empowers the chairperson to employ public service members as necessary to perform their functions and responsibilities, permitting the chairperson to enter agreements for the services of qualified individuals to assist in carrying out duties under this Act, on terms deemed appropriate. Clause 11 further allows the chairperson, with ministerial approval, to use public service facilities, services or officers.
- 2.12 Clause 12 states that an applicant may apply to the chairperson for a review of an ATI Unit or public agency's decision refusing access to a public record, refusing a record claimed to be exempt, refusing based on a claimed limitation, refusing to grant or amend access to a public record, or to determine the charge for access, whether paid or unpaid.
- Clause 12 also states that an applicant cannot seek a review if a fresh decision has been made by referral back to a public agency for reconsideration and accepted. The chairperson has the same powers as the ATI Unit or public agency and may grant access to an exempt record if it serves the public interest. The chairperson may refuse a review if the ATI Unit or public agency has previously reviewed the same request.
- 2.13 Clause 13 states that when an application is given to the chairperson for reviewing under Clause 12, the request for review must be submitted to the chairperson within 60 days from the date the applicant receives the decision notice.
- 2.14 Clause 14 specifies that a review under Part 3 involves the applicant, the public agency whose decision is under review, and the ATI Unit if its decision is being reviewed.
- 2.15 Clause 15 states that the chairperson may review a decision that is the subject of an application for review under Clause 12.

- 2.16 Clause 16 states that the chairperson may refuse to accept or dismiss a review application under section 12 if it is frivolous, vexatious, misconceived, lacking substance, not made in good faith, if the applicant fails to cooperate without reasonable excuse, if the review is deemed inappropriate, or if the chairperson cannot contact the applicant after reasonable attempts.

Clause 16 also allows the chairperson to dismiss a review if the applicant agrees in writing. The chairperson must notify the applicant and the ATI Unit or public agency of the decision, providing reasons.

- 2.17 Clause 17 states that the chairperson must conduct a review in a timely, efficient and fair manner, minimising formality and technicality.

Clause 17 also requires the chairperson to provide each party a reasonable opportunity to submit written representations and to adhere to the rules of natural justice. The chairperson may rely on an officer's advice and assistance in making preliminary inquiries, conducting the review, and making a fresh decision. Clause 15 states that the ATC chairperson may review a decision that is the subject of an application for review under Clause 12.

- 2.18 Clause 18 empowers the chairperson to make preliminary inquiries and consult with the parties to the review to determine the material facts, issues and whether the matter can be resolved informally.

- 2.19 Clause 19 states that the chairperson may issue a notice to produce or attend on an information officer of a public agency or an information officer of the ATI Unit.

- 2.20 Clause 20 states that if the chairperson, after a preliminary inquiry or issuing a notice, believes the ATI Unit or public agency could reasonably make a fresh decision satisfactory to the applicant under the law, the matter may be referred back for reconsideration.

Clause 20 also requires the fresh decision to be made within 28 days unless an alternative period is agreed upon in writing. The chairperson must be notified within three days after the period ends whether a fresh decision has been made. If a fresh decision is issued, the previous decision must be revoked, and the applicant must inform the chairperson in writing whether they accept it. Failure to respond is deemed acceptance.

- 2.21 Clause 21 states that if an applicant agrees to the fresh decision under Clause 20, the chairperson must dismiss the review. If the applicant does not agree to the fresh decision within 30 days of the chairperson being notified under Clause 20, the chairperson must complete the review unless the refusal to grant access is based on a claimed exemption for national security, defence, or international relations.

- 2.22 Clause 22 states that if the chairperson determines a matter can be resolved informally, reasonable steps must be taken to do so, recording the outcome in writing. An informal resolution does not constitute a decision on the review under this Bill.
- 2.23 Clause 23 states that after conducting a review, the chairperson must make a fresh decision on the original application.
- Clause 23 also states that the chairperson's decision has the same effect as that of the public agency or ATI Unit, and the chairperson must provide written notice of the decision and its reasons to the parties.
- 2.24 Clause 24 states that a person may lodge a complaint with the chairperson regarding an alleged contravention of a code of conduct by a person subject to it or the failure to fulfil an undertaking related to a code of conduct matter. Complaints may be made in iTaukei, Hindi or English.
- 2.25 Clause 25 states that a person may lodge a complaint with the chairperson regarding the unreasonable handling of a public record access request that contravenes the *Access to Information Act 2025*, the unreasonable failure of a public entity in handling such a request, or the failure to fulfil an undertaking related to a public record request. Complaints may be made in iTaukei, Hindi or English.
- 2.26 Clause 26 states that a person cannot lodge a complaint under Clause 24 or 25 if more than 12 months have passed since the alleged contravention of the code of conduct, if the complaint concerns a failure to perform an undertaking within the fixed time after the expiry of the fixed time, or if more than 12 months have passed since making a request for a public record under the *Access to Information Act 2025*, unless the chairperson is satisfied with the circumstances of the case.
- 2.27 Clause 27 states that a complaint may be made either orally or in writing, where an oral complaint must be confirmed in writing under Clause 28. The chairperson may waive the requirement to record an oral complaint where it is appropriate due to circumstances but must make a written record of any waiver.
- 2.28 Clause 28 requires the chairperson to create a written record of all complaints received, including the date received.
- 2.29 Clause 29 requires an officer to provide reasonable assistance to individuals filing a complaint with the chairperson, including helping them identify the parties involved.
- 2.30 Clause 30 empowers the chairperson to decide whether to address a complaint as soon as practicable after it is made or after attempting early resolution under Clause 38. The chairperson must also provide the complainant with written notice of the decision.

- 2.31 Clause 31 states that the chairperson may refuse to deal with or discontinue a complaint if it is frivolous, vexatious, misconceived, lacking substance, not made in good faith, made for an improper purpose, or if the complainant fails to provide requested information under Clause 33 and it is not in the public interest to proceed.

Clause 31 also applies if the matter falls within or has been determined by a court, tribunal, or other body without raising new issues, if the subject of the complaint has taken corrective action, if reasonable attempts to resolve the complaint with the relevant party have not been made, or if the complaint has been withdrawn.

- 2.32 Clause 32 states that if the chairperson decides to deal with a complaint under Clause 30, they must seek the complainant's agreement on the complaint's description. If no description is provided within 10 days, the chairperson may decide not to proceed and must notify the complainant in writing. If an agreement is reached, the chairperson may alter or vary the description with the complainant's consent.

- 2.33 Clause 33 states that the chairperson may request more information from the complainant, any party to the complaint and any other person who the chairperson reasonably believes to have relevant information.

- 2.34 Clause 34 states that the chairperson may divide a complaint into multiple complaints if it serves the complainant's interests or separate parts of a complaint to be handled under this Act while referring other parts to the appropriate authority under relevant law. The chairperson may concurrently handle multiple complaints, regardless of the number of complainants, if it does not disadvantage them or adversely affect any party's rights. Written notice must be provided to relevant complainants or parties as soon as possible after taking such action.

- 2.35 Clause 35 states that the chairperson must decide how to handle a complaint as soon as possible after providing a formal description to the relevant parties under section 32. The chairperson may decide to refer the complaint to a resolution process if all parties agree, or to conduct a complaint investigation.

Clause 35 further states that if the chairperson reasonably believes the complaint involves improper conduct, an investigation must be conducted. The chairperson must provide written notice of their decision to the parties as soon as possible.

- 2.36 Clause 36 states that a complainant may withdraw a complaint at any time after making it by written notice to the chairperson.

- 2.37 Clause 37 states that if a complaint is withdrawn, the chairperson may proceed with the complaint if the chairperson reasonably believes it is in the public interest to do so, believes that the complaint involves a contravention of a code of conduct, or if the chairperson believes that the complaint was withdrawn because of victimisation, coercion, duress or intimidation.

- 2.38 Clause 38 states that if the chairperson makes a decision under Clause 35, they may seek an agreed resolution to the complaint through facilitating discussion or negotiations between the parties to identify and resolve disputed issues, conduct a conciliation process where the chairperson proposes resolution options and terms for agreement.

Clause 38 also states that the chairperson must determine the manner of the complaint resolution process and should prefer the least formal approach appropriate to the circumstances.

- 2.39 Clause 39 states that the chairperson must provide written notice of any decision made under Clause 38 to the parties as soon as possible. Clause 39 also states that the notice must specify the complaint resolution process, how it will be conducted, and if conciliation is applied, the commencement date, the part of the complaint subject to conciliation, the chairperson's powers, the obligation to produce documents under section 35, and relevant offences under Clause 46(3) and 48.

Clause 39 further states that the notice must be given within a reasonable time before any required action, considering the complexity of the complaint and allowing sufficient preparation time for the parties.

- 2.40 Clause 40 states if a party to the complaint no longer agree to participate in the process, the chairperson may cease the complaint resolution process and if necessary, commence a complaint investigation, or decide to take no further action in respect of the complaint.

- 2.41 Clause 41 states that in a complaint resolution process, the chairperson may issue a written notice requiring the public entity, executive office holder, office holder or Parliamentary office holder, ATI Unit or a public agency to respond to each issue raised. The notice must specify a response deadline, which must not exceed 20 days from the date of issuance. Contravening this clause constitutes a summary offence, punishable by a fine not exceeding \$5,000 for individuals and \$15,000 for a body corporate.

- 2.42 Clause 42 states that the chairperson may extend the time where a person must comply with the written notice given under Clause 41.

- 2.43 Clause 43 states that if a complaint resolution process results in an agreement, the chairperson or a member must make a written record of the agreement and provide a copy to each party.

Clause 43 also states that if a public entity or person gives an undertaking during the complaint resolution process, the chairperson must record it in writing and have it signed by the entity or person.

Clause 43 further states that if no agreement is reached, the chairperson may either take no further action or conduct an investigation. If the chairperson decides to take no further action, written notice with reasons must be given to the parties.

- 2.44 Clause 44 states that if a public entity or person gives an undertaking during a complaint resolution process, the chairperson may require them to report on its implementation within a specified timeframe not exceeding 12 months from the date the undertaking is given. Contravening this clause constitutes a summary offence, punishable by a fine not exceeding \$5,000 for individuals and \$15,000 for a body corporate.
- 2.45 Clause 45 states that the chairperson must not commence a conciliation process unless both parties have consented to participating, and a written notice was given to each of the parties before the consent was given.
- 2.46 Clause 46 states that in a conciliation, the chairperson may issue a written notice requiring a public entity or person to produce specified documents or evidence related to a complaint concerning compliance with a declaration or a code of conduct, or information requested by the complainant. The notice must specify a deadline for submission, which must not exceed 20 days from the date of issuance. Contravention of this clause constitutes a summary offence, punishable by a fine not exceeding \$5,000 for individuals and \$15,000 for a body corporate.
- 2.47 Clause 47 states that the chairperson may extend the time which a public entity or person must comply with a written notice given by the chairperson under Clause 46.
- 2.48 Clause 48 states that a party who discloses anything said, done, or agreed upon in a conciliation without the consent of the relevant person commits a summary offence, punishable by a fine not exceeding \$5,000 for individuals and \$15,000 for a body corporate. Evidence from a conciliation is also inadmissible in any court or tribunal proceedings. This restriction does not apply to undertakings given during the conciliation process.
- 2.49 Clause 49 states that on completion of the conciliation process, the chairperson must provide written notice to the parties that specify the date the conciliation ceased, and the outcome of the conciliation.
- 2.50 Clause 50 provides the circumstances where the chairperson of the Commission may make a decision to investigate a complaint.

- 2.51 Clause 51 provides for the circumstances where the chairperson of the Commission may conduct an own initiative investigation. The threshold for an own initiative investigation are that the complaint is about improper conduct, the complainant has withdrawn from an improper conduct complaint and the chairperson reasonably believes that it is in the public interest to the complaint to be investigated.
- 2.52 Clause 52 provides for the principles that apply to all investigations conducted by the chairperson of the Commission. The principles require an investigation to be conducted expeditiously and with as little formality as possible, be in accordance with the rules of natural justice and that the rules of evidence do not apply. The rules of natural justice are furthered by the principle that a person affected by a decision must be given an opportunity to make submissions.
- 2.53 Clause 53 provides that where the chairperson decides that a complaint investigation can proceed without a hearing, that oral or written submissions may be made and the chairperson may send for persons, documents or other things.
- 2.54 Clause 54 provides for the requirements that apply where the chairperson decides that the complaint should be investigated by holding a hearing. One of which is the giving of notice to the relevant parties about the holding of the hearing.
- 2.55 Clause 55 provides for the authorisation of persons by the chairperson to exercise a power of entry and search under a warrant issued by a magistrate.
- 2.56 Clause 56 provides for the application to a magistrate for a search warrant where there are reasonable grounds to believe that there is evidence relevant to an investigation on a premises. The clause also provides that a warrant may only authorise a person to require a document named or described in the warrant to be produced, to examine or make copies of a document named or described in the warrant, to remove a document named or described in the warrant.
- 2.57 Clause 57 provides for the requirements when an authorised person executes a warrant and the occupier is present under clause 58.
- 2.58 Clause 58 provides for the details about a warrant that must be given to the occupier of premises that is present.
- 2.59 Clause 59 makes it an offence for a person without reasonable excuse to hinder or obstruct a person who is executing a warrant. The penalty that applies to the offence is a fine of \$5,000 for a natural person or 12 months imprisonment or both. In the case of a body corporate a fine of up to \$50,000 may be imposed.

- 2.60 Clause 60 of the Bill gives authority to the chairperson to compel a person into producing documents, items or to attend as a witness for the purpose of an investigation hearing. For this purpose the chairperson may serve written notice on persons for reasons provided under subsection (1) of this clause. In relation to the investigating hearing notice it must be in the prescribed form which must contain the particulars provided under subsection (2) of this clause.
- 2.61 Clause 61 of the Bill provides that failure to comply with an investigation hearing notice is an offence that can be liable for a summary offence, criminal offence or both for a natural person and monetary fine for a body corporate.
- 2.62 Clause 62 of the Bill provides how variations can be made to investigation hearing notice where the person served with the notice may make a claim at the investigations hearing for reason provided under subsection (1) of this clause, the chairperson may vary or revoke the investigation hearing notice if it is satisfied with the person's claim. However, the chairperson at any time on its own initiative by written notice vary or revoke an investigation hearing notice that has already been served.
- 2.63 Clause 63 of the Bill sets out that the chairperson may require persons attending the investigations hearing whether by hearing notice or otherwise to give evidence or answer questions on oath or affirmation, whereby the chairperson or a member of the Commission or an authorised officer may administer the oath or affirmation to a person for the purposes provided in subsection (1).
- 2.64 Clause 64 of the Bill provides authority to the chairperson to inspect documents or things produced at the investigations hearing and may at times retain them for as long as reasonably necessary for the purposes of the hearing that is relevant to. The chairperson may also at times make copies of documents or things that have been produced in the investigations hearing that is relevant to the subject matter of the hearing.
- 2.65 Clause 65 of the Bill provides that the chairperson may in his or her absolute discretion determine whether a complaint does not warrant an investigation, without limiting subsection (1) the chairperson may determine not to warrant an investigation on grounds provided in subsection (2). However, for persons that have delayed their complaints after more than a year has lapsed under subsection (3) may provide reasonable explanations for the delay in order for the chairperson to consider and warrant an investigation, it is within the chairperson's full discretion whether to warrant the investigations or not.
- 2.66 Clause 66 of the Bill provides that the chairperson may dismiss an investigation on grounds that are specified in this section.
- 2.67 Clause 67 of the Bill gives authority to the chairperson to discontinue an investigation at any time.

- 2.68 Clause 68 of the Bill provides that in the event where a subject matter of a complaint is already part of any court proceeding or tribunal, whether civil or criminal the chairperson may still commence or continue to investigate the matter. However, the chairperson or member of the commission must take all reasonable steps to ensure that the conduct of the investigation does not prejudice those proceedings.
- 2.69 Clause 69 of the Bill provides that the commission may refer complaints to other persons or body if the chairperson or a member of the commission does so for reasons provided under subsection (1) and for the purposes of subsection (1) person and bodies are specified in subsection (2).
- 2.70 Clause 70 of the Bill provides that the chairperson may also refer complaints of improper conduct to other persons or bodies if it finds it more appropriate for that other person or body to conduct the investigation, for the purpose of subsection (1) the persons or bodies are specified in subsection (2) of this clause.
- 2.71 Clause 71 of the Bill provides that the chairperson at any time may refer a complaint to a disciplinary body for reasons provided under subsection (1) of this clause.
- 2.72 Clause 72 of the Bill provides that the chairperson may at any time refer any matter or complaint to the office of the public prosecutor if it considers it relevant to the performance of the public prosecutor's duties, functions and powers.
- 2.73 Clause 73 of the Bill provides that for referrals made under clause 69, 70 or 71 of this Act, the chairperson must provide or disclose any information that it has in relation to the matter or complaint referred.
- 2.74 Clause 74 of the Bill provides that when the chairperson exercises the power to investigate an executive office holder, office holder or parliamentary office holder that maintains secrecy or restrictions on the disclosure of information that is imposed by any written law or rule of law will be overridden pursuant to the provisions of this Act.
- 2.75 Clause 75 of the Bill provides that subject to subsection (2) it is not a reasonable excuse for a natural person to say that they will be incriminated if they provide information or do anything required of them in order to assist an investigation or hearing as required by this Act. However a reasonable excuse for a natural person to refuse or comply with the requirement under subsection (1) is if it involves proceedings for an offence which the person is already been charged with but is yet to be completed, or if it involves proceedings or recovery of a penalty that have been commenced against that person.

- 2.76 Clause 76 of the Bill provides that it is not a reasonable excuse for a natural person to say that it would be a breach of legal professional privilege or client legal privilege if they provide information or do anything required of them in order to assist an investigation or hearing as required by this Act. The legal professional privilege is limited here under subsection (2) because the information, document or that other thing required to be done is given or done for an investigation of an improper complaint.
- 2.77 Clause 77 of the Bill requires the chairperson to prepare a written report upon completion of an investigation that was done under Part 8 of this Act. The report must set out the details provided under subsection (2) and must be completed within 30 days after the investigation and provided under subsection (3) of this clause.
- 2.78 Clause 78 of the Bill allows the chairperson to propose a finding that is adverse to a person if he is satisfied that the person is aware of the matters which the proposed finding is based on and is satisfied that the person has had the opportunity to respond to those matters during the investigation. The chairperson under subsection (2) is required to consider the person's response before making an adverse finding of the person. The chairperson is also required under subsection (3) to provide in its report pursuant to clause 77 the adverse finding and the person's response to the finding.
- 2.79 Clause 79 of the Bill requires the chairperson to give the report of the investigations to the person or public entity that was the subject of the complaint. If it is more than one then the chairperson must give the part of the report that relates to that person or public entity. The person under subsection (2) may also give all or part of the investigation report to a disciplinary body, to a person's employer if the report is relevant to the person's employment, to the public prosecutor or to the complainant.
- 2.80 Clause 80 provides a person must not take a detrimental action against another person or a whistle blower as an act of retaliation for a complaint lodged in relation to an improper conduct.
- 2.81 Clause 81 provides that in addition to imposing penalties the court may make orders for an offender convicted or found guilty of an offence under clause 80 provide compensation to the victim for any injury, loss or damage. The court under subsection (3) may also make orders for a person to be reinstated or re-employed if an employer committed an offence against clause 80 that led to loss of employment.
- 2.82 Clause 82 of the Bill provides that an application for an order or an injunction in relation to clause 80 may be lodged to the High Court by a person who believes that a detrimental action has or may be taken against them. The same can be done by an investigating entity if it believes that detrimental action has been or may be taken in reprisal for an improper conduct complaint.

- 2.83 Clause 83 of the Bill provides that the disclosure of contents by any person or body that are related to an improper conduct complaint is an offence that can be liable for a monetary fine, imprisonment or both. However, subsection (3) provides that this is not an offence if the disclosure was done under the direction of the chairperson or if it is necessary for the purpose of taking lawful action in relation to the conduct that is the subject of the complaint.
- 2.84 Clause 84 provides that disclosing information that leads to the identification of a whistleblower is an offence that is liable for monetary fine, imprisonment or both. However, subsection (2) provides that this does not apply if the whistleblower has given a written consent for the disclosure or if the chairperson has already determined before the disclosure that a conduct should not be an improper conduct complaint.
- 2.85 Clause 85 provides that a person who was or is a chairperson, a member or an officer is not obliged to give evidence in court in relation to an investigation under Part 8 unless the court compels them to do so.
- 2.86 Clause 86 of the Bill provides that a person who gives information or evidence to an investigation under Part 8 has the same protection and immunity as a witness has in a High Court proceedings.
- 2.87 Clause 87 provides that a person making a complaint is not liable for any loss, damage or injury suffered by another person because of making that complaint or because of any disclosure of document or information as evidence.
- 2.88 Clause 88 of the Bill provides that a person may be represented by another person or a legal practitioner if authorised by the chairperson for any process under this Act, giving evidence or producing documents to the chairperson under an investigation hearing notice.
- 2.89 Clause 89 of the Bill provides that information gained in the course of an investigation must not be disclosed unless authorised under this clause, non-compliance will be liable for a monetary fine, imprisonment or both, or in the case of a body, corporate a \$50,000 fine is warranted. However, subsection (2) provides the exceptions for disclosing information gained during the course of investigations.
- 2.90 Clause 90 of the Bill provides that information gained in the course of a complaint resolution process must not be disclosed unless authorised under this clause, non-compliance will be liable for a monetary fine, imprisonment or both, or in the case of a body, corporate a \$50,000 fine is warranted. However, subsection (2) provides the exceptions for disclosing information gained during the course of a complaint resolution process.

- 2.91 Clause 91 of the Bill provides that a chairperson, member or officer must not disclose information outside a conciliation if the information was gained in the conciliation, non-compliance will be liable for a monetary fine, imprisonment or both, or in the case of a body, corporate a \$50,000 fine is warranted. However, subsection (2) provides the exceptions for disclosing information under this clause.
- 2.92 Clause 92 of the Bill provides that the Commission's budget for each financial year will be determined in consultations with the Parliamentary Committee concurrently with the annual plan under section 93.
- 2.93 Clause 93 of the Bill provides that before each financial year the Commission must prepare and submit to the Parliamentary Committee for consideration its annual plan describing the Commissions proposed work program for that financial year. After the Parliamentary Committee has made comments to the financial plan the chairperson must make changes to the annual financial plan in accordance to subsections (4) and (5) of this clause.
- 2.94 Clause 94 of the Bill provides that in respect of each financial year the chairperson prepare a report on the chairperson's performance under the functions of this Act and with the report including requirements specified under subsections (2) of this clause.
- 2.95 Clause 95 of the Bill provides that at the end of each financial year but before 30 November the chairperson must provide a copy of an annual report to the clerk of Parliament who will cause the report to be laid before Parliament.
- 2.96 Clause 96 of the Bill gives authority to the Minister to make regulations prescribing matters that are required or permitted under this Act or are convenient to be prescribed for carrying out or giving effect to this Act and generally achieving the purpose of this Act including reasons further reasons that are specified under this clause.
- 2.97 Clause 97 of the Bill provides that the chairperson may issue guidelines for any of the chairperson's responsibilities or functions under this Act.
- 2.98 Clause 98 of the Bill provides that the chairperson may issue directions for the exercise of any of the chairperson's powers under this Act.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 This new legislation comes under the responsibility of the Attorney-General.

G. E. LEUNG
Attorney-General