

INTRODUCTION COPY

COMMISSION OF INQUIRY INTO WHITE COLLAR CRIME

EXPLANATORY NOTE

THE object of this Bill is to constitute a Commission of Inquiry and to confer on it wide powers with particular emphasis on:

- Investigating alleged occurrences of white collar crime, either on a complaint or reference to it or on its own initiative; and
- Examining the practical effect of the laws governing the operation of companies and securities and recommend, where appropriate, legislative changes to protect the rights and interests of investors.

The expression used in the Bill is "white collar crime". The Bill seeks to give this term a wide definition, including but not limited to criminal offences under a number of Acts of Parliament, so that the Commission of Inquiry may investigate a wide range of business practices.

PART I

PRELIMINARY

Clause 1 relates to the Short Title and commencement. The Act is to come into force on 1 October 1988.

Clause 2 defines terms used in the Bill.

PART II

CONSTITUTION OF COMMISSION

Clause 3 makes provision for the constitution of a Commission of Inquiry into White Collar Crime.

Clause 4 provides for the appointment by the Governor-General of a Commissioner for the Commission of Inquiry into White Collar Crime.

Clause 5 provides for the appointment by the Governor-General of one or more Assistant Commissioners.

Clause 6 defines the term "white collar crime".

PART III

FUNCTIONS OF THE COMMISSION

Clause 7 outlines the functions of the Commission.

Clause 8 provides that the Commission is not bound by the rules of evidence and shall exercise its functions with as little formality and technicality as possible.

Clause 9 allows the Commission to commence, continue, discontinue, or complete any investigation and make reports accordingly.

Clause 10 provides that the Commission may conduct an investigation on its own initiative, or by reference or complaint made to it.

Clause 11 provides that the Commission may require by notice in writing persons to attend hearings of the Commission and produce specified documentary evidence.

Clause 12 provides that where a person is required to produce a document under *Clause 11* that is self-incriminating, it may not be used against the person except in proceedings for an offence against this Act.

Clause 13 provides that the Commission may apply to the High Court for an injunction restraining any conduct that affects the subject of an investigation or proposed investigation by the Commission.

Clause 14 provides that the High Court shall not grant such an injunction unless it believes the conduct at issue is likely to impede the conduct of the investigation or proposed investigation.

Clause 15 provides that the Commission may hold hearings in the course of its investigations.

Clause 16 provides that the hearings shall be in public, unless the Commission otherwise directs.

Clause 17 provides for the right of persons considered by the Commission to be directly interested in a hearing to appear before that hearing.

Clause 18 provides for the right of legal representation for persons giving evidence at a hearing.

Clause 19 provides for the cross-examination of witnesses appearing at a hearing.

Clause 20 provides that the Commission may summon persons to appear at a hearing and produce documents specified by the Commission.

Clause 21 provides that a person failing to attend a summons may be arrested and kept in custody until released by order of the Commission.

Clause 22 provides that a witness appearing before a hearing may not refuse to answer questions or produce any document required by the Commission, whether or not to do so would be self-incriminating.

Clause 23 provides that the Commission may declare all or any classes of answers to be regarded as having been given on objection by the witness so that it is not necessary for the witness to make objections in respect of individual answers or documents.

PART IV

REFERRAL OF MATTERS BY COMMISSION

Clause 24 authorises the Commission, before, during or after an investigation by it, to refer a matter to any other appropriate person or body for investigation.

Clause 25 enables the Commission to require a relevant authority to report on the action taken.

Clause 26 sets out the action that may be taken by the Commission if it is dissatisfied with the report of a relevant authority. This includes the submission of a report to the relevant Minister.

Clause 27 requires a relevant authority to comply with the Commission's requirements.

Clause 28 provides for the revocation, variation, etc. of referrals, requirements or directions under this Part.

PART V

REFERENCES BY AND REPORTS TO PARLIAMENT

Clause 29 provides that Parliament may refer matters to the Commission for investigation or for other action.

Clause 30 relates to the preparation and furnishing to Parliament of reports on matters investigated and on other matters referred to.

Clause 31 requires the Commission to make annual reports to Parliament on its operations.

Clause 32 provides for the tabling of reports.

PART VI

CERTAIN OFFENCES

Clause 33 makes it an offence to obstruct the Commission or fail to comply with a lawful requirement of the Commission, to give false or misleading statements to the Commission, or disrupt a hearing before the Commission.

Clause 34 relates to the failure to comply with notices to produce information.

Clause 35 makes it an offence to fail to comply with a notice to attend before the Commission and to produce documents.

Clause 36 provides that it is an offence to give false or misleading evidence at a hearing.

Clause 37 relates to the procuring of false testimony.

Clause 38 relates to bribery of witnesses.

Clause 39 concerns fraud or deceit with intent to affect the testimony of witnesses.

Clause 40 makes it an offence to prevent a witness from attending before the Commission.

PART VII

CONTEMPT OF COMMISSION

Clause 41 defines "offender" for the purpose of this Part as including a person alleged to have committed contempt.

Clause 42 sets out the circumstances in which a person is guilty of contempt of the Commission.

Clause 43 provides for the punishment of an offence of contempt of the Commission.

Clause 44 contains ancillary provisions in relation to cases of contempt. The Commissioner may summon a person to show why the offender should not be dealt with for contempt, and the Commissioner may have the offender arrested and brought before the High Court.

Clause 45 states that an act or omission, which is both contempt and an offence, can be punished as either contempt or an offence but not both.

PART VIII
MISCELLANEOUS

Clause 46 contains secrecy provisions regarding information acquired in the exercise of functions under the Act.

Clause 47 authorises the Commission to give a direction prohibiting the publication of evidence or other matters.

Clause 48 provides that if an offence is in a court, the court may require that evidence subject to a direction under Clause 47 may be made available to the person charged or the prosecutor.

Hon. J. B. Bolger

**COMMISSION OF INQUIRY INTO WHITE COLLAR
CRIME**

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A BILL INTITULED

**An Act to establish a Commission of Inquiry into
white collar crime**

BE IT ENACTED by the Parliament of New Zealand as follows:

PART I
PRELIMINARY

1. Short Title and commencement—(1) This Act may be cited as the Commission of Inquiry into White Collar Crime Act 1988. 5

(2) This Act commences on 1 October 1988.

2. Interpretation—In this Act—

“Assistant Commissioner” means an Assistant Commissioner for the Commission of Inquiry into White Collar Crime: 10

“Commission” means the Commission of Inquiry into White Collar Crime constituted by this Act:

“Commissioner” means the Commissioner for the Commission of Inquiry into White Collar Crime:

“Conduct” includes neglect, failure and inaction: 15

“Investigation” means an investigation under this Act:

“Minister” means the Minister of Justice.

PART II
CONSTITUTION OF COMMISSION

3. Commission—(1) There is constituted by this Act the Commission of Inquiry into White Collar Crime. 20

(2) The Commission has the functions conferred or imposed on it by or under this or any other Act.

(3) The functions of the Commission are exercisable by the Commissioner, and any act, matter or thing done in the name of, or on behalf of, the Commission by the Commissioner, or with the authority of the Commissioner, shall be taken to have been done by the Commission. 25

(4) A reference in this Act to a hearing before the Commission or anything done or omitted by, to or in relation to the Commission includes a reference to a hearing before, or a thing done or omitted by, to or in relation to, the Commissioner or another officer of the Commission having authority in the circumstances. 30

4. Commissioner—(1) The Governor-General may appoint a Commissioner for the Commission of Inquiry into White Collar Crime upon the advice of Parliament. 35

(2) The Commissioner shall be or have been a judge of the High Court of New Zealand.

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

5 **5. Assistant Commissioners—**(1) The Governor-General may, with the concurrence of the Minister, appoint one or more Assistant Commissioners for the Commission of Inquiry into White Collar Crime.

(2) An Assistant Commissioner has and may exercise the functions conferred or imposed on an Assistant Commissioner
10 by or under this or any other Act.

(3) An Assistant Commissioner shall assist the Commissioner, as the Commissioner requires.

(4) Any Assistant Commissioner appointed under this section
15 shall be a barrister and solicitor of the High Court of New Zealand.

PART III

FUNCTIONS OF THE COMMISSION

6. White collar crime—(1) For the purposes of this Act, “white collar crime” means an act, statement or omission
20 that—

(a) Prima facie may constitute either an offence or give rise to civil liability, under any of the following enactments:

(i) Crimes Act 1961;

(ii) Companies Act 1955;

25 (iii) Securities Act 1978; or

(b) Constitutes a business practice which, in the opinion of the Commission, warrants inquiry, whether or not it constitutes an offence or gives rise to civil liability under any enactment.

30 **7. Functions of Commission—**The functions of the Commission shall be:

(a) To perform the functions and duties conferred or imposed on it by or under this Act or any other enactment;

35 (b) To investigate any circumstances or allegations that white collar crime may have occurred, may be occurring or may be about to occur;

(c) To communicate to the appropriate authorities the results of its investigations;

40 (d) To examine the laws governing the operations of companies with a view to recommending to

Parliament any changes required to protect the rights and interests of investors;

(e) To investigate any matter referred to the Commission by the House of Representatives, with a view to determining—

(i) Whether any white collar crime may have occurred, may be occurring or may be about to occur; or

(ii) Whether the laws governing the particular business practice referred to need to be changed with a view to reducing the likelihood of the occurrence of white collar crime.

8. Evidence and procedure—(1) The Commission is not bound by the rules or practice of evidence and can inform itself on any matter in such manner as it considers appropriate.

(2) The Commission shall exercise its functions with as little formality and technicality as is possible, and, in particular, the Commission shall accept written submissions as far as is possible and hearings shall be conducted with as little emphasis on an adversarial approach as is possible.

9. Court proceedings—(1) The Commission may do any or all of the following:

(a) Commence, continue, discontinue or complete any investigation;

(b) Furnish reports in connection with any investigation;

(c) Do all such acts and things as are necessary or expedient for those purposes, despite any proceedings that may be in or before any court or tribunal.

(2) If the Commission does any of the things mentioned in subsection (1)—

(a) The Commission shall, as far as practicable, ensure that any hearing or matters relating to the investigation are conducted in private during the currency of the proceedings so far as the hearing or other matters relate to or affect the subject-matter of the proceedings; and

(b) The Commission shall, as far as practicable, give such directions having effect during the currency of the proceedings under section 47 of this Act as will avoid prejudice to any person affected by the proceedings; and

(c) The Commission shall defer making any report to Parliament in relation to the investigation during the currency of the proceedings.

(3) This section has effect whether or not the proceedings commenced before or after the relevant investigation commenced and has effect whether or not the Commission or an officer of the Commission is a party to the proceedings.

10. Investigations generally—(1) The Commission may conduct an investigation on its own initiative, on a complaint made to it, on a report made to it or on a reference made to it.

(2) The Commission may, in considering whether or not to conduct, continue or discontinue an investigation, other than in relation to a matter referred by Parliament, have regard to such matters as it thinks fit, including whether or not, in the Commission's opinion,—

(a) The subject-matter of the investigation is trivial; or

(b) The conduct concerned occurred at too remote a time to justify investigation; or

(c) If the investigation was initiated as a result of a complaint—
the complaint was frivolous, vexatious or not in good faith.

11. Power to obtain documents—(1) For the purposes of an investigation, the Commission may, by notice in writing served on a person require the person—

(a) To attend, at a time and place specified in the notice, before a person, being the Commissioner or an Assistant Commissioner, specified in the notice; and

(b) To produce at that time and place to the person so specified a document specified in the notice.

(2) The notice may provide that the requirement may be satisfied by some other person acting on behalf of the person on whom it was imposed and may, but need not, specify the person or class of persons who may so act.

12. Self-incrimination—(1) This section applies where, under section 11 of this Act, the Commission requires any person—

(a) To produce any statement of information; or

(b) To produce any document.

(2) Where the statement or document tends to incriminate the person and the person objects to production at the time, the statement or document, if produced, may be used in any proceedings against the person, provided that the court or

commission may exclude such evidence in the interests of justice.

(3) They may however be used for the purposes of the investigation concerned, despite any such objection.

13. Injunctions—The High Court may, on application 5 made by the Commission, grant an injunction restraining any conduct in which a person is engaging, or in which such a person appears likely to engage, if the conduct is the subject of, or affects the subject of an investigation or proposed investigation by the Commission. 10

14. Provisions relating to injunctions—The High Court shall not grant an injunction under section 13 of this Act unless it is of the opinion that the conduct sought to be restrained is likely to impede the conduct of the investigation or proposed investigation. 15

15. Hearings—(1) For the purposes of an investigation, the Commission may hold hearings.

(2) A hearing shall be conducted by the Commissioner or by an Assistant Commissioner, as determined by the Commissioner. 20

(3) At each hearing, the person presiding shall announce the general scope and purpose of the hearing.

(4) A person appearing before the Commission at a hearing is entitled to be informed of the general scope and purpose of the hearing. 25

16. Public and private hearings—(1) A hearing shall be held in public, unless the Commission directs that the hearing be held in private.

(2) If the Commission directs that a hearing be held in private, the Commission may give directions as to the persons 30 who may be present at the hearing.

(3) At a hearing that is held in public, the Commission may direct that the hearing or part of the hearing be held in private and give directions as to the persons who may be present.

17. Right of appearance of affected person—If it is 35 shown to the satisfaction of the Commission that any person is substantially and directly interested in any subject-matter of a hearing, the Commission may authorise the person to appear at the hearing or a specified part of the hearing

18. Legal representation—(1) Any person giving evidence at a hearing is entitled to be represented by legal counsel.

(2) The Commission is required to give a reasonable opportunity for a person giving evidence at the hearing to be represented by counsel.

(3) Legal counsel appointed by the Commission to assist it may appear before the Commission.

19. Examination and cross-examination—(1) Legal counsel appointed by the Commission to assist it, or a person or a person's legal counsel authorised to appear at a hearing, may, with the leave of the Commission, examine or cross-examine any witness on any matter that the Commission considers relevant.

(2) Any witness so examined or cross-examined has the same protection and is subject to the same liabilities as if examined by the Commissioner or an Assistant Commissioner.

20. Power to summon witnesses and take evidence—

(1) The Commissioner may summon a person to appear before the Commission at a hearing at a time and place named in the summons—

(a) To give evidence; or

(b) To produce such documents or other things, if any, as are referred to in the summons—

or both.

(2) The person presiding at a hearing before the Commission may require a person appearing at the hearing to produce a document or other thing.

(3) The Commission may, at a hearing, take evidence on oath or affirmation and for that purpose—

(a) The person presiding at the hearing may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding; and

(b) The person presiding, or a person authorised for the purpose by the person presiding, may administer an oath or affirmation to a person so appearing at the hearing.

(4) A witness who has been summoned to attend before the Commission shall appear and report himself or herself from day to day unless the witness is excused from attendance or until the witness is released from further attendance by the person presiding at the hearing.

(5) A person who, without being so excused or released, fails to appear and report shall be taken to have failed to appear before the Commission in obedience to the summons.

21. Arrest of witness—(1) If a person served with a summons to attend the Commission as a witness fails to attend in answer to the summons, the Commission may, on proof by statutory declaration of the service of the summons, issue a warrant for the arrest of the witness. 5

(2) A warrant under this section authorises the arrest of the witness and his or her being promptly brought before the Commission and detained in custody for that purpose until released by order of the Commissioner. 10

(3) A warrant issued under this section may be executed by any member of the Police, and the person executing it may use such force as is reasonably necessary for the purpose of entering any premises for the purpose of executing it. 15

(4) The issue of a warrant or the arrest of a witness does not relieve the witness from any liability incurred by the witness for non-compliance with a summons.

22. Privilege as regards answers, documents, etc.—(1) A witness summoned to attend or appearing before the Commission at a hearing is not entitled to refuse— 20

- (a) To be sworn or to make an affirmation; or
- (b) To answer any question relevant to an investigation put to the witness by the Commissioner or other person presiding at a hearing; or 25
- (c) To produce any document or other thing in the witness's custody or control which the witness is required by the summons or by the person presiding to produce.

(2) A witness summoned to attend or appearing before the Commission at a hearing is not excused from answering any question or producing any document or other thing on the ground that the answer or production may incriminate or tend to incriminate the witness, or on any other ground of privilege, or on the ground of a duty of secrecy or other restriction on disclosure or on any other ground. 30 35

(3) An answer made, or document or other thing produced, by a witness at a hearing before the Commission is not, except as otherwise provided in this section, admissible in evidence against the person in any civil or criminal proceedings or in any disciplinary proceedings. 40

(4) Nothing in this section makes inadmissible—

- (a) Any answer, document or other thing in proceedings for an offence against this Act or in proceeding for contempt under this Act; or
- 5 (b) Any answer, document or other thing in any civil or criminal proceedings or in any disciplinary proceedings if the witness does not object to giving the answer or producing the document or other thing irrespective of the provisions of subsection (2) of this section; or
- 10 (c) Any document in any civil proceedings for or in respect of any right or liability conferred or imposed by the document or other thing.

23. Declaration as to objections by witness—The Commissioner or person presiding at the hearing may declare
15 that all or any classes of answers given by a witness or that all or any classes of documents or other things produced by a witness will be regarded as having been given or produced on objection by the witness, and there is accordingly no need for the witness to make an objection in respect of each such
20 answer, document or other thing.

PART IV

REFERRAL OF MATTERS BY COMMISSION

24. Referral of matter—(1) The Commission may, before
25 or after investigating a matter whether or not the investigation is completed, and whether or not the Commission has made any findings, refer the matter for investigation or other action to any person or body considered by the Commission to be appropriate in the circumstances.

30 (2) The person or body to whom a matter is referred is called in this Part a “relevant authority”.

(3) The Commission may, when referring a matter, recommend what action should be taken by the relevant authority and the time within which it should be taken.

35 (4) The Commission may communicate to the relevant authority any information which the Commission has obtained during the investigation of conduct connected with the matter.

(5) If the Commission communicates information to a person or body under this section on the understanding that the
40 information is confidential, the person or body is subject to the secrecy provisions of section 46 of this Act in relation to the information.

25. Report to Commission—(1) The Commission may, when referring a matter under this Part, require the relevant authority to submit to the Commission a report or reports in relation to the matter and the action taken by the relevant authority.

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(2) A report shall be of such a nature as the Commission directs.

(3) A report shall be submitted to the Commission within such time as the Commission directs.

26. Further action by Commission—(1) If the Commission is not satisfied that a relevant authority has duly and properly taken action in connection with a matter referred under this Part, the Commission shall inform the relevant authority of the grounds of the Commission's dissatisfaction and shall give the relevant authority an opportunity to comment within a specified time.

15

(2) If, after considering any comments received from the relevant authority within the specified time, the Commission is still not satisfied, the Commission may submit a report to the Minister for the relevant authority setting out the recommendation concerned and the grounds of dissatisfaction, together with any comments from the relevant authority and the Commission.

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27. Responsibility of relevant authority—It is the duty of a relevant authority to comply with any requirement or direction of the Commission under this Part.

25

28. Revocation of referral, recommendation, etc.—

(1) The Commission may revoke a referral under this Part.

(2) The Commission may revoke or vary a recommendation, requirement or direction of the Commission under this Part.

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(3) The Commission may vary any time within which a requirement under this Part is to be complied with.

PART V

REFERENCES BY AND REPORTS TO PARLIAMENT

29. References by the House of Representatives—

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(1) The House of Representatives may, by resolution, refer to the Commission any matter of the kind mentioned in section 7 of this Act.

(2) It is the duty of the Commission to investigate fully a matter referred to in section 7 (e) (i) of this Act.

40

(3) It is the duty of the Commission to comply as fully as possible with any directions contained in a reference of a matter referred to in section 7 (e) (i) of this Act.

5 (4) The House of Representatives may, by resolution, amend or revoke a reference made under this section.

30. Reports on referred matters, etc.—(1) The Commission may prepare reports in relation to any matter that has been or is the subject of an investigation.

10 (2) The Commission shall prepare reports in relation to a matter referred to the Commission by the House of Representatives.

15 (3) The Commission shall prepare reports in relation to matters as to which the Commission has conducted a public hearing, unless the House of Representatives has given different directions under subsection (2) of this section.

(4) The Commission shall furnish reports prepared under this section to the Speaker of the House of Representatives.

20 (5) A report required under this section shall be furnished as soon as possible after the Commission has concluded its involvement in the matter.

(6) The Commission may defer making a report under this section if it is satisfied that it is desirable to do so in the public interest except as regards a matter referred to the Commission by the House of Representatives.

25 (7) In determining whether it is desirable in the public interest to defer making a report under this section, the Commission shall have regard as to whether or not the matter is before a court.

31. Annual report—(1) The Commission shall, within the 30 period of four months after each 31 March, prepare a report of its operations during the year ended on that 31 March and furnish the report to the Speaker of the House of Representatives.

35 (2) A report by the Commission under this section in relation to a year shall include the following:

(a) A description of the matters that were referred to the Commission;

(b) A description of the matters investigated by the Commission;

40 (c) Any recommendations for legislative changes or for administrative action that the Commission considers should be made as a result of the exercise of its functions;

- (d) The general nature and extent of any information furnished under this Act by the Commission during the year to a law enforcement agency;
- (e) The extent to which its investigations have resulted in prosecutions in that year; 5
- (f) A description of its activities during that year in relation to its educating and advising functions.

32. Provisions relating to reports—(1) The Commission may include in a report a recommendation that the report be made public forthwith. 10

(2) If a report includes a recommendation by the Commission that the report be made public forthwith, the Speaker of the House of Representatives may make it public whether or not that House is in session and whether or not the report has been laid before that House. 15

(3) If such a report is made public by the Speaker of the House of Representatives before it is laid before that House, it attracts the same privileges and immunities as if it had been laid before that House.

(4) The Speaker needs to inquire whether all or any conditions precedent have been satisfied as regards a report purporting to have been made and furnished in accordance with this Act. 20

PART VI

CERTAIN OFFENCES 25

33. Obstruction of Commission—(1) A person shall not—

- (a) Without reasonable excuse, wilfully obstruct, hinder, resist or threaten the Commission or an officer of the Commission in the exercise of functions under this Act; or 30
- (b) Without reasonable excuse, refuse or wilfully fail to comply with any lawful requirement of the Commission or an officer of the Commission under this Act; or
- (c) Wilfully make any false statement to or mislead, or attempt to mislead the Commission or an officer of the Commission in the exercise of functions under this Act; or 35
- (d) Disrupt a hearing before the Commission.

(2) The maximum penalty for an offence against this section shall be 6 months imprisonment. 40

34. Offences relating to obtaining documents—(1) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on the person under section 11 of this Act.

5 (2) The maximum penalty for an offence against this section shall be 6 months imprisonment.

35. Failure to attend, etc.—(1) A person summoned to attend or appearing before the Commission at a hearing shall not without reasonable excuse, fail—

10 (a) To attend before the Commission in accordance with the summons; or

(b) To be sworn or to make an affirmation; or

15 (c) To answer any question relevant to an investigation put to the person by the Commissioner or other person presiding at the hearing; or

(d) To produce any document or other thing in the person's custody or control which the person is required by the summons or by the person presiding to produce.

20 (2) The maximum penalty for an offence against this section shall be six months imprisonment.

(3) It is a defence to a prosecution for failing without reasonable excuse to produce a document or other thing if the defendant establishes that the document or other thing was not relevant to an investigation.

25 **36. False or misleading evidence—**(1) A person who, at a hearing before the Commission, gives evidence that is, to the knowledge of the person, false or misleading in a material particular is guilty of an offence.

30 (2) The maximum penalty for an offence against this section shall be two years imprisonment.

37. Procuring false testimony by witness—(1) A person who procures or causes or attempts or conspires to procure or cause—

35 (a) The giving of false testimony at a hearing before the Commission; or

40 (b) In purported compliance with a notice served on any person under section 11 of this Act, the furnishing of information that is, to the knowledge of the person so served, false or misleading in a material particular, is guilty of an offence.

(2) The maximum penalty for an offence against this section shall be two years imprisonment.

38. Bribery of witness—(1) A person who—

- (a) Gives, confers or procures, or promises to give or confer, or to procure or attempt to procure, any property or benefit of any kind to, on or for any person, on any agreement or understanding that any person called 5
or to be called as a witness before the Commission will give false testimony or withhold true testimony; or
- (b) Attempts by any means to induce a person called or to be called before the Commission to give false testimony, 10
or to withhold true testimony; or
- (c) Asks, receives or obtains, or agrees or attempts to receive or obtain, any property or benefit of any kind for himself or herself, or for any other person, on any agreement or understanding that any person will as a 15
witness before the Commission give false testimony or withhold true testimony, is guilty of an offence.

(2) The maximum penalty for an offence against this section shall be five years imprisonment.

39. Fraud on witness—(1) A person who practises any 20
fraud or deceit on, or knowingly makes or exhibits any false statement, representation or writing to, any person—

- (a) Called or to be called as a witness before the Commission with intent to affect the testimony of that person as a 25
witness; or
- (b) Required to comply with a notice under section 11 of this Act with intent to affect that person's compliance with the notice,—

is guilty of an offence.

(2) The maximum penalty for an offence against this section 30
shall be five years imprisonment.

40. Preventing witness from attending—(1) A person who wilfully prevents or wilfully endeavours to prevent any person who has been summoned to attend as a witness before the Commission from attending as a witness or from producing 35
anything in evidence pursuant to a summons to attend is guilty of an offence.

(2) A person who wilfully prevents or wilfully endeavours to prevent any person from complying with a requirement under section 11 of this Act is guilty of an offence. 40

(3) The maximum penalty for an offence against this section shall be five years imprisonment.

PART VII

CONTEMPT OF COMMISSION

41. Definition—In this Part—

5 “Offender” means a person guilty or alleged to be guilty
of contempt of the Commission.

42. Contempt—A person who—

- (a) Having been served with a summons to attend before the Commission as a witness, fails to attend in obedience to the summons; or
- 10 (b) Having been served with a summons to attend before the Commission, fails to produce any document or other thing in the person's custody or control that the person is required by the summons to produce; or
- 15 (c) Being called or examined as a witness before the Commission, refuses to be sworn or to make an affirmation or refuses or otherwise fails to answer any question put to the person by the Commissioner or Assistant Commissioner; or
- 20 (d) Wilfully threatens or insults—
 (i) The Commissioner, an Assistant Commissioner or an officer of the Commission; or
 (ii) A barrister and solicitor appointed to assist the Commission as counsel; or
 (iii) Any witness or person summoned to attend
25 before the Commission; or
 (iv) A legal practitioner or other person authorised to appear before the Commission; or
- 30 (e) By writing or speech uses words that are false and defamatory of the Commission, the Commissioner or an Assistant Commissioner; or
- 35 (f) Obstructs or attempts to obstruct the Commission, the Commissioner, an Assistant Commissioner or a person acting under the authority of the Commission or the Commissioner in the exercise of any lawful function; or
- (g) Does any other thing that, if the Commission were a court of law having power to commit for contempt, would be contempt of that court; or
- 40 (h) Publishes, or permits or allows to be published, any evidence given before the Commission or any of the contents of a document produced at a hearing which the Commission has ordered not to be published,—
is guilty of contempt of the Commission.

43. Punishment of contempt—(1) Any contempt of the Commission under section 42 of this Act may be punished in accordance with this section.

(2) The Commissioner may certify the contempt in writing to the High Court. 5

(3) If the Commissioner certifies the contempt of a person to the High Court:

(a) The High Court shall thereupon inquire into the alleged contempt; and

(b) After hearing any witnesses who may be produced 10
against or on behalf of the person charged with the contempt and after hearing any statement that may be offered in defence, the High Court, if satisfied that the person is guilty of the contempt, may punish or take steps for the punishment of the person in like 15
manner and to the like extent as if the person had committed that contempt in or in relation to proceedings in the High Court.

(4) A person is not liable to be punished under this section where the person establishes that there was a reasonable 20
excuse for the act or omission concerned.

44. General provisions regarding contempt—(1) In the case of any alleged contempt of the Commission, the Commissioner may summon the offender to appear before the Commission at a time and place named in the summons to 25
show cause why the offender should not be dealt with under section 43 of this Act for the contempt.

(2) If the offender fails to attend before the Commission in obedience to the summons, and no reasonable excuse to the satisfaction of the Commissioner is offered for the failure, the 30
Commissioner may, on proof of the service of the summons, issue a warrant to arrest the offender and bring the offender before the Commissioner to show cause why the offender should not be dealt with under section 43 of this Act for the contempt. 35

(3) If a contempt of the Commission is committed in the face or hearing of the Commission, no summons need be issued against the offender, but the offender may be taken into custody then and there by a member of the Police and called upon to show cause why the offender should not be dealt with 40
under section 43 of this Act for the contempt.

(4) The Commissioner may issue a warrant to arrest the offender while the offender, whether or not already in custody

under this section, is before the Commission and to bring the offender forthwith before the High Court.

5 (5) The warrant is sufficient authority to detain the offender in a prison or elsewhere, pending the offender's being brought before the High Court.

(6) The warrant shall be accompanied by either the instrument by which the Commissioner certifies the contempt to the High Court or a written statement setting out the details of the alleged contempt.

10 (7) The Commission may revoke the warrant at any time before the offender is brought before the High Court.

(8) When the offender is brought before the High Court the Court may, pending determination of the matter, direct that the offender be kept in such custody as the Court may
15 determine or direct that the offender be released.

45. Act or omission that is both an offence and contempt—(1) An act or omission may be punished as a contempt of the Commission even though it could be punished as an offence.

20 (2) An act or omission may be punished as an offence even though it could be punished as a contempt of the Commission.

(3) If an act or omission constitutes both an offence and a contempt of the Commission, the offender is not liable to be punished twice.

25 **PART VIII**

MISCELLANEOUS

46. Secrecy—(1) This section applies to—

(a) A person who is or was an officer of the Commission; and

30 (b) A person who is or was a legal practitioner appointed to assist the Commission or who is or was a person who assists, or performs services for or on behalf of, such a legal practitioner in the exercise of the legal practitioner's functions as counsel to the Commission.

(2) A person to whom this section applies shall not, directly
35 or indirectly, except for the purposes of this Act or otherwise in connection with the exercise of the person's functions under this Act—

(a) Make a record of any information; or

40 (b) Divulge or communicate to any person any information,—

being information acquired by the person by reason of, or in the course of, the exercise of the person's functions under this Act.

- (3) A person to whom this section applies is not required—
- (a) To produce in any court any document or other thing that has come into the person's possession, custody or control by reason of, or in the course of, the exercise of the person's functions under this Act; or 5
 - (b) To divulge or communicate to any court any matter or thing that has come to the person's notice in the exercise of the person's functions under this Act.
- (4) Despite this section, a person to whom this section applies may divulge any such information— 10
- (a) For the purposes of and in accordance with this Act; or
 - (b) For the purposes of a prosecution instituted as a result of an investigation conducted by the Commission in the exercise of its functions; or
 - (c) In accordance with a direction of the Commissioner, if the Commissioner certifies that it is necessary to do so in the public interest; or 15
 - (d) To any prescribed authority or person.
- (5) An authority or person to whom information is divulged under subsection (4) of this section, and any person or employee under the control of that authority or person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under subsections (2) and (3) of this section as if he or she were a person to whom this section applies and had acquired the information in the exercise of functions under this Act. 20
- (6) In this section—
- “Court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions: 30
 - “Produce” includes permit access to.
- (7) The maximum penalty for an offence against this section shall be twelve months imprisonment.
- 47. Publication of evidence, etc.—**(1) The Commission 35 may direct that—
- (a) Any evidence given before it; or
 - (b) The contents of any document, or a description of any thing, produced to the Commission or seized under a search warrant issued under this Act; or
 - (c) Any information that might enable a person who has given evidence before the Commission to be identified; or 40
 - (d) The fact that any person has given or may be about to give evidence at a hearing,—

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

(2) A person shall not make a publication in contravention of a direction given under this section.

5 (3) The maximum penalty for an offence against this section shall be twelve months imprisonment.

48. Evidence in criminal proceedings—(1) If—

(a) A person has been charged with an offence before the High Court; and

10 (b) The Court considers that it is desirable in the interests of justice that particular evidence given before the Commission, being evidence in relation to which the Commission has given a direction under section 47 of this Act, be made available to the person or to a legal practitioner representing the person or to the prosecutor, the court may give to the Commission a certificate to that effect.

15 (2) The Commissioner may appear before the court for the purpose of making representations concerning the giving of such a certificate.

(3) On such a certificate being given, the Commission shall make the evidence or information available to the court.

20 (4) The Court may make the evidence or information available to the person charged with the offence concerned, to a legal practitioner representing the person charged or to the prosecutor, if the Court has examined the evidence or information and is satisfied that the interests of justice so require.

25 (5) Nothing in section 46 of this Act prevents a person to whom that section applies from producing any document or other thing, or divulging or communicating any matter or thing, to the extent necessary to give effect to the section.

(6) Nothing in section 47 of this Act prevents the evidence or information being made available under this section.