

THE INDEPENDENT POLICE COMPLAINTS COMMISSION BILL
(No. XIV of 2016)

Explanatory Memorandum

The object of this Bill is to provide for the establishment of an Independent Police Complaints Commission to investigate into complaints made against police officers in the discharge of their functions, other than complaints of acts of corruption or money laundering offences.

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A BILL

To provide for the establishment of an Independent Police Complaints Commission to investigate into complaints made against police officers in the discharge of their functions, other than complaints of acts of corruption or money laundering offences

ENACTED by the Parliament of Mauritius, as follows –

PART I – PRELIMINARY

1. Short title

This Act may be cited as the Independent Police Complaints Commission Act 2016.

2. Interpretation

In this Act –

“act of corruption” has the same meaning as in the Prevention of Corruption Act;

“Chairperson” means the Chairperson of the Commission;

“Commission” means the Independent Police Complaints Commission established under section 3;

“investigator” means a person designated as such under section 12;

“member” –

(a) means a member of the Commission; and

(b) includes the Chairperson;

“Minister” means the Minister to whom responsibility for the subject of human rights is assigned;

“money laundering offence” has the same meaning as in the Financial Intelligence and Anti-Money Laundering Act;

“officer” –

(a) means an officer of the Commission; and

(b) includes the Secretary;

“police officer” –

(a) has the same meaning as in the Police Act; but

(b) does not include the Commissioner of Police;

“public body” has the same meaning as in the Protection of Human Rights Act;

“Secretary” means the Secretary to the Commission.

PART II – INDEPENDENT POLICE COMPLAINTS COMMISSION

3. The Commission

(1) (a) There is established for the purposes of this Act a Commission to be known as the Independent Police Complaints Commission.

(b) The Commission shall be a body corporate.

(2) The Commission shall not, in the discharge of its functions and exercise of its powers, be subject to the direction or control of any person or authority.

(3) The Commission shall consist of –

(a) a Chairperson; and

(b) 2 members.

(4) (a) The Chairperson shall be a person who has –

(i) served as a Judge of the Supreme Court;

(ii) served as a Magistrate for not less than 10 years;

(iii) been a law practitioner for not less than 10 years; or

(iv) served as a Magistrate and has been a law practitioner for an aggregate period of not less than 10 years.

(b) The members, other than the Chairperson, shall be persons having knowledge and experience in the field of human rights, law, employment, industrial relations, business administration, education, sociology, policing, social work, psychology, psychiatry, medicine or prison management.

(5) (a) The Chairperson and the members shall be appointed by the President, acting on the advice of the Prime Minister, on such terms and conditions as the President may determine.

(b) The Prime Minister shall, before tendering advice to the President under paragraph (a), consult the Leader of the Opposition.

(6) Subject to subsection (7), the Chairperson and the members shall hold office for a period of 4 years and shall be eligible for reappointment.

(7) The President may, on the advice of the Prime Minister, remove the Chairperson or any member from office for inability to perform the functions of his office, whether arising from infirmity of body or mind, or for misbehaviour.

(8) (a) Where any vacancy occurs in the office of the Chairperson by reason of death, resignation or any other cause, the President may authorise another member to act as Chairperson until the vacancy is filled.

(b) Where the Chairperson is absent or on leave, the Chairperson may authorise another member to act as Chairperson until the date on which the Chairperson resumes his office.

(9) The Chairperson or any member shall not take office unless he has taken the oath specified in the Schedule before the President.

4. Functions of Commission

Without prejudice to the jurisdiction of the Courts or the powers conferred on the Director of Public Prosecutions, the Ombudsman or the Disciplined Forces Service Commission, the Commission shall –

- (a) investigate into any complaint made by any person or on his behalf against any act, conduct or omission of a police officer in the discharge of his functions, other than a complaint of an act of corruption or a money laundering offence;
- (b) investigate into the cause of death of a person who died whilst the person was in police custody or as a result of police action;
- (c) advise on ways in which any police misconduct may be addressed and eliminated;
- (d) promote better relations between the public and the Police; and
- (e) perform such other functions as may be conferred to it by any other enactment.

5. Powers of Commission

(1) Subject to subsection (2), the Commission may, in the discharge of its functions under this Act –

- (a) summon any person to appear before it on such date and at such time as may be specified in the summons, or require any person in writing –
 - (i) to answer any question or provide any information which the Commission considers necessary in connection with any investigation;
 - (ii) to produce any article, or any book, record, accounts, report, data, stored electronically or otherwise, or any other document;
 - (iii) to verify, or otherwise ascertain by oral examination of the person making the complaint, any fact, matter or document relating to a complaint;
- (b) visit any police station, prison or other place of detention for the purpose of an investigation under this Act;
- (c) where it considers appropriate, work in cooperation or consultation with any person or body, whether public or private.

(2) A person may refuse to answer any question, to provide any information, or to produce any article or document, which would incriminate him.

6. Meetings of Commission

(1) Subject to subsection (2), the Commission shall regulate its meetings and proceedings in such manner as it may determine.

(2) At any meeting of the Commission, 2 members, including the Chairperson, shall constitute a quorum.

7. Secretary to Commission

(1) There shall be a Secretary to the Commission who shall be a public officer of the rank of Deputy Permanent Secretary, to be designated, subject to the Public Service Commission Regulations, by the Secretary to Cabinet and Head of the Civil Service.

(2) The Secretary shall, subject to this Act, be responsible for the implementation of all the decisions of the Commission and for administering and managing the affairs of the Commission.

8. Staff of Commission

(1) The Secretary to Cabinet and Head of the Civil Service may, subject to the Public Service Commission Regulations, designate such public officers as may be necessary to assist the Commission.

(2) Every officer shall be under the administrative control of the Secretary.

(3) The Public Service Commission may approve the transfer, promotion or secondment of any officer in the public service to any office within the Commission and any public officer so transferred, promoted or seconded shall, in relation to any gratuity, pension or other allowance, be treated as continuing in the public service.

(4) The Commission may, on such terms and conditions as it may determine, employ on contract such suitably qualified person as may be necessary for the proper discharge of its functions.

(5) Notwithstanding this section, no serving police officer shall form part of the staff of the Commission.

9. Delegation

(1) The Commission may, subject to such instructions as it may give, delegate to the Secretary such of its powers and functions as may be necessary for the effective management of the day to day business and activities of the Commission.

(2) The Secretary may, with the approval of the Commission, delegate his powers and functions to such officer as he may designate.

PART III – INVESTIGATIONS

10. Investigations by Commission

(1) The Commission may conduct an investigation on the basis of a complaint.

(2) (a) Subject to paragraph (b), the Commission shall not investigate into a complaint unless it is made within one year from the day on which the complainant first had notice of the matter alleged in the complaint.

(b) The Commission may conduct an investigation into a complaint made after the period specified in paragraph (a) if it considers that there are special circumstances which make it proper to do so.

(c) Where any person makes a complaint in writing to a police officer against any act, conduct or omission of another police officer in the discharge of his functions, the police officer shall forthwith forward the complaint to the Commissioner of Police who –

- (i) shall, within 2 days from receipt of the complaint, forward to the Secretary of the Commission a copy of the complaint; and
- (ii) shall not investigate further into the complaint.

(d) The Commission may require the Commissioner of Police to provide it with such further information as it may determine in relation to any matter referred to in paragraph (c).

(3) Where a complaint consists of an allegation of an act of corruption or a money laundering offence against a police officer, it shall be referred by the Commission to the Independent Commission Against Corruption established under the Prevention of Corruption Act and shall be dealt with under that Act.

(4) The Commission may, in considering whether or not to conduct, continue or discontinue an investigation, have regard to such matters as it considers appropriate, including whether or not in its view –

- (a) the complaint may not, in the first place, be resolved through conciliation;
- (b) the subject matter of the investigation is trivial; or
- (c) the complaint is frivolous, vexatious or not made in good faith.

11. Making or continuing a complaint on behalf of another person

Where a person –

- (a) makes a complaint and, for any reason, is unable to act for himself after making the complaint;
- (b) dies before the complaint which he has made is investigated under this Act; or

- (c) who could have made a complaint dies before doing so or is for any reason unable to act for himself,

the complaint may be made or continued by his personal representative, a member of his family or, where applicable, any other person designated by the complainant.

12. Powers of investigator

(1) The Commission may designate any of its officers to act as investigator for the purpose of an investigation.

(2) (a) Notwithstanding any other enactment, an investigator may, for the purpose of an investigation under this Act –

- (i) take all lawful measures which a police officer may take under the Police Act or any other enactment for the detection of an offence, except arrest a person;
- (ii) record a statement under warning from any person;
- (iii) enter and search any premises occupied or used by the Police Force or any other public body in that capacity;
- (iv) inspect any document or other thing on the premises;
- (v) take copies of any document on the premises.

(b) The Police Force and every other public body shall make available to an investigator such facilities as may be necessary to enable the Commission to exercise its powers under this Act.

(3) Where an investigator wishes to enter and search private premises in furtherance of an investigation, he shall apply to a District Magistrate for a search warrant, setting out the nature of the investigation and the purpose of entering the premises.

(4) Notwithstanding any other enactment, the Supreme Court may, on an application made by the Commission in connection with an investigation, make such order, issue such writs and give such directions as it considers appropriate for the purpose of enforcing this Act.

13. Hearings

(1) For the purpose of an investigation, the Commission may hold hearings.

(2) A hearing may be held in public or in private, or partly in public and partly in private, as the Commission may determine.

(3) The Commission shall, when conducting a hearing, endeavour to exercise its functions with as little formality and technicality as may be possible.

(4) Where a person satisfies the Commission that he has a substantial or direct interest in the subject matter of a hearing, the Commission may authorise him to appear at the hearing or for a specified part of the hearing.

(5) (a) Subject to subsection (6), the Commission may summon a person to appear at a hearing at such time and place as may be specified in the summons –

(i) to give evidence;

(ii) to produce any article, or any book, record, accounts, report or data, stored electronically or otherwise, or other document;

(iii) to provide any other information.

(b) The Commission may require a person appearing at a hearing to give evidence under oath or solemn affirmation.

(c) A person who has been summoned to attend before the Commission shall appear and report from day to day unless he is excused from attendance or until he is released from further attendance.

(6) A person may, at a hearing, refuse to give any evidence, to produce any document or to provide any information which would incriminate him.

(7) A person giving evidence at a hearing may be represented by a legal adviser.

14. Record of complaint and investigation

(1) The Commission shall ensure that a faithful record of every complaint and investigation is kept and maintained.

(2) The testimony of a witness at a hearing shall be taken down in writing by such person as may be designated by the Commission, read over to the witness and signed by the witness and the person who recorded the testimony.

15. Use of evidence

Subject to the Constitution and to the law of evidence, any evidence obtained in the course of an investigation may give rise to, or be used in, civil or criminal proceedings.

16. Completion of investigation

(1) On the completion of an investigation, the Commission –

- (a) shall make an assessment and form an opinion as to whether or not the subject matter of a complaint has or may have occurred; and
- (b) may, where appropriate, refer the matter to –
 - (i) the Director of Public Prosecutions, with a recommendation that the police officer be prosecuted for a criminal offence;
 - (ii) the Disciplined Forces Service Commission, with a recommendation that disciplinary proceedings, or such other action as the Commission considers desirable, be taken against the police officer;
 - (iii) the Attorney-General, with a recommendation that the complainant or his representative be paid such compensation or granted such relief as the Attorney-General may deem appropriate;
- (c) shall transmit a certified copy of the record of the investigation, together with its observations and recommendations, to the relevant authority;
- (d) shall inform the complainant of the outcome of the investigation, including such recommendation as may have been made under paragraph (b).

(2) Where the relevant authority agrees with the recommendation of the Commission, it shall –

- (a) initiate appropriate action for the implementation of the recommendation within 3 months from the date of the recommendation;
- (b) within 6 months, inform the Commission of the action taken.

(3) Where the relevant authority does not agree with the recommendation of the Commission, it shall inform the Commission of its decision at the earliest opportunity.

(4) In this section –

“relevant authority” means the Attorney-General, Director of Public Prosecutions or Disciplined Forces Service Commission, as the case may be.

PART IV – MISCELLANEOUS

17. Protection from liability

No liability, civil or criminal, shall be incurred by the Commission, any member or officer, in respect of any act done or omitted by it or him in good faith in the discharge of its or his functions, or exercise of its or his powers under this Act.

18. Confidentiality

(1) No member or officer shall disclose to any unauthorised person any matter which comes to his knowledge in the performance of his functions.

(2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable, to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

19. General Fund

The Commission shall set up a General Fund –

- (a) into which all monies received from any source by the Commission shall be paid; and
- (b) out of which all payments required to be made by the Commission shall be effected.

20. Execution of documents

No deed, cheque or other document shall be executed or signed by or on behalf of the Commission unless it is signed by –

- (a) the Chairperson or, in the absence of the Chairperson, any other member designated by the Commission; and

- (b) the Secretary or, in the absence of the Secretary, an officer designated by the Secretary.

21. Estimates

(1) The Commission shall, not less than 3 months before the beginning of every financial year, submit to the Minister an estimate of the expenditure and income of the Commission for the next financial year for his approval.

(2) Subject to subsection (3), the Minister shall, before the beginning of the financial year, signify in writing his approval of the estimates.

(3) Where the Minister signifies his approval under subsection (2), he may –

- (a) approve only part of the expenditure under any item;
- (b) direct the Commission to amend the estimates in respect of any item in such manner as he may determine.

22. Annual report and other reports

(1) (a) The Commission shall, in accordance with the Statutory Bodies (Accounts and Audit) Act, prepare an annual report and submit it to the Minister, together with an audited statement of accounts on the operations of the Commission, in respect of every financial year.

(b) The Minister shall, at the earliest available opportunity, lay a copy of the annual report and the audited statement of accounts of the Commission before the Assembly.

(c) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

(2) The Commission shall submit to the Minister such other reports as he may require in relation to the objects, activities, income and expenditure of the Commission.

(3) Section 7(1) of the Statutory Bodies (Accounts and Audit) Act shall not apply to the first financial year of the Commission after the coming into operation of this Act.

23. Offences

Any person who –

- (a) fails to attend the Commission after having been summoned to do so;

- (b) knowingly gives false evidence, or evidence which he knows to be misleading, before the Commission;
- (c) conceals, destroys, alters, tampers with, or otherwise disposes of, any article, or book, record, accounts, report or data, stored electronically or otherwise, or other document, which he has been summoned or required to produce;
- (d) procures the false testimony of a witness, or interferes with a witness on account of his testimony, before the Commission;
- (e) knowingly makes or causes to be made a false complaint before the Commission;
- (f) at any sitting of the Commission –
 - (i) insults a member; or
 - (ii) interrupts the proceedings;
- (g) obstructs or assaults a member or an officer of the Commission in the discharge of his functions or exercise of his powers; or
- (h) impersonates a member or an officer of the Commission,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

24. Regulations

(1) The Minister may, after consultation with the Commission, make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide that any person who contravenes them shall commit an offence and shall, on conviction, be liable to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year.

25. Repeal

The Police Complaints Act is repealed.

26. Consequential amendments

(1) The Protection of Human Rights Act is amended –

- (a) in section 2 –
 - (i) in the definition of “Deputy Chairperson”, by deleting the words “, National Preventive Mechanism Division or Police Complaints Division” and replacing them by the words “or National Preventive Mechanism Division”;
 - (ii) in the definition of “Division”, by deleting the words “, the Police Complaints Division”;
 - (iii) by deleting the definition of “Police Complaints Division”;
- (b) in section 3 –
 - (i) in subsection (3), by repealing paragraph (b);
 - (ii) in subsection (4)(b), by deleting the figure “3” and replacing it by the figure “2”;
 - (iii) in subsection (6), by deleting the figure “3” and replacing it by the figure “2”;
 - (iv) in subsection (12), by deleting the words “ the Deputy Chairperson of the Police Complaints Division or”;
- (c) in section 4(2)(c), by deleting the words “one of the 2 other Divisions of the Commission” and replacing them by the words “the National Preventive Mechanism Division”.

(2) The Statutory Bodies (Accounts and Audit) Act is amended, in the Second Schedule, in Part II, by inserting, in the appropriate alphabetical order, the following new item and its corresponding entry –

Independent Police Complaints Commission	Independent Police Complaints Commission Act 2016
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27. Transitional provisions

(1) Any complaint against a police officer in the performance of his duty, which is pending immediately before the commencement of this Act before the Police Complaints Division, may, at the commencement of this Act, be investigated by the Commission as if it was received under this Act.

(2) The contract of the Deputy Chairperson and members of the Police

Complaints Division shall, at the commencement of this Act, be terminated.

(3) In this section –

“Deputy Chairperson” means the Deputy Chairperson who is assigned to the Police Complaints Division pursuant to the Protection of Human Rights Act;

“member” means a member of the Police Complaints Division;

“Police Complaints Division” means the Police Complaints Division referred to in the Protection of Human Rights Act and in the Police Complaints Act.

28. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

SCHEDULE
[Section 3]

**OATH OF OFFICE FOR CHAIRPERSON AND MEMBERS OF THE
INDEPENDENT POLICE COMPLAINTS COMMISSION**

I,, having been appointed as Chairperson*/member* of the Independent Police Complaints Commission under the Independent Police Complaints Commission Act, do swear/solemnly affirm* that I shall faithfully, impartially and to the best of my ability discharge the trust and perform the duties devolving upon me by such appointment and that I shall not without reasonable cause disclose any information imparted to me in the performance of such duties.

Before me

.....
Signature

.....
President of the Republic

.....
Date

**Delete as appropriate*
