ENFORCEMENT AGENCY INTEGRITY COMMISSION BILL 2009

ARRANGEMENT OF CLAUSES

PART I

PRELIMINARY

Clause

1. Short title, commencement and application
2. Interpretation

PART II

ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION

3. Establishment of the Commission
4. Functions of the Commission
5. Constitution of the Commission
6. Remuneration
7. Term of office
8. Vacation of office
9. Meetings of the Commission
10. Temporary exercise of functions of Chairman
11. Disclosure of interest
12. Exercise of functions and powers of the Commission by a Commissioner

PART III

ADMINISTRATION

13. The Secretary
14. Officers and staff of the Commission
15. Consultants
16. Complaints Committee

Clause

17. Task Force
18. Other committees
19. Authority card
20. Use of staff, facilities or services
21. Cooperation with other agencies

PART IV

DEALING WITH COMPLAINTS

22. General power of the Commission in dealing with complaints
23. Complaints of misconduct
24. Scope of misconduct
25. Preliminary investigation
26. Findings of the Complaints Committee
27. Action by Commission after Complaints Committee's findings
28. Commission may commence investigation on own initiative
29. Prevention of dual investigation
30. Findings of the Commission after investigation

PART V

INVESTIGATION POWERS

31. Powers of the Commission relating to investigation
32. Power to obtain documents or other things
33. Legal obligation to give information
34. Hearings
35. Public and closed hearings
36. Right of appearance of interested person
37. Legal representation
38. Examination of witnesses
39. Privileged documents, answers, *etc*.
40. Power to search with warrant
41. Search and seizure without warrant
42. List of things seized
43. Release of seized conveyance, *etc*.

Part VI

OFFENCES

Clause

44. Threats against witnesses
45. Contempt

Part VII

GENERAL

46. Funds
47. Statutory Bodies (Accounts and Annual Reports) Act 1980
48. Annual report
49. Protection of Commissioners, officers and staff of the Commission
50. Public Authorities Protection Act 1948
51. Public servant
52. Obligation of secrecy
53. Institution and conduct of prosecution
54. Regulations
55. Power of Prime Minister to amend Schedule

SCHEDULE

A BILL

i n t i t u l e d

An Act to provide for the establishment of the Enforcement Agency Integrity Commission and to provide for its functions and powers and for other matters connected therewith.

[ ]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title, commencement and application

1. (1) This Act may be cited as the Enforcement Agency Integrity Commission Act 2009.

(2) This Act comes into operation on a date to be appointed by the Yang di-Pertuan Agong by notification in the *Gazette*.

(3) This Act applies to complaints made or referred to the Commission in respect of misconduct occurring on or after the commencement of this Act.

(4) This Act shall apply to an enforcement agency as prescribed by the Prime Minister in the Schedule.

(5) Notwithstanding subsection (4), this Act shall not apply to the Malaysian Anti-Corruption Commission established under the Malaysian Anti-Corruption Commission Act 2009 [*Act 694*].

Interpretation

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

"enforcement agency" means—

(a) any Ministry, Department, Agency or other body set up by the Federal Government, including a unit, section, division, department or agency of such Ministry, Department, Agency or body, conferred with enforcement functions by any written law or having enforcement powers;

(b) a body established by a Federal law which is conferred with enforcement functions by that Federal law or any other written law; or

(c) a unit, section, division, department or agency of a body established by Federal law having enforcement functions;

"Complaints Committee" means the Complaints Committee established under section 16;

"disciplinary offence" includes any act or inaction that constitutes or may constitute grounds for disciplinary action under any written law;

"Task Force" means a Task Force established under section 17;

"enforcement officer" means an officer of—

(a) an enforcement agency; or

(b) the joint service established under Article 133 of the Federal Constitution who is performing an enforcement function;

"Commissioner" means the Chairman, Deputy Chairman and other Commissioner appointed under section 5;

"Disciplinary Authority", in relation to an enforcement officer in—

(a) a Federal Ministry, means the appropriate Disciplinary Authority established under Part X of the Federal Constitution but does not include the Armed Forces Council established under Article 137 of the Federal Constitution;

(b) a Federal statutory body, means the Disciplinary Authority established—

(i) under the Federal law in force relating to the discipline of, and the imposition of surcharge on, officers of statutory bodies; or

(ii) by any law by which a statutory body is incorporated; or

(c) a joint service pursuant to Article 133 of the Federal Constitution, means the Disciplinary Authority established under Article 139 of the Federal Constitution;

"misconduct" means any act or inaction as specified in section 24;

"Commission" means the Enforcement Agency Integrity Commission established under section 3.

PART II

ESTABLISHMENT AND FUNCTIONS OF THE COMMISSION

Establishment of the Commission

3. (1) A body corporate to be known as the Enforcement Agency Integrity Commission is established.

(2) The Commission shall have perpetual succession and a common seal.

(3) The Commission may sue and be sued in its name.

(4) Subject to and for the purposes of this Act, the Commission may, upon such terms as the Commission deems fit—

(a) enter into contracts;

(b) acquire, purchase, take, hold and enjoy movable and immovable property of every description; and

(c) convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest in the property vested in the Commission.

Functions of the Commission

4. (1) The functions of the Commission are as follows:

(a) to receive complaints of misconduct from the public against an enforcement officer or against an enforcement agency in general and to investigate into and conduct hearings on such complaints;

(b) to formulate and put in place mechanisms for the detection, investigation and prevention of misconduct by an enforcement officer;

(c) to protect the interest of the public by preventing and dealing with misconduct of an enforcement officer;

(d) to provide for the auditing and monitoring of particular aspects of the operations and procedures of an enforcement agency;

(e) to promote awareness of, enhancement of, and education in relation to, integrity within an enforcement agency and to reduce misconduct amongst enforcement officers;

(f) to assist the Government in formulating legislation, or to recommend administrative measures to the Government or an enforcement agency, in the promotion of integrity and the abolishment of misconduct amongst enforcement officers;

(g) to study and verify any infringement of enforcement procedures and to make any necessary recommendations relating thereto; and

(h) to make site visits to the premises of an enforcement agency, including visiting police stations and lockups in accordance with the procedures under any written law, and make any necessary recommendations relating thereto.

(2) The Commission shall have power to do all things expedient or reasonably necessary for, or incidental to, the performance of its functions.

Constitution of the Commission

5. (1) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint not more than seven Commissioners, of whom there shall be a Chairman and a Deputy Chairman, for such period and on such terms and conditions as may be specified in the instrument of appointment.

(2) No person shall be eligible to be appointed as a Commissioner if he is or was an enforcement officer.

(3) The appointment of Commissioners under this section shall be published in the *Gazette*.

Remuneration

6. A Commissioner shall be paid such remuneration and allowances as the Yang di-Pertuan Agong may determine.

Term of office

7. (1) Subject to subsection (2), a Commissioner holds office for a term not exceeding three years as may be specified in his instrument of appointment, but he is eligible for re-appointment.

(2) A person may not hold the office of a Commissioner for more than two terms consecutively.

(3) A Commissioner may at any time resign his office by letter addressed to the Yang di-Pertuan Agong.

(4) The appointment of a Commissioner may at any time be revoked by the Yang di-Pertuan Agong.

Vacation of office

8. The office of a Commissioner shall be vacated if—

(a) he dies;

(b) there has been proved against him, or he has been convicted on, a charge in respect of—

(i) an offence involving fraud, dishonesty or moral turpitude;

(ii) an offence under any law relating to corruption; or

(iii) any other offence punishable with imprisonment (in itself only or in addition to or in lieu of a fine) for more than two years;

(c) he becomes a bankrupt;

(d) he is of unsound mind or is otherwise incapable of discharging his duties;

(e) he absents himself from three consecutive meetings of the Commission without leave of the Chairman;

(f) his resignation has been accepted by the Yang di-Pertuan Agong;

(g) his appointment has been revoked by the Yang di-Pertuan Agong; or

(h) his term of appointment has expired.

Meetings of the Commission

9. (1) The Commission shall meet as often as may be necessary for the performance of its functions.

(2) The Chairman of the Commission shall preside at all meetings of the Commission.

(3) The quorum of the Commission shall be four.

(4) Every Commissioner present shall be entitled to one vote and if on a question to be determined by the Commission there is an equality of votes, the Chairman shall have a casting vote.

(5) The Commission shall determine the conduct of its own proceedings.

(6) The Commission shall cause minutes of all its meetings to be maintained and kept in a proper form.

(7) The Commission may invite any person to attend a meeting for the purpose of advising it on any matter under discussion but that person shall not be entitled to vote at the meeting or be present during the making of a decision.

Temporary exercise of functions of Chairman

10. Notwithstanding subsection 9(2), where the Chairman is for any reason unable to perform his functions, or during any period of vacancy in the office of the Chairman, the Deputy Chairman or, if he is unavailable, any Commissioner appointed by the other Commissioners, shall perform the functions of the Chairman.

Disclosure of interest

11. A Commissioner having, directly or indirectly, by himself, a member of his family or his associate, any interest in any matter under discussion by the Commission or in any proceedings or hearing before the Commission, shall disclose to the Commission the fact and nature of his interest and such disclosure shall be recorded in the minutes or notes of proceedings or hearing and, unless specifically authorized by the Chairman, the Commissioner shall take no part in any discussion, proceedings or hearing, or in the making of any decision by the Commission relating to the matter.

Exercise of functions and powers of the Commission by a Commissioner

12. The functions and powers of the Commission are exercisable by a Commissioner unless the Commission determines otherwise.

PART III

ADMINISTRATION

The Secretary

13. (1) The Commission shall have a Secretary who shall be the chief executive officer of the Commission.

(2) The Secretary shall be appointed by the Commission.

(3) The Secretary shall be appointed on such terms and conditions and shall have such functions as the Commission may determine.

Officers and staff of the Commission

14. (1) There shall be appointed such number of officers and staff of the Commission as may be necessary to assist the Commission in discharging its functions effectively and efficiently and for the purpose of carrying into effect the provisions of this Act.

(2) The Commission may appoint any officers from any enforcement agency on secondment basis to be its investigators.

(3) The Commission may appoint such number of legal officers as may be necessary who shall be seconded from amongst officers of the Judicial and Legal Service or appointed from amongst advocates and solicitors to assist the Commission.

(4) An officer of the Commission having directly or indirectly, by himself, a member of his family or his associate, any interest or connection to an enforcement officer under investigation by the Commission shall disclose his interest or connection forthwith to a Commissioner and shall not be involved in any investigation conducted by the Commission as regards that enforcement officer.

(5) The Commission may, with the approval of the Yang di-Pertuan Agong, make regulations with respect to the conditions of service of its officers and staff.

Consultants

15. (1) The Commission may engage persons, including retired or former members of an enforcement agency, on such terms and conditions as the Commission deems fit, as consultants or to perform such services as it deems appropriate.

(2) A person engaged under subsection (1) having directly or indirectly, by himself, a member of his family or his associate, any interest or connection to an enforcement officer under investigation by the Commission shall disclose his interest or connection forthwith to a Commissioner and shall not be involved in any investigation conducted by the Commission as regards that enforcement officer.

Complaints Committee

16. (1) The Commission shall establish a Complaints Committee which shall consist of such number of officers of the Commission as the Commission deems necessary or expedient.

(2) The Complaints Committee shall have the following duties and responsibilities:

(a) to receive complaints of misconduct from any person to the Commission;

(b) to keep and maintain a register of all complaints received by the Commission;

(c) to assess the complaints in accordance with section 23;

(d) to determine the nature of the misconduct;

(e) to conduct any preliminary investigation into the complaint under section 25; and

(f) to inform the complainant of the status of his complaint and the actions taken after the Commission has made its findings.

Task Force

17. (1) The Commission may establish such number of Task Forces as it deems necessary to assist the Commission in performing its functions effectively and efficiently under this Act.

(2) The members of a Task Force may comprise the officers of the Commission and the consultants engaged under section 15.

(3) A Task Force shall perform such functions and duties conferred upon the Task Force under this Act.

(4) The members of a Task Force shall have all the powers of investigation as contained in the Criminal Procedure Code [*Act 593*] and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.

(5) The Commission may establish joint task forces with any other authorities as it deems necessary.

Other committees

18. The Commission may establish such other committees as it deems necessary or expedient to assist it in the performance of its functions.

Authority card

19. (1) A certificate of appointment in the form of an authority card shall be issued to a Commissioner, the chief executive officer, other officers of the Commission and a member of a Task Force, and such card shall be signed by the Chairman of the Commission.

(2) The Commissioner, chief executive officer, other officer of the Commission or a member of a Task Force acting under this Act shall, on demand, declare his office and produce to the person against whom he is acting or from whom he seeks any information the authority card issued to him under subsection (1).

Use of staff, facilities or services

20. (1) The Commission may arrange for the use of the services of—

(a) any staff or facilities of a government department or a local or statutory authority; or

(b) any enforcement officer to cooperate with, or assist, a Task Force in the exercise of its duties, or to assist the Commission in the performance of its functions under this Act.

(2) It shall be the duty of the government departments or local or statutory authority or enforcement officer referred to in subsection (1) to comply with this section.

Cooperation with other agencies

21. (1) In performing its investigative functions, the Commission may work in cooperation with any other investigation and law enforcement agencies and any State or Federal government departments or other persons as the Commission deems appropriate.

(2) In performing its other relevant functions, the Commission may work in cooperation with educational institutions and such other persons as the Commission deems appropriate.

(3) The Commission may consult with and disseminate intelligence and information to any other investigation and law enforcement agencies and such other persons, including any task force, as the Commission deems appropriate.

(4) If the Commission disseminates intelligence or information to any agency or person under this section on the understanding that the intelligence or information is confidential, the agency or person is subject to the secrecy provisions in relation to the intelligence or information.

PART IV

DEALING WITH COMPLAINTS

General power of the Commission in dealing with complaints

22. (1) The Commission shall have power to investigate any complaints of misconduct it receives from a member of the public or that are referred to it by any person.

(2) The Commission shall have power to refer any complaints of misconduct it receives or that are referred to it under subsection (1) of a disciplinary nature to the appropriate Disciplinary Authority.

(3) The Commission shall have power to refer any complaints of misconduct it receives or that are referred to it under subsection (1) of a criminal nature to the Public Prosecutor.

Complaints of misconduct

23. (1) Any person may make or refer a complaint of misconduct against an enforcement agency or an enforcement officer to the Commission.

(2) A complaint shall be made in writing and shall include the following:

(a) particulars of the complainant;

(b) particulars of the enforcement officer, if identifiable, whose action or inaction is the basis of the complaint, or if not identifiable, a description or any other particulars that are sufficient to enable him to be identified;

(c) particulars of the misconduct complained of, including the date of and place where the misconduct occurred;

(d) particulars of the person affected by the act or inaction of the enforcement officer, if that person is not the complainant;

(e) particulars of any other person who was present during or involved in the act or inaction complained of, if any; and

(f) any other details, including photographs and documents, that the complainant deems appropriate or necessary to include in the complaint.

(3) Notwithstanding subsection (2), a complaint shall not be rejected for want of any of the particulars or details specified in paragraphs (2)*(a)* to *(f)* unless the complaint becomes impossible or impracticable to be assessed without such particulars or details.

(4) The Complaints Committee shall immediately record all complaints received by the Commission in the Register of Complaints and assess the complaints as to whether—

(a) the conduct complained of is within the scope of misconduct as specified in section 24;

(b) the complaint is frivolous, vexatious or not in good faith;

(c) the subject matter of the complaint is trivial;

(d) the misconduct complained of occurred at too remote a time to justify an investigation;

(e) there is or was available to the complainant an alternative and satisfactory means of redress; and

(f) the subject matter of the complaint has been finally determined by any court or is the subject matter of any proceedings pending in any court, including any appeal proceedings.

Scope of misconduct

24. (1) The Commission may receive, or be referred, complaints on the following:

(a) act or inaction by an enforcement officer which is contrary to any written law;

(b) any act or inaction of an enforcement officer which, in the opinion of the Commission, is unreasonable, unjust, oppressive or improperly discriminatory;

(c) any act or inaction of an enforcement officer which is, in the opinion of the Commission, committed on improper motives, irrelevant grounds or irrelevant consideration;

(d) any act or inaction of an enforcement officer which is based on a mistake of law or fact;

(e) any act or inaction of an enforcement officer of which grounds should have been given but were not given;

(f) the failure of an enforcement officer to follow rules and procedures laid down by law or by the appropriate authority; and

(g) the commission of any criminal offence by an enforcement officer.

(2) The misconduct of an enforcement officer may be investigated by the Commission notwithstanding that—

(a) the act or inaction also involves persons who are not enforcement officers; or

(b) the act or inaction occurs while the enforcement officer was not on official duty.

Preliminary investigation

25. A preliminary investigation may be conducted by the Complaints Committee for the purpose of obtaining further information in order to determine—

(a) the nature of the misconduct complained of; and

(b) whether the Commission should proceed with a full investigation into the complaint.

Findings of the Complaints Committee

26. (1) Where the Complaints Committee is satisfied that a disciplinary offence is disclosed and that the complaint would be better dealt with by the appropriate Disciplinary Authority, the Complaints Committee shall immediately make a report to the Commission of the complaint together with a recommendation to refer the complaint to the appropriate Disciplinary Authority for the Commission's consideration.

(2) Where the Complaints Committee is satisfied that an offence under Part IV of the Malaysian Anti-Corruption Commission Act 2009 is disclosed, the Complaints Committee shall immediately make a report to the Commission of the complaint together with a recommendation to refer the complaint to the Malaysian Anti-Corruption Commission for the Commission's consideration.

(3) Where the Complaints Committee is satisfied that a misconduct as specified in section 24 is disclosed and that there is a basis for the Commission to commence a full investigation, the Complaints Committee shall immediately make a report to the Commission of the complaint together with a recommendation for the Commission to commence a full investigation into the misconduct for its consideration.

(4) Where the Complaints Committee is satisfied that—

(a) the complaint does not fall within the scope of misconduct as specified in section 24;

(b) the complaint is of a frivolous or vexatious nature, or it was not made in good faith;

(c) the subject matter of the complaint is trivial;

(d) the misconduct complained of occurred too remote a time to justify an investigation;

(e) there is or was available to the complainant an alternative and satisfactory means of redress; or

(f) the subject matter of the complaint has been finally determined by any court or is the subject matter of any proceedings pending in any court, including any appeal proceedings,

the Complaints Committee shall make a report to the Commission of the complaint and its finding, including the grounds for its finding, and make a recommendation for the Commission to reject the complaint.

Action by Commission after Complaints Committee's findings

27. (1) Where the Commission, after considering the report and the recommendation of the Complaints Committee under subsection 26(1), agrees with the recommendation of the Complaints Committee and the Commission does not wish to commence a full investigation into the complaint, the Commission shall refer the complaint to the appropriate Disciplinary Authority for its action.

(2) Where the Commission, after considering the report and the recommendation of the Complaints Committee under subsection 26(2), agrees with the recommendation of the Complaints Committee, the Commission shall refer the complaint to the Malaysian Anti-Corruption Commission for its action.

(3) Where the Commission has referred a complaint to the appropriate Disciplinary Authority under subsection (1) or the Malaysian Anti-Corruption Commission under subsection (2) for action, the Disciplinary Authority or the Malaysian Anti-Corruption Commission, as the case may be, shall conduct its own investigation and communicate its finding to the Commission within thirty days from the date of receipt of the complaint from the Commission.

(4) Where the Commission, after considering the report and the recommendation of the Complaints Committee under subsection 26(3), agrees with the recommendation of the Complaints Committee

and is of the opinion that it should commence a full investigation into the complaint, the Commission shall inform—

(a) in the case where the complaint of misconduct is of a disciplinary nature, the appropriate Disciplinary Authority; or

(b) in the case where the complaint of misconduct is of a criminal nature, the relevant enforcement agency and the Public Prosecutor,

and commence the investigation into the complaint under this Act.

(5) Where the Commission, after considering the report, finding and recommendation of the Complaints Committee under subsection 26(4), agrees with the finding and recommendation of the Complaints Committee and the Commission does not wish to investigate the complaint, the Commission shall reject the complaint.

(6) If the Commission is not satisfied with the report and recommendation or finding of the Complaints Committee under subsection 26(1), (2), (3) or (4), the Commission shall direct a Task Force to make further investigation into the complaint.

(7) The Task Force shall report the findings of its investigation to the Commission within fourteen days for a final decision of the Commission.

(8) The Commission shall inform the complainant of the action taken under this section.

Commission may commence investigation on own initiative

28. Without prejudice to section 27, the Commission may commence an investigation in respect of a misconduct it becomes aware of on its own initiative only if the Commission is satisfied that the matter is of significant interest to the public or that it is in the public interest to do so.

Prevention of dual investigation

29. On being informed by the Commission under subsection 27(4) that the Commission is investigating a complaint of misconduct

of a disciplinary nature or a criminal nature, the Disciplinary Authority or the relevant enforcement agency, as the case may be—

(a) shall not conduct any disciplinary proceedings or investigation into a subject matter which is the same subject matter of the complaint of misconduct; or

(b) where a complaint as regards the same subject matter had been made or referred to the Disciplinary Authority or to the enforcement agency by any other person and the Disciplinary Authority or enforcement agency is conducting disciplinary proceedings or an investigation into the complaint against the enforcement officer concerned, shall immediately cease its disciplinary proceedings or investigation into that complaint.

Findings of the Commission after investigation

30. (1) Where the Commission has completed its investigation into any complaint of misconduct under this Act and finds that—

(a) the misconduct complained of is not substantiated, it shall record its finding and inform the complainant;

(b) the misconduct constitutes a disciplinary offence, it shall record its finding and make a recommendation as to the punishment that should be imposed upon the enforcement officer concerned and refer the matter to the appropriate Disciplinary Authority for its action; or

(c) the misconduct constitutes a criminal offence, it shall record its finding and compile its report and the investigation papers and refer the matter to the Public Prosecutor.

(2) Where the Commission has referred a matter to the appropriate Disciplinary Authority under paragraph (1)*(b),* the Disciplinary Authority shall inform the Commission of its action and the grounds of its decision within fourteen days from the date of receipt of the finding and recommendation.

(3) Where the Commission has referred a matter to the Public Prosecutor under paragraph (1)*(c),* the Public Prosecutor shall communicate his decision to the Commission within fourteen days from the date of receipt of the finding, report and investigation papers.

(4) Where a charge is preferred by the Public Prosecutor, any evidence obtained by the Commission under this Act may, notwithstanding the provisions of any other written law to the contrary, be used for the purpose of criminal proceedings.

(5) The Commission shall make public its finding and inform the complainant of its finding and any action taken by the Disciplinary Authority or the Public Prosecutor under this section.

PART V

INVESTIGATION POWERS

Powers of the Commission relating to investigation

31. (1) The Commission shall, for the purposes of an investigation under this Act, have the power—

(a) to conduct hearings if the Commission considers necessary or desirable to do so;

(b) to procure and receive all such evidence, whether written or oral, and to examine all such persons as witnesses as the Commission considers necessary or desirable to procure or examine;

(c) to require the evidence, whether written or oral, of any witnesses to be made on oath or affirmation (such oath or affirmation to be that which could be required of the witness if he was giving evidence in a court of law) or by statutory declaration;

(d) to summon any person residing in Malaysia to attend any meeting or hearing of the Commission to give evidence or produce any document or other thing in his possession;

(e) to issue a warrant of arrest to compel the attendance of any person who, after having been summoned to attend, fails to do so and does not excuse such failure to the satisfaction of the Commission, and to order such person to pay all costs which may have been occasioned in compelling his attendance or by reason of his refusal to obey the summons, and also to fine such person a sum not exceeding five thousand ringgit;

(f) to fine in a sum not exceeding five thousand ringgit any person who, being required by the Commission to give evidence on affirmation or to produce a document or other thing, refuses to do so and does not excuse such refusal to the satisfaction of the Commission;

(g) to admit, notwithstanding any of the provisions of the Evidence Act 1950 [*Act 56*], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings;

(h) to award any person who has attended any meeting or hearing of the Commission such sums as in the opinion of the Commission may have been reasonably incurred by such person by reason of such attendance; and

(i) to admit or exclude the public from such hearing or any part thereof.

(2) Notwithstanding paragraph (1)*(d)*, where a person summoned is a person under detention under any written law, such summons shall be issued in accordance with the laws applicable in relation to the place of detention.

Power to obtain documents or other things

32. (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 Commissioner or a member of the Task Force as specified in the notice; and

(b) to produce any document or evidence, as 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.

(3) A person shall not, without reasonable excuse, refuse or fail to comply with a notice served on him under this section.

(4) A person who fails, without reasonable excuse, to comply with a notice served under subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Legal obligation to give information

33. (1) Subject to such limitation as is provided under this Act, every person required by a Commissioner or a member of the Task Force to give any information on any subject which the Commissioner or member of the Task Force has a duty to investigate under this Act, and which is in that person's power to give, shall be legally bound to give the information.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Hearings

34. (1) For the purposes of an investigation, the Commission may hold a hearing if the Commission deems it necessary or expedient.

(2) A hearing shall be presided by such number of Commissioners as the Commission deems fit on a case-to-case basis.

(3) A person appearing at a hearing is entitled to be informed of the general scope and purpose of the hearing, unless the Commission is of the opinion that to disclose such information would seriously prejudice the investigation concerned.

(4) The Commission may be assisted by a legal officer appointed under section 14.

Public and closed hearings

35. (1) All hearings are to be open to the public.

(2) Notwithstanding subsection (1), a hearing or part of a hearing may be closed to the public if the Commission is satisfied that—

(a) information or documents that may be given, or a matter that may arise during the public hearing or a part of the hearing is of a confidential nature; or

(b) the hearing or part of the hearing of a matter or part of a matter would not be conducive to the due administration of this Act if the hearing or part of the hearing is open to the public.

(3) In making these decisions, the Commission is obliged to have regard to any matters that it considers to be related to public interest.

(4) The Commission may give directions as to the persons who may be present at a hearing when it is being held as a closed hearing, and no person shall be present at the hearing in contravention of any such direction.

Right of appearance of interested person

36. If it is 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 authorize the person to appear at the hearing or a specified part of the hearing.

Legal representation

37. (1) The Commission may, in relation to a hearing, authorize—

(a) a person giving evidence at the hearing; or

(b) a person referred to in section 36,

to be represented by a legal practitioner at the hearing or a specified part of the hearing.

(2) The Commission may be assisted by a legal officer appointed under section 14 should the Commission deems it necessary.

Examination of witnesses

38. (1) A person authorized or required to appear at a hearing or his legal practitioner may, with the leave of the Commission, examine any witness on any matter that the Commission considers relevant.

(2) The legal officer appointed by the Commission to assist it may examine any witness on any matter that the Commission considers relevant.

(3) A witness examined under this section has the same protection and is subject to the same liabilities as if examined by a Commissioner.

Privileged documents, answers, *etc.*

39. (1) A witness summoned to attend or appearing before the Commission at a hearing shall not refuse—

(a) to be sworn or to make an affirmation;

(b) to answer any question relevant to an investigation put to the witness by a Commissioner at the hearing; or

(c) to produce any document or other thing in the custody or control of the witness that the witness is required by the summons or by the Commission 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, document or other thing may incriminate or tend to incriminate the witness, or on any other ground of privilege, duty of secrecy or other restriction on disclosure, or on any other ground.

(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, but may be used in deciding whether to make an order for the purpose of any disciplinary proceedings held by the appropriate Disciplinary Authority.

(4) Nothing in this section makes inadmissible—

(a) any answer, document or other thing in proceedings for an offence against this Act or in proceedings for contempt under this Act;

(b) any answer, document or other thing in any civil or criminal 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); or

(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.

Power to search with warrant

40. (1) If it appears to a Magistrate, upon written information on oath from a Commissioner or a member of the Task Force and after such inquiry as the Magistrate considers necessary, that there is reasonable cause to believe that—

(a) any premises has been used for; or

(b) in any premises, there is evidence necessary to investigate,

the misconduct, the Magistrate may issue a warrant authorizing the Commissioner or a member of the Task Force named therein, at any reasonable time by day or night and with or without assistance, to enter the premises and if need be, by force.

(2) A warrant issued under subsection (1) may authorize the Commissioner or the member of the Task Force to—

(a) search the premises for, and to seize or remove from the premises, any conveyance, contrivance, equipment, book, record, document or other article that is reasonably believed to furnish evidence of the misconduct;

(b) take samples of any thing found in the premises for the purposes of ascertaining, by testing or otherwise, whether the misconduct has been committed; and

(c) make copies of or take extracts from any book, record, document or other article found in the premises.

(3) The Commissioner or member of the Task Force entering any premises under this section may take with him such other persons and equipment as may appear to him to be necessary.

(4) The Commissioner or member of the Task Force may, in the exercise of his powers under this section, if it is necessary so to do—

(a) break open any outer or inner door of the premises or any fence, enclosure, gate or other obstruction to the premises, in order to effect entry into the premises;

(b) remove by force any obstruction to entry, search, seizure and removal as he is empowered to effect under this section; and

(c) detain any person found in the premises until the search has been completed.

Search and seizure without warrant

41. Whenever the Commissioner or member of the Task Force has reasonable cause to believe that any conveyance, contrivance, equipment, book, record, document or other article that is reasonably believed to furnish evidence of the misconduct is likely to be found in or on any place, premises, person or conveyance and that by reason of delay in obtaining a warrant under section 40 the object of the search may be frustrated, he may, without warrant, with such assistance and force as is necessary—

(a) enter and search such place or premises;

(b) stop and search such person or conveyance; and

(c) seize any conveyance, contrivance, equipment, book, record, document or other article which may be found and may be evidence of the misconduct.

List of things seized

42. (1) Where any seizure is made under this Act, the Commissioner or the member of the Task Force making the seizure shall prepare a list of every conveyance, contrivance, equipment, book, record, document or other article seized and of the place in which it was found and shall sign the list.

(2) The list shall be given to—

(a) the occupant of the place or premises where the conveyance, contrivance, equipment, book, record, document or other article seized was found; and

(b) the person in control or in charge of the conveyance, where the seizure is made in regards of the conveyance or anything in the conveyance.

(3) Where the seizure is made in or from any place or premises which are unoccupied, the Commissioner or member of the Task Force shall whenever possible post a list of things seized conspicuously at the place or premises.

Release of seized conveyance, *etc.*

43. A Commissioner or member of the Task Force authorized by a Commissioner may, where he thinks fit, at any time direct that any conveyance, contrivance, equipment, book, record, document or other article seized under this Act be released to the person from whose possession, custody or control it was seized.

PART VI

OFFENCES

Threats against witnesses

44. (1) A person who hinders or attempts to hinder any person from giving evidence before the Commission or by threats, deters or attempts to deter any person from giving such evidence, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand ringgit or to both.

(2) A person who threatens, insults or injures any person for having given evidence, or on account of the evidence which the person has given before the Commission, shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand ringgit or to both.

Contempt

45. (1) A person who commits an act of contempt against a Commissioner commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand ringgit or to both.

(2) For the purpose of this section, an "act of contempt" means—

(a) any act of disrespect or any insult or threat offered to a Commissioner while sitting in a hearing; and

(b) any act of disrespect or any insult or threat to a Commissioner at any other time and place on account of him proceeding in his capacity as a Commissioner.

PART VII

GENERAL

Funds

46. The Government shall make allocation of adequate funds annually for the purposes of the Commission to enable the Commission to discharge its functions effectively under this Act.

Statutory Bodies (Accounts and Annual Reports) Act 1980

47. The Statutory Bodies (Accounts and Annual Reports) Act 1980 [*Act 240*] shall apply to the Commission.

Annual report

48. (1) The Commission shall not later than the first meeting of Parliament of the following year, submit an annual report to Parliament of all its activities during the year to which the report relates.

(2) The report shall contain a list of all matters referred to the Commission and the action taken in respect of them.

Protection of Commissioners, officers and staff of the Commission

49. No action, suit, prosecution or proceeding shall be instituted in any court against the Commissioners, the chief executive officer, other officers and staff of the Commission and any member of the Task Force in respect of any act or thing done or committed by him in such capacity provided that he at the time had carried out his functions in good faith.

Public Authorities Protection Act 1948

50. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Commission or against any Commissioner, officer of the Commission or member of the Task Force in respect of any act or thing done or committed by him in such capacity.

Public servant

51. Every Commissioner, officer of the Commission or member of the Task Force, while discharging his duties as such Commissioner, officer or member of the Task Force shall be deemed to be a public servant within the meaning of the Penal Code [*Act 574*].

Obligation of secrecy

52. (1) Except for the purposes of this Act or for the purposes of any civil or criminal proceedings under any written law or where otherwise authorized by the Commission—

(a) no Commissioner, officer and staff of the Commission and member of the Task Force, whether during or after his tenure of office or employment, shall disclose any information obtained by him in the course of his duties; and

(b) no other person who has by any means access to any information or documents relating to the affairs of the Commission shall disclose such information or document.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand ringgit or to both.

Institution and conduct of prosecution

53. No prosecution in respect of any offence under this Act shall be instituted except by or with written consent of the Public Prosecutor.

Regulations

54. The Prime Minister may make regulations for the purpose of carrying out or giving effect to the provisions of this Act.

Power of Prime Minister to amend Schedule

55. The Prime Minister may by order published in the *Gazette* amend the Schedule.

SCHEDULE

[Subsection 1(4)]

ENFORCEMENT AGENCIES TO WHICH THIS ACT APPLIES

National Anti-Drugs Agency

Malaysian Maritime Enforcement Agency

Ikatan Relawan Rakyat Malaysia (RELA)

Department of Environment

Immigration Department of Malaysia

Royal Customs Department of Malaysia

Department of Occupational Safety and Health

National Registration Department

Civil Aviation Department

Road Transport Department

Industrial Relations Department

Fisheries Department

Department of Wildlife and National Parks

Labour Department

Ministry of Health (Enforcement Division)

Ministry of Tourism Malaysia (Enforcement Unit of Licensing Division)

Ministry of Domestic Trade and Consumer Affairs (Enforcement Division)

Ministry of Housing and Local Government (Enforcement Division)

Commercial Vehicles Licensing Board

Registrar of Businesses

Royal Malaysia Police

EXPLANATORY STATEMENT

This Enforcement Agency Integrity Commission Bill 2009 ("the proposed Act") seeks to provide for the establishment of the Enforcement Agency Integrity Commission ("Commission") and to provide for its functions and powers and other matters connected therewith. The objects of the proposed Act are to improve the integrity of the enforcement agencies, to reduce misconduct amongst enforcement officers and to promote public confidence in the enforcement agencies.

PART I

2. Part I of the proposed Act deals with preliminary matters.

Clause 1 contains the short title, commencement and the application of the proposed Act.

Clause 2 contains the definitions of words and expressions used in the proposed Act.

PART II

3. Part II of the proposed Act deals with the establishment and functions of the Commission.

Clause 3 seeks to provide for the establishment of the Commission.

Clause 4 deals with the functions of the Commission.

Clause 5 seeks to provide for the constitution of the Commission.

Clause 6 provides for the payment of remuneration and allowances to the Commissioners.

Clause 7 contains provision on the terms of office for the Commissioners.

Clause 8 spells out the circumstances in which the office of a Commissioner becomes vacant.

Clause 9 contains provisions on the meetings of the Commission.

Clause 10 sets out the circumstances under which the Deputy Chairman or other Commissioners may exercise the function of the Chairman.

Clause 11 provides that a Commissioner must disclose his interest in any matter under discussion by the Commission or in any proceedings or hearing before the Commission.

Clause 12 sets out that the functions of the Commission are exercisable by a Commissioner.

Part III

4. Part III of the proposed Act deals with the administration of the Commission.

Clause 13 seeks to empower the Commission to appoint a Secretary who will be the chief executive officer.

Clause 14 seeks to empower the Commission to appoint its officers and staff.

Clause 15 seeks to empower the Commission to engage consultants to assist it in the performance of its functions and powers.

Clause 16 deals with the establishment of the Complaints Committee.

Clause 17 deals with the establishment of the Task Force.

Clause 18 seeks to allow the Commission to establish such other committees as it deems necessary.

Clause 19 provides for the issue of authority cards to the Commissioners, officers of the Commission and members of the Task Force.

Clause 20 seeks to allow the Commission to make arrangements with other government department or local or statutory authority for the use of their staff or facilities, and arrangements with the enforcement agencies for the assistance of enforcement officers to cooperate or assist the Commission in the performance of its functions under the proposed Act.

Clause 21 seeks to allow the Commission to work in cooperation with any other investigation and law enforcement agencies, educational institutions and other persons for the performance of its functions.

Part IV

5. Part IV of the proposed Act consists of provisions on dealing with complaints by the Commission.

Clause 22 sets out the general powers of the Commission in dealing with complaints.

Clause 23 specifies that any person may make or refer a complaint of misconduct against an enforcement officer or an enforcement agency to the Commission.

Clause 24 specifies the scope of misconduct that may be received by or referred to the Commission.

Clause 25 seeks to allow the Complaints Committee to conduct preliminary investigation for the purpose of obtaining further information on the complaints.

Clause 26 deals with the findings of the Complaints Committee.

Clause 27 deals with the actions that may be taken by the Commission after considering the reports of findings of the Complaints Committee and its recommendations as regards the complaints.

Clause 28 seeks to enable the Commission to commence investigation into a misconduct on its own initiative.

Clause 29 provides that the appropriate Disciplinary Authority or the relevant enforcement agencies shall not conduct or shall cease in conducting any disciplinary proceedings or investigation as regards any subject matter which is being investigated by the Commission.

Clause 30 deals with the findings of the Commission after the completion of an investigation.

Part V

6. Part V of the proposed Act consists of provisions dealing with the powers of investigation of the Commission.

Clause 31 provides for the general powers of investigation of the Commission.

Clause 32 deals with the power of the Commission to obtain documents or other things from a person.

Clause 33 imposes a legal obligation on a person to give information to the Commission.

Clause 34 relates to the power of the Commission to conduct hearings. Generally, the hearings are to be open to the public. However, there are exceptions and these exceptions are provided for in *clause 35*.

Clause 36 seeks to allow the Commission to authorize interested persons in any subject matter of a hearing to appear at the hearing.

Clause 37 seeks to allow the Commission to authorize a person giving evidence at a hearing or an interested person appearing in a hearing to be represented by a legal practitioner.

Clause 38 deals with the examination of witnesses at a hearing whilst *clause 39* sets out that a witness is not excused from answering any question or producing any document or other thing on any grounds.

Clauses 40 and *41* deal with provisions relating to the power of search and seizure with warrant and search and seizure without warrant of the Commissioners and members of the Task Force for the purpose of investigation into a misconduct.

Clause 42 seeks to impose a duty on the Commissioners or members of the Task Force to prepare a list of things seized.

Clause 43 deals with the release of anything seized by the Commissioners or members of the Task Force under the proposed Act.

Part VI

7. Part VI of the proposed Act consists of provisions dealing with offences.

Clause 44 makes it an offence for a person to hinder or threaten any person from giving evidence under the proposed Act whilst *clause 45* deals with acts of contempt against a Commissioner.

Part VII

8. Part VII of the proposed Act consists of general provisions.

Clause 46 deals with the fund of the Commission.

Clause 47 seeks to provide that the Statutory Bodies (Account and Annual Reports) 1980 shall apply to the Commission.

Under *clause 48*, the Commission is required to submit an annual report to Parliament.

Clause 49 provides for the protection of the Commissioners and officers and staff of the Commission, and members of the Task Force exercising any power under the proposed Act from legal suits if the acts were done in good faith.

Clause 50 provides for the Public Authorities Protection Act 1948 to be applicable to the Commission and its officers or members of the Task Force.

Clause 51 provides that every Commissioner, officer of the Commission and members of the Task Force shall be deemed to be a public servant within the meaning of the Penal Code while discharging his duties as such.

Clause 52 prohibits the disclosure of information relating to the affairs of the Commission except under certain circumstances.

Clause 53 seeks to provide for the institution and conduct of prosecution.

Clause 54 seeks to empower the Prime Minister to make regulations.

Clause 55 seeks to empower the Prime Minister to amend the Schedule by order published in the *Gazette*.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U^2)2678]