

INDEPENDENT POLICE COMPLAINTS OF MISCONDUCT COMMISSION BILL 2019

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A BILL

i n t i t u l e d

An Act to provide for the establishment of the Independent Police Complaints of Misconduct Commission and to provide for its functions and powers, matters relating to complaints of misconduct, investigation of misconduct, proceedings to deal with misconduct, etc., and for related matters.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I
PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Independent Police Complaints of Misconduct Commission Act 2019.

(2) This Act comes into operation on a date to be appointed by the Prime Minister by notification in the *Gazette*.

Interpretation

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

“member of the police force” means a member of the police force established under Article 132 of the Federal Constitution;

“member of the commission” means the Chairman, Deputy Chairman and other members of the Commission appointed under section 6;

“public body” includes—

- (a) the Government of Malaysia;
- (b) the Government of a State;
- (c) any local authority and any other statutory authority; and
- (d) any department or service of the Government of Malaysia, the Government of a State, or a local authority;

“committee” means a committee established under section 18;

“Complaints Committee” means the Complaints Committee established under section 23;

“Disciplinary Board” means the Disciplinary Board established under subsection 31(3);

“Task Force” means a Task Force established under section 29;

“officer of the Commission” means any officer appointed under section 16 and includes the Secretary appointed under section 14;

“misconduct” means misconduct as specified in section 22;

“Commission” means the Independent Police Complaints of Misconduct Commission established under section 3.

PART II

ESTABLISHMENT, FUNCTIONS AND POWERS OF COMMISSION

Establishment of Commission

3. (1) The Independent Police Complaints of Misconduct Commission is established.

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

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

(4) The Commission may, upon such terms as the Commission thinks fit and for the purposes of this Act—

- (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 Commission

4. The functions of the Commission shall be as follows:

- (a) to promote integrity within the police force;
- (b) to protect the interest of the public by dealing with misconduct of any member of the police force;
- (c) to formulate and put in place mechanisms for the detection, investigation and prevention of misconduct of any member of the police force;
- (d) to advise the Government and make recommendations on appropriate measures to be taken in the promotion of integrity within the police force; and
- (e) to exercise disciplinary control over all members of the police force in such manner as may be provided in this Act or any written law.

Powers of Commission

5. (1) The Commission shall have the power and may do all things necessary for, or in connection with, or incidental to, the performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1), the Commission may—

- (a) advise the Government on the enhancement of the well-being and welfare of members of the police force;
- (b) assist the Government in formulating legislation or recommend administrative measures to the Government or the police force, to promote integrity and abolish misconduct;
- (c) provide for the auditing and monitoring of particular aspects of the facilities, logistics, operations and standard operating procedure, of the police;
- (d) visit any place and premises such as police stations, police quarters, lock-ups and detention centres and to make any necessary recommendations;
- (e) study and verify any infringement of the standards operating procedure of the police and make any necessary recommendations;
- (f) receive and assess any complaint of misconduct from any person against any member of the police force and investigate the complaint; and
- (g) collect and process any information and evidence relating to any investigation under this Act and take such lawful measures and do such lawful acts as may be necessary relating to it.

Members of Commission

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

(2) No person shall be appointed as a member of the Commission if he is or was a member of the police force, or if he is a member of the public service.

Term of office

7. (1) Subject to subsection (2), a member of the Commission shall hold office for a term not exceeding three years as may be specified in his instrument of appointment and he shall be eligible for reappointment.

(2) No person shall hold the office of a member of the Commission for more than two terms consecutively.

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

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

Remuneration

8. A member of the Commission shall be paid such remuneration and allowances as the Yang di-Pertuan Agong may determine.

Vacation of office

9. The office of a member of the Commission shall be vacated—

(a) if he dies;

(b) if 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 or fine of not more than two thousand ringgit;
- (c) if he becomes a bankrupt;
- (d) if he is of unsound mind or is otherwise incapable of discharging his duties;
- (e) if he absents himself from three consecutive meetings of the Commission without leave of the Commission;
- (f) if he is elected or appointed as a member of a House of Parliament or the State Legislature of any State;
- (g) if his resignation has been accepted by the Yang di-Pertuan Agong;
- (h) if his appointment has been revoked by the Yang di-Pertuan Agong; or
- (i) if his term of appointment has expired.

Meetings

- 10.** (1) The Commission shall meet at least twice a month or as often as may be necessary for the performance of its functions.
- (2) The Chairman shall preside at all meetings of the Commission.
- (3) The quorum of a meeting of the Commission shall be five.
- (4) Every member of the Commission 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 cause minutes of all its meetings to be maintained and kept in a proper form.

(6) The Commission may invite any person or any representative from the police force to attend its meeting for the purpose of advising the Commission 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.

(7) The Commission shall regulate its own proceedings.

Temporary exercise of functions of Chairman

11. Notwithstanding subsection 10(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 member of the Commission appointed by the other members, shall perform the functions of the Chairman.

Disclosure of interest

12. A member of the Commission 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 discussion on a misconduct under this Act 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 the discussion on the misconduct and the member of the Commission shall recuse himself from taking part in such discussion or in the making of any decision by the Commission relating to, the misconduct.

Delegation of functions and powers of Commission

13. (1) The Commission may delegate its functions and powers—

- (a) to any member of the Commission;
- (b) to any committee; or
- (c) to any member of the police force.

(2) A member of the Commission, a committee or a member of the police force delegated with such functions and powers under subsection (1) shall be bound to observe and have regard to all conditions and restrictions imposed by the Commission and all requirements, procedures and matters specified by the Commission, relating to such delegation.

(3) Any function and power delegated under this section shall be performed and exercised in the name and on behalf of the Commission.

(4) A delegation under this section shall not preclude the Commission from itself performing or exercising at any time any of the delegated functions and powers.

PART III

ADMINISTRATION

Secretary

14. (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 who shall be an officer of the Commission.

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

Temporary exercise of functions of Secretary

15. The Commission may appoint any officer of the Commission to act temporarily as the Secretary during any period when—

(a) the office of the Secretary is vacant;

(b) the Secretary is absent from duty or from Malaysia; or

(c) the Secretary is, for any other reason, unable to perform the duties of his office.

Officers

16. (1) There shall be appointed such number of officers of the Commission as may be necessary to assist the Commission in discharging its functions and exercising its powers 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 government 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 a member of the police force under investigation by the Commission shall disclose his interest or connection forthwith to the Chairman and shall not be involved in any investigation conducted by the Commission as regards that member of the police force.

Consultants

17. (1) The Commission may engage any person, including retired or former members of the police force, on such terms as the Commission may impose, as consultants or to perform such services as the Commission thinks 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 a member of the police force under investigation by the Commission shall disclose his interest or connection forthwith to the Chairman and shall not be involved in any investigation conducted by the Commission as regards that member of the police force.

Committees

18. (1) The Commission may establish such committees to assist it in the performance of its functions under this Act.

(2) The Commission may elect any of its members to be the chairman of a committee.

(3) The Commission may appoint any members or officer of the Commission to be a member of any committee.

(4) A committee shall be subject to and act in accordance with any direction given to the committee by the Commission.

(5) The Commission may at any time discontinue or alter the constitution of a committee.

(6) A member of a committee shall be paid such allowances as the Prime Minister may determine.

Authority card

19. (1) For the purposes of this Act, an authority card shall be issued to a member and an officer of the Commission.

(2) The authority card shall be signed by the Chairman of the Commission and such card shall be *prima facie* evidence of the appointment under this Act.

(3) A member or an officer of the Commission 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.

Use of staff or facilities of government department, etc.

20. (1) The Commission may request and 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 government officer including a member of the police force to cooperate with, or assist 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 government officer referred to in subsection (1) to comply with a request under that subsection.

Cooperation with other agencies

21. (1) The Commission may, in exercising its functions, work in cooperation with other enforcement agencies, any Federal or State government department, or any person or body, as the Commission thinks appropriate.

(2) The Commission may consult with, and disseminate information to, other enforcement agencies, any Federal or State government department, or any person or body as the Commission thinks appropriate.

(3) Any information disseminated under this section shall be treated as confidential, and any person or body who received such information shall be subject to the secrecy provisions of section 44 in relation to the information.

PART IV

COMPLAINT OF MISCONDUCT

Scope of misconduct

22. (1) The Commission may receive or deal with complaints against any member of the police force referred to it, on the following misconduct:

- (a) any act or inaction which is contrary to any written law;
- (b) non-compliance of rules and standard operating procedure of the police;

- (c) any act or inaction which is unreasonable, unjust, oppressive or improperly discriminatory;
- (d) any act or inaction which is committed on improper motives, irrelevant grounds or irrelevant consideration;
- (e) omission to provide grounds in cases where grounds should have been provided; and
- (f) the commission of any criminal offence by a member of the police force.

(2) Notwithstanding subsection (1), misconduct shall not include any act regulated under sections 96 and 97 of the Police Act 1967 [*Act 344*].

Complaints Committee

23. The Commission shall establish a Complaints Committee which shall consist of such number of officers of the Commission.

Complaint against police

24. (1) Any complaint made by any person against the police force or a member of the police force shall be made in writing and be addressed to the Complaints Committee.

(2) Where any complaint against the police force or a member of the police force is made by any person directly to the Head of Department, the Head of Department shall immediately refer such complaint to the Complaints Committee.

(3) The Complaints Committee shall deliberate on the complaint received and decide on the classification of such complaints as specified in section 25.

(4) In this section, "Head of Department" means any member of the police force charged with such control as is provided for in section 6 of the Police Act 1967.

Classification of complaints

25. The classification of complaints shall be as follows:

- (a) where the complaint involves any offence under Part IV of the Malaysian Anti-Corruption Act 2009 [Act 694], the complaint shall be referred to the Malaysian Anti-Corruption Commission;
- (b) where the complaint involves any criminal offence under any other written law, the complaint shall be referred to the relevant authority;
- (c) where the complaint involves any misconduct mentioned in section 22, the complaint shall be referred to any officer of the Commission for investigation; and
- (d) where—
 - (i) the complaint is frivolous, vexatious or not made in good faith, or the subject matter of the complaint is trivial;
 - (ii) the misconduct complained of occurred at too remote a time to justify an investigation;
 - (iii) there is or was available to the complainant an alternative and satisfactory means of redress;
 - (iv) 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; or
 - (v) the complaint is repetitious and contains no fresh allegation which would significantly affect the content of the complaint,

the Complaints Committee shall recommend to the Commission to reject the complaint.

PART V

INVESTIGATION POWERS

Power to examine persons

26. (1) An officer of the Commission may, in conducting any investigation under this Act, by a written notice—

- (a) order any member of the police force or any officer of a public body or any person to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation; or
- (b) order any member of the police force or any officer of a public body or any person to furnish a statement in writing made on oath or affirmation setting out therein all such information which may be required under the notice, being information which, in the opinion of the officer of the Commission, would be of assistance in the investigation, within the time specified by such officer of the Commission.

(2) A person to whom a written notice has been given under paragraph (1)(a) shall—

- (a) attend in accordance with the terms of the notice to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and
- (b) during such examination, disclose all information which is within his knowledge, or which is available to him, in respect of the matter in relation to which he is being examined, and answer any question put to him truthfully and to the best of his knowledge and belief.

(3) An officer of the Commission examining a person under paragraph (1)(a) shall record in writing any statement made by the person and the statement so recorded shall be read to and signed by the person, and where such person refuses to sign the record, the officer shall endorse thereon under his hand the fact of such refusal and the reasons for the refusal, if any, stated by the person examined.

(4) Any person who contravenes this section 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.

Power to obtain documents or other things

27. (1) For the purpose of an investigation under this Act, the Commission may, by notice served on any member of the police force or any officer of a public body or any person, require the member of the police force, officer of the public body, or the person, to produce documents or other things related to the investigation or which in the opinion of the Commission are relevant.

(2) A notice under this section—

(a) shall specify or describe the documents or other things concerned; and

(b) shall fix a time and date for compliance of the notice.

(3) The notice may provide that the requirement may be satisfied by some other person or class of persons acting on behalf of any member of the police force, any officer of the public body or any person and may, but need not, specify the person or class of persons who may so act.

(4) Any person who has been served with a notice under this section—

(a) who fails to comply with such notice; or

(b) who furnishes any information knowing it to be false or misleading in a material particular,

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.

Findings of investigation

28. (1) The officer of the Commission shall, upon the completion of any investigation, submit his findings to the Complaints Committee.

(2) The Complaints Committee may, upon considering the findings of the officer of the Commission, take the following action:

- (a) where the findings disclosed any offences under Part IV of the Malaysian Anti-Corruption Act 2009, refer the findings to the Malaysian Anti-Corruption Commission;
- (b) where the findings disclosed any criminal offence under any written law, refer the findings to the relevant authority;
- (c) where the findings disclosed any misconduct, refer the findings of misconduct to the Commission for the purpose of commencing of proceedings to deal with a misconduct under Part VI; and
- (d) where the findings disclosed no misconduct, record the findings.

(3) The Complaints Committee shall inform the complainant of the action taken on the complaint.

Task Force

29. (1) The Commission may establish such number of Task Forces to assist the Commission in the investigation of misconduct under this Act.

(2) The members of the Task Force may comprise of the officers of the Commission and the consultants engaged under section 17.

(3) For the purpose of investigating any incident under section 47, 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.

Commission may initiate investigation

30. (1) Notwithstanding anything to the contrary in this Act, the Commission may commence an investigation on its own initiative but only if the Commission is satisfied that the subject matter of the investigation is of significant interest to the public or that it is in the public interest to do so whether or not there is a complaint of misconduct relating to it.

(2) The investigation referred to in subsection (1) shall be conducted in accordance with Part V of this Act.

PART VI

PROCEEDINGS TO DEAL WITH MISCONDUCT

Disciplinary authority

31. (1) The Commission shall have disciplinary authority over any misconduct committed by any member of the police force.

(2) The Commission may exercise disciplinary jurisdiction over any complaint concerning the misconduct of any member of the police force.

(3) The Commission shall establish a Disciplinary Board which shall have the jurisdiction, and consist of members, as specified in the Schedule.

(4) Notwithstanding subsection (3), where the complaint of misconduct is against the Inspector General of Police, the Chief Secretary to the Government shall establish a Special Disciplinary Board to hear the complaint and the proceedings before the Special Disciplinary Board shall be conducted in accordance with regulations made under Article 132 of the Federal Constitution.

Proceedings to deal with misconduct

32. (1) The Disciplinary Board may, upon considering the findings under section 28 and upon completion of an investigation under section 30, conduct proceedings to deal with a misconduct.

(2) The proceedings to deal with a misconduct shall be conducted in accordance with regulations made under this Act.

(3) The Disciplinary Board shall complete the proceedings to deal with any misconduct in such manner as the Commission considers most appropriate for a just and expeditious disposal.

Punishment for misconduct

33. (1) The Disciplinary Board may, impose any or more of the following punishments:

- (a) warning;
- (b) fine;
- (c) forfeiture of emoluments;
- (d) deferrals of salary movements;
- (e) reduction of salary;
- (f) reduction in rank; or
- (g) dismissal.

(2) The imposition of the punishment specified under subsection (1) shall be made in accordance with regulations made under this Act.

PART VII

OFFENCES

Threats against person who gives evidence

34. (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 a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years 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, commit 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.

Contempt

35. (1) A person who commits an act of contempt against any member of the Commission 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.

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

- (a) any act of disrespect or any insult or any threat to any member of the Commission at any time and place on account of him proceeding in his capacity as a member of the Commission; or
- (b) any act other than that provided in paragraph (a) that, if the Commission were a court of law having power to commit for contempt, would be contempt of that court.

PART VIII
MISCELLANEOUS

Surcharge

36. (1) The Commission may impose a surcharge on any member of the police force in accordance with the Financial Procedure Act 1957 [*Act 61*].

(2) Every imposition of surcharge under subsection (1) shall be recorded in the members of the police force’s record of service.

Supply of information

37. (1) The Commission may compile and supply the police force or any relevant authority with such statistical information or any other general information which the Commission considers should be brought to the attention of the police force or relevant authority in connection with the functions of the Commission under section 4 and powers under section 5 to enable the police force or relevant authority to carry out their functions under any written law.

(2) The Commission may request from the police force or any relevant authority any statistical information or any other general information in connection with the functions of the Commission under section 4 and powers of the Commission under section 5.

(3) The police force or any relevant authority shall inform the Commission of such action taken arising from the supply of information by the Commission under subsection (1) within fourteen days from the date of receipt of such information from the Commission.

Protection from liability

38. (1) No action, suit, prosecution or proceeding shall be instituted in any court against the Commission, any member of the Commission, or any officer of the Commission in respect of any act or thing done or committed by or on behalf of the Commission or by any member of the Commission or any officer of the Commission in such capacity provided that the Commission or such member or officer at the time had carried out its or his functions in good faith.

(2) An advocate and solicitor assisting the Commission or representing a person before the Commission has the same protection and immunity as an advocate and solicitor appearing for a party in any proceedings in the Court.

(3) Subject to this Act, a person summoned to attend or appearing before the Commission as a witness, or producing a document or other thing to the Commission, has the same protection as a witness in any proceedings in the Court.

(4) No criminal or civil liability apart from this Act attaches to a person for compliance, or purported compliance in good faith, with any requirement made under this Act; in particular, if a person gives any record of examination or a written statement on oath or affirmation or produces any document or other thing under this Act, no civil liability attaches to the person for doing so, whether that liability would arise under a contract or otherwise.

(5) No evidence, document or findings of the Commission under this Act shall be admissible in any civil or criminal proceedings whatsoever against the person who gave the evidence if the person objects to giving any record of examination or a written statement on oath or affirmation or produces any document or other thing.

Allocation of annual funds

39. The Parliament shall make allocation of adequate funds annually for the purposes of the Commission to enable the Commission to discharge its functions and exercise its powers effectively under this Act.

Statutory Bodies (Accounts and Annual Reports) Act 1980

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

Annual report

41. (1) The Commission shall not later than the second meeting of Parliament of the following year, submit and to be tabled 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.

Public Authorities Protection Act 1948

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

Public servant

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

Obligation of secrecy

44. (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 member of the Commission, officer of the Commission or Consultant, 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) Any 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.

Institution and conduct of prosecution

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

Protection of person assisting Commission

46. (1) If it appears to the Commission that, because a person is assisting the Commission, the safety of the person or any other person may be prejudiced or the person or other person may be subject to intimidation or harassment, the Commission may make such arrangements as are necessary—

(a) to protect the safety of any such person; or

(b) to protect any such person from intimidation or harassment.

(2) In this section, a reference to a person who is assisting the Commission shall be a reference to a person who—

(a) has appeared, is appearing or is to appear before the Commission to give evidence or to produce a document or other thing; or

(b) has assisted, is assisting or is to assist the Commission in some other manner.

(3) The Commission may direct the Inspector General of Police, a public body, or an officer of such body—

(a) to provide any protection referred to in subsection (1);

(b) to provide personnel or facilities or both to assist in providing that protection; or

(c) to otherwise assist in the provision of that protection.

(4) The Inspector General of Police, a public body, or an officer of such body, shall be under a duty to comply with any direction under this section as far as is reasonably possible.

(5) Any arrangements made under subsection (1) may but need not involve the Commission making orders applying to a specified person; and such order shall not be limited to directions of the kind referred to in subsection (3).

(6) Any person who contravenes an order made under subsection (5) 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.

Responsibility to refer cases of grievous hurt or death in custody

47. The police force shall refer to the Commission any incident which has resulted in grievous hurt or death to any person under the detention or custody of the police force.

Police force to provide information

48. The police force shall cooperate with and assist the Commission, including to provide such information within their control or ability to procure, as may be required by the officer of the Commission in the performance of the functions and the exercise of the powers of the Commission under this Act.

Power to amend Schedule

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

Regulations

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

(2) Without prejudice to the generality of subsection (1), such regulations may prescribe—

(a) the procedure of the handling of complaints;

(b) the procedure relating to the conduct of proceedings to deal with a misconduct; and

(c) any other matter required to be prescribed under this Act.

(3) Regulations made under this section may prescribe any act in contravention of the regulations to be made an offence and may prescribe penalties of a fine not exceeding ten thousand ringgit or imprisonment for a term not exceeding two years or both for such offence.

PART IX

REPEAL, SAVING AND TRANSITIONAL PROVISIONS

Repeal and dissolution

51. The Enforcement Agency Integrity Commission Act 2009 [Act 700] (the “repealed Act”) is repealed and the Enforcement Agency Integrity Commission (the “dissolved Commission”) is dissolved.

Commissioner of dissolved Commission

52. Notwithstanding anything to contrary, the Commissioners of the dissolved Commission and the members of any committee appointed under the repealed Act who held office before the date of coming into operation of this Act shall cease to hold office on that date.

Transfer of powers, etc.

53. All powers, rights, duties, liabilities and obligations which immediately before the date of coming into operation of this Act were the powers, rights, duties, liabilities and obligations of the dissolved Commission shall, on the coming into operation of this Act, be devolved on the Commission.

Transfer of moneys in funds of dissolved Commission

54. All money standing in or due to be paid into the funds of the dissolved Commission established under the repealed Act shall on the coming into operation of this Act be transferred to and be deemed to be part of the funds of the Commission under section 39 of this Act.

Vesting of property, etc.

55. (1) Subject to this Act, the Prime Minister may, from time to time, by order published in the *Gazette*, appoint a vesting date and on such date all properties, rights, interests, obligations and liabilities the dissolved Commission specified by the Prime Minister in the order shall, by virtue of this Act, be transferred to and vested in the Commission without any conveyance, assignment or transfer.

(2) Every property, rights, interest, obligation and liability transferred to and vested in the dissolved Commission shall be transferred to and vested in the Commission for the like title, estate or interest and on the like tenure as the property, rights, interest, obligation and liability were vested or held immediately before the vesting date.

(3) Any land which immediately before the date of coming into operation of this Act were vested in the dissolved Commission shall, on the vesting date, be vested in the Commission for the purposes of the Commission.

(4) Where by virtue of subsection (1), any property is transferred to and vested in the dissolved Commission, the provisions of Part Thirty of the National Land Code 1965 [*Act 56 of 1965*] shall, for the purpose of effecting the registration of such vesting, apply to the Commission.

(5) Any property and asset other than land which immediately before the date of coming into operation of this Act were vested in the dissolved Commission shall, on the vesting date, be vested in the Commission.

(6) In the case of rights, interests, obligations and liabilities arising under any loan which are vested in the dissolved Commission on the vesting date, the Commission may enter into agreements or arrangements over the rights, interests, obligations and liabilities with any other person.

Existing contracts, etc.

56. All deeds, agreements, documents and other instruments subsisting immediately before the date of coming into operation of this Act and affecting any property or money transferred under this Act shall continue to remain in full force and effect, against or in favour of the Commission, and enforceable as fully and effectually as if, instead of the dissolved Commission, the Commission had been named in the deeds, agreements, documents and other instruments and had been a party to the deeds, agreements, documents and other instruments.

Officers and staff of dissolved Commission deemed officers of Commission

57. All officers and staff holding an appointment under the repealed Act shall be deemed to be officers of the Commission appointed under this Act and shall hold such title of office as may be determined by the Commission.

Complaint, etc., of misconduct of enforcement agency other than Royal Malaysia Police

58. All complaints, investigations, findings and hearing in relation to an enforcement agency as prescribed in the Schedule of the repealed Act other than the Royal Malaysia Police shall, on the date of coming into operation of this Act, be referred to the respective Disciplinary Authority of the enforcement agency.

Continuance of pending complaint, etc., of police misconduct

59. The following matters in so far as they relate to the misconduct of members of the Royal Malaysia Police shall, on the coming into operation of this Act, be dealt with under the repealed Act as if the repealed Act had not been repealed, by the Commission

and shall be completed within six months from the date of coming into operation of this Act:

- (a) any pending complaints under section 23 of the repealed Act;
- (b) any pending investigations under section 25, subsection 27(4) and section 28 of the repealed Act;
- (c) any pending findings of the Complaints Committee under section 26 of the repealed Act and findings of the Commission under section 30 of the repealed Act; or
- (d) any pending hearing under section 34 of the repealed Act.

Continuance of disciplinary proceedings relating to misconduct pending before Royal Malaysia Police Disciplinary Authority

60. All disciplinary proceedings relating to misconduct pending before the Royal Malaysia Police Disciplinary Authority before the date of coming into operation of this Act shall be continued by the Royal Malaysia Police Disciplinary Authority as if this Act had not been passed.

SCHEDULE
[Subsection 31(3)]

<i>Disciplinary Board</i>		
<i>(1) Category of officer</i>	<i>(2) Jurisdiction</i>	<i>(3) Members of the Disciplinary Authority</i>
All members of the police force	All disciplinary actions with a view to dismissal or reduction in rank	<p>Chairman: A member of the Commission</p> <p>Members: Two members of the Commission</p> <p>Inspector General of Police or one representative from the police force of a higher rank than the accused</p> <p>One representative from the Police Force Commission (who shall not be a member of the police force)</p>
	All disciplinary actions not with a view to dismissal or reduction in rank	<p>Chairman: A member of the Commission</p> <p>Members: Two members of the Commission</p> <p>Inspector General of Police or one representative from the police force of a higher rank than the accused</p> <p>One representative from the Police Force Commission (who shall not be a member of the police force)</p>

EXPLANATORY STATEMENT

The Independent Police Complaints of Misconduct Commission Bill 2019 (“the proposed Act”) seeks to provide for the establishment of the Independent Police Complaints of Misconduct Commission (“Commission”). The objects of the proposed Act are to improve the integrity of the police force, to reduce misconduct amongst members of the police force and to promote public confidence in the police force.

PART I

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

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

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

PART II

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

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

Clauses 4 and *5* deal with the functions and powers of the Commission.

Clause 6 seeks to provide for the members of the Commission.

Clause 7 contains provision on the term of office for the members of the Commission.

Clause 8 provides for the payment of remuneration and allowances to the members of the Commission.

Clause 9 sets out the circumstances in which the office of a members of the Commission become vacant.

Clause 10 contains provision on the meetings of the Commission.

Clause 11 sets out the circumstances under which the Deputy Chairman or other member of the Commission may exercise the functions of the Chairman.

Clause 12 provides that a member of the Commission shall disclose his interest in any matter under discussion by the Commission or in any proceedings before the Commission.

Clause 13 sets out that the functions and powers of the Commission are exercisable by a member of the Commission, any committee or any member of the police force.

PART III

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

Clause 14 seeks to empower the Commission to appoint a Secretary who will be the chief executive officer.

Clause 15 sets out the circumstances where the Commission may appoint any officer of the Commission to exercise the function of the Secretary temporarily.

Clause 16 seeks to empower the Commission to appoint any person to be the officers of the Commission.

Clause 17 seeks to empower the Commission to engage consultants to assist the Commission in the performance of its functions and powers.

Clause 18 seeks to allow the Commission to establish committees to assist the Commission.

Clause 19 provides for the issuance of authority cards to the members of the Commission and officers of the Commission.

Clause 20 seeks to allow the Commission to make arrangements with any government department or local or statutory authority for the use of their staff or facilities, and make arrangements with the police force for the assistance of members of the police force to cooperate or assist the Commission in the performance of its functions.

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

PART IV

5. Part IV of the proposed Act consists of the provisions relating to the dealing of complaints by the Commission.

Clause 22 provides that the Commission may receive complaints, or deal with complaints referred to it, on misconduct.

Subclause 22(2) seeks to provide that misconduct shall not include any act regulated under sections 96 and 97 of the Police Act 1967.

Clause 23 provides for the establishment of the Complaints Committee.

Clause 24 sets out the manner to make complaints against any member of the police force.

Clause 25 seeks to provide for the classification of complaints.

PART V

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

Clause 26 deals with the power of the officer of the Commission to issue a written notice, to order any person to attend before the officer to be examined orally, or to order any person to furnish a statement made on oath for the purpose of the officer's investigation.

Clause 27 deals with the power of the Commission to obtain documents or other things from a person.

Clause 28 requires the officer of the commission to submit his findings to the Complaints Committee. The Complaints Committee thereafter will decide any of the following:

- (a) refer any findings of misconduct to the Disciplinary Board;
- (b) record the findings where the findings disclosed no act of misconduct;
- (c) refer any complaints of misconduct it receives to the Malaysian Anti-Corruption Commission if the offence is under Part IV of the Malaysian Anti-Corruption Act 2009;
- (d) refer to the relevant authority of a criminal nature any findings of misconduct, it receives or referred to it.

The Complaints Committee shall inform the complainant of any of the above action taken.

Clause 29 provides for the establishment a Task Force for the purpose of investigation of misconduct of any member of the police force.

Clause 30 seeks to enable the Commission to commence investigation into a misconduct on its own initiative.

PART VI

7. Part VI deals with the procedure on the conduct of proceedings to deal with a misconduct.

Clause 31 provides that the Commission shall have disciplinary authority over all members of the police force. The proposed *clause* also seeks to provide for the establishment of the Disciplinary Board. Where the complaint of misconduct is against the Inspector General of Police, the Chief Secretary to the Government shall establish a Special Disciplinary Board.

Clause 32 provides that the Disciplinary Board shall, upon considering the finding under *clause 28* and upon completion of investigation under *clause 30*, commence proceedings to deal with a misconduct.

Clause 33 sets out punishments that may be imposed by the Disciplinary Board.

PART VII

8. Part VII contains of provisions dealing with offences.

Clause 34 makes it an offence for a person who threatens, insult or injures any person giving evidence before the Commission.

Clause 35 deals with the act of contempt against a member of the Commission.

PART VIII

9. Part VIII consist of miscellaneous provisions.

Clause 36 seeks to empowers the Commission to impose a surcharge on any officer in accordance with the Financial Procedure Act 1957.

Clause 37 provides for the sharing of any statistical information between the Commission and the police force, any relevant authority in connection with the functions and powers of the Commission.

Clause 38 provides for the protection of the Commission, members of the Commission and officers of the Commission including any person who is acting under the direction of the Commission or an advocate and solicitors to any action, liability, claim or demand. It also provides that no evidence, document or findings of the Commission shall be admissible in any civil or criminal proceedings whatsoever against the person who gave the evidence.

Clause 39 deals with the provision of moneys to the Commission.

Clause 40 seeks to provide that the Statutory Bodies (Account and Annual Reports) 1980 shall apply to the Commission.

Clause 41 seeks to provide that the Commission is required to submit and table an annual report to the Parliament.

Clause 42 provides for the Public Authorities Protection Act 1948 shall apply to the Commission and its officers.

Clause 43 provides that every member of the Commission and officer of the Commission shall be deemed to be public servants within the meaning of the Penal Code while discharging their duties as such.

Clause 44 prohibits the disclosure of information relating to the affairs of the Commission.

Clause 45 seeks to provide for the institution and conduct of prosecution.

Clause 46 provides for the protection of persons who assist Commission.

Clause 47 imposes duty on the police force to refer any occurrence of incident to the Commission which has resulted in grievous hurt and death of any person who at the time under the detention or custody of the police force.

Clause 48 seeks to provide responsibility to the police force to cooperate with and assist the Commission, including to provide such information as may be required by the Commission.

Clause 49 seeks to empower the Prime Minister to amend the Schedule.

Clause 50 seeks to empower the Prime Minister to make regulations.

PART IX

10. Part IX consist of repeal, saving and transitional provisions arising from the dissolution of the Enforcement Agency Integrity Commission.

FINANCIAL IMPLICATIONS

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

[PN(U2)3185]