

THE PROSECUTION COMMISSION BILL
(No. XXXV of 2016)

Explanatory Memorandum

The object of this Bill is to make provision for the accountability of the Director of Public Prosecutions through –

- (a) the Prosecution Commission;
- (b) the issue of directions by the Prosecution Commission to the Director of Public Prosecutions;
- (c) the furnishing of information by the Director of Public Prosecutions to the Prosecution Commission,

and for such supplementary or ancillary matters as may appear necessary or expedient.

Sir ANEROOD JUGNAUTH, G.C.S.K., K.C.M.G., Q.C.
*Prime Minister, Minister of Defence, Home Affairs, Minister
for Rodrigues and National Development Unit*

16 December 2016

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ARRANGEMENT OF CLAUSES

Clause

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A BILL

To provide for the accountability of the Director of Public Prosecutions in the discharge of his functions

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Prosecution Commission Act 2016.

2. Interpretation

In this Act –

“aggrieved party” means, in relation to –

- (a) criminal proceedings instituted by the Director of Public Prosecutions, the accused;
- (b) (i) criminal proceedings discontinued by the Director of Public Prosecutions or any person acting in accordance with his general or specific instructions; or
- (ii) a decision by the Director of Public Prosecutions not to institute criminal proceedings,

the complainant or declarant, or in cases where an enquiry is initiated by the Commissioner of Police or any other investigatory authority, the Commissioner of Police or such other investigatory authority, as the case may be;

“criminal proceedings” does not include an appeal from any determination in any criminal proceedings before any court, or any case stated or question of law reserved for the purposes of any such proceedings to any other court;

“Commission” means the Prosecution Commission referred to in section 72A of the Constitution;

“quarter” means a period of 3 months ending at the end of March, June, September or December.

3. Application of Act

This Act shall not apply to any –

- (a) criminal proceedings instituted by the Director of Public Prosecutions before any court of law more than 36 months before the commencement of this Act;
- (b) criminal proceedings discontinued by the Director of Public Prosecutions, whether in person or through other persons acting in accordance with his general or specific instructions, more than 36 months before the commencement of this Act;
- (c) decision of the Director of Public Prosecutions not to institute criminal proceedings more than 36 months before the commencement of this Act.

4. Independence of Director of Public Prosecutions

Except as provided in section 72A of the Constitution and this Act, the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority in the exercise of his powers under section 72 of the Constitution.

5. Prosecution Commission

(1) The Commission shall meet as often as is necessary but at least once every month and at such time and place as the Chairperson may determine.

(2) Every decision of the Commission shall be taken by a majority of the votes and each Commissioner shall have one vote.

(3) A decision of the Commission shall be valid notwithstanding the absence of any Commissioner or any temporary vacancy.

(4) Deliberations of the Commission shall, except where the Commission or a court of law of competent jurisdiction determines otherwise, be confidential and subject to legal privilege.

(5) The Director of Public Prosecutions, or any other person holding that post in an acting capacity, shall attend every meeting of the Commission but shall not have the right to vote.

(6) Any Commissioner who has a conflict of interest or a significant risk of a conflict of interest in any matter to be considered by the Commission shall,

immediately after the relevant facts have come to his knowledge, disclose in writing the nature of the interest to the President and shall not be present during any deliberation, or take part in any decision, of the Commission with respect to that matter.

6. Functions and powers of Commission

(1) The Commission shall, on its own initiative, or on the application of any aggrieved party, discharge its functions and powers under section 72A of the Constitution.

(2) Where an application is made under subsection (1), the Commission shall endeavour to determine the application within 21 days of the date on which it receives the application.

(3) Where the Commission takes more than 21 days to determine an application it shall, in its determination, state the reasons for the delay.

(4) Any application under subsection (1) shall be made within 21 days of the institution or discontinuance, as the case may be, of the criminal proceedings to which the application relates or, in case of a decision not to institute criminal proceedings, of the decision not to institute criminal proceedings.

(5) Notwithstanding subsection (4), any application regarding criminal proceedings instituted or discontinued or a decision not to institute criminal proceedings before the commencement of this Act shall be made before 30 September 2017.

7. Information to be furnished to Commission

(1) The Director of Public Prosecutions shall, not later than 7 days after the end of every quarter, submit a report on the discharge of his functions in a form approved by the Commission.

(2) Notwithstanding subsection (1), the Director of Public Prosecutions shall submit a report on the discharge of his functions for the period starting 1 January 2014 to 31 December 2016 in a form approved by the Commission not later than 30 June 2017.

(3) The Commission may, at any time, request from the Director of Public Prosecutions any information as it requires to enable it to discharge its functions.

(4) The Director of Public Prosecutions shall provide any information requested by the Commission within such time as the Commission may require.

(5) The Commission shall cause any report received under subsections (1) and (2) to be laid before the Assembly, together with such observations as the Commission may deem appropriate within 3 months of its submission to the Commission.

8. Compliance

Where the Director of Public Prosecutions fails, without reasonable excuse, to –

- (a) comply with a direction of the Commission;
- (b) furnish such information to the Commission as it requires under section 7;
- (c) provide a report to the Commission as provided under section 7,

he shall commit an act of misbehaviour.

9. Protection from liability

(1) No liability, civil or criminal, shall be incurred by the Commission or any Commissioner in respect of any act done or omitted in the execution in good faith of his or its functions or duties under this Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act, and for the purposes of that Act, every Commissioner shall be deemed to be a public officer or person engaged or employed in the performance of a public duty.

10. Commencement

This Act shall come into operation on a date to be fixed by Proclamation.
