

The "Right to be Heard" and Referrals

When the Ombudsman Commission conducts an investigation and considers that a leader has a case to answer, it notifies the leader and grants him or her the "right to be heard."

The Commission considers the leader's response (if one has been received) and makes a decision as to whether or not there is a *prima facie* case of misconduct in office. If the Commission is satisfied that there is a case, the matter is referred to the Public Prosecutor for prosecution by him before a leadership tribunal.

Leadership Tribunals

A leadership tribunal usually consists of one National Court Judge and two senior Magistrates. The tribunal determines whether a leader is guilty of misconduct in office. The tribunal is not required to comply with the rules of evidence, expected in normal court proceedings, but must observe the "principles of natural justice" which requires the tribunal to act fairly. Leadership tribunal proceedings are not the same as judicial proceedings.

Penalties

Where a tribunal finds a Leader guilty of misconduct in office, the most severe penalty it can recommend is dismissal from office. Section 31(1) of the *Constitution* states that a leader who is dismissed from office for misconduct is disqualified from holding public office for three years. So he or she is not eligible-

- To any elective public office; or
- For appointment as Head of State or as a nominated member of Parliament; or
- For appointment to a provincial legislature or provincial executive; or
- For appointment to a Local-Level Government body.

To date the Commission has referred 86 leaders to the Public Prosecutor for breaches of the Leadership Code since 1975.

Prosecutions

Most of these leaders have faced leadership tribunals and many have been dismissed from office. Others resigned from public office before the tribunal could hand down its decision, thereby escaping penalty.

In the event that the Public Prosecutor fails to prosecute the matter within a reasonable time, the Ombudsman Commission may prosecute it in his stead.

- To investigate complaints alleging wrong conduct by government departments, statutory authorities and other governmental bodies.
- To investigate discriminatory practices.
- To administer the Leadership Code.

What are the main functions of the Ombudsman Commission?

From time to time the Ombudsman Commission brings matters to the attention of the Supreme Court for legal interpretation.

This information pamphlet deals with the enforcement of the Leadership Code.

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Duties and responsibilities of Leadership



What is the Leadership Code?

The Leadership Code (Division III.2 of the *Constitution*) is essentially a code of conduct that PNG's leaders are expected to know and follow. The Ombudsman Commission has been given the authority by the *Constitution* and the *Organic Law on the Duties and Responsibilities of Leadership* to supervise and enforce the Leadership Code.

Who are the Leaders for the purposes of the Leadership Code?

The following people are defined as leaders by Section 26 of the *Constitution*. They come under the Leadership Code and are expected to abide by the Code. They are:

- All members of Parliament (including the Prime Minister, the Leader of the Opposition and all Ministers)
- All members of Provincial Assemblies and Local Level Governments
- All constitutional office holders (Judges, the Public Prosecutor, the Public Solicitor, the Chief Magistrate, the members of the Electoral Commission, the Clerk of Parliament, the Auditor-General, the members of the Public Services Commission and the members of the Ombudsman Commission)
- All heads (Secretaries) of Departments of the National Public Service and Provincial Administrators
- All heads of statutory authorities
- The Commissioner of Police
- The Commander of the Defence Force
- All Ambassadors and High Commissioners and senior diplomatic officials
- The Public Curator
- All personal staff of the Governor-General, the Ministers and the Leader and Deputy Leader of the Opposition

What are the main provisions of the Leadership Code?

Section 27 of the *Constitution* sets out the general duties and responsibilities of leaders:

- 1 Leaders must never place themselves in a position where they could have a conflict of interest, or where they might be comprised when discharging their official duties.
- 2 Leaders must never demean their office or position.
- 3 Leaders must never allow their integrity to be called into question.
- 4 The integrity of the government in Papua New Guinea must be preserved at all times. No act of a leader should endanger or diminish respect for and confidence in the integrity of the government.
- 5 Leaders must never use their office for personal gain. They must not enter into any transaction or activity that might cause the public to doubt that they are carrying out their duties as leaders.
- 6 A leader's spouse, children and associate's conduct must not cause the leader to breach the duties above.

The *Organic Law on the Duties and Responsibilities of Leadership* also sets out a number of specific duties that leaders are expected to uphold. These include:

- Leaders are required to submit annual statements to the Ombudsman Commission giving details of their assets, incomes, liabilities, business interests, directorships, gifts they have received and the accounts of all public money entrusted to them.
- Leaders must not use their official position to benefit themselves personally or their families, friends or associates.

- Leaders must not apply or authorize to apply public money to any purpose other than that for which it was intended. Misapplication of public funds is misconduct in office.
- Before dealing with, debating or voting on a matter in which he or she has an interest, a leader must disclose that interest to the appropriate body. For example, a leader must make it known if he or she has friends, associates or wantoks involved in a company that is being considered for a government contract.

The *Organic Law on the Integrity of Political Parties and Candidates*, imposes additional duties on executive officers and members of Parliament, who are members of a registered political party. For example:

- An executive officer who is responsible for the cancellation of his or her party's registration will be guilty of misconduct in office.
- A member of Parliament who was an endorsed candidate of a registered political party at an election must vote only in accordance with a party resolution on important matters such as a vote of no confidence in the Prime Minister or a proposed constitutional amendment. An MP who votes against their party's resolution shall be referred by the Registrar of Political Parties to the Ombudsman Commission for investigation.

Enforcement Powers

The Ombudsman Commission can require any person (leader, government employee or private citizen) to appear before it to give testimony or to produce any document that is relevant to an investigation. The Commission can give directions to leaders to ensure compliance with the laws. Failure to cooperate or comply with a direction constitutes misconduct in office.