



**PROPOSED LAW TO ALTER THE *CONSTITUTION*.**

entitled

***Constitutional Amendment (Independent Commission Against Corruption) Law,***

Being a law to alter the *Constitution* by making provision for the establishment of an Independent Commission Against Corruption and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**“NEW DIVISION VIII.3.**

Part VIII of the *Constitution* is amended by adding after Division 3 the following new division:

***“Division 3. - The Independent Commission Against Corruption.***

[Clarify which Division this will be – 3 or 4]

**“220A. THE INDEPENDENT COMMISSION AGAINST CORRUPTION.**

(1) There shall be an Independent Commission Against Corruption consisting of a Commissioner and two Deputy Commissioners of whom at least one member shall be a female.

(2) The members of the Commission shall be appointed by the Head of State, acting with, and in accordance with, the advice of an Appointments Committee consisting of-

(a) the Prime Minister, who shall be Chairman; and

- (b) the Chief Justice; and
- (c) the Leader of the Opposition; and
- (d) the Commissioner of Police; and
- (e) two persons of standing in the community, of whom one shall be a female, appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, by notice in the National Gazette.

[This would give the Executive a large say in the appointments – is this sufficiently independent? Should the 2 members of the public be appointed on the advice of NEC? Should they instead be ex officio members of particular bodies? Or should there be some other process for their identification and more specific qualification requirements? How long should they be appointed for? See Discussion Paper Part 8.]

“(3) The attendance of all members at a meeting of the Appointments Committee, shall constitute a quorum and the Committee may determine its own procedures.

[Is it practical for all members to have to be present for the Committee to make decisions? Under s39 of the Interpretation Act 1975, a majority of members present can constitute a quorum. What is reasonable, balancing safeguards against practicality? Alternatively, or in addition, it may be possible to add a ground for removal (covered in the Organic Law) missing three consecutive meetings.]

“(4) In the performance of its functions under Section 220C (functions of the Commission) the Commission:-

- (a) shall be assisted by an Advisory Committee consisting of -
  - (i) the Commissioner who shall be Chairman; and
  - (ii) the Chief Executive Officer; and
  - (iii) the Chief Ombudsman; and
  - (iv) the Police Commissioner; and
  - (v) the Public Prosecutor; and
  - (vi) two persons of standing in the community, of whom one shall be a female, appointed by the Head of State, acting with, and in accordance with the advice of the National Executive Council, by notice in the National Gazette.

[Should the Commissioner and the CEO of the ICAC be on the Advisory Committee, which is charged with advising the ICAC? Perhaps they should be observers instead, or not participate at all. Additionally, it may not be appropriate for a member of the Appointments Committee also

to be a member of the Advisory Committee. This depends partly on whether the body is to have an independent oversight role (recommended) or be purely advisory in nature – see Discussion Paper Part 8.

The same comments made above apply in relation to the appointment of members of the community. Are there any other particular bodies that should be represented on the Advisory Committee? See Discussion Paper Part 8.]

and

(b) is not subject to direction or control by any person or authority.

- “(5) An Organic Law shall make further provisions in respect of -
- (a) the qualification and the terms and conditions of the appointment of the members of the Commission and of the powers, procedures and immunity of the Commission; and
  - (b) the functions of the Appointment Committee and Advisory Committee.

[There is no provision allowing the Organic Law to specify qualifications or terms of appointment for the public members of the Advisory Committee or the Appointments Committee – see comments above.]

**“220B. PURPOSES OF THE COMMISSION.**

Guided by the National Goals and Directive Principles and other development plans of Papua New Guinea the purposes of the Independent Commission Against Corruption are to help to contribute to strengthening anti-corruption measures and combating corrupt conduct.

~~— achieve the National Goals and Directive Principles and other development plans of Papua New Guinea by endeavouring to strengthen anti corruption measures and —  
— eliminate corrupt conduct~~

[Are these appropriate purposes?]

**“220C. FUNCTIONS OF THE COMMISSION.**

(1) Subject to any Organic Law or an Act of Parliament made for the purposes of Subsection (2), the functions of the Independent Commission Against Corruption are:-

- (a) to receive and consider complaints regarding against alleged or suspected corrupt conduct and investigate such of those complaints as it considers appropriate/practicable;

[Should there be a more specific test as to the factors the ICAC should take into account when deciding whether to investigate complaints, and who should have responsibility for making those decisions? See Discussion Paper Part 1. Even if there is, it may be more appropriate for these to be set out in the Organic Law rather than the Constitution.]

and

- (b) to investigate, on its own initiative or on complaints received, by a person ~~affected, any case of an any~~ alleged or suspected corrupt conduct ~~within the meaning of a Law prohibiting such conduct~~; and
- (c) to encourage and support public and private sector organization in the –
- (i) development, establishment and review;
  - (ii) establishment, application or the coordination of the implementation,
- of practices and procedures for the elimination of corruption;

[Query whether it is practical to vest the Commission with such a broad range of functions – international studies demonstrate that anti-corruption agencies are likely to fail if their functions are too broad. In particular, question whether private sector should be covered in relation to corruption prevention (as opposed to corrupt conduct investigation). See Discussion Paper Part 1 regarding the scope of the Commission’s proposed functions.]

and

- (d) to promote greater awareness of and educate the people of Papua New Guinea against the evils and the prevention of corrupt conduct; and

[Query whether this is practical or reasonable in PNG’s circumstances, or whether these functions should instead be performed by other organisations – see Discussion Paper Part 1.]

- (e) any other functions conferred on it by or under an Organic Law or an Act of Parliament.

[Reconsider these functions and ensure that they are consistent with those specified in the Organic Law – see Discussion Paper Part 1.]

“(2) An Organic Law or an Act of Parliament shall make provision in respect of the powers and procedures of the Independent Commission Against Corruption and in particular:-

- (a) shall, subject to Paragraph (b), make provision for the Commission to have access to all available information;- and
- (b) may impose reasonable restrictions on the availability of information; and
- (c) shall make provision to ensure the secrecy or confidentiality of secret or confidential information made available to the Commission or to a member of the Commission or to a member of the staff of the Commission; -and
- (d) shall make provision for the bodies with which the Commission may share secret or confidential information
- (e) shall make provision for and in respect of publicity for the proceedings, reports and recommendations of the Commission.

“(3) Without limiting the generality of the expression “corrupt conduct” for the purposes of this Division Section 220C (Functions of the Commission) “corrupt conduct” is such conduct, act or omission defined in an Organic Law or an Act of Parliament as a corrupt conduct.

**“220D. REPORTS BY THE INDEPENDENT COMMISSION AGAINST CORRUPTION.**

(1) As soon as practicable after 31 December each year, the Advisory Committee referred to in Section 220B shall, after receiving from the Commission a copy of the Report of the Commission for the year preceding the report for its comments give to the Minister with any comments the Committee may make, for presentation to the Parliament, a report on the functions and workings of the Commission, with such recommendations as to improvement as the Commission or the Committee thinks proper.

“(2) Nothing in Subsection (1) prevents the Commission from making on its own initiative, other reports on any aspect of the functions and workings of the Commission.”.

[There is no requirement in the Constitutional amendments or in the draft Organic Law for the Commission to make annual reports, or clarity as to whom they should be provided. See Discussion Paper Part 8. It is suggested that:

- the Commission should be required to publish an Annual Report by 31 March each year

- The annual report must be provided to the Minister, the Advisory Committee and published by 31 March each year – so that it is publicly available
- The Minister must table the annual report in Parliament during the next meeting of Parliament following receipt of the report (cf section 16(3) *Audit Act 1989*).]

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