

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 21A.

Constitutional Commission.

GENERAL ANNOTATION

ADMINISTRATION.

While the administration of this Chapter was not vested specifically in any Minister, it appears from the determination of the functions of Departments that it came within the responsibility of the Prime Minister at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

NOTE:

The *Constitutional Commission Act 1978* provided that Sections 1, 11, 12 and 13 of that Act were to come into operation on the date notified in the National Gazette and that the remainder of the Act was to come into operation on the date it was certified (31 March 1978).

At the time of up-dating the specified sections had not been gazetted.

Section 1 of the Act provides for the repeal of the Constitutional Commission (Interim Provisions) Act and Section 20 provides for the repeal of the 1978 Act on presentation of the Commissions Final Report to the Parliament.

As Section 1 of the Act has not been brought into operation it is necessary to include both Acts in the up-dating, but as both will eventually be repealed and it is at present necessary to refer to the original Act when reading this Act, it has been decided to number this Chapter 21A, for insertion after Chapter 21.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 21A.

Constitutional Commission Act.

ARRANGEMENT OF SECTIONS.

1. Repeal.
2. Interpretation—
 - "Commission"
 - "establishment date"
 - "member"
 - "National Government"
 - "proposed Constitutional Law"
 - "this Act."
3. Establishment of the Commission.
4. Conditions of appointment.
5. Disqualifications from office.
6. Resignation.
7. Appointment to fill vacancy, etc.
8. Declaration of Office.
9. Procedures of the Commission.
10. Committees.
11. Powers of Commission.
12. Duties of Commission.
13. Further duties of Commission.
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15. Effect of this Act.
16. Staff of Commission.
17. Obligations of department, etc.
18. Regulations.
19. Transitional provisions.
20. Repeal of this Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA

CHAPTER NO. 21A.

Constitutional Commission Act.

Being an act to implement Section 260 (*General Constitutional Commission*) of the Constitution by providing for the establishment of a General Constitutional Commission and its powers, duties, functions and responsibilities.

1. Repeal.

The *Constitutional Commission (Interim Provisions) Act* is repealed.¹

2. Interpretation.

In this Act, unless the contrary intention appears—

“Commission” means the General Constitutional Commission established by Section 3;

“establishment date” means the date Sections 1, 11, 12 and 13 are brought into operation;

“member” means a member of the Commission;

“National Government” means the National Government as described in Section 99 (*structure of Government*) of the Constitution;

“proposed Constitutional Law” means a proposed law to alter the Constitution or an Organic Law.

“this Act” includes the regulations.

3. Establishment of the Commission.

(1) A General Constitutional Commission is hereby established.

(2) The Commission shall consist of nine members who shall—

(a) be appointed by the Head of State, acting on advice, given after consultation with the Permanent Parliamentary Committee on Appointments; and

(b) be broadly representative of the different areas of the country; and

(c) give balanced representation of the major political parties and groups in the National Parliament.

(3) Each member shall be a citizen and—

(a) a member of the Parliament; or

(b) a member of a provincial government or local level government (whether established by a National law or a provincial law); or

(c) a member of a State Service established by, or by virtue of, Section 188 (*establishment of State Services*) of the Constitution; or

(d) have relevant expertise.

(4) The Head of State, acting on advice, given after consultation with the Permanent Parliamentary Committee on Appointments, shall appoint one member to be the Chairman and one member to be Deputy Chairman of the Commission.

¹But, see, note to General Annotation.

4. Conditions of appointment.

The Head of State, acting on advice, given after consultation with the Permanent Parliamentary Committee on Appointments, shall determine the conditions of appointment of members.

5. Disqualifications from office.

A person shall not be appointed to be a member, or, if a member, shall cease to be a member, if he is, or becomes—

- (a) not qualified to be a member under Section 3(3); or
- (b) an undischarged bankrupt or insolvent; or
- (c) of unsound mind within the meaning of any law relating to the protection of the persons and property of persons of unsound mind; or
- (d) under sentence of death or imprisonment; or
- (e) under disqualification under Section 31 (*disqualifications on dismissal*) of the Constitution.

6. Resignation.

(1) A member, other than the Chairman or Deputy Chairman may resign from the Commission by giving one month's written notice to the Chairman.

(2) The Chairman or Deputy Chairman may resign from the Commission by giving one month's written notice to the Prime Minister.

7. Appointment to fill vacancy, etc.

The Head of State, acting on advice, given after consultation with the Permanent Parliamentary Committee on Appointments, may, at any time, appoint a person—

- (a) who shall become a member when a vacancy occurs on the Commission; or
- (b) to fill temporarily a vacancy on the Commission; or
- (c) to act in the absence of a member for any reason.

8. Declaration of Office.

Before entering on the duties of his office, a member shall make the Declaration of Office and, if he has not already made it, the Declaration of Loyalty, before the Head of State or a person appointed by the Head of State for the purpose.

9. Procedures of the Commission.

(1) The Chairman shall fix the times and places for meetings of the Commission.

(2) At a meeting of the Commission—

- (a) five is a quorum; and
- (b) the Chairman, or in his absence the Deputy Chairman shall preside, or if the Chairman and Deputy Chairman are both absent the members present shall appoint a member to be the Chairman for that meeting; and
- (c) all matters shall be decided by a majority of votes but this section does not prevent a member or members from submitting a minority report to the Parliament; and
- (d) in the event of an equality of votes on a matter the member presiding has a casting as well as a deliberative vote.

- (3) The Commission shall cause minutes of its meetings to be kept.
- (4) Subject to this Act, the procedures of the Commission are as determined by it.

10. Committees.

The Commission may appoint and dissolve committees for general or special purposes which in the Commission's opinion would be better dealt with by committees.

11. Powers of Commission.

The Commission shall have all reasonable powers that are necessary or convenient for the exercise and performance of its powers, functions, duties and responsibilities and such other powers as may be prescribed.

12. Duties of Commission.

The Commission shall inquire into—

- (a) the working of the Constitution and the Organic Laws; and
- (b) any other matter of a constitutional nature as the Head of State, acting on advice, may direct.

(2) The Commission shall, on completion of their inquiries in accordance with Subsection (1), prepare a Final Report.

(3) The Commission shall prepare Interim Reports—

- (a) as soon as practicable after 16 September in each year; and
- (b) at such other times as the Commission considers appropriate.

(4) The Final Report or an Interim Report prepared in accordance with Subsection (2) or (3) shall be forwarded by the Commission to the Speaker for presentation by him to the Parliament and—

- (a) shall set out the Commission's findings on matters inquired into by the Commission; and
- (b) may make recommendations for the amendment of the Constitution, any Organic Law and any Act; and—
- (c) may propose new Organic Laws or Acts; and
- (d) may recommend a review of any administrative procedure; and
- (e) may make general recommendations and comments.

13. Further duties of Commission.

(1) A proposed Constitutional Law shall after it has been read a first time in the Parliament be referred to the Commission.

(2) The Commission shall consider a proposed Constitutional Law referred to it in accordance with Subsection (1) and shall, within 21 sitting days or, in the case of a proposed Constitutional Law to which Section 15 (*urgent alterations*) of the Constitution applies, five sitting days or within such further time as the Parliament may fix, prepare a report.

(3) A report prepared in accordance with Subsection (2) shall be forwarded by the Commission to the Speaker for presentation by him to the Parliament.

(4) Subject to Subsection (5), the Parliament shall not deal further with a proposed Constitutional Law which has been referred to the Commission until the report of the Commission has been presented to it in accordance with Subsection (3).

(5) If the Commission fails to forward its report on a proposed Constitutional Law to the Speaker within the time specified in Subsection (2) the Parliament may deal with the proposed Constitutional Law in the ordinary course of its business.

14. Parliament is not bound by reports.

The Parliament is not in any way bound by anything contained in a report presented to it under Section 12(4) or 13(3).

15. Effect of this Act.

This Act does not operate so as to invalidate or call in question any Act.

16. Staff of Commission.

(1) The staff of the Commission shall include—

- (a) an Executive Officer; and
- (b) a Legal Officer; and
- (c) a Research Officer,

appointed by the Prime Minister after consultation with—

- (d) the Chairman of the Commission; and
- (e) the Chairman of the Public Services Commission.

(2) The Commission shall have such other staff as may be determined by the National Executive Council after consultation with the Chairman of the Public Services Commission.

(3) The terms and conditions of employment of the Commission's staff shall be determined by the National Executive Council after consultation with the Public Services Commission.

17. Obligations of department, etc.

(1) In accordance with the duty imposed on them by Section 225 (*provision of facilities, etc.*) of the Constitution, the National Government and all other government bodies, and all public office-holders and institutions shall, so far as it is within their respective legal powers, ensure that all arrangements are made, staff and facilities are provided and steps taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the duties, powers and functions of the Commission.

(2) In accordance with Subsection (1) the Department of Finance shall on behalf of the National Government allocate to the Commission the necessary funds to enable the Commission to perform its powers, functions, duties and responsibilities.

(3) Where, in accordance with Subsection (1), the services of a person are made available to the Commission, the period during which those services are available to the Commission shall, in respect of the person whose services are made available, be regarded for all purposes as part of that person's period of service with the National Government or other government body, public office-holder or institution which made his services available to the Commission.

18. Regulations.

The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

19. Transitional provisions.

(1) If immediately prior to the establishment date the Interim Constitutional Commission established by the *Constitutional Commission (Interim Provisions) Act* was considering a Bill referred to it in accordance with Section 11 of that Act that Bill shall be considered by the Commission as if it had been a proposed Constitutional Law referred to it in accordance with Section 13 on the establishment date.

(2) For the purposes of Section 3 of the *Constitutional Commission (Interim Provisions) Act* the Commission shall be deemed to be established on the establishment date.

20. Repeal of this Act.

This Act shall be deemed to be repealed on the presentation of the Commission's Final Report to the Parliament under Section 12(4).

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 21A.

Constitutional Commission.

APPENDIX.

SOURCE OF THE CONSTITUTIONAL COMMISSION ACT.

Part A.—Previous Legislation.

Constitutional Commission Act 1978 (No. 16 of 1978).

Part B.—Cross References.

Section etc., in Revised Edition.	Previous Reference. ¹ Edition.	Section etc., in Revised	Previous Reference. ¹
1	1	11	11
2	2	12	12
3	3	13	13
4	4	14	14
5	5	15	15
6	6	16	16
7	7	17	17
8	8	18	18
9	9	19	19
10	10	20	20

¹Unless otherwise indicated, references are to the Act set out in Part A.

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