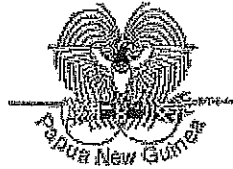




No. of 2010.

*Constitutional (Amendment No. 34) Law 2010.*

Certified on : 15:05 : 2012



*Constitutional (Amendment No. 34) Law 2010.*

**ARRANGEMENT OF SECTIONS.**

1. Responsibilities of office (Amendment of Section 27).
2. Further provisions (Amendment of Section 28).
3. Prosecution of misconduct in office (Amendment of Section 29).
4. The Ombudsman Commission (Amendment of Section 217).
5. New Section 219A.

**“219A. OMBUDSMAN COMMISSION COMMITTEE.”**



*Constitutional (Amendment No. 34) Law 2010,*

Being a Law to alter the *Constitution* by amending the provisions relating to the Leadership Code, 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 Minister.

**1. RESPONSIBILITIES OF OFFICE (AMENDMENT OF SECTION 27).**

Section 27 of the *Constitution* is amended -

(a) in Subsection (3) -

(i) in Paragraph (b) by repealing the full stop at the end of the word “doubt” and replacing it with the following:-

“; and”; and

(ii) by adding a new paragraph after Paragraph (b) as follows:

“(c) particularly, a head of department who has control of the expenditure of public funds, shall ensure that himself or his officers, authorized to expend public funds -

(i) properly expend public funds to implement National Government policies and directives; or

(ii) perform their respective legislative duties in relation to the expenditure of public funds; or

(iii) implement the National Government’s budgetary allocation; or

(iv) do not inappropriately apply or misuse public funds;”;  
and

*Constitutional (Amendment)*

- (b) by repealing Subsection (5) and replacing it with the following:

“(5) Notwithstanding Subsection (4), powers conferred on the Commission in this section, does not include the power to give directives that prevent the implementation of Government’s, including Provincial and Local-level Government’s policies, directives, powers and functions aimed at achieving the economic, social, cultural and infrastructural development of the country, including the implementation of the Government’s including Provincial and Local-level Governments’ annual budgetary allocation.

“(6) A person to whom this Division applies who -

- (a) is convicted of an offence in respect of his office or position or in relation to the performance of his functions or duties; or
- (b) fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) or (3),

is guilty of misconduct in office.”

**2. FURTHER PROVISIONS (AMENDMENT OF SECTION 28).**

Section 28 of the *Constitution* is amended –

- (a) in Subsection (1A) by repealing the full stop after the word “imposed” and adding after the word “imposed” the following:

“or make such a directive that is necessary or convenient for attaining the objects of this Division, to that person”; and

- (b) by repealing Subsection (5) and replacing it with the following:

“(5) Proceedings under Subsection (1)(g) are not judicial proceedings but are subject to the principles of natural justice, and an Organic Law may provide –

- (a) for such proceedings for the purposes of this Division to be a bar to a proceeding under another law; or
- (b) for a proceeding under a law to be a bar to a proceeding for the purposes of this Division.”.

*Constitutional (Amendment)*

**3. PROSECUTION OF MISCONDUCT IN OFFICE (AMENDMENT OF SECTION 29).**

Section 29 of the *Constitution* is amended -

- (a) by repealing Subsection (1) and replacing it with the following:

“(1) Where the Ombudsman Commission or other authority referred to in Section 28(1)(f) (*further provisions*) is of the opinion that there is evidence of misconduct in office by a person to whom this Division applies, it may refer the matter to the Public Prosecutor for prosecution before a tribunal established under Section 28(1)(g) (*further provisions*).”; and

- (b) by adding a new subsection after Subsection (2) as follows:

“(3) Notwithstanding Subsection (1), if the Ombudsman Commission or other authority referred to in Section 28(1)(f) (*further provisions*) is of the opinion that -

- (a) there is no serious culpability on the part of the person alleged to have been guilty of misconduct in office and public policy and public good do not require dismissal; or
- (b) the evidence of misconduct in office by a person to whom this Division applies, is trivial or in the nature of a minor offence and the objects of this Division can be achieved without prosecution,

it may give such a directive that is necessary or convenient for attaining the objects of this Division, to that person.”.

**4. THE OMBUDSMAN COMMISSION (AMENDMENT OF SECTION 217).**

Section 217 of the *Constitution* is amended by repealing Subsection (8).

*Constitutional (Amendment)*

5. NEW SECTION 219A.

The *Constitution* is amended by adding after Section 219 the following new section:

**“219A. OMBUDSMAN COMMISSION COMMITTEE.**

“(1) An Organic Law or an Act of Parliament may provide for the establishment of an Ombudsman Commission Committee, which is a Permanent Parliamentary Committee for the purposes of Subdivision VI.2.E (*the Committee System*) of the *Constitution*.

(2) The primary function of the Ombudsman Commission Committee is, in accordance with an Organic Law or an Act of Parliament –

- (a) to consider and report on any report relating to an administrative complaint; and
- (b) to monitor and review any aspect of the workings, functions, operations and administration of the Ombudsman Commission; and
- (c) to investigate, on its own initiative or on complaint by a person affected and report to Parliament, any conduct on the part of -
  - (i) the Ombudsman Commission or an Ombudsman Commissioner; or
  - (ii) governmental body or an officer or employee of a governmental body, where the conduct is or may be wrong; and
- (d) to refer a matter to the appropriate authorities for further investigation and prosecution, disciplinary action and to ensure compliance with the laws, as the case may be.

(3) An Organic Law or an Act of Parliament may provide for the Membership, procedure and expand the functions of the Committee under Subsection (2) and may confer additional functions and duties not inconsistent with the performance of the functions and duties conferred and imposed by Subsection (2).”.

*Constitutional (Amendment)*

I hereby certify that the above is a fair print of the *Constitutional (Amendment No. 34) Law 2010* which has been made by the National Parliament.

Clerk of the National Parliament.

*Constitution.*

**CERTIFICATE UNDER SECTION 14.**

I, **JEFFERY NAPE**, Speaker of the National Parliament, hereby certify that the requirements of Section 14(1), (2) and (3) of the *Constitution* were complied with in respect of the *Constitutional (Amendment No. 34) Law 2010* and that the law was made by the National Parliament as follows:

- (a) the first vote was taken on 11 March 2009 when the number of seats in the National Parliament were 109 and those voting for the proposal were 86 and none voted against the proposal; and
- (b) the second vote was taken on 9 March 2010 when the number of seats in the National Parliament were 109 and those voting for the proposal were 83 and none voted against the proposal.

Speaker of the National Parliament.