

No. 5 of 2012.

*Supreme Court (Amendment) Act 2012.*

Certified on: 19.04.2012



No.        of 2012.

*Supreme Court (Amendment) Act 2012.*

**ARRANGEMENT OF SECTIONS.**

1.     Implementation of Constitutional Planning Committee's Intentions.
2.     Rules of Court (Amendment Section 41).
3.     New Parts VI and VII.



No. of 2012.

An ACT

entitled

***Supreme Court (Amendment) Act 2012.***

Being an Act to amend the *Supreme Court Act* (Chapter 37) and to implement Subdivision VI.5.C (*The Supreme Court of Justice*) of the *Constitution* by making further provision in relation to the Supreme Court of Justice.

Made by the National Parliament to be deemed to have come into operation on 9 December 2011.

**1. IMPLEMENTATION OF CONSTITUTIONAL PLANNING COMMITTEE'S INTENTIONS.**

This Act is a law that is made for the purpose of giving effect to the intention of the Constituent Assembly that opinions given by the Supreme Court pursuant to Section 19 of the *Constitution* serve two aims: -

- (a) a Section 19 opinion shall help an institution charged with the enforcement of a constitutional provision or the executive to establish what the law on a particular constitutional point is as such it is not meant to cover the field, as in common law, no advisory opinions are given; and
- (b) Section 19 of the *Constitution* was intended to overcome the limitations of the common law because there are no parties in a Section 19 reference as such no orders in the nature of prerogative writs can therefore be made in a Section 19 Reference.

**2. RULES OF COURT (AMENDMENT OF SECTION 41).**

Section 41 of the Principal Act is amended by adding after Subsection (1) the following: -

“2. The Rules of the Court made pursuant to Section 184 of the *Constitution* and Section 41(1) of this Act shall not be inconsistent with the following minimum requirements, where any proceeding before the Supreme Court invokes the powers of the Supreme Court to give an opinion under Sections 18(1) and 19 of the *Constitution* and where the rights, powers and privileges of the referring authority is not in issue, the Court shall not have the power to make any: -

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- (a) consequential orders; or
- (b) interim injunctive reliefs and orders in the nature of prerogative writs; or
- (c) order for security for costs; or
- (d) order in the nature of orders such as are referred to in Section 8(1)(a), (b), and (c) of the Act.”.

**3. NEW PARTS VI AND VII.**

The Principal Act is amended by adding after Part V the following: -

**“PART VI. – VACATING ORDERS OF THE COURT.**

**“42. VACATING CERTAIN COURT ORDERS.**

All orders and reliefs issued by the Court contrary to Section 41(2) in proceedings: -

- (a) Supreme Court Reference No. 3 of 2011; and
- (b) Supreme Court Reference No. 5 of 2012,

are hereby vacated and shall have no force of law and effect and are null and void.”.

**“PART VII. – SUPREME COURT ORIGINATING SUMMONS PROCEEDINGS.**

**“43. NULLIFYING SUPREME COURT ORIGINATING SUMMONS.**

The Supreme Court Rules relating to the Originating Summons instituted to invoke the jurisdiction of the Court under Section 18(1) of the *Constitution* that have not been tabled and allowed by Parliament under Section 184(5) of the *Constitution* are hereby declared to have no force of law and effect and are null and void.”.

**“44. PROCESSES TO USE EXISTING SUPREME COURT RULES.**

All existing proceedings commenced by way of Supreme Court Originating Summons shall be recommenced pursuant to Order 4 of the Supreme Court Rules.”.

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**“45. NO AD HOC DIRECTIONS WHERE RULES EXIST.**

No Ad Hoc Directions shall be issued by the Court where there exists Supreme Court Rules that have been tabled and allowed by Parliament pursuant to Section 184(5) of the *Constitution*.”.

**“46. COURT DECISIONS NULLIFYING STATUTORY INSTRUMENT.**

The constitutional validity of any provision in the Supreme Court Rules allowed by Parliament pursuant to Section 184(5) of the *Constitution* shall not be declared unconstitutional by the Court unless proper notice has been given to the Attorney-General under the *Attorney-General Act 1989* and distributed widely through the Papua New Guinea Law Society to all lawyers who may have an interest in the validity of the Supreme Court Rules and for this purpose, the Attorney-General is deemed to be a proper party to such proceedings.”.

I hereby certify that the above is a fair print of the *Supreme Court (Amendment) Act 2012* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Supreme Court (Amendment) Act 2012* was made by the National Parliament on 18 April 2012.

Speaker of the National Parliament.

