Mr. Speaker,

I seek leave of Parliament to present the Supreme Court (Amendment) Bill and the Bill be read the second time and I be allowed to speak to it.

(After leave is granted)

Mr. Speaker,

There is no doubt that this nation is acutely in a constitutional crisis. The constitutional crisis is established not be the government or this Parliament. The fact of the matter is that the Constitution provides that power belongs to the people of this country. The Constitution in facts states that this power of the people is vested in their duly elected representatives. It does not belong to one or two appointed individuals.

I am reminded that during the committee stages of the Constituent Assembly debates, there was a concern expressed by Papua New Guinea members of then about having to share power with the appointed members of the judiciary who are the time comprised a handful of foreign judges. The concern which was expressed then was that as power belongs to the people and is vested in their duly elected representatives how could it then be justified that this people's power should be shared also with an unelected group of appointed individuals.

Mr. Speaker,

They had asked questions about security of the people's power. They had wanted assurances that these appointed individuals will do one day usurp more power and make them above the people's power that is vested in their elected representatives. Basically, they were fearful of the ability of lawyers to use legal jargon and the power of language to vest upon themselves more power than Parliament was prepared to give. Their concerns at that time have become a reality today.
It appears that they reluctantly agreed to go along with the legal and other advisers then upon being given a comprise text that assures Parliament's oversight role of the judiciary.

This oversight role is provided in Section 157 of the Constitution. This section is titled "Independence of the National judicial System". However, in this section is subject to other provisions of the Constitution which provides limitations on their independence. More specifically, it provided that the system is not subject to ministerial control or direction but that does not include the power of Parliament to make legislation giving directions to the court or a member of the court in respect to the exercise of Judicial powers or functions.

Mr. Speaker,

I repeat, this section reserves the Parliament's power of oversight I talked about earlier. It specifically says Parliament can by legislation give directions as to the exercise of judicial power or functions. This is one of the three oversight powers that the members of the Constituent Assembly were assured by the lawyers and other advisers would be used if the courts were to overstep their mark by usurping more powers that they were not entitled to have under the Constitution. This is the power that Parliament has exercised and will exercise again later today when we discuss the Judicial Conduct (Amendment) Bill.

Mr. Speaker,

The second oversight power that this Parliament has over the judiciary is found in Section 184(4) of the Constitution.

Subsection (4) states that where the Rules of the Court are inconsistent with an Act of Parliament, the Rule of the Court ceases to the extent of its inconsistency. This simply means that Parliament can make laws to
invalidate rules of the court. As we will see later, if the court relies on rules of the court to invalidate decisions taken by this parliament, the parliament can make laws that invalidate the court rules relied upon by the Court.

Mr. Speaker,

The third oversight power that Parliament has over the judiciary is provided for in Section 184(5) of the Constitution. Sub-section 5 provides an obligation on the court to forward to Parliament all rules of the court for approval.

Parliament has the power under this sub-section to disallow any rule of the court.

Mr. Speaker,

What I have pointed out to this Honourable House are just some examples and very relevant examples of Parliament's oversight role of the Judiciary as provided for in our Constitution. Those members of the public, lawyers and judges who say that the judiciary is independent and exercise equal if not more powers than this Parliament have not read these constitutional provisions and are intent on being mischievous and misrepresenting the Constitution and creating and fomenting conflict between this Parliament and the judiciary.

Mr. Speaker,

It is therefore imperative that Parliament use their oversight powers at this time.

It is imperative because of the recent decision on Wednesday by a three judge panel which stayed the implementation of the Judicial Conduct Act following an application by the Morobe Provincial Executive in a Section 19 Reference.
It is clear that a Section 19 Reference is a special procedure for seeking opinions on the interpretation and application of a constitutional provision in the Constitution.

This *Supreme Court (Amendment) Bill* is a proposed 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 Section 19 opinion will 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. It is not meant to cover the field, as in common law, no advisory opinions are given. Section 19 of the *Constitution* was intended to overcome the limitations of common law. Because there are no parties in a Section 19 Reference, no orders in the nature of prerogative writs can be made in these proceedings.

Mr. Speaker,

The Courts have given themselves powers they do not have under the *Constitution*. This is clear in their rulings. They have said they have power under the Section 155(4) of the *Constitution* which deals with proceedings generally between parties and extended their power to also cover special references under Section 19 where there are no parties. To do that they have also relied upon Order 3 Rule 2 of the *Supreme Court Rules* to issue those stay orders in the recent reference filed by Morobe Provincial Executive.

I am not going to dwell on where the court has gone wrong in its ruling but let me say this: Morobe Provincial Executive has no direct interest in the outcome of the stay orders. It is not directly affected by them. The Court has certainly been biased in its ruling. If you are to read the ruling, you will come to the conclusion that their introduction as to their constitutional duties, roles and oath of office and their comment that there exists a fear that this *Judicial Conduct Act* may be applied to them in future, the obvious
The conclusion would be that as their collective mind is now been subjected to the fear element, they must disqualify themselves from hearing the application. Nevertheless they proceeded to hand down their rulings and issued orders bad on their state of mind that they are fearful.

Mr. Speaker,

I want to remind the honourable judges that their oath of office stated that they must perform their functions "without fear or favour, affection or ill-will". It is clear that in SCR 5 of 2012, the judges were performing their functions with fear, special favour and affection towards the Chief Justice and Justice Kirriwom and certainly ill-will towards this House of Parliament. Their own ruling is evidence of their failure to honour their oath of office.

Mr Speaker,

Having said this let me proceed to the provisions of the Supreme Court (Amendment) Bill.

Section 1 of the Bill

This section was introduced to make clear the purpose of Section 19 of the Constitution by quoting a passage from the CPC Report and the opinion of Chief Justice Kidu given in 1982 in the Somare Case where Somare challenged the validity of the legislation committing troops to Vanuatu.

Section 2 of the Bill

This section amended Section 41 of the existing Supreme Court Act (Principal Act)
Section 41 of the Principal Act had only one paragraph which says:

41. RULES OF COURT.

Subject to Section 184 (rules of court) of the Constitution, the Judges of the Supreme Court may make Rules of Court.

The proposed amendment inserts a new sub-section 2. This is necessitated because the Court had relied on its powers in Order 3 Rule 2 to hand down declaratory and stay orders in Section 19. References which should essentially be a proceeding that is limited to seeking an opinion of the court, where there are no parties with vested interests that needed protecting. Order 3 Rule 2 says that the court has power to make those orders that are specified in the amendment with the exception that in the proposed amendment, the court is not permitted to issue those orders if the Referent in the reference does not have any rights, powers and privileges or any vested interest that needed protection.

So in the case where the Morobe Provincial Executive cannot prove that their powers, rights and privileges are not being affected, then they cannot obtain the stay orders such as those obtained against the Parliament in SCR 5 of 2012.

Section 3 of the Bill

This section inserted a new Part VI and Section 42 in the Principal Act.

This section follows from the general provision laid out in the new sub-section 2 of section 41 that I have explained above.

The new Section 42 vacates the orders granted by the Court in SCR 3 of 2011 and SCR 5 of 2012. The effect of this provision is to invalidate the orders that were made by the court in the named proceedings.

Section 41 repealed and replaced by the Supreme Court (Amendment) Act 1987 (No. 14 of 1987).
Section 4 of the Bill

Section 4 of the Bill inserted a new Part VII and new Sections 43, 44, 45, and 46 in the Principal Act.

PART VII-SUPREME COURT ORIGINATING SUMMONS
PROCEEDINGS

NEW SECTION 43: NULLIFYING SUPREME COURT ORIGINATING
SUMMONS

The Supreme Court in a decision in December 2010 (Mondial case), changed the rules of the
game by making a decision that the Supreme Court Rules (Order 4 Rule 1 and Form 1)
which is a statutory instrument tabled before Parliament in 1984 and approved pursuant to
Section 184(5) of the Constitution, is unconstitutional. This rule was established following
the Somare case in 1982 and provides a procedure for invoking the powers of the Court
under Section 18(1) of the Constitution.

The Mondial case says that this rule is unconstitutional. The reasoning or lack of reasoning in
Chief Justice's ruling and other two judges who supported him shows the shallowness of that
ruling and leaves one to doubt the logic and veracity of their judgement. His written judgement
lacks clarity and is challengeable. For a start, they misrepresented the majority decision in the
Somare case to justify a selected outcome by the Chief Justice and his colleagues. They are
now using this case to say that Section 18(1) References are null and void and everyone has
now to use a process called the Supreme Court Originating Summons process and yet there is
nothing in the Rules of the Court that provide for such a process. They created the procedure
using their general power under Section 185 of the Constitution - the power to give ad hoc
directions.
The Supreme Court Rules were made by 8 judges in 1984. The three judges in Mondecai case cannot over-rule the decision of 8 judges in 1984. In order for the rules to be made invalid there must be a ruling of more than 8 judges. How can a decision of 8 judges be over ridden by three judges. That defies logic.

If this amendment is passed, it will negative automatically the SCOS No. 4 of 2012 which is a proceeding filed by the Registrar of the Supreme Court also seeking similar injunctive orders restraining any action to be taken under the Judicial Conduct Act against the Chief Justice and Justice Kirriwom. This proceeding is scheduled to be heard by the Court on Friday 13th April 2012.

The new Section 43 simply makes the rules adopted by the Court without tabling on the floor of Parliament to comply with Section 184(5) of the Constitution invalid. This section will make invalid the SCOS No. 4 of 2012 proceeding.

NEW SECTION 43: PROCESSES TO USE EXISTING SUPREME COURT RULE

This new section 43 in the Bill preserves the existing court cases by saying that they can be recommenced by way of a Section 18(1) Reference. However, by the previous addition to Section 41(2)(a) of this Bill, the Registrar of the Supreme Court not having a personal right or interest in the outcome of the proceeding cannot seek restraining or stay orders. The effect of this section is to make invalid SCOS No. 4 of 2012 proceedings filed by the Registrar of the Supreme Court.

NEW SECTIOB 44: NO AD HOC DIRECTIONS WHERE RULES EXIST

This new Section 44 of the Bill makes it clear that ad hoc directions cannot be issued by the Court where there exist rules of the court that had been tabled in Parliament and has the status of a statutory instrument. Chief Justice and
his judges had invalidated the Supreme Court rules and given themselves more powers that are not authorised by the Constitution. This amendment is meant to keep them within their limits of their authority.

NEW SECTION 45: COURT DECISIONS NULLIFYING STATUTORY INSTRUMENT

The court rules affect all parties and their lawyers. What these judges have done is to change the rules of the game without giving due notice to all interested parties and in this case all lawyers who might have a client's interest to protect.

Accordingly what is provided here is that the rules cannot be changed without giving notice to the Attorney-General and that he must be a party in the proceeding. Additionally, the court must give notice to the PNG Law Society to circulate to all lawyers so that they may have an opportunity to be heard before the court can proceed to declare any rule unconstitutional.

This is just a checking mechanism to control the behaviour of judges. Mr. Speaker,

I repeat, we are in a constitutional crisis. The crisis is created by someone who a think that he owns the position that he holds. The position of Chief Justice belongs to the people of this nation. It does not belong to one man. It is not his personal property. Parliament will never give up its oversight role and responsibility I talked about earlier.

Mr Speaker,

Parliament is being asked to endorse this Bill to show that the nation's interest is represented through the majority of its duly elected representatives in this House. It is not represented through the minority in this House. In this respect the courts are duty bound I to accept and
implement the laws made by the majority members in Parliament. It has no power to stay the implementation of any legislation unless an appropriately constituted court has found that parts of the Act are unconstitutional. No stay orders should be made without first finding that the law is unconstitutional. Justice Hartshorn got it right when he refused to grant similar stay orders sought by Sir Michael Somare and Sir Arnold Amet. It is clear that last Wednesday the Chief Justice used his position for personal gain, by appointing judges who would decide to protect his interest - he has stacked the bench by appointing Justices Mogish, Manuhu and Sawong. Remember these judges. They have no backbone. They are not true to their oath of office.

Commencement Date

Mr Speaker,

This Bill is deemed to have commenced on 9 December 2012 and accordingly even if the proceedings SCR 1 and 2 of 2012 are unsuccessful, the Sections proposed in this Bill will negate the consequential orders granted by the Court in SCR 3 of 2011 proceeding, on 12 December 2011.

Conclusion

Mr Speaker,

The Supreme Court (Amendment) Bill contains provisions which I have explained. These provisions give directions to the court or a member of the court in respect to the exercise of judicial powers or functions. The Bill is therefore consistent with Section 157 of the Constitution.

I, therefore, commend the Supreme Court (Amendment) Bill to this House.