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# Strengthening the Independence and Accountability of the Malaysian Anti-Corruption Commission: Problems, Case Studies, and Reform Strategies

Prepared by:
**Andrew Yong**

# STRENGTHENING THE INDEPENDENCE AND ACCOUNTABILITY OF THE MALAYSIAN ANTI-CORRUPTION COMMISSION: PROBLEMS, CASE STUDIES, AND REFORM STRATEGIES

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# Executive summary

- Reform of the MACC should be governed by the dual aims of safeguarding its operational independence as well as securing the accountability of its officers to the law and to democratic institutions.
- At present, the MACC Chief Commissioner is appointed, and can be removed, by the Yang di-Pertuan Agong ('YDPA') on the advice of the Prime Minister ('PM'). Other personnel of the MACC, like all public servants, also hold office at the pleasure of the YDPA.
- Prosecutions for corruption are under the control of the Attorney General ('AG'), who is also appointed, and can be removed, by the YDPA on the advice of the PM.
- In order to protect the independence of the MACC:
  - The power to appoint and remove the Chief Commissioner and other MACC officers should be transferred from the Executive to a constitutional Anti-Corruption Service Commission ('ACSC').
  - The *Public Officers (Conduct and Discipline) Regulations 1993* should be amended to transfer the power to terminate public officers in the public interest from the Government to the appropriate service commission (rather than the Government).
  - Article 132 of the *Federal Constitution* should be amended to provide that public servants hold office at the pleasure of the appropriate service commission (rather than the YDPA).
  - Article 135 of the *Federal Constitution* should be amended to guarantee that where a public servant is terminated, dismissed or reduced in rank or suffers any other disciplinary action other than by the decision of the appropriate service commission, he should have a right of appeal to the service commission.
- To avoid confusion with the new ACSC, the MACC (one of the world's oldest anti-corruption bodies) should revert to its historic name of the Anti-Corruption Agency (ACA) and its Chief Commissioner should revert to the title of Director General.

- To allow the ACSC to perform the function of an independent, specialist service commission for the anti-corruption service:
  - The ACSC should be established by an amendment to Part X of the *Federal Constitution*, and have jurisdiction over appointments, promotions, transfers and discipline of members of the anti-corruption service.
  - The ACSC should comprise a chairman, who should be a former judge of the Federal Court, Court of Appeal or a High Court, and other members appointed by the YDPA in his discretion but after considering the advice of the PM, together with the Director General of the ACA as an *ex officio* member.
  - The ACSC should have responsibility for safeguarding the independence of the anti-corruption service and for overseeing the functions of the ACA. It (rather than the Executive) should have the power to appoint members of an Advisory Committee, a Complaints Committee and such other committees as it deems necessary to assist it in its functions.
- To provide for parliamentary oversight of the anti-corruption service:
  - Article 40 of the *Federal Constitution* should be amended to allow Parliament to require the PM to submit his advice or the advice of Cabinet in respect of specific appointments for the confirmation of a parliamentary committee.
  - The Special Committee on Corruption should be renamed the Parliamentary Joint Committee on Corruption ('PJCC'), and should consist of equal numbers of members nominated by the President of the Senate and the Speaker of the House of Representatives in accordance with each House's selection procedures (rather than by the PM).
  - The PJCC's membership should reflect the partisan composition of the two Houses, and its chairman should, like that of the Public Accounts Committee, be a member of the Official Opposition.
  - The PJCC should examine the reports of both the ACA and the ACSC, and its own report should be made directly to both Houses

of Parliament (rather than to the PM). It should also scrutinize and confirm the PM's advice on the appointments of the chairman and other members of the ACSC and of the Director General and Deputy Director General of the ACA.

- As previously recommended in BERSIH's report on reforming the office of AG and the Judicial and Legal Service in Malaysia:[1]
  - Article 145 of the *Federal Constitution* should be amended to remove the AG's responsibility for criminal prosecutions and to create a separate Public Prosecutor with security of tenure.
  - Parliament should be empowered to authorize public authorities such as the ACA to institute and conduct prosecutions for offences under their respective statutes, subject to the Public Prosecutor's power to take over any prosecution with the consent of the authority concerned or of the court.
- The proposed constitutional amendments and amendments to the *MACC Act* are included in the appendices to this Report.

1 Andrew Yong, *Reforming the Office of Attorney General and the Judicial and Legal Service in Malaysia* (2021) <https://bersih.org/download/reforming-the-office-of-attorney-general-and-the-judicial-and-legal-service-in-malaysia/>.

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# INTRODUCTION

This legal and policy research paper has been commissioned by BERSIH as a study into the reform of the Malaysian Anti-Corruption Commission ('MACC').

June 2024

# Corruption in Malaysia

## Recent history

Malaysia has the dubious distinction of having during the past decade been the site of a grand corruption scandal described as 'the world's biggest heist'.[1] The more-than-US$4.5 billion 1Malaysia Development Berhad ('1MDB') scandal ultimately led, in the 14th General Election ('GE') in 2018, to the downfall of the governing coalition that had ruled Malaysia since *Merdeka*.

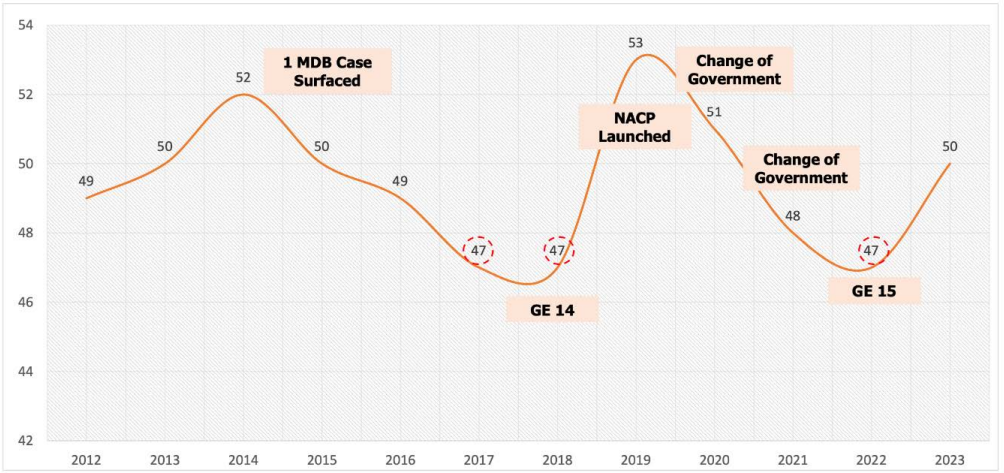


*Figure 1: Graph showing Malaysia's score in the Corruption Perceptions Index, 2012–2023.*[2]

Figure 1, showing Malaysia's Corruption Perceptions Index ('CPI') scores over the past decade, captures how the country has been seen to perform against corruption over the period. [3] The CPI is a composite indicator compiled by Transparency International ('TI') that is used to measure

1 'Malaysia: The World's Biggest Heist', *101 East* (Al Jazeera, 7 February 2019) <https://www.aljazeera.com/program/101-east/2019/2/7/malaysia-the-worlds-biggest-heist>.

2 Muhammad Mohan, 'Corruption Perceptions Index 2023' (TI-Malaysia, 30 January 2024) <https://transparency.org.my/filemanager/files/shares/CPI%202023/Malaysia%20CPI%202023_English.pdf>.

3 Ibid.

perceptions of public sector corruption in countries across the world. It draws upon 13 data sources, including executive surveys and risk assessments by the World Economic Forum and the Economist Intelligence Unit ('EIU'), etc, that capture the assessment of business executives and experts on corrupt behaviours in the public sector, as well as the mechanisms available to prevent corruption.[4]

From 2014, when the 1MDB scandal first surfaced, Malaysia's score in the CPI dropped from 52 to a low of 47 at the time of the GE 14. Following the change of government after GE 14 and the launch of the 2019–2023 National Anti-Corruption Plan ('NACP'),[5] Malaysia's score rose sharply to a high of 53. Following two changes of government and a widespread perception of a lack of political will in fighting institutional corruption (which had manifested itself in a stalling of institutional reforms), it had fallen back down to 47 at the time of GE 15. Finally, following the change of government in GE 15, Malaysia's score recovered to 50 in 2023.

Among the factors cited by TI-Malaysia to have contributed to Malaysia's poor rating in 2022 included the slow implementation of the NACP, as well as the Government's failures to make progress on bills on reforms to the MACC, the separation of the offices of Attorney General ('AG') and Public Prosecutor, government procurement, political financing and whistle-blower protection.[6]

Of the areas of institutional reform tracked by the Center to Combat Corruption and Cronyism ('C4') in its September 2022 MyGov reform tracker—including several identified as priorities areas by the NACP (namely, Political financing, Asset declaration, Police accountability and Separation of the AG & Public Prosecutor)—10 out of 13 were assessed as 'sidetracking',[7] with the exception of Party hopping (assessed as 'speedy implementation'),

4 TI, 'Corruption Perceptions Index Technical Methodology Note' <https://images.transparencycdn.org/images/CPI_2022_Methodology.zip>.

5 Prime Minister's Department, *National Anti-Corruption Plan 2019–2023* (2019).

6 Muhammad Mohan, 'Corruption Perceptions Index 2022' (TI-Malaysia, 31 January 2023) 21 <https://transparency.org.my/filemanager/files/shares/CPI%202022/Malaysia%20CPI%202022_English.pdf>.

7 Namely: Whistle-blower protection; Freedom of Information Act; Asset declaration, Separation of the AG & Public Prosecutor; Parliamentary Select Committees; Parliamentary Service Bill; Ombudsman Bill; MACC independence; Political funding; Public procurement.

Environmental protection (assessed as 'slow implementation') and Police accountability (assessed as 'failure to implement').[8]

In May 2023, C4 criticised the re-appointment of MACC Chief Commissioner Azam Baki, citing allegations of misconduct against Azam and calling for the suitability of the MACC Chief to be scrutinized by a parliamentary committee.[9]

Malaysia's anti-corruption efforts have also been repeatedly tarnished in recent months by a series of failures in the prosecutions of high-level corruption cases. In March 2023, former PM Najib Razak and 1MDB former CEO Arul Kanda were acquitted of abuse of power in relation to the 1MDB audit without their defences being called.[10] The prosecution subsequently failed to file a petition of appeal against the acquittal by the court deadline.[11] In August 2023, former PM Muhyiddin Yassin was acquitted of four abuse of power charges relating to the Jana Wibawa stimulus programme because of defective charges.[12] And in September 2023, 47 charges of corruption and money laundering against Deputy PM Zahid Hamidi in connection with the Yayasan Akalbudi scandal were dropped by the prosecution even though the judge had found there to be a case to be answered.[13]

In January 2024, it was announced that Malaysia's 2023 CPI score had risen to 50, based in part on the smooth transition of power in GE 15, the

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8 K Sudhagaran Stanley, *MyGov Reform Tracker: A Report by the Center to Combat Corruption and Cronyism (C4 Center)* (C4 Center, September 2022) <https://c4center.org/wp-content/uploads/MyGov_Reform_Tracker_Report.pdf>.

9 'Azam Baki's Term Extension: A Sign of MACC's Persistent Institutional Flaws - C4', *Aliran* (online, 19 May 2023) <https://aliran.com/civil-society-voices/azam-bakis-term-extension-a-sign-of-maccs-persistent-institutional-flaws-c4>.

10 Hidir Reduan Abdul Rashid, '1MDB Audit: Najib, Ex-CEO Acquitted of Power Abuse', *Malaysiakini* (online, 3 March 2023) <https://www.malaysiakini.com/news/657153>.

11 Ida Lim, 'Najib, Arul Kanda's Acquittal: Prosecution Fails to File Court Papers within Deadline Needed to Continue Appeal', *Malay Mail* (online, 28 August 2023) <https://www.malaymail.com/news/malaysia/2023/08/28/najib-arul-kandas-acquittal-prosecution-fails-to-file-court-papers-within-deadline-needed-to-continue-appeal/87614>."plainCitation":"Ida Lim, 'Najib, Arul Kanda's Acquittal: Prosecution Fails to File Court Papers within Deadline Needed to Continue Appeal', Malay Mail (online, 28 August 2023

12 Eileen Ng, 'Former Malaysian PM Muhyiddin Acquitted of Power Abuse Charges', *The Straits Times* (Singapore, online, 15 August 2023) <https://www.straitstimes.com/asia/se-asia/former-malaysian-pm-muhyiddin-acquitted-of-power-abuse-charges>.

13 'Malaysia DPM Ahmad Zahid's Dropped Charges Sparks Criticisms from across Political Spectrum', *CNA* <https://www.channelnewsasia.com/asia/malaysia-ahmad-zahid-47-graft-charges-court-decision-dropped-attorney-general-3747316>.

country's rise in the EIU's Democracy Index, and Najib's conviction and imprisonment in the SRC International case.[14] However, in February 2024, to widespread public anger, the Federal Territories Pardons Board halved Najib's 12-year prison sentence and reduced his accompanying fine from RM210 million to RM50 million.[15]

## Impacts of corruption

The failure to prevent and punish corruption has huge impacts on a country and its economy. Corruption results in the nation's financial resources being siphoned out of the public treasury and often out of the country. It has been estimated that Malaysia has lost RM4.5 trillion to corruption and leakages over the past 26 years alone.[16]

Corruption results in public decisions such as policy-making and the awarding of contracts being distorted to favour the givers of bribes, to the detriment of economic efficiency and the public interest. It increases the cost of public infrastructure and services and/or reduces the quality of infrastructure and services provided.

Corruption benefits the wealthy and well-connected at the expense of the poor, reducing state resources and capacity to assist those whom the Government is supposed to protect, and hurting ordinary people who are forced to pay bribes in exchange for public services. It increases the cost of doing business and reduces business confidence and investment.

Finally, corruption can result in the manipulation of the political system and the administration of justice by those with money, diminishing public confidence, political stability and the rule of law. It allows those with financial resources to circumvent laws designed to protect the environment, human rights, public health, national security and public safety, and to avoid punishment for their crimes.[17]

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14 Muhammad Mohan (n 4).

15 'Malaysians Outraged by Halved Jail Sentence for Disgraced Former PM Najib', *ABC News* (online, 6 February 2024) <https://www.abc.net.au/news/2024-02-06/najib-razak-malaysia-corruption-1mdb-royal-clemency-sentence/103430638>.

16 Rais Hussin, 'Corruption Bled Malaysia RM4.5t over 26 Years', *Malaysiakini* (online, 10 May 2023) <https://www.malaysiakini.com/news/664559>.

17 UNODC, 'Anti-Corruption Module 1 Key Issues: Effects of Corruption' <https://www.unodc.org/e4j/zh/anti-corruption/module-1/key-issues/effects-of-corruption.html>.

# Anti-corruption bodies in Malaysia

## History

The first modern, centralized anti-corruption agencies ('ACAs') in the world were introduced in the common law countries of Southeast Asia after the end of the Second World War.[18] Singapore's Corrupt Practices Investigation Bureau ('CPIB') was established in 1952 under the jurisdiction of the AG of Singapore, replacing the Anti-Corruption Branch of the Criminal Investigation Department ('CID') of the Singapore Police. The prevalence of corruption within the Singapore Police and the need for an investigative body independent of the police was the most important reason for the creation of the CPIB.[19]

The establishment of Singapore's CPIB was followed by Malaysia's ACA in 1967 and by Hong Kong's Independent Commission Against Corruption ('ICAC') in 1974. Malaysia's ACA, one of the world's oldest, replaced two bodies, the Special Crime Branch of the CID of the Royal Malaysia Police and the Anti-Corruption Section of the Home Ministry (previously the Prime Minister ('PM')'s Department), integrating all aspects of the anti-corruption effort—investigation, prosecution, research and prevention—into a single agency under the Home Ministry.[20]

From the outset, there were issues of staffing, with the ACA mainly dependent on officers seconded from the police and customs departments, who were insufficiently trained in their anti-corruption role and reluctant to investigate corrupt practices in the departments to which they might be returned or sent in future. There were also perennial complaints that

18 Luis de Sousa, 'Anti-Corruption Agencies: Between Empowerment and Irrelevance' (2010) 53 *Crime, Law and Social Change* 6.

19 Jon ST Quah, 'Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis' (2007) 8(2) *International Public Management Review* 73.

20 Y Mansoor Marican, 'Combating Corruption: The Malaysian Experience' (1979) 19(6) *Asian Survey* 597.

the ACA focused on 'small fry' while ignoring the 'big fish' with political connections. In Parliament, there were calls for the greater independence of the ACA, including calls for it to be made answerable directly to the judiciary or to Parliament, and for its director to be appointed by the Yang di-Pertuan Agong ('YDPA') or the Conference of Rulers and to have the status of a judge.[21]

In 1973, the ACA became a statutory agency under the name of the National Bureau of Investigation ('NBI'),[22] with a director-general appointed by the YDPA on the advice of the PM, with the powers of a Deputy Public Prosecutor, and its own permanent staff. NBI officers were given the powers of a police officer and of a customs officer, and were given 'incentive allowances' for successful investigations.[23]

The NBI was initially placed under the PM's Department, but in 1976, it was moved under the Ministry of Law and AG, before being moved back to the PM's Department in 1980.[24] Like the ACA before it, the NBI also continued to suffer from criticisms that it lacked the political independence necessary to catch the 'big fish', and faced opposition calls for it to report directly to Parliament.

The Home Ministry had originally pushed for the removal of the word 'anti-corruption' from the ACA's title in 1973 because it gave the 'wrong perception to the public regarding the level of corruption that existed in the country'. But the name change backfired, causing the NBI to be inundated with reports of non-corruption-related crimes, such as illegal gambling and criminal breach of trust,[25] and the agency consequently reverted to its original name in 1982.[26] However, then-PM Dr Mahathir Mohamad rejected recommendations by a special committee set up by his predecessor that there should be an advisory committee in the Hong Kong model to advise on the prevention of corruption.[27]

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21 Ibid 604–5.

22 *National Bureau of Investigation Act 1973* (Act 123).

23 Marican (n 22) 605–6.

24 Zulkanain Abdul Rahman, Ahmad Kamal Ariffin Mohd Rus, and Noor Ain Mat Noor, *MACC: The History: The Battle for a Corruption-Free Malaysia* (2020) 107.

25 Ibid 108, 119.

26 *Anti-Corruption Act 1982* (Act 271).

27 Zulkanain Abdul Rahman, Ahmad Kamal Ariffin Mohd Rus, and Noor Ain Mat Noor (n 26) 124.

## Current arrangements

In 2009, the ACA was reformed as the MACC,[28] largely in order to improve public confidence in the agency as an effective and transparent body independent of the Executive. A committee established by then-PM Abdullah Ahmad Badawi in the aftermath of GE 12 in March 2008 to look into models of ACAs from various countries had identified Hong Kong's ICAC, with its four advisory committees an Advisory Committee on Corruption, an Operations Review Committee, a Corruption Prevention Advisory Committee and a Citizens Advisory Committee on Community Relations), as the best model for reform. [29]

The *MACC Act* consequently established three statutory 'mechanisms of accountability': an Anti-Corruption Advisory Board ('ACAB'), a parliamentary committee known as the Special Committee on Corruption ('SCC') and a Complaints Committee. In addition, an Operations Review Panel ('ORP') and a Consultation and Corruption Prevention Panel ('CCPP') were established through administrative means.

In addition to the board, committees and panels listed above, the Malaysian Government has also constituted various executive committees and other entities in its efforts against corruption. In 1997, a Special Cabinet Committee on the Integrity of Government Management ('JKKMKPK') was established, with a joint secretariat provided by the ACA and the Malaysian Administrative Modernization and Management Planning Unit ('MAMPU').[30] In 2004, the Malaysian Integrity Institute (IIM) was established as an entity to coordinate and monitor the implementation of the National Integrity Plan (and later the NACP).[31]

In 2018, the Government under then-PM Dr Mahathir Mohamad established a National Centre for Governance, Integrity and Anti-Corruption ('GIACC') to coordinate and monitor government activities in

28 *Malaysian Anti-Corruption Commission Act 2009* (Act 694) ('*MACC Act*').

29 Zulkanain Abdul Rahman, Ahmad Kamal Ariffin Mohd Rus, and Noor Ain Mat Noor (n 26) 188–9.

30 Ibid 157.

31 Ibid 169.

this area, which reported to the JKKMKPK, renamed the Special Cabinet Committee on Anti-Corruption ('JKKMAR').[32]

In April 2023, under current PM Anwar Ibrahim, the GIACC was brought under the MACC and renamed the National Governance Planning Division,[33] while the JKKMAR was renamed in July 2023 as the Special Cabinet Committee on National Governance ('JKKTN').[34]

32 Azura Abas, 'PM Agrees to GIACC Formation to Handle Governance, Integrity and Anti-Graft', *NST Online* (online, 1 June 2018) <https://www.nst.com.my/news/nation/2018/06/375513/pm-agrees-giacc-formation-handle-governance-integrity-and-anti-graft>.

33 Bernama, 'GIACC Part of MACC since April, Graft-Buster Confirms', *Malaysiakini* (online, 9 May 2023) <https://www.malaysiakini.com/news/664519>.

34 Dawn Chan, 'Anwar: Ministers, Deputy Ministers to Declare Assets Soon', *NST Online* (online, 6 July 2023) <https://www.nst.com.my/news/nation/2023/07/928120/anwar-ministers-deputy-ministers-declare-assets-soon>.

# Institutional key issues

## Independence

As previously noted, since the creation of the ACA in 1967 as an agency—at times under the Home Ministry and at other times under the PM's Department—recurring concerns have been raised about whether the Agency has had sufficient independence to pursue cases of grand corruption by 'big fish' with high political connections, of which the 1MDB scandal was the biggest and most brazen one.

In 2003, Malaysia signed the United Nations ('UN') Convention Against Corruption ('UNCAC'), which it proceeded to ratify in 2008.[35] Articles 6 & 36 of UNCAC require Malaysia to maintain specialized authorities with the necessary independence for the effective prevention and punishment of corruption 'without any undue influence'. Article 36, for instance, provides:

> Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted **the necessary independence**, in accordance with the fundamental principles of the legal system of the State Party, **to be able to carry out their functions effectively and without any undue influence**. Such persons or staff of such body or bodies should have the **appropriate training and resources to carry out their tasks**.[36] *(emphasis added)*

### *1. Leadership*

One important aspect of the independence of the MACC is the ability of leadership and officers to carry out their duties without undue influence from the Executive. At present, the Chief Commissioner of the MACC is appointed by the YDPA upon the advice of the PM, and holds office 'at the

35 'Ratification Status', *United Nations : Office on Drugs and Crime* <//www.unodc.org/unodc/en/corruption/ratification-status.html>.

36 *United Nations Convention Against Corruption,* adopted 31 October 2003, A/58/422 (entered into force 14 December 2005).

pleasure of the [YDPA], subject to the advice of the [PM]'.[37] This means that the Chief Commissioner can be dismissed at any time by the Executive.

Given Malaysia's history of institutional failures during the 1MDB scandal in 2015, when then-AG Abdul Gani Patail was dismissed by then-PM Najib Razak before the AG could frame corruption charges against him,[38] the equally precarious tenure of the Chief Commissioner raises questions about whether the MACC has the 'necessary independence' to pursue cases of grand corruption without undue influence from the Executive, as required by Arts 6 & 36 of UNCAC.

The method of appointment and the lack of security of tenure of the Chief Commissioner goes against the *Jakarta Statement on Principles for Anti-Corruption Agencies* (*Jakarta Principles*), adopted in 2012 by anti-corruption agencies around the world with the support of the UN Development Programme ('UNDP') and the UN Office on Drugs and Crime ('UNODC'). This provides that—

> APPOINTMENT: ACA heads shall be appointed through a process that **ensures their apolitical stance, impartiality, neutrality, integrity and competence** …
>
> REMOVAL: ACA heads **shall have security of tenure** and **shall be removed only through a legally established procedure** equivalent to the procedure for the removal of a key independent authority specially protected by law (such as the Chief Justice).[39] *(emphasis added)*

These principles apply to the leadership of the ACA, 'whether it consists of a single head, a commission or a board, including one or more deputies'.[40]

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37 *MACC Act* (n 30) s 5(1) & (3).

38 'Gani Patail Replaced as Attorney-General Shocker', *Malaysiakini* (online, 28 July 2015) <https://www.malaysiakini.com/news/306399>.

39 *Jakarta Statement on Principles for Anti-Corruption Agencies 2012* principles 4 & 6 ('*Jakarta Principles*').

40 UNODC, *Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies* (2020) 23 ('*Colombo Commentary*').

### *2. Human resources*

One aspect of the MACC's independence that is sometimes considered to be unsatisfactory relates to its autonomy over the recruitment and selection of its own staff, as well as the ability to control unwanted transfers and terminations. This is an area that is covered by the *Jakarta Principles*:

> AUTHORITY OVER HUMAN RESOURCES: ACAs shall have the power to recruit and dismiss their own staff according to internal clear and transparent procedures.[41]

At present, the MACC comes under the jurisdiction of the Public Services Commission ('PSC'), which has authority over appointments, promotions, transfers and discipline of members of the general public service of the Federation. While the PSC is an independent service commission established under Part X of the *Federal Constitution*, its broad remit covering the whole of the general public service means that it has no specialist anti-corruption experience or expertise.

Despite the lack of autonomy over human resources, there is little evidence that the MACC is obviously undermanned. In recent years the number of posts in the MACC has increased from 2,955 in 2018 to 3,232 in 2022, though the number filled has only increased from 2,704 in 2018 to 2,713 in 2022.[42] This gives the MACC an actual staff–population ratio of 1:12,509,[43] in between the numbers listed in 2014 for Hong Kong (1:5,333) and Singapore (1:26,682), two countries renowned for having effective anti-corruption regimes.[44]

Out of ten Asia-Pacific countries listed in a report sponsored by TI, only two had staff to population ratios in 2014 that were better than Malaysia's in 2022:

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41 *Jakarta Principles* (n 41) principle 10.

42 MACC, *Annual Report 2022* (2023) <https://www.sprm.gov.my/admin/uploads_publication/laporan-tahunan-sprm-2022--my-01082023.pdf>.

43 Population of Malaysia (2022) was 33,938,221: 'World Bank Open Data', *World Bank Open Data* <https://data.worldbank.org>.

44 Jon ST Quah, 'Combating Corruption in Asian Countries: Learning from Success & Failure' (2018) 147(3) *Daedalus* 202, 205 ('Combating Corruption in Asian Countries').

| Country | CPI score (2022) | ACA Budget (US$ M) | Expenditure in ‰ of GDP | ACA personnel | Staff–population ratio |
|---|---|---|---|---|---|
| Hong Kong SAR | 76 | 120.14 | 0.412 | 1,358 | 1 :5,333 |
| Fiji | 53 | 3.76 | 0.774 | 132 | 1:6,711 |
| ***Malaysia (2022)*** | ***47*** | ***64.89*** | ***0.159*** | ***2,713*** | ***1:12,509*** |
| Singapore | 83 | 29.30 | 0.093 | 205 | 1 :26,682 |
| Philippines | 33 | 38.80 | 0.130 | 1,214 | 1:81,631 |
| Taiwan | 68 | 14.40 | 0.027 | 240 | 1:97,641 |
| South Korea | 63 | 58.30 | 0.039 | 465 | 1:108,430 |
| Bangladesh | 25 | 5.99 | 0.029 | 1,264 | 1:127,369 |
| Indonesia | 34 | 50.17 | 0.056 | 1,102 | 1:230,943 |
| India | 40 | 65.50 | 0.032 | 5,676 | 1 :228,206 |
| Pakistan | 27 | 20.52 | 0.076 | 402 | 1 :461 ,442 |

*Table 1: Staff–population ratios and expenditure per GDP of 10 ACAs (2014),[45] with comparable data for Malaysia and CPI scores for all countries (2022) added (shaded grey).*

### *3. Financial resources*

On the issue of financial resourcing, the *Jakarta Principles* provide that—

> ADEQUATE AND RELIABLE RESOURCES: ACAs shall have **sufficient financial resources** to carry out their tasks, taking into account the country's budgetary resources, population size and land area. ACAs shall be entitled to **timely, planned, reliable and adequate resources** for the gradual capacity development and improvement of the ACA's operations and fulfilment of the ACA's mandate.
>
> FINANCIAL AUTONOMY: ACAs shall receive a budgetary allocation over which ACAs have **full management and control** without prejudice to the appropriate accounting standards and auditing requirements.[46] (*emphasis added*)

45 Jon ST Quah, *Anti-Corruption Agencies in Asia Pacific Countries: An Evaluation of Their Performance and Challenges* (TI, 2017) 12 <https://images.transparencycdn.org/images/2017_ACA_Background_Paper.pdf> ('*Anti-Corruption Agencies in Asia Pacific Countries*'); International Monetary Fund, 'GDP, Current Prices', *IMF Datamapper* <https://www.imf.org/external/datamapper/NGDPD@WEO>.

46 *Jakarta Principles* (n 41) principles 11 & 12.

The finances allocated to the MACC are set by the Ministry of Finance and approved by Parliament through the Budget process. In recent years, MACC's budget has increased from RM242 million in 2018 to RM312 million in 2023, an average annual increase of 5.2% per annum.[47]

Again, referring to Table 1, there appears to be little evidence that the MACC is obviously underfunded. Using GDP in current US$ as a proxy for financial resources, only two of the ten Asia-Pacific countries referenced spent more as a proportion of GDP in 2014 than Malaysia did in 2022.[48]

### *4. Prosecution powers*

Although the *MACC Act*, like previous Acts, grants the Chief Commissioner 'such powers of a Deputy Public Prosecutor as authorized by the Public Prosecutor for the purposes of this Act',[49] the prosecution of offences under the *MACC Act* remains under the control of the AG as Public Prosecutor.

Until the 1997 case of *Repco Holdings v Public Prosecutor*, [50] public authorities such as the Securities Commission, trading standards officers, local authorities, etc, had statutory powers to conduct prosecutions of offences under their respective statutes. Since then, however, such provisions have been struck down as unconstitutional insofar as they authorize the institution of prosecutions independent of the AG / Public Prosecutor. Section 58 of the *MACC Act* therefore provides that no prosecution of any offence under the Act may be instituted except by or with the consent of the Public Prosecutor.

In 2015, then-AG Mohamed Apandi Ali exonerated then-PM Najib Razak over his involvement the 1MDB affair, directed the MACC to close its as-yet incomplete investigations, and refused to consider the MACC's requests for mutual legal assistance from foreign agencies. The Malaysian

47 Syed Jaymal Zahiid, 'Putrajaya Ups 20pc More Budget for MACC', *Malay Mail* (online, 2 November 2018) <https://www.malaymail.com/news/malaysia/2018/11/02/putrajaya-ups-20pc-more-budget-for-macc/1689395>; Ministry of Finance, *Estimate Federal Expenditure 2023* (24 February 2023) <https://budget.mof.gov.my/pdf/belanjawan2023/perbelanjaan/Anggaran-Perbelanjaan-Persekutuan-2023.pdf>.

48 RM303.87M = US$64.89M (2022): Ministry of Finance (n 49).

49 *MACC Act* (n 30) s 5(6).

50 *Repco Holdings Bhd v Public Prosecutor* [1997] 3 MLJ 681.

Bar sought to challenge the AG's decisions, but failed to obtain leave to bring judicial review.[51] Subsequent failures in the corruption prosecutions of various high-profile politicians, set out above, also highlight the importance of the proper conduct of the prosecution of corruption offences.

### *5. Permanence*

Although Malaysia has had an ACA since 1967, its existence has never been acknowledged in the *Federal Constitution*. The *Jakarta Principles* provide that—

> PERMANENCE: ACAs shall, in accordance with the basic legal principles of their countries, be established by a proper and stable legal framework, such as the Constitution or a special law to ensure continuity of the ACA.[52]

The *Colombo Commentary* explains that the rationale of this principle is to prevent the abolition or curtailment of the powers of an ACA on political grounds.[53] However, due to the difficulty of enacting constitutional amendments and of revising them when necessary, it may be impracticable to place the detailed powers of the ACA in the constitution, rather than in an ordinary law.

In Hong Kong, for example, the mandate and powers of the ICAC are set out in ordinary laws,[54] while the Basic Law—other than stating the appointing authority and the nationality requirements for the Commissioner Against Corruption—simply provides for the existence of ICAC and its independence and accountability:

> A Commission Against Corruption shall be established in the Hong Kong Special Administrative Region. It shall function independently and be accountable to the Chief Executive.[55]

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51 'Leave Application in the Federal Court of Malaysia (28 July 2017): Malaysian Bar v Attorney General of Malaysia & Malaysian Anti-Corruption Commission', Circular No 157/2017 from Roger Chan, Secretary of the Malaysian Bar to Members of the Malaysian Bar, 18 July 2017.

52 *Jakarta Principles* (n 41) principle 3.

53 UNODC (n 42) 21.

54 *Prevention of Bribery Ordinance* (Hong Kong) cap 201; *Independent Commission Against Corruption Ordinance* (Hong Kong) cap 204.

55 *Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China,* art 57.

In Singapore, the mandate and powers of the CPIB are likewise set out in an ordinary law,[56] but the *Constitution* provides that the elected President of Singapore has discretionary powers to refuse to appoint or dismiss the Director of the CPIB and to give his consent to any corruption investigation to which the PM has refused his consent.[57]

## Accountability

While ACAs must have sufficient independence to be able to carry out their anti-corruption functions without undue influence, it is also essential that they are accountable to external authorities. The *Jakarta Principles* provide that—

> EXTERNAL ACCOUNTABILITY: ACAs shall strictly adhere to the rule of law and **be accountable to mechanisms established to prevent any abuse of power**.
>
> PUBLIC REPORTING: ACAs shall formally report at least annually on their activities to the public.[58] (*emphasis added*)

The *Colombo Commentary* notes that—

> Independence is not the same as arbitrariness. As the well-known saying goes, power tends to corrupt, and absolute power corrupts absolutely. ACAs need to be powerful, but external accountability through the rule of law must restrain them to ensure their proper functioning.[59]

In addition to judicial oversight, which is only engaged when a case is brought to court, ACAs therefore also require other legally-established oversight mechanisms. In Malaysia, these currently include the ACAB, SCC and Complaints Committee established under the *MACC Act*.

The *MACC Act* also requires the Chief Commissioner to make an annual report, which is sent to the SCC together with the comments of the ACAB.[60] The SCC then makes an annual report to the Prime Minister, which is laid before both Houses of Parliament.[61]

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56 *Prevention of Corruption Act* (Singapore) cap 241.

57 *Constitution of the Republic of Singapore* arts 22 & 22G.

58 *Jakarta Principles* (n 41) principles 14 & 15.

59 UNODC (n 42) 67.

60 *MACC Act* (n 30) ss 11(2) & 13(5).

61 Ibid s 14(5).

### *1. Appointment of members of oversight bodies*

The *MACC Act* currently provides that the members of the ACAB (other than the Chief Commissioner) and SCC are appointed by the YDPA on the advice/nomination of the PM,[62] while members of the Complaints Committee are appointed by the Minister with responsibility for the MACC.[63] ACAB members are required to be 'persons of integrity who have rendered distinguished public service or have achieved distinction in the professions', while members of the SCC are required to be members of either House of Parliament other than members of the administration.

The appointment of members of advisory/oversight committees by the Executive mirrors the method of appointment in Hong Kong. However, the appointment of members of the SCC on the nomination of the PM contrasts unfavourably with members of parliamentary select committees in Malaysia, who are appointed by bipartisan Committees of Selection headed by the Speaker of the House of Representatives or the President of the Senate.

### *2. Complaints and discipline*

The Complaints Committee is established by the *MACC Act* to 'monitor the handling by the Commission of complaints of misconduct which is [*sic*] non-criminal in nature against officers of the Commission' and to make recommendations concerning weaknesses in the MACC's work procedures that may give rise to such complaints.[64] Because the MACC already has its own statutory Complaints Committee, the MACC is specifically excluded from the jurisdiction of the Enforcement Agency Integrity Commission (EAIC).[65] If a complaint results in disciplinary action, it will be referred to a Disciplinary Board established under the *Public Services Disciplinary Boards Regulations 1993*, from which appeal lies to a Disciplinary Appeal Board consisting of the members of the PSC.[66]

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62 In the case of the SCC, as Leader of the House of Representatives.

63 Currently the Minister in the PM's Department (Law and Institutional Reforms).

64 *MACC Act* (n 30) s 15(1).

65 *Enforcement Agency Integrity Commission Act 2009* (Act 700) s 1(5).

66 *Public Services Disciplinary Board Regulations 1993* (PU(A) 396) reg 12(1).

## Constitutional safeguards

Although the MACC and its predecessors are not mentioned in the *Federal Constitution*, the *Constitution* contains constitutional safeguards of the independence of the public services that apply equally to the MACC, which exists as part of the general public service of the Federation.

### *1. Service commissions*

At the 1956 Federation of Malaya Constitutional Conference ('London Conference'), it was agreed that for an independent Federation to maintain an 'efficient and contented public service', it was essential that the service conditions and prospects of public servants should be free from political influence:

> The first essential for ensuring an efficient administration is that the **political impartiality of the public service should be recognised and safeguarded** … In order to discharge their role effectively, public servants should know that their service conditions and prospects are **not subject to political or personal influence of any kind** …
>
> One of the most essential ingredients of a contented and efficient service is that promotions policy should be regulated in accordance with publicly recognised professional principles. The Service must feel confident that **promotions will be determined impartially on the basis of official qualifications, experience and merit** …
>
> Similarly, a **reasonable security of tenure and an absolute freedom from the arbitrary application of disciplinary provisions are essential foundations of a public service** ….[67] *(emphasis added)*

The mechanism chosen to preserve the independence and impartiality of the public service was an independent PSC, a separate Judicial Service Commission and a Police Service Commission, each independent of the Executive, and with authority over the appointments, promotions and discipline of their service members.

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67 Colonial Office (UK), *Report of the Federation of Malaya Constitutional Conference* (Cmnd. 2714, February 1956) [40]–[42] ('*London Report*').

As the Reid Commission subsequently wrote in its Report:

> If the Commissions are to perform their functions in the manner contemplated by the Report, we think that it is **essential that they should be completely free from Government influence and direction of any kind**. The members should either hold office *ex-officio*, or be appointed on a full-time basis for not less than five years, and should not be subject to removal from office by the Government …
>
> [T]he broad principle should be that the Legislature and Government are necessarily responsible for fixing establishments and terms of employment, while the Public Services Commission is **charged with the internal administration of the service as a professional body and with the responsibility for public service matters including appointments, promotions, and the application, when necessary, of disciplinary provisions** in respect of members of the public service.[68] (*emphasis added*)

These arrangements were set out in Part X of the *Federal Constitution* (entitled 'Public Services'), which created an Armed Forces Council, a Judicial and Legal Services Commission, a PSC, a Police Service Commission (subsequently renamed Police Force Commission) and a Railway Service Commission. An Education Service Commission was added in 1974, and the Railway Service Commission abolished in 1981. Members of the MACC, as part of the general public service of the Federation, currently fall under the jurisdiction of the PSC.

Part X contains various safeguards for the political independence of the service commissions. By Article 142(1)–(3), no member of either House of Parliament or of a State Legislative Assembly may be appointed a member of a Commission.[69] With the exception of *ex officio* members of Commissions, also disqualified are members of the public services, officers or employees of local authorities or statutory bodies or trade unions. In addition, the chairmen and deputy chairmen of Commissions may not be engaged in the affairs of any organizations or any commercial, industrial or other undertakings, other than those of a charitable or social nature.

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68 Colonial Office (UK), *Report of the Federation of Malaya Constitutional Commission* (Colonial No 330, 1957) [154]–[155] ('*Reid Commission Report*').

69 With one exception, in the 1960 addition of the minister with responsibility for the police as chairman of the Police Force Commission.

Article 143 safeguards the tenure and terms of office of members of the Commissions, providing that they may not be removed before the expiry of their (usually 5-year) term except on like grounds and in like manner as a judge of the Federal Court, and that their remunerations and terms of office cannot be altered to their disadvantage after appointment.

Part X also provides safeguards for the tenure of public servants. Article 135(1) provides that a public servant cannot be dismissed or reduced in rank by an authority subordinate to that which has the power to appoint a member of his rank. Article 135(2) provides that before he is dismissed or reduced in rank, he must have a reasonable opportunity of being heard, with exceptions in certain cases.[70]

***2. Erosion of safeguards***

Unfortunately, since *Merdeka*, the safeguards for the political independence and security of tenure of public servants have been eroded by a number of constitutional amendments. In 1960, Article 140(1) was amended to provide for the Home Minister to be chairman of the Police Force Commission. This made the Commission more like the Armed Forces Council and unlike any other service commission, breaching the Reid Commission's stipulation that the service commissions should be 'completely free of Government influence and direction of any kind'.

Article 132(2A) was also added to provide that, except as expressly provided by *the Constitution*, members of the federal public services hold office 'during the pleasure of the [YDPA]'. In the case of *Mahan Singh*,[71] the Privy Council held that this meant, *prima facie*, that the Executive can terminate a public servant 'without notice and at any time he pleases', subject only to the requirements of Article 135(1) & (2). Following the Privy Council decision, Article 135(2) was amended to provide that a public servant who is terminated in the public interest does not even need to be afforded a reasonable opportunity to be heard.

Part X has also been amended to allow bodies other than the service commissions, (and the officers or boards acting under delegated authority

70 Eg, where he is convicted of a criminal offence, where it is not reasonably practicable to afford an opportunity to be heard, or in the interests of national security, etc.

71 *Mahan Singh v Government of Malaysia* [1978] 2 MLJ 133.

from them) to exercise disciplinary control over public servants. The 1960 amendment added Article 144(5A) to allow for the disciplinary and various other functions of the Commissions to be exercised by an officer or board of officers of the service concerned, as determined by federal law or regulations made by the YDPA, with only a right of appeal in disciplinary matters to the Commission. In 1966, Article 144(5B) was added to allow all functions of the PSC and the Education Service Commission to be exercised by a board appointed by the YDPA, with a right of appeal to a separate Appeal Board. In practice, however, as stated above, the Disciplinary Appeal Board for members of the general public service serving within Malaysia comprises members of the PSC.[72]

72 *Public Services Disciplinary Board Regulations 1993* (n 68) reg 12.

# Previous proposals for reform

## MACC reform

In 2014, the MACC proposed amendments to the *Federal Constitution* that would have seen the creation of an Anti-Corruption Service Commission ('ACSC') under Part X of the *Constitution*, as well as provisions to protect the security of tenure of the MACC Chief Commissioner.[73] In December 2014, then-Minister in the Prime Minister's Department Paul Low announced that the Cabinet had approved the proposed changes in principle,[74] and in September 2015, it was announced that the a special committee had been established to look into the proposals.[75]

In December 2015, the Malaysian Bar, together with the Institute for Democracy and Economic Affairs ('IDEAS'), C4 and TI-Malaysia, submitted to the Minister a memorandum on reform of the MACC that proposed the establishment of an Independent Anti-Corruption Commission ('IACC') as a unique, stand-alone constitutional commission along the lines of the Election Commission, with up to fifteen commissioners nominated by the SCC (renamed the Parliamentary Select Committee on Corruption), of whom 40% would be from civil society, with powers of appointment and oversight over a renamed ACA.[76] It also proposed that the IACC be given powers of investigation, including the powers of a police officer, which it could delegate to the ACA, as well as powers to subpoena and question

73 See Malaysian Bar et al, *Memorandum for the Reform of the Malaysian Anti-Corruption Commission Submitted to YB Senator Paul Law, Minister in the Prime Minister's Office* (11 November 2015).

74 Nicholas Cheng, 'Take Politics out of MACC, Says Low', *The Star* (online, 10 December 2014) <https://www.thestar.com.my/News/Nation/2014/12/10/Take-politics-out-of-MACC-says-Low-Cabinet-approves-proposal-to-make-commission-independent-of-civil/>.

75 Bernama, 'Paul Low: MACC to Be Removed from Civil Service, Made Answerable to Parliament', *Malay Mail* (online, 2 September 2015) <https://www.malaymail.com/news/malaysia/2015/09/02/paul-low-macc-to-be-removed-from-civil-service/962763>."plainCitation":"Bernama, 'Paul Low: MACC to Be Removed from Civil Service, Made Answerable to Parliament', Malay Mail (online, 2 September 2015

76 Malaysian Bar et al (n 75) 44–5.

witnesses.[77] These proposals were broadly mirrored in the 2018 Pakatan Harapan Manifesto.[78]

The question of MACC reform was considered by the Institutional Reforms Committee ('IRC') appointed to advise then-PM Dr Mahathir Mohamad after GE 14 in 2018. Further submissions were received by the Malaysian Bar, which now recommended the creation of an ACSC under Part X of the *Federal Constitution*,[79] and from the Human Rights Commission of Malaysia ('SUHAKAM'), which recommended that the MACC 'be elevated to a Commission under the *Federal Constitution*' and that its Chief Commissioner be appointed on the advice of Parliament.[80]

In its report, the IRC recommended that a service commission to be known as the IACC, with five commissioners, be established under Part X of the *Federal Constitution*, with authority and oversight over a renamed ACA. The IACC would then absorb the various oversight bodies overseeing the MACC, namely the ACAB, Complaints Committee, ORP and CCPP, retaining only such of the committees as it deemed necessary.[81]

The NACP subsequently listed the following under Strategic Objective 5.3 'Strengthening Law Enforcement Agencies':

> To empower the [MACC] in terms of the appointment of Chief Commissioner, budgetary, oversight committee, establishment of service commission and manpower.[82]

In May 2023, it was announced that a committee would study a proposal for the MACC to be placed under the jurisdiction of the EAIC.[83]

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77 Ibid 51–2.

78 Pakatan Harapan, *Buku Harapan: Rebuilding Our Nation: Fulfilling Our Hopes* (8 March 2018) Promise 14.

79 Malaysian Bar, *Submissions to the Committee for Institutional Reform, Part F* (7 June 2018).

80 SUHAKAM, *Submission by the Human Rights Commission of Malaysia* (May 2018).

81 Institutional Reforms Committee, *Report of the Institutional Reforms Committee* (July 2018) Part E.

82 Prime Minister's Department (n 7) 51.

83 Fahmy A. Rosli, 'Pro-Tem Committee to Study the Need to Put MACC under EAIC Supervision', *NST Online* (online, 2 May 2023) <https://www.nst.com.my/news/nation/2023/05/905116/pro-tem-committee-study-need-put-macc-under-eaic-supervision>.

## Reform of public prosecutions

In 2021, BERSIH published a report on reforming the office of AG and the Judicial and Legal Service in Malaysia.[84] The report recommended that in order to prevent improper political influence and interference in criminal prosecutions, the AG should cease to exercise the function of Public Prosecutor with exclusive power over criminal prosecutions, and that the *Federal Constitution* should be amended to constitute the Public Prosecutor as an independent constitutional officer, appointed on the recommendation of the appropriate service commission and with the same security of tenure as a Federal Court judge.

Of relevance to the MACC, the 2021 report also recommended that the *Federal Constitution* be amended to empower Parliament—

- to require the PM to submit his advice or the advice of Cabinet in respect of specific appointments for the confirmation of a parliamentary committee; and

- to authorize public authorities other than the Public Prosecutor to bring criminal prosecutions under specific legislation (reversing the 1997 High Court decision in *Repco Holdings*).

The constitutional amendments proposed in the 2021 report are set out in Appendix 1.

84 Yong (n 2).

# Recommended reforms

## Creation of a constitutional commission

As noted above, the MACC at present comes under the PSC, a service commission established under Part X of the *Federal Constitution*. However, under the *MACC Act*, its Chief Commissioner is appointed and can be removed by the YDPA acting on the advice of the PM. [85] Other personnel of the MACC, like all other public servants, also hold office at the pleasure of the YDPA,[86] and can in theory be terminated by the Executive at any time without a hearing 'in the public interest'.[87]

> Any reform of the MACC should be governed by the need to both to protect the independence as well as to ensure the accountability of the MACC. There is clearly a recognized need for a specialist oversight body, independent of the Executive, that can be in charge of appointments, promotions, transfers and discipline (the normal functions of a service commission), as well as one that can oversee and monitor the proper functioning and resourcing of the anti-corruption function of the MACC, as well as the handling of complaints (the functions of the specialist oversight bodies under the MACC Act).

### *1. Constitutional basis*

With the exception of parliamentary oversight, which should continue to be the function of a joint committee of both Houses of Parliament, all of the above functions can be carried out by a specialist service commission established under Part X of the *Federal Constitution*. The members of such service commissions, other than *ex officio* members, enjoy protections under the *Federal Constitution* and cannot be removed except on the like grounds and in the like manner as a judge of the Federal Court, and have

85 *MACC Act* (n 30) s 5(1) & (3).

86 *Federal Constitution* Art 132(2A).

87 Ibid Art 135(2); *Public Officers (Conduct and Discipline) Regulations 1993* (PU(A) 395) reg 49.

other protections of remuneration and terms of office under Article 143 and under the *Service Commissions Act 1957*.[88]

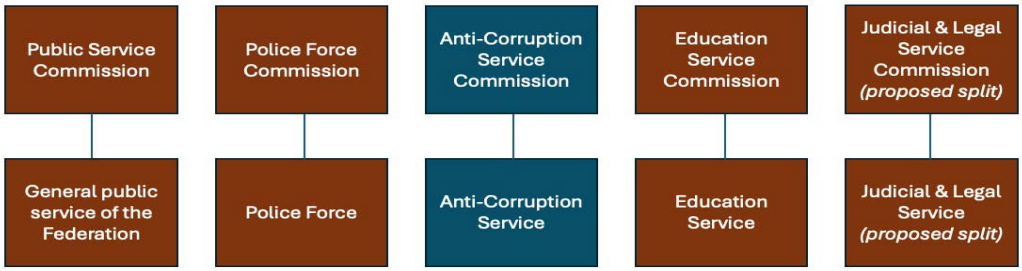


*Figure 2: The proposed Anti-Corruption Service Commission, shown with other Service Commissions established under Part X of the Federal Constitution*

### *2. Names and titles*

Whether the service commission is called the ACSC or the IACC does not matter, but in this Report we adopt the more generic title ACSC. We also adopt the recommendation of previous proposals that the MACC—one of the oldest ACAs in the world—should revert to its historic name in order to avoid confusion with the ACSC. The *MACC Act* would then become the *Anti-Corruption Act*.

Under these proposals, the titles of Chief Commissioner and Deputy Chief Commissioner would also revert to Director General and Deputy Director General. This would avoid confusion with the Chairman of the ACSC, who is the head of the Commission.

Consideration should also be given to renaming the ranks of Commissioner, Deputy Commissioner, Senior Assistant Commissioner and Assistant Commissioner (which correspond to the police ranks of Commissioner of Police, Deputy Commissioner of Police, Senior Assistant Commissioner of Police and Assistant Commissioner of Police).

### *3. Composition and powers*

The ACSC should comprise a Chairman—who we recommend for reasons of legal experience and stature should be a former judge of the

88 *Service Commissions Act 1957* (Act 393).

Federal Court, Court of Appeal or a High Court—and between six and ten other members appointed by the YDPA in his discretion but after considering the advice of the PM. The Director General of the ACA should be an *ex officio* member. The relationship between the Chairman and the Director General should be akin to that of an independent chairman and chief executive on a board. The ACSC should be given a constitutional responsibility to ensure the independence of the anti-corruption service.

Pursuant to Article 144(2), which allows federal law to confer additional functions on service commissions, the ACSC should be given general responsibility for overseeing the functions of the ACA. In pursuance of that responsibility, the ACSC should have the power to constitute an Advisory Committee, a Complaints Committee and such other committees as it sees fit. Each committee should consist of at least two members of the ACSC, one of whom should be chairman, together with the Director General or a Deputy Director General and such other persons of integrity as the ACSC sees fit to appoint.

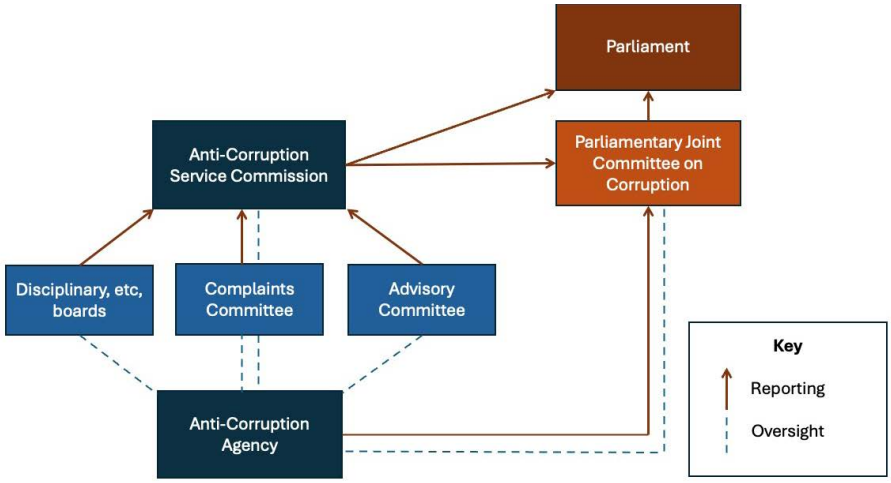


*Figure 3: Proposed relationship between the Anti-Corruption Service Commission, other oversight bodies and Parliament.*

## Parliamentary Joint Committee

The SCC, as a joint committee of both Houses of Parliament, currently provides vital democratic oversight over and accountability for the MACC. To avoid confusion with the Special Cabinet Committees on corruption that have been created from time to time, the SCC should be renamed the Parliamentary Joint Committee on Corruption (PJCC).

The PJCC should have the function, *inter alia*, of examining the annual report of the ACA as well as the annual report of the ACSC required to be laid before Parliament by Part X of the *Federal Constitution*.[89] Its own report should be made directly to both Houses of Parliament (instead of via the PM).

### *1. Appointment*

Instead of being nominated by the PM as Leader of the House of Representatives, the PJCC should consist of equal numbers of members nominated by the President of the Senate and the Speaker of the House of Representatives, in accordance with the procedures for the selection of members of select committees in their respective Houses of Parliament. Conventions that the members nominated should reflect the partisan composition of each House, and that the chairman of the PJCC, like the chairman of the Public Accounts Committee, should always be a member of the Official Opposition, should also be adopted.

### *2. Parliamentary confirmation*

As recommended in the 2021 Bersih report on reforming the office of AG and Public Prosecutor, Article 40 of the *Federal Constitution* should be amended to allow Parliament to require the advice of the PM or Cabinet in respect of appointments to specified offices or posts to be referred for scrutiny and confirmation by a parliamentary committee.

The PM's advice relating to the appointments of the Chairman and other members of the ACSC—and, if designated as special posts by the YDPA, the Director General and Deputy Director General of the ACA—should then be required to be scrutinized and confirmed by the PJCC.

## Appointment and removal of officers

### *1. Appointments*

In order to shield the Director General of the ACA from undue political influence, power over his appointment and removal should be placed in the hands of the relevant service commission, the ACSC, as is the case

89 *Federal Constitution* (n 88) Art 146.

for other public servants. In the case of senior public servants, such as the Inspector General and Deputy Inspector General of Police and heads and deputy heads of department, Article 144(4) of the *Federal Constitution* allows the YDPA to designate those posts as special posts, in which case the appointment is made by the YDPA on the recommendation of the service commission (instead of by the service commission directly).[90] However, the YDPA is required to consider the advice of the PM and may refer the recommendation back—only once—to the service commission in order that it may be reconsidered.[91] This procedure gives the Executive an appropriately limited, but not overriding, say in the choice of senior public servants.

All other officers of the ACA should be appointed directly by the ACSC.

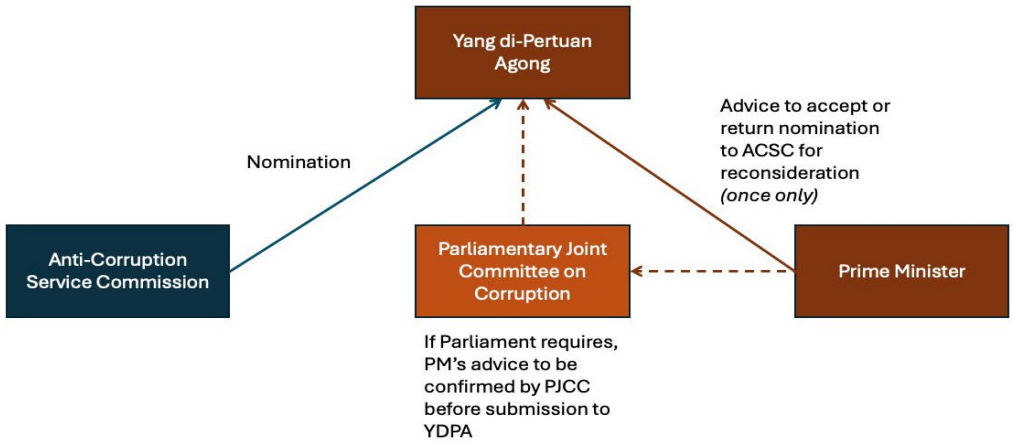


*Figure 4: Proposed method of appointment of Director General and Deputy Director General under Art 144(4) of the Federal Constitution, with an additional parliamentary confirmation process pursuant to an amended Art 40, if required by Parliament.*

### *2. Removals*

The power to remove the Director General and other officers for disciplinary or other reasons (including termination in the public interest) should likewise be placed in the hands of the ACSC.

90 Ibid Arts 140(4) & 144(3).

91 Ibid Arts 140(5) & 144(5).

To restore the original scheme of the *Merdeka Constitution*, and to protect the Director General and other officers of the MACC from undue influence from the Executive, Article 132(2A) should be amended to provide that public servants hold office at the pleasure of the appropriate service commission (rather than the YDPA).

Article 135 should also be amended to guarantee where a public servant is terminated, dismissed or reduced in rank or suffers any other disciplinary measure by the decision of a body other than the appropriate service commission, or of an appeals board comprising members of the commission, s/he should have a right of appeal to the appropriate service commission.

***3. Special protection for the Director General***

While the *Jakarta Principles* provide that ACA heads should have security of tenure and shall be removed only through a legally established procedure equivalent to the procedure for the removal of a judge, the *Colombo Commentary* explains that this provision applies to the leadership of the ACA 'whether it consists of a single head, a commission or a board'. [92]

Given the existence of the ACSC as an independent commission overseeing the ACA, and the security of tenure already enjoyed by its other members, it may be queried whether the Director General needs also to enjoy the same security of tenure (ie, to be removable only on the grounds of breach of the code of ethics or 'inability, from infirmity of body or mind or other cause properly to discharge the functions of his office'[93]). As with other chief executives, there may be other reasons, such as inefficiency or unsuitability, why it may be necessary for the ACSC to terminate the Director General's appointment early in the public interest.

Nonetheless, we have provided in our proposed amendments to the *MACC Act* (renamed the *Anti-Corruption Act*) that the Director General should only be removed for misconduct or inability for any reason properly to discharge the duties of his office. The Director General should be appointed for a fixed, non-renewable term of five years, in line with international best practice.[94]

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92 UNODC (n 42) 23.

93 *Federal Constitution* (n 88) Art 125(3).

94 The 2014 report of the UN Open-ended Intergovernmental Working Group on the Prevention of Corruption suggests any period from five to nine years: UNODC (n 42) 33.

## Other measures

### *1. Independent power of prosecution*

As noted above, until the 1997 High Court decision in *Repco Holdings*, public authorities other than the AG had the power to institute and conduct prosecutions under various Acts of Parliament. In England, even a private citizen has the right to institute a private prosecution, subject to the AG's right to intervene (to prevent prosecutions that have no prospect of success, or that are abusive or contrary to the public interest). This right has been described by the House of Lords as 'a valuable constitutional safeguard against inertia or partiality on the part of authority'.[95] However, since 1997, no criminal prosecution may be instituted in Malaysia except by or under the authority of the AG.

As recommended in Bersih's 2021 report on reforming the office of AG, the *Federal Constitution* should be amended to return to Parliament the power to authorize public authorities such as the ACA to institute and conduct criminal prosecutions within their respective fields.

### *2. Power over finances*

In a parliamentary democracy, it is right that Parliament has full control over the allocation of public finances to public authorities. However, as noted above, the financing of an ACA should be sufficient to allow it to carry out its functions and reliable enough to allow for capacity development and improvement.

In order to encourage the ACA to focus on cases of grand corruption by 'big fish', the ACA could be given the right to retain a percentage of monies recovered through successful asset recovery and confiscation proceedings, as is the case in the United States.[96] In the United Kingdom, the Serious Fraud Office received a proportion of sums recovered from confiscation orders and civil recovery proceedings until 2014. However, because these sums were unpredictable and difficult to manage, since 2018, the Office instead receives 'blockbuster funding' where it pursues expensive investigations costing more than £2.5 million.[97]

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95 *Gouriet v Union of Postal Workers & Ors* [1978] AC 435 ('*Gouriet's Case*') (Lord Wilberforce).

96 UNODC (n 42) 60–61.

97 Serious Fraud Office (UK), 'About Us' <https://www.sfo.gov.uk/about-us/>.

## Reforms without constitutional amendments

Many of the above reforms can be carried out even without constitutional amendments. For instance, the *MACC Act* can be amended—

- to change the method of appointment of members of the SCC;
- to change the method of appointment, terms of office and method of removal of the Chief Commissioner;
- to require nominations for the position of Chief Commissioner to be subject to scrutiny and confirmation by the SCC;
- to institute financial incentives for the recovery of the proceeds of corruption.
- In addition, the *Public Officers (Conduct and Discipline) Regulations 1993* can be amended to—
- to change the requirements and process for terminating a public servant in the public interest;
- to give public servants a right of appeal against termination to the PSC.

The constitutional amendments proposed in this Report are set out in Appendix 2, with amendments to the *MACC Act* set out in Appendix 3.

# Appendix 1
# Constitutional amendments proposed by Bersih in respect of the Public Prosecutor

*Confirmation of appointments by parliamentary committee*

**Yang di-Pertuan Agong to act on advice**

**40.** …

(3) Federal law may make provision for requiring the Yang di-Pertuan Agong to act after consultation with or on the recommendation of any person or body of persons other than the Cabinet in the exercise of any of his functions other than—

(a) functions exercisable in his discretion;

(b) functions with respect to the exercise of which provision is made in any other Article.

(4) Where provision is made in any other Article for the Yang di-Pertuan Agong to act on, or to consider, the advice of the Prime Minister or the Cabinet in connection with an appointment to any office or post, federal law may require the Prime Minister, before tendering his advice or the advice of the Cabinet in respect of any specified office or post, to submit such advice for the confirmation of a committee of Parliament.

Creation of separate office of Public Prosecutor

**The Public Prosecutor**

**145A.** (1) There shall be a Public Prosecutor, who shall be appointed by the Yang di-Pertuan Agong on the recommendation of the Legal Service Commission from among the members of the legal service of the Federation who are qualified to be a judge of the Federal Court.

(2) Before acting on the recommendation of the Legal Service Commission in accordance with Clause (1), the Yang di-Pertuan Agong shall consider the advice of the Prime Minister, and may once refer the recommendation back to the Commission in order that it may be reconsidered.

(3) The Public Prosecutor shall have power, exercisable at his discretion subject to the following provisions of this Article, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial.

(4) The Public Prosecutor shall have the power to direct the Inspector General of Police to investigate any information or allegation of criminal conduct, and to direct a magistrate to inquire into the cause of, and the circumstances connected with, any death.

(5) Except where otherwise provided by this Constitution or by federal law, the powers of the Public Prosecutor may be exercised by prosecuting officers acting under his direction and control.

(6) Parliament may by law extend to any person or authority the power to institute, conduct or discontinue proceedings for any particular offence or class of offences, but the Public Prosecutor may at any time take over the conduct of such proceedings with the permission of the court or the consent of the person or authority concerned.

(7) In the exercise of his functions under this Article, the Public Prosecutor shall have regard to the public interest, the interests of the administration of justice and the need to prevent abuse of the legal process.

(8) The Public Prosecutor shall as soon as practicable after the end of each year submit to Parliament a report on the discharge of his functions during that year and shall, if required by either House of Parliament or a committee thereof, submit additional reports on any question or issue connected with the discharge of those functions.

**Safeguard of independence of Public Prosecutor**

**145B.** (1) Subject to Clauses (2) and (3), the Public Prosecutor shall not require the consent of any person or authority for the institution or discontinuance of any criminal proceedings, and in the exercise of his powers or functions shall not be under the direction or control of any person or authority.

(2) Federal law may require the Public Prosecutor to consult with the Attorney General before instituting proceedings for any particular offence or class of offences.

(3) The Yang di-Pertuan Agong may on the recommendation of the Legal Service Commission, and after consultation with the Chief Justice of the Federal Court, prescribe a code of ethics for the Public Prosecutor and other prosecuting officers.

(4) Subject to Clause (5), the Public Prosecutor shall hold office until the sooner of—

(*a*) the date eight years after the date of his appointment; or

(*b*) the date he attains the age of sixty-six years or such later time, not later than six months after such date, as the Yang di-Pertuan Agong may approve.

(5) The Public Prosecutor may at any time resign his office but shall not be removed from office except on the like grounds and in the like manner as a judge of the Federal Court:

Provided that in connection with the removal or suspension of the Public Prosecutor, references in Clauses (3), (4) or (5) of Article 125 to—

(*a*) the code of ethics prescribed by Clause (3B) of Article 125 shall be construed as references to the code of ethics prescribed by Clause (4) of this Article; and

(*b*) the Judicial Service Commission shall be construed as references to the Legal Service Commission.

(6) Parliament shall by law provide for the remuneration of the Public Prosecutor and may provide for other terms of office, and the remuneration so provided shall be charged on the Consolidated Fund.

(7) The remuneration and other terms of office (including pension rights) of the Public Prosecutor shall not be altered to his disadvantage after his appointment.

# Appendix 2
# Constitutional amendments proposed by this Report

*Establishment of Anti-Corruption Service Commission*

**Part X**

**PUBLIC SERVICES**

**Public services**

**132.** (1) For the purposes of this Constitution, the public services are—

*(a)* the armed forces;

*(b)* the judicial and legal service;

*(c)* the general public service of the Federation;

*(d)* the police force;

*(e)* *(Repealed)*;

*(f)* the joint public services mentioned in Article 133;

*(g)* the public service of each State; ~~and~~

*(h)* the education service; and

*(i)* the anti-corruption service.

(2) Except as otherwise expressly provided by this Constitution, the qualifications for appointment and conditions of service of persons in the public services other than those mentioned in paragraph *(g)* of Clause (1) may be regulated by federal law and, subject to the provisions of any such law, by the Yang di-Pertuan Agong; …

(2A) Except as expressly provided by this Constitution, every person who is a member of any of the public services ~~mentioned in paragraphs *(a)*, *(b)*, *(c)*, *(d)*, *(f)*, and *(h)* of Clause (1)~~ holds office during the pleasure of the Commission to which this Part applies whose jurisdiction extends to that service~~Yang di-Pertuan Agong, and, except as expressly provided by the Constitution of the State, every person who is a member of the public service of a State holds office during the pleasure of the Ruler or Yang di-Pertua Negeri~~.

(2B) Federal law or, in the case of the public service of a State, State law may designate any office or position within the public services as a protected position, and any person holding such an office shall hold office during good behaviour, subject to his term of office and any mandatory retirement age, and may only be removed from office on the grounds of misbehaviour or the inability properly to perform the duties of his office or position.

…

**Restriction on dismissal and reduction in rank**

**135.** (1) No member of any of the services mentioned in paragraphs *(b)* to ~~*(h)*~~ *(i)* of Clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank:

…

And provided further that this Clause shall not apply to a case where a member of any of the services mentioned in this Clause is dismissed or reduced in rank by an authority in pursuance of a power delegated to it by a Commission to which this Part applies, and this proviso shall be deemed to have been an integral part of this Clause as from Merdeka Day.

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without being given a reasonable opportunity of being heard:

Provided that this clause shall not apply to the following cases:

*(a)* where a member of such a service is dismissed or reduced in rank on the ground of conduct in respect of which a criminal charge has been proved against him; or

*(b)* where the authority empowered to dismiss or reduce in rank a member of such a service is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to carry out the requirements of this Clause; or

*(c)* where the Yang di-Pertuan Agong, or, in the case of a member of the public service of a State, the Ruler or Yang di-Pertua Negeri of that State, is satisfied that in the interests of the security of the Federation or any part thereof it is not expedient to carry out the requirements of this Clause; or

*(d)* where there has been made against a member of such a service any order of detention, supervision, restricted residence, banishment or deportation, or where there has been imposed on such a member any form of restriction or supervision by bond or otherwise, under any law relating to the security of the Federation or any part thereof, prevention of crime, preventive detention, restricted residence, banishment, immigration, or protection of women and girls:

Provided further that for the purpose of this Article, where the service of a member of such a service is terminated in the public interest under any law for the time being in force or under any regulation made by the Yang di-Pertuan Agong under Clause (2) of Article 132, such termination of service shall not constitute dismissal whether or not the decision to terminate the service is connected with the misconduct of or unsatisfactory performance of duty by such member in relation to his office or the consequences of the termination involved an element of punishment; and this proviso shall be deemed to have been an integral part of this Article as from Merdeka Day.

(2A) Notwithstanding anything in this Part, where any member of such a service as aforesaid is terminated, dismissed or reduced in rank or suffers any other disciplinary measure pursuant to the decision of an authority other than the Commission whose jurisdiction extends to that service or an Appeal Board comprising the members of that Commission, he shall

have a right to appeal to the appropriate Commission within such time and in such manner as may be prescribed by regulations made by the Yang di-Pertuan Agong, and the Commission may make such order thereon as it may consider just.

(3) No member of any of the services mentioned in paragraph *(c)*, *(f)* or *(g)* of Clause (1) of Article 132 shall, without the concurrence of the Judicial and Legal Service Commission, be dismissed or reduced in rank or suffer any other disciplinary measure for anything done or omitted by him in the exercise of a judicial function conferred on him by law.

…

**Anti-Corruption Service Commission**

**141B.**—(1) There shall be an Anti-Corruption Service Commission, whose jurisdiction shall extend to all members of the anti-corruption service, and whose responsibility it shall be to safeguard the independence of the anti-corruption service.

(2) The Anti-Corruption Service Commission shall consist of the following members:

(*a*) a chairman, who shall be appointed by the Yang di-Pertuan Agong, after consultation with the Chief Justice of the Federal Court, from among former judges of the Federal Court, Court of Appeal or a High Court;

*(b)* the senior officer commanding the anti-corruption agency of the Federation; and

*(c)* not less than four nor more than ten other members appointed by the Yang di-Pertuan Agong acting in his discretion but after considering the advice of the Prime Minister.

# Appendix 3
# Proposed amendments to the MACC Act (renamed Anti-Corruption Act)

*(The words 'Anti-Corruption Agency', 'Agency' and 'Director General' to replace 'Malaysian Anti-Corruption Commission', 'Commission' and 'Chief Commissioner' throughout the Act)*

## Part II

## THE ~~MALAYSIAN~~ ANTI-CORRUPTION ~~COMMISSION~~AGENCY

**Establishment of the ~~Malaysian~~ Anti-Corruption ~~Commission~~Agency**

**4.** The ~~Malaysian~~ Anti-Corruption ~~Commission~~Agency is established.

**~~Chief Commissioner~~Director General**

**5.** (1) ~~The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint a Chief Commissioner of the Malaysian Anti-Corruption Commission for such period and on such terms and conditions as may be specified in the instrument of appointment.~~There shall be appointed a Director General of the Anti-Corruption Agency, who shall hold office for a non-renewable term of five years.

(2) Where the ~~Chief Commissioner~~Director General is appointed from among members of the public services, the period of appointment of the ~~Chief Commissioner~~Director General shall not extend beyond the date of his compulsory retirement from the public service, but where he so attains the age of compulsory retirement he may be reappointed as ~~Chief Commissioner~~Director General ~~by the Yang di-Pertuan Agong, on the advice of the Prime Minister,~~ on contract for ~~such period and on such terms and conditions as may be specified in the instrument of appointment~~a further period of up to one year, such that his total period of office does not exceed five years.

(3) ~~The Chief Commissioner shall, during the period of his appointment as set out in the instrument of appointment, hold office at the pleasure of the Yang di-Pertuan Agong, subject to the advice of the Prime Minister~~The

Director General may at any time resign his office but shall not be removed from office except on the grounds of misconduct or inability for any reason properly to discharge the duties of his office.

(4) The ~~Chief Commissioner~~Director General shall, during his term of office as such, be deemed to be a member of the ~~general public~~anti-corruption service of the Federation for purposes of discipline.

(5) Subject to section 13, ~~The Chief Commissioner~~the Director General shall be responsible for the direction, control and supervision of all matters relating to the ~~Commission~~Agency.

(6) The ~~Chief Commissioner~~Director General shall have all the powers of an officer of the ~~Commission~~Agency and shall have such powers of a Deputy Public Prosecutor as authorized by the Public Prosecutor for the purposes of this Act.

(7) The ~~Chief Commissioner~~Director General shall, before assuming the duties and responsibilities of his office, make in such manner as he may declare to be most binding on his conscience before the Yang di-Pertuan Agong such declaration as may be prescribed by the Minister by rules made under section 71.

(8) There shall be issued to the ~~Chief Commissioner~~Director General a certificate of appointment in the form of an authority card as evidence of his appointment.

(9) ~~The person holding office as the Director General of the Anti-Corruption Agency appointed under subsection 3(2) of the Anti-Corruption Act 1997 *[Act 575]* immediately before the commencement of this Act shall, upon the commencement of that Act, be deemed to have been appointed Chief Commissioner under subsection (1) for the remainder of the period of his appointment under the 1997 Act, and the requirements of subsection (7) shall be deemed to have been satisfied~~*(Repealed)*.

…

## PART III

## ~~PROVISIONS ON ADVISORY BOARD, SPECIAL COMMITTEE AND COMPLAINTS COMMITTEEOVERSIGHT OF THE AGENCY~~

## ~~Anti-Corruption Advisory Board~~

~~**13.** (1) The Commission shall be advised by an advisory board to be known as the Anti-Corruption Advisory Board.~~

~~(2) The Advisory Board shall consist of—~~

~~(a) at least seven members who shall be appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister; and~~

~~(b) the Chief Commissioner as ex-officio member.~~

~~(3)The members appointed by the Yang di-Pertuan Agong shall be persons of integrity who have rendered distinguished public service or have achieved distinction in the professions.~~

~~(4) The term of office of members appointed by the Yang di-Pertuan Agong shall be three years and such member shall not hold office for more than two terms either continuously or otherwise.~~

~~(5) The Advisory Board shall have the following functions:~~

~~*(a)* to advise the Commission on any aspect of the corruption problem in Malaysia;~~

~~(b) to advise the Commission on policies and strategies of the Commission in its efforts to eradicate corruption;~~

~~(c) to receive, scrutinise and endorse proposals from the Commission towards the efficient and effective running of the Commission;~~

~~(d) to scrutinise and endorse resource needs of the Commission to ensure its effectiveness;~~

~~(e) to scrutinise the annual report of the Commission before its submission to the Special Committee on Corruption; and~~

~~(f) to submit its comments to the Special Committee on Corruption as to the exercise by the Commission of its functions under this Act.~~

**Anti-Corruption Service Commission**

**13.** (1) The Anti-Corruption Service Commission shall, in addition to its functions under Articles 141B and 144 of the Federal Constitution, have general responsibility for overseeing the functions of the Agency under this Act, which shall include oversight and scrutiny of—

(a) the policies and strategies of the Agency in its efforts to prevent and eradicate corruption;

(b) the general effectiveness and efficiency of the Agency's operations;

(c) the resourcing of the Agency to ensure its operational effectiveness;

(d) the maintenance of beneficial and cooperative relations between the Agency and the public; and

(e) the handling of complaints or allegations of misconduct received by the Commission regarding the Agency or any of its officers.

(2) The Commission shall have the power to constitute the following oversight committees to assist it in the performance of its functions under this section:

(a) an Advisory Committee;

(b) a Complaints Committee; and

(c) such other committees as the Commission may deem necessary.

(3) Each of the oversight committees established pursuant to clause (2) shall consist of the following persons appointed by the Commission:

(a) not less than two members of the Commission, one of whom shall be chairman;

(b) the Director General or a Deputy Director General of the Agency;

(c) such other persons as the Commission may see fit to appoint, being persons of integrity who have rendered distinguished public service or have achieved distinction in the professions.

(4) The term of office of members of an oversight body shall be three years but a member shall not hold office for more than two terms either continuously or otherwise.

(5) Members of the oversight committees appointed pursuant to clause (3)*(c)* who are not members of the public services shall be entitled to such remuneration and allowances as may be prescribed by the Minister by rules made under section 71.

(6) The remuneration and other terms of office of a member of an oversight committee shall not be altered to his disadvantage after his appointment.

**~~Special~~ Parliamentary Joint Committee on Corruption**

**14.** (1) There shall be a committee to be known as the ~~Special~~Parliamentary Joint Committee on Corruption which shall have all the privileges and powers of a committee of a House of Parliament under the Houses of Parliament (Privileges and Powers) Act 1952 [*Act 347*], in the exercise of the following functions:

*(a)* to ~~advise the Prime Minister on~~examine any aspect of the problem of corruption ~~problem~~ in Malaysia;

*(b)* to examine the annual report of the ~~Commission~~Agency;

*(c)* to examine the ~~comments of the Anti-Corruption Advisory Board as to the exercise by the Commission of its functions under this Act~~annual report of the Commission laid before both Houses of Parliament pursuant to Article 146 of the Federal Constitution; ~~and~~

*(d)* to ~~seek clarifications and explanations on the annual report of the Commission and the comments of the Anti-Corruption Advisory Board~~examine the policy and administration of the Government in connection with the prevention and eradication of corruption in Malaysia; and

*(e)* to examine any advice of the Prime Minister or Cabinet in respect of appointments to the Commission or the Agency that is submitted for the confirmation of the Parliamentary Special Committee.

(2) The ~~Special~~Parliamentary Joint Committee shall consist of ~~seven~~not less than eight nor more than twelve members, ~~to be appointed~~as may be determined by the Yang di-Pertuan Agong, who shall be drawn both from the members of the Senate and the House of Representatives, none of whom shall be a member of the administration.

(3) The members to be appointed under subsection (2) shall ~~be the~~comprise equal numbers of members of the Senate nominated by the President of the Senate and members of the House of Representatives nominated by the ~~Leader~~Speaker of the House of Representatives, in accordance with the procedures for the selection of members of committees of their respective Houses of Parliament.

(4) The terms of office of members of the ~~Special~~Parliamentary Joint Committee shall be ~~three years but a member shall not hold office for more than two terms either continuously or otherwise~~determined by their respective Houses of Parliament.

(5) The ~~Special~~Parliamentary Joint Committee shall make an annual report on the discharge of their functions to ~~the Prime Minister who shall lay a copy of that annual report before~~ each House of Parliament.

**Confirmation of advice in respect of appointments**

**14A.** It shall be the duty of the Prime Minister, before submitting to the Yang di-Pertuan Agong any advice in respect of any appointment to the following offices, to submit a memorandum setting out such advice for the confirmation of the Parliamentary Joint Committee on Corruption:

(a) the chairman or a member of the Anti-Corruption Service Commission; and

(b) if designated as special posts pursuant to Article 144(4) of the Federal Constitution, the Director General and Deputy Director General of the Agency.

(2) The Parliamentary Joint Committee shall within sixty days of receiving a memorandum of advice in accordance with sub-section (1),

excluding any days when Parliament stands prorogued or dissolved, either confirm the advice or return it to the Prime Minister with the Committee's reasons for refusing to confirm the advice.

~~**Complaints Committee**~~

**15.** ~~(1) There shall be a complaints committee which shall have the following functions:~~

(a) to monitor the handling by the Commission of complaints of misconduct which is non-criminal in nature against officers of the Commission; and

(b) to identify any weaknesses in the work procedures of the Commission which might lead to complaints and where it considers appropriate to make such recommendations as to the work procedures of the Commission as it deems fit.

~~(2) The Minister shall appoint not more than five persons, whom he deems fit and proper, to be members of the Complaints Committee~~*(Repealed)*.

# List of abbreviations

| | |
|---|---|
| ACA | Anti-Corruption Agency (Malaysia), or anti-corruption agency |
| ACAB | Anti-Corruption Advisory Board (Malaysia) |
| ACSC | Anti-Corruption Service Commission (Malaysia, proposed) |
| AG | Attorney General |
| C4 | Center to Combat Corruption and Cronyism (Malaysia) |
| CCPP | Consultation and Corruption Prevention Panel (Malaysia) |
| CID | Criminal Investigation Department |
| CPI | Corruption Perceptions Index |
| CPIB | Corrupt Practices Investigation Bureau (Singapore) |
| EAIC | Enforcement Agency Integrity Commission (Malaysia) |
| EIU | Economist Intelligence Unit |
| FC | *Federal Constitution* |
| GE | General Election |
| IACC | Independent Anti-Corruption Commission (Malaysia, proposed) |
| ICAC | Independent Commission Against Corruption (Hong Kong) |
| IIM | Malaysian Integrity Institute *(Institut Integriti Malaysia)* |
| IRC | Institutional Reforms Committee (Malaysia) |

| | |
|---|---|
| JKKMAR | Special Cabinet Committee on Anti-Corruption *(Jawatankuasa Khas Kabinet Mengenai Anti-Rasuah)* |
| JKKMKPK | Special Cabinet Committee on the Integrity of Government Management *(Jawatankuasa Khas Kabinet Mengenai Keutuhan Pengurusan Kerajaan)* |
| JKKTN | Special Cabinet Committee on National Governance *(Jawatankuasa Khas Kabinet Tatakelola Nasional)* |
| JPA | Public Services Department *(Jabatan Perkhidmatan Awam)* |
| MACC | Malaysian Anti-Corruption Commission |
| MAMPU | Malaysian Administrative Modernization and Management Planning Unit |
| NACP | National Anti-Corruption Plan |
| NBI | National Bureau of Investigation (Malaysia) |
| ORP | Operations Review Panel (ORP) |
| SJCC | Parliamentary Joint Committee on Corruption (Malaysia, proposed) |
| PM | Prime Minister |
| PSC | Public Service(s) Commission |
| SCC | Special Committee on Corruption (Malaysia) |
| SJCC | Special Joint Committee on Corruption (Malaysia, proposed) |
| SUHAKAM | Human Rights Commission of Malaysia *(Suruhanjaya Hak Asasi Manusia Malaysia)* |
| YDPA | Yang di-Pertuan Agong |

# Bibliography

## Articles/Books/Reports

'Azam Baki's Term Extension: A Sign of MACC's Persistent Institutional Flaws - C4', *Aliran* (online, 19 May 2023) <https://aliran.com/civil-society-voices/azam-bakis-term-extension-a-sign-of-maccs-persistent-institutional-flaws-c4>

Azura Abas, 'PM Agrees to GIACC Formation to Handle Governance, Integrity and Anti-Graft', *NST Online* (online, 1 June 2018) <https://www.nst.com.my/news/nation/2018/06/375513/pm-agrees-giacc-formation-handle-governance-integrity-and-anti-graft>

Bernama, 'GIACC Part of MACC since April, Graft-Buster Confirms', *Malaysiakini* (online, 9 May 2023) <https://www.malaysiakini.com/news/664519>

Bernama, 'Paul Low: MACC to Be Removed from Civil Service, Made Answerable to Parliament', *Malay Mail* (online, 2 September 2015) <https://www.malaymail.com/news/malaysia/2015/09/02/paul-low-macc-to-be-removed-from-civil-service/962763>

Chan, Dawn, 'Anwar: Ministers, Deputy Ministers to Declare Assets Soon', *NST Online* (online, 6 July 2023) <https://www.nst.com.my/news/nation/2023/07/928120/anwar-ministers-deputy-ministers-declare-assets-soon>

Cheng, Nicholas, 'Take Politics out of MACC, Says Low', *The Star* (online, 10 December 2014) <https://www.thestar.com.my/News/Nation/2014/12/10/Take-politics-out-of-MACC-says-Low-Cabinet-approves-proposal-to-make-commission-independent-of-civil/>

Fahmy A. Rosli, 'Pro-Tem Committee to Study the Need to Put MACC under EAIC Supervision', *NST Online* (online, 2 May 2023) <https://www.nst.com.my/news/nation/2023/05/905116/pro-tem-committee-study-need-put-macc-under-eaic-supervision>

'Gani Patail Replaced as Attorney-General Shocker', *Malaysiakini* (online, 28 July 2015) <https://www.malaysiakini.com/news/306399>

Hidir Reduan Abdul Rashid, '1MDB Audit: Najib, Ex-CEO Acquitted of Power Abuse', *Malaysiakini* (online, 3 March 2023) <https://www.malaysiakini.com/news/657153>

Lim, Ida, 'Najib, Arul Kanda's Acquittal: Prosecution Fails to File Court Papers within Deadline Needed to Continue Appeal', *Malay Mail* (online, 28 August 2023) <https://www.malaymail.com/news/malaysia/2023/08/28/najib-arul-kandas-acquittal-prosecution-fails-to-file-court-papers-within-deadline-needed-to-continue-appeal/87614>

'Malaysia DPM Ahmad Zahid's Dropped Charges Sparks Criticisms from across Political Spectrum', *CNA* <https://www.channelnewsasia.com/asia/malaysia-ahmad-zahid-47-graft-charges-court-decision-dropped-attorney-general-3747316>

Malaysian Bar et al, *Memorandum for the Reform of the Malaysian Anti-Corruption Commission Submitted to YB Senator Paul Law, Minister in the Prime Minister's Office* (11 November 2015)

Malaysian Bar, *Submissions to the Committee for Institutional Reform, Part F* (7 June 2018)

'Malaysians Outraged by Halved Jail Sentence for Disgraced Former PM Najib', *ABC News* (online, 6 February 2024) <https://www.abc.net.au/news/2024-02-06/najib-razak-malaysia-corruption-1mdb-royal-clemency-sentence/103430638>

Marican, Y Mansoor, 'Combating Corruption: The Malaysian Experience' (1979) 19(6) *Asian Survey* 597

Muhammad Mohan, 'Corruption Perceptions Index 2022' (TI-Malaysia, 31 January 2023) <https://transparency.org.my/filemanager/files/shares/CPI%202022/Malaysia%20CPI%202022_English.pdf>

Muhammad Mohan, 'Corruption Perceptions Index 2023' (TI-Malaysia, 30 January 2024) <https://transparency.org.my/filemanager/files/shares/CPI%202023/Malaysia%20CPI%202023_English.pdf>

Ng, Eileen, 'Former Malaysian PM Muhyiddin Acquitted of Power Abuse Charges', *The Straits Times* (Singapore, online, 15 August 2023) <https://www.straitstimes.com/asia/se-asia/former-malaysian-pm-muhyiddin-acquitted-of-power-abuse-charges>

Pakatan Harapan, *Buku Harapan: Rebuilding Our Nation: Fulfilling Our Hopes* (8 March 2018)

Quah, Jon ST, *Anti-Corruption Agencies in Asia Pacific Countries: An Evaluation of Their Performance and Challenges* (TI, 2017) <https://images.transparencycdn.org/images/2017_ACA_Background_Paper.pdf>

Quah, Jon ST, 'Anti-Corruption Agencies in Four Asian Countries: A Comparative Analysis' (2007) 8(2) *International Public Management Review* 73

Quah, Jon ST, 'Combating Corruption in Asian Countries: Learning from Success & Failure' (2018) 147(3) *Daedalus* 202

Rais Hussin, 'Corruption Bled Malaysia RM4.5t over 26 Years', *Malaysiakini* (online, 10 May 2023) <https://www.malaysiakini.com/news/664559>

de Sousa, Luis, 'Anti-Corruption Agencies: Between Empowerment and Irrelevance' (2010) 53 *Crime, Law and Social Change*

Stanley, K Sudhagaran, *MyGov Reform Tracker: A Report by the Center to Combat Corruption and Cronyism (C4 Center)* (C4 Center, September 2022) <https://c4center.org/wp-content/uploads/MyGov_Reform_Tracker_Report.pdf>

SUHAKAM, *Submission by the Human Rights Commission of Malaysia* (May 2018)

Syed Jaymal Zahiid, 'Putrajaya Ups 20pc More Budget for MACC', *Malay Mail* (online, 2 November 2018) <https://www.malaymail.com/news/malaysia/2018/11/02/putrajaya-ups-20pc-more-budget-for-macc/1689395>

TI, 'Corruption Perceptions Index Technical Methodology Note' <https://images.transparencycdn.org/images/CPI_2022_Methodology.zip>

UNODC, *Colombo Commentary on the Jakarta Statement on Principles for Anti-Corruption Agencies* (2020)

Yong, Andrew, *Reforming the Office of Attorney General and the Judicial and Legal Service in Malaysia* (2021) <https://bersih.org/download/reforming-the-office-of-attorney-general-and-the-judicial-and-legal-service-in-malaysia/>

Zulkanain Abdul Rahman, Ahmad Kamal Ariffin Mohd Rus, and Noor Ain Mat Noor, *MACC: The History: The Battle for a Corruption-Free Malaysia* (2020)

'Malaysia: The World's Biggest Heist', *101 East* (Al Jazeera, 7 February 2019) <https://www.aljazeera.com/program/101-east/2019/2/7/malaysia-the-worlds-biggest-heist>

'Leave Application in the Federal Court of Malaysia (28 July 2017): Malaysian Bar v Attorney General of Malaysia & Malaysian Anti-Corruption Commission', Circular No 157/2017 from Roger Chan, Secretary of the Malaysian Bar to Members of the Malaysian Bar, 18 July 2017

## Cases

*Gouriet v Union of Postal Workers & Ors* [1978] AC 435

*Mahan Singh v Government of Malaysia* [1978] 2 MLJ 133

*Repco Holdings Bhd v Public Prosecutor* [1997] 3 MLJ 681

## Legislation

### a. Malaysian

Federal Constitution

*Anti-Corruption Act 1982* (Act 271)

*Enforcement Agency Integrity Commission Act 2009* (Act 700)

*Malaysian Anti-Corruption Commission Act 2009* (Act 694)

*National Bureau of Investigation Act 1973* (Act 123)

*Public Officers (Conduct and Discipline) Regulations 1993* (PU(A) 395)

*Public Services Disciplinary Board Regulations 1993* (PU(A) 396)

*Service Commissions Act 1957* (Act 393)

**b. Overseas**

*Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China,*

*Constitution of the Republic of Singapore*

*Independent Commission Against Corruption Ordinance* (Hong Kong) cap 204

*Prevention of Bribery Ordinance* (Hong Kong) cap 201

*Prevention of Corruption Act* (Singapore) cap 241

## Treaties

*United Nations Convention Against Corruption,* adopted 31 October 2003, A/58/422 (entered into force 14 December 2005)

## Official documents

Colonial Office (UK), *Report of the Federation of Malaya Constitutional Commission* (Colonial No 330, 1957)

Colonial Office (UK), *Report of the Federation of Malaya Constitutional Conference* (Cmnd 2714, February 1956)

Institutional Reforms Committee, *Report of the Institutional Reforms Committee* (July 2018)

*Jakarta Statement on Principles for Anti-Corruption Agencies 2012*

MACC, *Annual Report 2022* (2023) <https://www.sprm.gov.my/admin/uploads_publication/laporan-tahunan-sprm-2022--my-01082023.pdf>

Ministry of Finance, *Estimate Federal Expenditure 2023* (24 February 2023) <https://budget.mof.gov.my/pdf/belanjawan2023/perbelanjaan/Anggaran-Perbelanjaan-Persekutuan-2023.pdf>

Prime Minister's Department, *National Anti-Corruption Plan 2019–2023* (2019)

## Internet sources

International Monetary Fund, 'GDP, Current Prices', *IMF Datamapper* <https://www.imf.org/external/datamapper/NGDPD@WEO>

'Ratification Status', *United Nations : Office on Drugs and Crime* <//www.unodc.org/unodc/en/corruption/ratification-status.html>

Serious Fraud Office (UK), 'About Us' <https://www.sfo.gov.uk/about-us/>

UNODC, 'Anti-Corruption Module 1 Key Issues: Effects of Corruption' <https://www.unodc.org/e4j/zh/anti-corruption/module-1/key-issues/effects-of-corruption.html>

'World Bank Open Data', *World Bank Open Data* <https://data.worldbank.org>