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INDEPENDENT STATE OF PAPUA NEW GUINEA

Draft of: 20/01/06

THE CONSTITUTION

## ALTERATION TO THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS

THE Honourable Member for Ialibu Pangia, Peter O'Neill, proposes to alter the *Organic Law on Provincial Governments and Local-level Governments*, and pursuant to Section 14(2) (Making of alterations to the Constitution and Organic Laws) of the Constitution, I, Jeffery Nape, Speaker of the National Parliament, hereby publish the proposed law:—

Draft of: 20/01/06

INDEPENDENT STATE OF PAPUA NEW GUINEA

## PROPOSED LAW TO ALTER THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS

The Organic Law on Provincial Governments and Local-level Governments (Amendment No. ) Law

### ARRANGEMENT OF CLAUSES

1. Provincial Government and Provincial Legislature (Amendment of Section 10).
2. The Deputy Provincial Governor (Amendment of Section 18).
3. Provincial and Local-level Administrative System (Amendment of Section 72).
4. Functions of the Provincial and District Administrator (Amendment of Section 74).

Draft of: 20/01/06

INDEPENDENT STATE OF PAPUA NEW GUINEA

## ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS (AMENDMENT LAW No. ) LAW

being

A law to alter the *Organic Law on the Provincial Governments and Local-level Governments* and for related purposes, MADE by the National Parliament.

**Proposed Law on Provincial Governments and Local-Level Governments (Amendment Law No. ) Law:—continued****1. PROVINCIAL GOVERNMENT AND PROVINCIAL LEGISLATURE (AMENDMENT OF SECTION 10).**

Section 10 of the Organic Law is amended in Subsection 3 by repealing Paragraphs (b) and (c).

**2. THE DEPUTY PROVINCIAL GOVERNOR (AMENDMENT OF SECTION 18).**

Section 18 of the Organic Law is amended:—

(a) in Subsection (2) by repealing “Section 10(3)(b) and (c) “and replacing them with the following:—  
“Section 10(3)(a)”; and

(b) by repealing Subsections (3) and (4) and replacing them with the following:—

“(3) If the Deputy Provincial Governor:—

(a) is dismissed from office in accordance with Section 20; or

(b) is appointed:—

(i) a Minister or a Vice-Minister in the National Government; or

(ii) the Speaker or Deputy Speaker of the Parliament; or

(iii) the Leader or Deputy Leader of the Opposition in the Parliament; or

(iv) the Chairman of the Permanent Parliamentary Public Works Committee; or

(v) the Chairman of the Permanent Parliamentary Public Accounts Committee; or

(vi) to an office which has powers and privileges equivalent to those of a Minister; or

“(c) resigns his office by written notice to the Minister responsible for provincial government and local-level government matters; or; and

“(d) is, in the opinion of two medical practitioners appointed for the purpose by the National Authority responsible for the registration or licensing of medical practitioners, unfit, by reasons of physical or mental incapacity, to carry out the duties of his office; or

“(e) is otherwise disqualified by law or ceases to be a member of the Provincial Assembly or of the National Parliament,

he shall be deemed to have vacated the office of the Deputy Provincial Governor.

“(4) If the Deputy Provincial Governor vacates his office in accordance with Subsection (3), the Provincial Assembly shall elect the Deputy Provincial Governor in accordance with Subsection (2).

“(5) Where the Deputy Provincial Governor vacates his office in accordance with Subsection (3)(a), (b), (c) or (d), he shall continue to hold office as a member of the Assembly, and is eligible to be re-elected as the Deputy Provincial Governor.”.

**3. PROVINCIAL AND LOCAL-LEVEL ADMINISTRATIVE SYSTEM (AMENDMENT OF SECTION 72).**

Section 72 of the Organic Law is amended in Subsection (2)(a) by adding the following new subparagraph:—

“(iv) District Authorities; and”.

**4. FUNCTIONS OF THE PROVINCIAL AND DISTRICT ADMINISTRATOR (AMENDMENT OF SECTION 74).**

Section 74 of the Organic Law is amended in Subsection (3) as follows:—

(a) by deleting the termination mark (full-stop) in Paragraph (b) and adding the following:—

“; and”; and

(b) by inserting the following new paragraph:—

“(c) policy directions, functions and directions as from time to time issued by the Authority or as directed to him by the Authority.”.

Draft of 07/12/05

## INDEPENDENT STATE OF PAPUA NEW GUINEA

A BILL

for

AN ACT

entitled

*District Authority Act 2005*

## ARRANGEMENT OF CLAUSES

## PART I.—PRELIMINARY

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2. Purpose and Object of the Act and Authorities.
3. Application.
4. Interpretation.

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## DISTRICT AUTHORITY

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- 34. Regulations.

Draft of 07/12/05

**INDEPENDENT STATE OF PAPUA NEW GUINEA****A BILL**

for

**AN ACT***District Authorities Act 2005*

being

An Act to establish District Authorities for Districts and to define their powers and functions, and for related purposes, MADE by the National Parliament to come into operation in accordance with a notice published in the *National Gazette* by the Head of State, acting on advice of the Minister.

**PART I.—PRELIMINARY****1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

- (1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subsection III.3.C (qualified rights) of the Constitution, namely:—
  - (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the Constitution; and
  - (b) the right to privacy conferred by Section 49 of the Constitution,is a law that is made for the purpose of giving effect to the public interest in public welfare.
- (2) For the purposes of Section 41 of the *Organic Law on Provincial Government*, it is hereby declared that this law relates to a matter of national interest.

**2. PURPOSE AND OBJECT OF THE ACT AND AUTHORITIES.**

The objects and the purposes of the Act and the Authorities are to implement the principal administrative functions as specified under Section 45 (Principal administrative functions of the Local-level Governments) of the Organic Law on the Provincial Governments and Local-level Governments of the Organic Law on the Provincial Governments and Local-level Governments to achieve the following:—

- (a) to bring government funding and resources directly to the people within the Districts;
- (b) to enable elected leaders of the people, to determine priorities for allocation of funding and to oversee management control and distribution of resources so as to accelerate improvement of the standards to living of the people;
- (c) to ensure that resources are equitably distributed in the Districts;
- (d) to encourage co-operation among both the governmental and non-governmental agencies or persons engaging in development activities in the Districts.

**3. APPLICATION.**

- (1) Subject to the Organic Law, this Act applies to all Districts.
- (2) Notwithstanding any other laws, all laws, acts, matters or things that are inconsistent with provisions of this Act are, to the extent of inconsistency, invalid and effective and the provisions of this Act shall prevail.

**District Authority:—continued****4. INTERPRETATION.**

In this Act, unless the contrary intention appears:—

“Authority” means a District Authority established under Section 5 of this Act;

“District” in relation to an Authority, means the area of the Local-level Government in and for which the Authority is established;

“Member” means the Member of the National Parliament representing the electorate in the province in which the Authority is established;

“Organic Law” means the Organic Law on the Provincial Governments and Local-level Governments;

“this Act” includes the Regulation.

**PART II.—DISTRICT AUTHORITIES****Division 1.—Establishment of Authorities.****5. ESTABLISHMENT, ETC., OF THE AUTHORITY.**

(1) A District Authority for each District is hereby established.

(2) The Authority:—

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold and dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

**6. FUNCTIONS OF AN AUTHORITY.**

Subject to this Act and to the Organic Law, the functions of an Authority are:

- (a) to assist in the proper and efficient administration and management of the District; and
- (b) to assist in the maintenance of all government services including health, education, law and order, infrastructure maintenance and extension services; and
- (c) in consultation with the District Services of the Provincial and Local-level Government Administrative Services to formulate policies in relation to the powers of the Local-level Governments under Section 44 of the Organic Law; and
- (d) in consultation with the District Administrator, to assist the Joint District Planning and Budget Priorities Committee to perform its functions under Section 33A of the Organic Law; and
- (e) make provisions for appointment of personnel to provide support services for Local-level Governments.

**7. POWERS OF AN AUTHORITY.**

(1) Subject to this Act, an Authority has power to do all things necessary or convenient to be done for or in connexion with the achievement of its objects and the performance of its functions, and in principle achieving or promoting any of the subject matters specified in Section 44 (*Law Making powers of the Local-level Governments*) of the Organic Law.

(2) Without limiting the generality of Subsection (1), the power of an Authority under that subsection includes power to:—

- (a) take such action as it deems necessary or desirable for the maintenance of public assets for the benefit of the people of the District; and
- (b) carry out any works for the benefit of the people in the District; and
- (c) provide or co-operate with any department of the national government and a provincial government or other body in providing any public or social service to the people in the District; and
- (d) subject to this Act and Organic Law, do all such other things as seem to it necessary or desirable for performing its powers and functions under this Act.

**District Authority:—continued****8. HEAD OFFICE.**

An Authority shall have an office which, for the purposes of this Act and the Authority, shall be referred to as the 'Authority Office' and:—

- (a) in which all the records and documents of the Authority shall be kept; and
- (b) to which all correspondence shall be addressed; and
- (c) subject to any direction of the Authority, in which all the meetings of the Authority shall be held.

**Division 2.—Membership of the Authorities.****9. COMPOSITION OF THE AUTHORITY.**

(1) Subject to the Organic Law, the members of the Authority shall consist of:—

- (a) the Member of the Parliament representing the open electorate, *ex officio*; and
- (b) the Presidents of the Rural Local-level Governments, *ex officio*; and
- (c) the District Administrator, *ex officio*; and
- (b) the District Treasurer, *ex officio*; and
- (e) one person representing the Churches nominated by the Council of Churches in PNG; and
- (f) one person representing the PNG National Council of Women, nominated the Council; and
- (g) one person representing the Papua New Guinea Chamber of Commerce nominated, by that Chamber

(2) The members of the Authority referred to in Subsection (1)(e), (f) and (g):—

- (a) shall be appointed in accordance with the *Regulatory Statutory Authorities Act* 2004; and
- (b) shall be appointed for a term not exceeding three years; and
- (c) shall hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act* (Chapter 299); and
- (d) are eligible for re-appointment; and
- (e) shall be ordinary resident in the District.

**10. FILLING OF VACANCIES.**

Where there is a vacancy in the membership of the Authority (other than a vacancy in the offices referred to in Section 9(1)(a), (b), (c) and (d)):—

- (a) an appointment to fill the vacancy shall, subject to Paragraphs (b) and (c) of this section, be made as soon as practicable and in any case not later than three months after the date on which the vacancy occurs; and
- (b) the appointment shall be made in accordance with Section 9 and the person so appointed shall hold office, subject to this Act, for the balance of his predecessor's term of office; and
- (c) where the vacancy occurs within three months before the expiration of the term of office the vacancy shall remain unfilled for the remainder of the term.

**11. CHAIRMAN OF THE AUTHORITY.**

- (1) There shall be a Chairman of an Authority.
- (2) The Member of the National Parliament representing the open electorate shall be the Chairman of the Authority.

**12. DEPUTY CHAIRMAN.**

- (1) The members of the Authority shall elect one of the members referred to in Section 9(b) to be the Deputy Chairman of the Authority.
- (2) Subject to this Act, except by express authority in writing by the Chairman, the Deputy Chairman may act as Chairman only in the absence of the Chairman or if the Chairman is unable to perform the duties of his office.



**District Authority:—continued****13. LEAVE OF ABSENCE.**

The Authority may grant leave of absence to a member of the Authority on such terms and conditions as the Minister determines.

**14. RESIGNATION.**

A member of an Authority may resign his office by written notice to the Authority.

**15. VACATION OF OFFICE.**

- (1) A vacancy occurs when a member, other than members specified under Section 9(1)(a), (b), (c) and (d), of the Authority:—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office under Section 14; or
- (c) is without valid reason absent from three consecutive meetings of the Authority; or
- (d) fails to comply with lawful directions of the Authority given under this Act; or
- (e) becomes bankrupt, or applies to take the benefit of any law for relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result is sentenced to imprisonment,

the Minister shall terminate his appointment.

- (2) The Minister may at any time by written notice advise a member, other than the members specified under Section 9(1)(a), (b), (c) and (d), that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.
- (3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Minister who shall consider the reply, and, where appropriate, terminate the appointment.
- (4) Where the member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

**16. VACANCY NOT TO AFFECT POWERS AND FUNCTIONS.**

The exercise of a power or the performance of a function of an Authority is not invalidated by reason only of a vacancy in the membership of the Authority.

**17. MEETINGS OF AN AUTHORITY.**

- (1) An Authority shall meet at such times and places as the Chairman determines, or, in his absence the Deputy Chairman determines, but shall:—
  - (a) meet at least twice in each period of 3 calendar months; and
  - (b) not meet at the same time as the meetings of the National Parliament, the Provincial Assembly or a Local-level Government.
- (2) Notwithstanding that the time and place have been determined under Subsection (1), a meeting of the Authority shall be called:—
  - (a) by the Chairman or in the absence of the Chairman by the Deputy Chairman acting in his place; or
  - (b) by members of the Authority, being a number not less than three, in writing, so request.
- (3) Notice of a meeting shall be given personally, or by post, by the Chairman or, at his direction, the Executive Officer to each member at least 7 days before the meeting is to be held.
- (4) Where a direction or request is received for a meeting under Subsection (2), the Chairman or the Deputy Chairman acting in his place shall call the meeting within 14 days of the receipt of the direction or request.
- (5) At a meeting of the Authority:—
  - (a) three members, of whom the Chairman or the Deputy Chairman is one, are a quorum; and
  - (b) all matters before the meeting shall be determined in accordance with a majority of the votes; and
  - (c) the Chairman has a deliberative and, in the event of an equality of votes, a casting vote.
- (6) Subject to this Act, the Authority may otherwise determine its own procedures.

**District Authority:—continued****18. DISCLOSURE OF INTERESTS.**

- (1) A member who has a direct or indirect interest in a matter being considered or about to be considered by an Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the Authority.
- (2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Authority and, unless the Authority determines otherwise, the member shall not:—
  - (a) be present during any deliberation of the Authority with respect to that matter; or
  - (b) take part in any decision of the Authority with respect to that matter.

**19. COMMITTEES OF AN AUTHORITY.**

- (1) An Authority may, from time to time, establish Committees of the Authority, to advise the Authority on such matter as the Authority considers necessary.
- (2) In establishing a Committee under Subsection (1), the Authority may:—
  - (a) appoint such persons, including members, as it considers necessary; and
  - (b) specify the functions, powers and procedures of the Committee.

**20. REPORTS.**

- (1) An Authority shall furnish to the Minister responsible for Local-level Governments a report on the progress and performance of the Authority in relation to its functions before 31st March each year and the Minister shall table such report at the first sitting of the National Parliament each year.
- (2) The Authority shall also furnish to the Minister such other reports as the Minister may require at such intervals as the Minister may determine.

**21. DELEGATION.**

An Authority may delegate, by instrument under its seal, to any person or body any of its powers and functions under this Act (except this power of delegation).

*Division 3.—Secretariat, etc.,***22. SECRETARIAT AND SUPPORT STAFF.**

- (1) The District Administrator shall:—
  - (a) be the Executive Officer of an Authority; and
  - (b) ensure adequate services and support staff is accorded to the Authority.
- (2) A person, required under Subsection (1)(b) to provide services of the Authority, who is an officer of the National Public Services:—
  - (a) shall be deemed to have been seconded to the support staff of the Authority; and
  - (b) shall, during his period of deemed secondment, be paid his salary and other entitlements as an officer or employee of the State, by the government department or governmental body which, immediately prior to the officer's deemed secondment, the officer was employed with.
- (3) The service on the support staff of the Authority of an officer shall be counted as services in the National Public Services for the purpose of determining his rights (if any) in respect of:—
  - (a) leave of absence on the grounds of illness; and
  - (b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

**23. GENERAL OBLIGATIONS.**

All government departments, public authorities, bodies, instrumentalities of the State, and their officers and employees are required to cooperate and assist an Authority in carrying out its functions under this Act.

**24. FAILURE TO CO-OPERATE WITH THE AUTHORITY TO AMOUNT TO MISCONDUCT.**

- (1) Where a public authority referred to in Section 23, fails to co-operate or assist an Authority in the performance by the Authority of its functions under this Act:—
  - (a) in the case of a public authority other than a Department—the person deemed to have failed to co-operate is considered to have been guilty of misconduct or misbehaviour and is liable to be dismissed or removed from office; and



**District Authority:—continued**

- (b) in the case of a Department—the Departmental Head and every officer concerned is guilty of negligence in the discharge of his duties,  
under the *Public Services (Management) Act* 1986 or any other appropriate law.
- (2) For the purposes of Subsection (1), a government department, a public authority or public body or a person employed by a government department, public authority or public body fails to co-operate with an Authority if it or he fails, within a reasonable time:—
- (a) to comply with a notice issued by the Authority; or
  - (b) to comply with a direction by the Authority; or
  - (c) to answer correspondence from the Authority; or
  - (d) otherwise, to assist the Authority in the performance of its functions to the extent that such assistance is within the functions and powers of that public authority or person.

**PART III.—FINANCE****25. SOURCES OF FINANCE.**

The sources of finance for an Authority shall include:—

- (a) grants and aids from the National Government, the Provincial Governments and the Local-level Governments within the District; and
- (b) contributions or donations from private persons and bodies; and
- (c) fees for work carried out by the Authority on a contractual or agency basis for a government or a private person or body.

**26. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1986.**

Part VIII of the *Public Finances (Management) Act* 1986 applies to and in relation to an Authority.

**27. APPLICATION OF AUDIT ACT 1989.**

The accounts of an Authority shall be audited in accordance with Part III of the *Audit Act* 1989.

**PART IV.—SUSPENSION****28. SUSPENSION.**

- (1) Where in the opinion of the Minister:—

- (a) the business of an Authority is:—

- (i) being negligently, improperly, inefficiently, fraudulently or badly conducted; or
- (ii) being so conducted in a manner that is not in the best interest or welfare of the District or of people in the District; or

- (b) An Authority is not properly carrying out its duties imposed under this Act or any other law,

the Minister may, by written notice addressed to the Chairman of the Authority, suspend the Authority, subject to Subsection (2), for a period of two months within which an investigation shall instituted and completed and remedial action taken to correct the cause of the suspension.

- (2) Unless a suspension under Subsection (1) is previously confirmed, varied or revoked by the Minister, it lapses at the end of one month.

**29. EFFECT OF SUSPENSION.**

The suspension of an Authority under Section 28 does not affect:—

- (a) any right, privilege, obligation or liability, acquired, accrued or incurred by the Authority; or
- (b) any investigation, legal proceeding or remedy in respect of a suspended power or function; or
- (c) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability,

and any such right, privilege, obligation or liability may, subject to this Act, be carried on or enforced as if the suspension had not taken place.

**District Authority:—continued****30. APPOINTMENT OF MANAGER.**

- (1) Where an Authority is suspended under Section 28, the Minister shall appoint a person to be the Manager for the Authority.
- (2) Subject to any direction of the Minister, a Manager:—
  - (a) has and may exercise, on behalf of the Authority, such of the suspended powers and functions of the Authority as are specified by the Minister in the instrument; and
  - (b) has such other powers, functions, duties and responsibilities as are prescribed.
- (3) Subject to the *Salaries and Conditions Monitoring Committee Act* 1988, the terms and conditions of appointment of the Manager are as determined by the Minister.

**PART V.—MISCELLANEOUS****31. AGENCY FUNCTIONS.**

An Authority may perform duties or responsibilities on behalf of the National Government, Provincial Government, Local-level Government or any other public body or instrumentality, as an agent or instrumentality of the National Government, Provincial Government, Local-level Government, the public body or instrumentality, as the case maybe, on such terms and conditions as are agreed upon.

**32. PROTECTION FROM PERSONAL LIABILITY.**

The Chairman, Deputy Chairman or a member of the Authority, is not personally liable for any act or default of himself or the Authority or for the purposes of this Act.

**33. CONFIDENTIALITY.**

- (1) The Authority shall take all reasonable steps to protect, from unauthorized use or disclosure, information given to it in confidence in connection with the performance of its functions or the exercise of its powers under this Act.
- (2) For the purposes of Subsection (1), the disclosure of information as required and permitted by any law or court of competent jurisdiction shall be considered authorized use and disclosure of the information.
- (3) For the purposes of Subsection (1), the disclosure of information by a person for the purposes of performing that person's functions as:—
  - (a) person providing secretarial services to the Authority; or
  - (b) member of the support staff of the Authority; or
  - (c) member of the Authority,shall be considered authorized use disclosure of the information.

**34. REGULATIONS.**

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