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INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

ALTERATION TO CONSTITUTION

THE Government proposes to alter the Constitution and, pursuant to Section 14(2) (*Making of alterations to the Constitution and Organic Laws*) of the Constitution, I, Bill Skate, Speaker of the National Parliament, hereby publish the proposed Law.

Draft of 17/8/03

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE CONSTITUTION

Constitutional Amendment (Regulatory Statutory Authorities) Law

ARRANGEMENT OF CLAUSES

1. Compliance with Constitutional requirements.
2. New Part VIIA.
 - “Part VIIA.—Regulatory Statutory Authorities.”
 - “208A. Establishment to Regulatory Statutory Authorities.”
 - “208B. Appointment to Certain Offices of Regulatory Statutory Authorities.”
3. Transitional and savings.

INDEPENDENT STATE OF PAPUA NEW GUINEA
 PROPOSED LAW TO ALTER THE CONSTITUTION

entitled

Constitutional Amendment (Regulatory Statutory Authorities) Law,

being

A Law to alter the Constitution by making provision relating to:—

- (a) the establishment of Regulatory Statutory Authorities; and
- (b) the appointment, suspension and revocation of appointment of chief executive officers of Regulatory Statutory Authorities; and
- (c) the appointment of non *ex officio* members of Boards of Regulatory Statutory Authorities.

MADE by the National Parliament to come into operation in accordance with a notice in the *National Gazette* by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

- (1) This Law, to the extent that it regulates or restricts the exercise of a right of freedom referred to in Subdivision III.3 (*qualified rights*) of the Constitution, namely:—
- (a) the right to freedom of expression and publication conferred by Section 46; and
 - (b) the right peacefully to assemble and associate and to form or belong to, or not to belong to, political parties, industrial organizations or other association conferred by Section 47; and
 - (c) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
 - (d) the right to reasonable privacy conferred by Section 49; and
 - (e) the right of reasonable access to official documents conferred by Section 51; and
 - (f) the right of freedom of movement conferred by Section 52, of the Constitution, is a law that is made (pursuant to Section 38 of the Constitution), taking account of the National Goals and Directive Principles and the Basic Social Obligations, in particular the National Goals and Directive Principles entitled:—
 - (g) national sovereignty and self reliance; and
 - (h) natural resources and environment,

for the purpose of giving effect to the public interest in public order and public welfare.

2. NEW PART VIIA.

The Constitution is amended by inserting after Part VII the following new Part:—

“Part VIIA.—Regulatory Statutory Authorities.”

“208A. Establishment of Regulatory Statutory Authorities.”

- (1) The following are Regulatory Statutory Authorities for the purposes of this Part:—
- (a) a body corporate established by an Act of Parliament to perform specific statutory functions; and
 - (b) a body corporate incorporated by authority of an Act of Parliament, and declared by an Act of Parliament to be a body to which this Part applies.
- (2) An Act of the Parliament may make provision for or in respect of other Regulatory Statutory Authorities to which this Part applies.

Constitutional Amendment (Regulatory Statutory Authorities) Law—continued

“208B. Appointments to certain Offices of Regulatory Statutory Authorities”.

- (1) This section applies to and in respect of the following offices and positions:—
- (a) all offices of chief executive officers of Regulatory Statutory Authorities; and
 - (b) all offices of non *ex officio* members of Boards of Regulatory Statutory Authorities; and
 - (c) such other offices and positions as are prescribed by an Act of Parliament for the purpose.
- “(2) All appointments (whether temporary or substantive) to offices to which Subsection (1)(a) applies shall be made by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, given after considering recommendations from the relevant Minister, acting on the advice of the relevant Board, in accordance with the recommendation from the Public Services Commission, following procedures prescribed by an Act of Parliament.”
- “(3) All temporary appointments (whether temporary or substantive) to offices to which Subsection (1)(a) applies shall be made by the National Executive Council given after consultation with the Public Services Commission.”
- “(4) The revocation of appointments of persons appointed under Subsection (1)(a) shall be made by the Head of State, acting with, and in accordance with, the advice of the National Executive Council in accordance with a recommendation of the Public Services Commission following procedures prescribed by an Act of Parliament.”
- “(5) The suspension from office of persons appointed under Subsection (1)(a) shall be made by Head of State, acting with, and in accordance with, the advice of the National Executive Council, in accordance with a recommendation of the Public Services Commission following procedures prescribed by an Act of Parliament.”
- “(6) All appointments (whether temporary or substantive) to offices to which Subsection (1)(b) applies shall be made by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after considering recommendations from the relevant Minister following procedures prescribed by an Act of Parliament.”

3. TRANSITIONAL AND SAVINGS.

- (1) A chief executive officer of a Regulatory Statutory Authority or a non *ex officio* member of the Board of a Statutory Regulatory Authority referred to in Section 208B (appointment to certain offices of Regulatory Statutory Authorities) of the Constitution who:—
- (a) was, before the coming into operation of this Law, validly appointed (whether substantively or temporarily); and
 - (b) immediately before that coming into operation held that office (whether substantively or otherwise).
- shall, on that coming into operation, be deemed to be validly appointed (substantively or temporarily, as the case may be) under Section 208B (appointment to certain offices of Regulatory Statutory Authorities) and shall continue to hold that office (substantively or temporarily, as the case may be) until the expiry of the term of his appointment or until the cessation of his appointment otherwise according to law, whichever shall first happen.
- (2) A chief executive officer of a regulatory statutory authority referred to in Section 208B(b) (appointment to certain offices of Regulatory Statutory Authorities) of the Constitution who:—
- (a) was, before the coming into operation of this Law, validly suspended from office; and
 - (b) immediately before that coming into operation was so suspended from office.
- shall, on that coming into operation, be deemed to be validly suspended from that office in accordance with 208B(b) (appointment to certain offices of Regulatory Statutory Authorities) of the Constitution, and shall continue to be so suspended from office until the suspension is lifted or until he ceases to hold that office according to law, whichever shall first happen.