



National Gazette

PUBLISHED BY AUTHORITY

(Registered at the General Post Office, Port Moresby, for transmission by post as a Qualified Publication)

No. G192] PORT MORESBY, WEDNESDAY, 22nd OCTOBER [2008

INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

ALTERATION TO THE CONSTITUTION

THE Honourable Member for Esa'ala Open, Moses Maladina, proposes to alter the Constitution and, pursuant to the requirements of Section 14(2) (making of alterations to the Constitution and Organic Laws) of the Constitution, I, Jeffrey Nape, the Speaker of the National Parliament, hereby publish the proposed Law:—

Draft of: 17/10/2008

INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

PROPOSED LAW TO ALTER THE CONSTITUTION

entitled

Constitution (Amendment) Law.

ARRANGEMENT OF CLAUSES

1. Responsibilities of office (Amendment of Section 27).
2. Further provisions (Amendment of Section 28).
3. Prosecution of misconduct in office (Amendment of Section 29).
4. The Ombudsman Commission (Amendment of Section 217).
5. New Section—219A.

“219A. OMBUDSMAN COMMISSION COMMITTEE.”

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE CONSTITUTION

entitled

Constitution (Amendment) Law.

being

A Law to alter the Constitution by amending the provisions relating to the Leadership Code, and for related purposes.

Proposed Law to Alter the Constitution—continued

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. RESPONSIBILITIES OF OFFICE (AMENDMENT OF SECTION 27).

Section 27 of the Constitution is amended:—

(a) in Subsection (3)—

(i) in Paragraph (b) by repealing the full stop after the word “doubt” and replacing it with the following:—

“; and”; and

(ii) by adding a new Paragraph after Paragraph (b):—

“(c) particularly, a head of department who has control of the expenditure of public funds, shall ensure that himself or his officers, authorised to expend public funds:—

(i) properly expend public funds to implement National Government policies and directives; or

(ii) perform their respective legislative duties in relation to the expenditure of public funds; or

(iii) implement the National Government’s budgetary allocation.”; or

(iv) do not inappropriately apply or misuse public funds.”; and

(b) by repealing Subsection (5) and replacing it with the following:—

“(5) Notwithstanding Subsection (4), powers conferred on the Commission in this Section, does not include the power to give directives that prevent the implementation of National Governments policies and directives, including the implementation of the National Government’s annual budgetary allocation.

(6) A person to whom this Division applies who—

(a) is convicted of an offence in respect of his office position or in relation to the performance of his functions or duties; or

(b) fails to comply with a direction under Subsection (4) or otherwise fails to carry out the obligations imposed by Subsections (1), (2) or (3), is guilty of misconduct in office.”

2. FURTHER PROVISIONS (AMENDMENT OF SECTION 28).

Section 28 of the Constitution is amended —

(a) in Subsection (1A) and repealing the full stop after the word “imposed” and adding after the word “imposed” the following:—

“or make such a directive that is necessary or convenient for attaining the objects of this Division, to that person.”; and

(b) by repealing Subsection (5) and replacing it with the following:—

“(5) Proceedings under Subsection (1)(g) are not judicial proceedings but are subject to the principles of natural justice, and an Organic Law may provide—

(a) for such proceedings for the purposes of this Division to be a bar to a proceeding under another Law; or

(b) for a proceeding under a law to be a bar to a proceeding for the purposes of this Division.”

Proposed Law to Alter the Constitution—continued**3. PROSECUTION OF MISCONDUCT IN OFFICE (AMENDMENT OF SECTION 29).**

Section 29 of the Constitution is amended —

(a) by repealing Subsection (1) and replacing it with the following:—

“(1) Where the Ombudsman Commission or other authority referred to in Section 28(1)(f)(*further provisions*) is of the opinion that there is evidence of misconduct in office by a person to whom this Division applies, it may refer the matter to the Public Prosecutor for prosecution before a tribunal established under Section 28(1)(g)(*further provisions*).”; and

(b) by adding a new Subsection after Subsection (2):—

“(3) Notwithstanding Subsection (1), if the Ombudsman Commission or other authority referred to in Section 28(1)(f)(*further provisions*) is of the opinion that—

- (a) there is no serious culpability on the part of the person alleged to have been guilty of misconduct in office and public policy and public good do not require dismissal; or
- (b) the evidence of misconduct in office by a person to whom this Division applies, is trivial or in the nature of a minor offence and the objects of this Division can be achieved without prosecution, it may give such a directive that is necessary or convenient for attaining the objects of this Division, to that person.”

3. THE OMBUDSMAN COMMISSION (AMENDMENT OF SECTION 217).

Section 217 of the Constitution is amended by repealing Subsection (8).

5. NEW SECTION—219A.

The Constitution is amended by adding after Section 219 the following new Section:—

“219A. OMBUDSMAN COMMISSION COMMITTEE.

- (1) An Organic Law or an Act of Parliament may provide for the establishment of an Ombudsman Commission Committee, which is a Permanent Parliamentary Committee for the purposes of Subdivision VI.2.E (*the Committee system*).
- (2) The primary function of the Ombudsman Commission Committee is, in accordance with an Organic Law or an Act of Parliament—
 - (a) to consider and report on any report relating to an administrative complaint; and
 - (b) to monitor and review any aspect of the workings, functions, operations and administration of the Ombudsman Commission; and
 - (c) to investigate, on its own initiative or on complaint by a person affected and report to Parliament, any conduct on the part of—
 - (i) the Ombudsman Commission or an Ombudsman Commissioner; or
 - (ii) government body or an officer or employee of a governmental body, where the conduct is or may be wrong; and
 - (d) to refer a matter to the appropriate authorities for further investigation and prosecution, disciplinary action and to ensure compliance with the laws, as the case may be.
- (3) An Organic Law or an Act of Parliament may provide for the membership, procedures and expand the functions of the Committee under Subsection (2) and may confer additional functions and duties not inconsistent with the performance of the functions and duties conferred and imposed by Subsection (2).”

INDEPENDENT STATE OF PAPUA NEW GUINEA
THE CONSTITUTION
ALTERATION TO THE CONSTITUTION

The Honourable Member of Esa'ala Open, Moses Maladina, proposes to alter the *Organic Law on the Terms and Conditions of Employment of Judges* and, pursuant to the requirements of Section 14(2) (making of alterations to the *Constitution and Organic Laws*) of the *Constitution*, I, Jeffrey Nape, the Speaker of the National Parliament, hereby publish the proposed Law:—

Draft of: 17/10/2008

INDEPENDENT STATE OF PAPUA NEW GUINEA
THE CONSTITUTION
**PROPOSED LAW TO ALTER THE ORGANIC LAW ON THE TERMS AND CONDITIONS OF
 EMPLOYMENT OF JUDGES**

entitled

The Organic Law on the Terms and Conditions of Employment of Judges (Amendment) Law

ARRANGEMENT OF CLAUSE

Retirement (Amendment of Section 7).

INDEPENDENT STATE OF PAPUA NEW GUINEA
THE CONSTITUTION
**PROPOSED LAW TO ALTER THE ORGANIC LAW ON THE TERMS AND CONDITIONS OF
 EMPLOYMENT OF JUDGES**

entitled

The Organic Law on the Terms and Conditions of Employment of Judges (Amendment) Law.

being

A Law to alter the *Organic Law on the Terms and Conditions of Employment of Judges (Amendment) Law*, and for related purposes,

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.

RETIREMENT (AMENDMENT OF SECTION 7).

Section 7 of the *Organic Law* is amended:—

- (a) in Subsection (1) by repealing the number “60” (twice appearing) and replacing them with the following:—
 “72” ; and
- (b) in Subsection (2) by repealing the number “65” and replacing it with the following:—
 “75”.

INDEPENDENT STATE OF PAPUA NEW GUINEA
THE CONSTITUTION
ALTERATION TO THE CONSTITUTION

The Honourable Member of Esa'ala Open, Moses Maladina, proposes to alter the *Organic Law on the Duties and Responsibilities of Leadership* and, pursuant to the requirements of Section 14(2) (making of alterations to the *Constitution and Organic Laws*) of the *Constitution*, I, Jeffrey Nape, the Speaker of the National Parliament, hereby publish the proposed Law:—

Draft of: 17/10/2008

INDEPENDENT STATE OF PAPUA NEW GUINEA
THE CONSTITUTION

**PROPOSED LAW TO ALTER THE ORGANIC LAW ON THE DUTIES AND RESPONSIBILITIES OF
LEADERSHIP**

entitled

The Organic Law on the Duties and Responsibilities of Leadership (Amendment) Law.

ARRANGEMENT OF CLAUSES.

1. Repeal and replacement of Section 8.
2. New Sections—16A and 16B.
“16A. Heads of Department, etc.”
“16B. Committee Proceedings.”
3. Complaints (Amendment of Section 18).
4. Proceedings of the Commission (Amendment of Section 20).
5. Tribunals—(Amendment of Section 27).
6. Effect of proceedings (Amendment of Section 30).

Draft of: 17/10/2008

INDEPENDENT STATE OF PAPUA NEW GUINEA

**PROPOSED LAW TO ALTER THE ORGANIC LAW ON THE DUTIES AND RESPONSIBILITIES OF
LEADERSHIP**

entitled

The Organic Law on the Duties and Responsibilities of Leadership (Amendment) Law.

being

A Law to alter the *Organic Law on the Duties and Responsibilities of Leadership*, and for related purposes,

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. REPEAL AND REPLACEMENT OF SECTION 8.

Section 8 of the *Organic Law* is repealed and replaced with the following:—

“8. SHAREHOLDINGS.

- (1) A person to whom this Law applies:—
 - (a) who hold shares or any other investment in any company or unincorporated profit-seeking organization; or
 - (b) whose spouse or any of whose children under voting age hold any such shares or other investment, that could be reasonably be expected to place him in a position in which he could have a conflict of interest or might be compromised when discharging his public or official duties, is guilty of misconduct in office.
- (2) Subsections (1) does not apply to a person who, prior to obtaining the shares or making the investment referred to in Subsection (1), has obtained the approval of the Ombudsman Commission to do so.
- (3) Subsections (1) and (2) do not prevent a person to whom this Law applies, or the spouse or the child of that person, from acquiring, holding and disposing of shares or establishing, maintaining, divesting or disposing of an investment, provided that the Ombudsman Commission is notified in the prescribed manner.”

Proposed Law to Alter the Organic Law on the Duties and Responsibilities of Leadership—continued**2. NEW SECTIONS— 16A AND 16B.**

The *Organic Law* is amended by adding after Section 16 the following new Sections:—

“16A. HEADS OF DEPARTMENTS, ETC.

- (1) Subject Subsection (2), a person to whom this Division applies, particularly, a head of department who has control of the expenditure of public funds—
- (a) who; or
 - (b) whose officer, authorised to expend public funds, fails to properly expend public funds to implement National Government policies and directives, breaches their respective legislative duties in relation to the expenditure of public funds, inappropriately applies or misuses public funds or fails to implement the National Governments budgetary allocation, is guilty of misconduct in office.
- (2) A person referred to in Subsection (1), shall be responsible individually and vicariously for any action or inaction committed by him or by his officers in carrying out their obligations under Subsection (1).

“16B. COMMITTEE PROCEEDINGS.

A person to whom this Law applies who is required to appear or appears before a Committee of the Parliament—

- (a) to whom a summons has been served and refuses or fails, without reasonable excuse, to appear or to continue in attendance in obedience to the summons; or
- (b) who, by an act or omission, knowingly dissuades or prevents a person from obeying a summons; or
- (c) who, without reasonable excuse, refuses—
 - (i) to be sworn or make an affirmation; or
 - (ii) to answer a question put to him by the Committee or by a member of the Committee.; or
 - (iii) to produce a document that he is required by the Committee to produce.; or
- (d) who uses, causes, inflicts or procures any violence, punishment, damage, loss or disadvantage to or on any person for or on account of evidence lawfully given by him before the Committee; or
- (e) who willfully gives false evidence on oath or affirmation before the Committee, is guilty of misconduct in office.”

3. COMPLAINTS (AMENDMENT OF SECTION 18).

Section 18 of the *Organic Law* is amended:—

- (a) in Subsection (3) —
 - (i) in Paragraph (b), by adding before the word “the” the following words:—
“subject to Subsection (5)” ; and
 - (ii) in Paragraph (d), by repealing the comma after the word “investigation” and replacing it with the following:—
“,or” ; and
 - (iii) by adding after Paragraph (d), the following new Paragraph:—
“(e) it is a matter referred to in Section 30,” ;and

Proposed Law to Alter the Organic Law on the Duties and Responsibilities of Leadership—*continued*

(b) by adding after Subsection (4), the following new Subsection:—

“(5) Notwithstanding anything in this Law, the Commission or other authority shall cease to investigate and hold any hearing on a complaint on the conduct of a person to whom this law applies, where the Commission or other authority fails —

- (a) to complete its investigations on the complaint within 4 years from the date of the making of the complaint of the alleged misconduct in office; or
- (b) to refer the matter to the Public Prosecutor within 4 years from the date of the making of the complaint of the alleged misconduct in office.”

4. PROCEEDINGS OF THE COMMISSION (AMENDMENT OF SECTION 20).

Section 20 of the Organic Law is amended by repealing Subsections (2), (3) and (4) and replacing them with the following:—

“(2) The Commission or other authority in the course of conducting its investigation, shall not divulge any information of such investigation, which is capable of—

- (a) prejudicing the outcome of a tribunal inquiry; or
- (b) imputing guilt on a person who is been investigated, to the public media in any form.

(3) Where the Commission or other authority undertakes an investigation contrary to Subsection (2)—

- (a) such an investigation shall be deemed to have been undertaken contrary to the principles of natural justice; and
- (b) a person aggrieved by such an investigation, may seek relief in the National Court.

(4) The Commission or other authority may hear or obtain information from any person who the Commission considers can assist and may make whatever inquiries it thinks fit and shall, before taking action under Subsections (6), (7) or (11), notify the person whose conduct is being investigated.

(5) Nothing in this Law compels the Commission or other authority to hold any hearing and no person, other than the person whose conduct is being investigated, is entitled as of right to be heard by the Commission.

(6) Notwithstanding any provision in this Law, where the Commission or other authority is satisfied, on receipt of a complaint, that there is evidence of misconduct in office —

- (a) by a person to whom this Law applies; or
- (b) by an officer, authorized to expend public monies, under the control and supervision of a person to whom this Law applies referred to in Section 16A, before taking an action under Subsection (11), it shall, within fourteen days of the receipt of a complaint, in writing, notify and consult the person to whom this Law applies, to take the appropriate action that is necessary or convenient for attaining the objects of this Law or any other law.

(7) Notwithstanding any provision in this Law, where the Commission or other authority is satisfied, after an inquiry into a matter on its own initiative, that there is evidence of misconduct in office —

- (a) by a person to whom this Law applies; or
- (b) by an officer, authorized to expend public monies, under the control and supervision of a person to whom this Law applies referred to in Section 16A, before taking an action under Subsection (11), it shall, within fourteen days of the commencement of its inquiry, in writing, notify and consult the person to whom this Law applies, to take the appropriate action that is necessary or convenient for attaining the objects of this Law or any other law achieved without prosecution, make such a directive that is necessary or convenient for attaining the objects of this Law, to that person.”; and

Proposed Law to Alter the Organic Law on the Duties and Responsibilities of Leadership—*continued*

(c) by adding a new Subsection after Subsection (4):—

“(4A) For the purposes of Subsection (4), the standard of proof to be applied in tribunal proceedings is that of proof beyond reasonable doubt and the onus is on the prosecution.”; and

(d) in Subsection (5)—

(i) in Paragraph (b), by deleting the full stop after the word “imposed” and inserting the following:—

“; or”; and

(ii) by adding the following new Paragraph after Paragraph (b)—

“(c) the person comply with such a directive that is necessary or convenient for attaining the objects of this Law.”; and

(e) in Subsection (7), in Paragraph (e) by repealing the words “& a tribunal consisting of a Judge (who shall be the Chairman) and two senior magistrates appointed by the Chief Justice” and replacing them with the following:—

“- a tribunal appointed by the Chief Justice, consisting of a Judge (who shall be the Chairman) and two other members, all of whom must be —

(i) senior magistrate; or

(ii) former Judges of the National Court; or

(iii) former Judges of the pre-Independence Supreme Court of Papua New Guinea; or

(ii) Judges or former Judges of an equivalent court of a country that has a legal system similar to that of Papua New Guinea.”

6. REPEAL AND REPLACEMENT OF SECTION 30.

Section 30 of the *Organic Law* is repealed and replaced with the following:—

“30. EFFECT OF PROCEEDINGS.

- (1) Subject to Subsection (8), the result of any proceedings in respect of a charge of misconduct in office, is a bar to proceedings in respect of the same act under any other provision of the Constitution or any other law.
- (2) Subject to Subsection (8), the result of any proceedings under any other provision of the Constitution or of any other law, is a bar to proceedings in respect of the same act under this Law.
- (3) It is the duty of the Supreme Court and the National Court to ensure —
 - (a) that advantage is not taken of Subsection (1), (2) or (8) in cases that are truly vexatious or oppressive; or
 - (b) that proceedings under one provision or law are not used primarily with a view to obtaining evidence for use in or in relation to, or to gain advantage in or in relation to, other proceedings; or
 - (c) Subsection (1), (2), (6) or (7) are not contravened.
- (4) Where a charge of misconduct in office is also capable of being dealt with in proceedings in respect of the same act under any other provisions of the Constitution or any other law —
 - (a) the Commission may inquire into the charge of misconduct in office under this Law, if a complaint concerning the alleged misconduct in office, is made to the Commission or it inquires generally into the matter on its own initiative; or
 - (b) another authority, may inquire into the charge of misconduct in office under any other provision of the Constitution or any other law, if a complaint concerning the alleged misconduct in office, is made to that authority.

Proposed Law to Alter the Organic Law on the Duties and Responsibilities of Leadership—*continued*

- (5) Subsection (4) does not prevent —
- (a) the Commission from referring, in writing, the charge of misconduct in office to another authority to inquire into under any other provision of the Constitution or any other law; or
 - (b) another authority from referring, in writing, the charge of misconduct in office to the Commission to inquire into under this Law, if it is necessary or convenient to attain the objects of this Law or any other provision of the Constitution or any other law.
- (6) The Commission shall not inquire into a charge of misconduct in office referred to in Subsection (4)(b) or (5)(a).
- (7) Another authority shall not inquire into a charge of misconduct in office referred to in Subsection (4)(a) or (5)(b).
- (8) Notwithstanding anything in this Section, Subsections (1) and (2) do not apply to a charge of misconduct in office in respect of the misuse, misappropriation, misapplication or the improper expenditure of public monies.”