



Draft of 11/11/2014

A BILL

for

AN ACT

entitled

District Development Authority Bill 2014.

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A BILL

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District Development Authority Bill 2014.

Being an Act relating to District Development 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 Prime Minister.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely –

- (a) the right to privacy conferred by Section 49; and
 - (b) the right to freedom of information conferred by Section 51,
- of the *Constitution*, is a law that is made for the purpose of giving effect to the public interest in public safety, public order and public welfare.

2. APPLICATION OF ACT.

This Act does not apply to the Autonomous Region of Bougainville or the National Capital District.

3. INTERPRETATION.

In this Act, unless the contrary intention appears –

“appointed member” means a member of a Board appointed under Section 12;

“authorised officer” means a person appointed as an authorised officer under Section 18;

“Authority” means a District Development Authority established by Section 33A of the *Organic Law on Provincial Governments and Local-level Governments*;

“Board” means the Board of an Authority established by Section 10;

“Chairperson” means the Chairperson of a Board;

“Chief Executive Officer” means the Chief Executive Officer of an Authority;

“department” means the department responsible for provincial and local-Level government matters;

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- “document” includes any record of information, however recorded or stored, whether in written or printed form, or film, by electronic means or otherwise;
- “member” means a member of the Board and includes the Chairperson;
- “Minister” means the Minister responsible for provincial and local-level government matters;
- “Salaries and Conditions Monitoring Committee” means the Salaries and Conditions Monitoring Committee established under section 4 of the *Salaries and Conditions Monitoring Committee Act 1988*;
- “secretariat” means the secretariat of an Authority referred to in Section 22;
- “this Act” includes the regulations.

PART II. – MAIN PROVISIONS FOR DISTRICT DEVELOPMENT AUTHORITIES.

4. CHARACTERISTICS OF AUTHORITIES.

- (1) A District Development Authority –
- (a) is a body corporate with perpetual succession; and
 - (b) is to have a seal; and
 - (c) may acquire, hold and dispose of real and personal property; and
 - (d) may sue and be sued in its corporate name.
- (2) All courts, judges and persons acting judicially are to take judicial notice of the seal of an Authority affixed to a document and are to presume that it was duly affixed.

5. FUNCTIONS OF AUTHORITIES.

The functions of an Authority are –

- (a) to perform service delivery functions and carry out service delivery responsibilities specified in the Ministerial determination made under Section 6; and
- (b) to develop, build, repair, improve and maintain roads and other infrastructure; and
- (c) to approve the disbursement of district support grants and other grants; and
- (d) to oversee, co-ordinate and make recommendations as to the overall district planning, including budget priorities, for consideration by the Provincial Government and the National Government; and
- (e) to determine and control the budget allocation priorities for the Local-level Governments in the district; and
- (f) to approve the Local-level Government budgets for presentation to the Local-level Government and to make recommendations concerning them; and
- (g) to draw up a rolling five-year development plan and annual estimates for the district; and
- (h) to conduct annual reviews of the rolling five-year development plan; and
- (i) such other functions as are prescribed by the regulation.

6. DETERMINATION OF SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES.

- (1) The Minister shall determine the service delivery functions and responsibilities of each District Development Authority in consultation with the Board and the Provincial Executive Council.

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(2) The Minister may, in consultation with the Board and the Provincial Executive Council, revoke or vary a determination.

(3) A determination, revocation or variation shall be published in the National Gazette as soon as possible after it has been made.

(4) To avoid doubt, the power to make a determination under this section does not in any way limit or affect the power to make a determination under Section 5 of the *Intergovernmental Relations (Functions and Funding) Act 2009*.

7. POWERS OF AUTHORITIES.

(1) An Authority has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its functions.

- (2) Without limiting subsection (1), an Authority may –
- (a) enter into contracts; and
 - (b) charge fees for work done, and services provided, by the Authority; and
 - (c) purchase and take on hire, and dispose of, plant, machinery, equipment and other goods; and
 - (d) engage consultants and other persons to perform works or services for the Authority; and
 - (e) form or participate in the formation of companies; and
 - (f) enter into partnerships and participate in joint ventures; and
 - (g) do anything incidental to any of its powers.

8. AUTHORITIES TO CO-OPERATE WITH PROVINCIAL GOVERNMENTS.

An Authority shall –

- (a) cooperate with the Provincial Government; and
- (b) not perform any of its functions or exercise any of its powers in a way that is inconsistent or in conflict with the policies and plans of the Provincial Government.

9. ROLES OF PROVINCIAL AND LOCAL-LEVEL GOVERNMENT SERVICE MONITORING AUTHORITY.

(1) The Provincial and Local-level Service Monitoring Authority shall monitor the performance of Authorities and the implementation of this Act.

(2) The Authority may make recommendations or give advice, or both, to the Minister on how to improve the performance of Authorities and the operation of this Act.

(3) The Monitoring Authority may make recommendations or give advice in relation to the performance of one or more particular Authorities or the overall operation of Authorities.

PART III. – BOARDS.

10. ESTABLISHMENT OF A BOARD FOR EACH AUTHORITY.

A Board of each Authority is hereby established.

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11. FUNCTIONS AND POWERS OF A BOARD.

- (1) The functions of the Board of an Authority are –
 - (a) to ensure the proper, efficient and economical performance of the Authority's operations for the benefit of the people of the district; and
 - (b) to give directions to the Chief Executive Officer under Paragraph 22(3)(a); and
 - (c) such other functions as are conferred on the Board by or under this Act.
- (2) The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- (3) Anything done in the name of, or on behalf of, an Authority by the Board, or with the authority of the Board, is taken to have been done by the Authority.

12. MEMBERSHIP OF A BOARD.

- (1) A Board shall consist of the following members:
 - (a) the Member of Parliament representing the open electorate who shall be the Chairperson of the Board; and
 - (b) subject to Subsection (2), the heads of Local-level Governments in the district; and
 - (c) not more than three other members appointed by the Member of the Parliament representing the open electorate.
- (2) Where the office of the head of a Local-level Government is or becomes vacant, the deputy head of the Local-level Government is deemed to be a member of the Authority until the office of the head of the Local-level Government is filled.
- (3) One of the members appointed under Subsection (1)(c) shall be a woman.

13. VACANCIES.

- (1) A vacancy in the membership of the Board must be filled as soon as practicable.
- (2) Where the office of the Member of the Parliament representing the open electorate becomes vacant, the members of the Board shall elect the Head of a Local-level Government in the district to act as the Chairperson of the Board until the office of the Member of the Parliament representing the open electorate is occupied.
- (3) The performance of the functions, and the exercise of the powers, of an Authority are not affected by reason only of vacancies in the membership of the Board of the Authority

14. APPOINTED MEMBERS.

- (1) A member of a Board appointed under Section 12(1)(c) –
 - (a) is to be appointed, so far as practicable, for a term that runs concurrently with the term of the National Parliament; and
 - (b) is eligible for re-appointment; and
 - (c) subject to Subsection (2), shall be paid the remuneration, sitting fees and allowances approved, in writing, by the Minister; and

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(d) shall hold office on such other terms and conditions as are prescribed by the regulations.

(2) The Salaries and Conditions Monitoring Committee shall provide advice to the Minister on the remuneration, sitting fees and allowances to be paid to members of a Board and the proposed remuneration, sitting fees and allowances shall not exceed the remuneration, sitting fees and allowances payable to members of a Provincial Assembly.

(3) An appointed member may resign by giving his resignation in writing to the Member of the Parliament representing the open electorate.

(4) A person ceases to be an appointed member if he –

(a) dies; or

(b) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment of his remuneration for their benefit; or

(c) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to imprisonment or death.

(5) The Member of the Parliament representing the open electorate may terminate the appointment of an appointed member by notice in writing to the member if the Member of Parliament is satisfied that –

(a) it is not in the best interest of the Authority for the appointed member to continue in office; or

(b) the performance of the appointed member has been unsatisfactory for a significant period; or

(c) the appointed member is unable to perform his duties because of physical or mental incapacity.

15. DISCLOSURE OF INTERESTS.

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) The disclosure shall be recorded in the minutes of the meeting of the Board and the member –

(a) shall not take part, after the disclosure, in any deliberation or decision of the Board in relation to the matter; and

(b) is to be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

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PART IV. – POWERS OF THE NATIONAL EXECUTIVE COUNCIL AND MINISTER.

16. SUSPENSION OF A BOARD BY THE NATIONAL EXECUTIVE COUNCIL.

(1) The National Executive Council may, by notice published in the National Gazette, suspend the Board of an Authority if the Council is satisfied that –

- (a) the Authority is incapable of effectively performing its functions; or
- (b) the Authority has conducted or is conducting its affairs in a grossly improper manner; or
- (c) the Authority has misappropriated or is misappropriating funds; or
- (d) the Authority has performed or is performing its functions or has exercised or is exercising its powers in a way that is inconsistent or in conflict with the policies and plans of the Provincial Government; or
- (e) the Board has not complied with a direction given under Section 20.

(2) In deciding whether or not to suspend an Authority, the National Executive Council shall consider a report given to the Minister under Section 17.

(3) The National Executive Council may, by notice in the National Gazette, revoke the suspension of the Board on a date specified in the notice.

17. REPORT ON PROPOSED SUSPENSION OF A BOARD.

(1) The head of the department responsible for provincial and local-level government matters shall prepare a written report on the proposed suspension of the Board of an Authority.

(2) The head of the department responsible for provincial and local-level government matters shall give the Board of the Authority concerned a copy of the report and the Board may, within 28 days after receiving the report, respond in writing to the report.

(3) The head of the department responsible for provincial and local-level government matters shall give the report, including any response received from the Board of the Authority, to the Minister.

18. BOARD'S FUNCTIONS AND POWERS ON SUSPENSION TRANSFERRED TO MINISTER.

Where the Board of an Authority is suspended, the functions and powers of the Board are transferred to the Minister and the Minister shall perform those functions and exercise those powers until the Board is restored.

19. ENTRY, SEARCH AND OTHER POWERS.

(1) The Minister may authorise the entry and search of premises if he is satisfied, on reasonable grounds, that an Authority –

- (a) is incapable of effectively performing its functions; or
- (b) has or is conducting its affairs in a grossly improper manner; or

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(c) has or is misappropriating funds.

(2) Subject to Subsection (3), an authorised officer may, with such assistance and by such force as is necessary and reasonable, enter any premises of, or under the control of, an Authority if the occupier of the premises has consented to the entry and may do any or all of the following:

- (a) search the premises for, seize, inspect, examine, take extracts from, and make copies of, any documents relating to the affairs of the Authority; and
- (b) seize any other thing found during the course of the search that he believes on reasonable grounds is relevant to the affairs of the Authority; and
- (c) ask any person at the premises to answer any questions relating to the affairs of the Authority.

(3) The consent of the occupier of the premises is not required if the authorised officer is satisfied, on reasonable grounds, that because of circumstances that exist on or in relation to the premises, documents relating to the affairs of the Authority are being destroyed or likely to be destroyed.

(4) An authorised officer may ask any member of the staff of an Authority or any agent of the Authority –

- (a) to answer any question relating to the affairs of the Authority; or
- (b) to provide information that the Minister reasonably requires for the administration or enforcement of this Act.

(5) A person who fails to answer a question or provide information under Paragraph (2)(c) or Subsection (4) is guilty of an offence punishable on conviction by a fine not exceeding K1,000.00.

(6) It is a defence to a prosecution for an offence under subsection (5) for a person if an answer to a question or the provision of information would tend to incriminate the person.

(7) The Minister may, in writing, appoint members of the National Public Service to be authorised officers for the purposes of this section.

20. DIRECTIONS BY THE MINISTER.

The Minister may give a written direction to a Board concerning the Authority's operations if the Minister is satisfied that the direction is necessary in order to ensure the proper performance of the Authority's functions and the Board shall comply with the direction.

21. REQUEST BY THE MINISTER FOR ADVICE OR INFORMATION.

The Minister may, in writing, request advice or information from a Board on any matter relating to the operations of the Authority and the Board shall comply with the request.

PART V. –CHIEF EXECUTIVE OFFICER, STAFF AND FINANCES.

22. CHIEF EXECUTIVE OFFICER.

(1) The District Administrator of a district is the Chief Executive Officer of the Authority for the district.

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(2) Where a province has only one district, the Chief Executive Officer of the Authority for that district shall be a public servant appointed under the *Public Services (Management) Act 2014*.

- (3) The Chief Executive Officer is responsible for –
- (a) implementing the policy and decisions of the Authority in accordance with the directions of the Board; and
 - (b) the day to day control and supervision of the staff of the Authority.

(4) The Chief Executive Officer may, in writing, delegate all or any of his functions and powers under this Act, except this power of delegation.

23. SECRETARIAT AND OTHER STAFF OF AUTHORITIES.

(1) An Authority shall be serviced by such staff as are necessary, including staff for a secretariat to provide administrative and secretarial support to the Authority, and staff to provide technical services to the Authority.

- (2) The head of the department responsible for personnel management matters shall –
- (a) approve a proposed staffing structure for an Authority; and
 - (b) determine the terms and conditions of the staff of an Authority in accordance with the *Public Services (Management) Act 2014* and the General Orders under that Act.

(3) The head of the department responsible for personnel management matters may make a determination under Paragraph (2)(b) in respect of one or more particular Authorities or all Authorities.

24. APPLICATION OF PART VIII OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

Part VIII of the *Public Finances (Management) Act 1995* applies to District Development Authorities.

25. FUNDING OF AUTHORITIES.

- (1) The funds of an Authority consist of –
- (a) any monies appropriated to the Authority by the National Government or a Provincial Government, including grants; and
 - (b) any monies received by the Authority by way of grants, donations or other contributions from any lawful source, including sources outside of Papua New Guinea.

- (2) The monies of the Authority are to be expended only –
- (a) in payment or discharge of expenses, obligations and liabilities of the Authority; and
 - (b) in payment of the remuneration, sitting fees and allowances of appointed members of the Board; and
 - (c) for such other purposes that are consistent with the functions of the Authority as the Board may determine.

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(3) The National Economic and Fiscal Commission may provide oral or written advice to the Treasurer on the kind of grants and amount of grants to be made to an Authority.

26. ESTIMATES OF EXPENDITURE.

The Chief Executive Officer of an Authority shall, before 30 November in each year, submit to the heads of the Local-level Governments in the district and the Governor of the Province, estimates of all expenditure of the Authority for the next year.

27. SUPPLY AND TENDER PROCEDURES.

(1) The Minister responsible for financial matters may approve the establishment of a District Supply and Tenders Board if the Minister is satisfied that –

(a) a District Development Authority has complied with the provisions of the *Public Finance (Management) Act 1995*; and

(b) qualified and reputable persons with appropriate skills and experience are available in the district to be appointed to the Board.

(2) If the Minister has given approval under Subsection (1), the Minister shall appoint the members of the District Supply and Tenders Board.

(3) The Authority shall use a District Supply and Tenders Board to invite public tenders for the purchase or disposal of property or stores or for the supply of works or services that equal or exceed an amount determined by the Minister responsible for financial matters.

(4) Any purchase or disposal of property or stores or any supply of works or services that is below the amount determined by the Minister under Subsection (3) is not subject to public tender

(5) A District Supply and Tenders Board has such functions and powers as are prescribed by financial instructions issued by the Minister responsible for financial matters and the financial instructions may prescribe all other matters that are necessary or convenient to be prescribed for the Board to operate.

(6) The Minister responsible for financial matters may, in writing, request advice or information from a District Supply and Tenders Board on any matter relating to the operations of the Board, and the Board shall comply with the request.

(7) The Minister responsible for financial matters may suspend a District Supply and Tenders Board if the Minister is satisfied that –

(a) the Board is incapable of effectively performing its functions; or

(b) the Board has conducted or is conducting its affairs in a grossly improper manner;
or

(c) the Board has misappropriated or is misappropriating funds.

(8) If a District Supply and Tenders Board does not exist in a district or is suspended, the District Development Authority shall use the Provincial Supply and Tenders Board to invite public tenders for the purchase or disposal of property or stores or for the supply of works or services that equal or exceed the amount determined under Subsection (3)

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(9) Notwithstanding the existence of a Provincial Supply and Tenders Board or a District Supply and Tenders Board, an Authority shall use the Central Supply and Tenders Board to invite public tenders for the purchase or disposal of property or stores or for the supply of works or services that exceed K10,000,000.00.

**PART VI. – MEETINGS AND OTHER ADMINISTRATIVE
ARRANGEMENTS OF A BOARD.**

28. MEETINGS.

- (1) All meetings of a Board shall be open to the public.
- (2) A Board shall meet at least once in every quarter on such dates and at such times as the Chairperson decides in consultation with the secretariat.
- (3) notwithstanding Subsection (2), the Chairperson –
 - (a) may at any time convene other meetings of the Board; and
 - (b) shall, on receipt of a written request signed by at least 3 other members, convene a meeting of the Board within 21 days.
- (4) The secretariat shall give to all members at least 14 days written notice of the date and time of a meeting of the Board.
- (5) The secretariat shall advertise the date and time of a meeting of the Board together with the agenda for the meeting 7 days before the meeting takes place by one of the following means:
 - (a) on a public notice at the office of the District Administration; or
 - (b) in a newspaper circulating in the district; or
 - (c) on the local radio; or
 - (d) on the internet.
- (6) The Chairperson shall preside at a meeting of the Board.
- (7) Where the Chairperson is absent from a meeting of the Board, the members present at the meeting shall elect one of their number to act as the Chairperson for the meeting.
- (8) The secretariat of a Board shall record and keep minutes of the meetings of the Board, and display any resolution of a meeting of the Board on a public notice at the office of the District Administration.
- (9) All meetings of the Board shall be held in the district.

29. QUORUM AND DECISION MAKING AT MEETINGS.

- (1) A quorum for a meeting of a Board is half the members plus one.
- (2) The Board must decide matters at a meeting by a majority of the votes of the members present at the meeting.

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(3) The Chairperson, or other member presiding at a meeting, has a deliberative vote and, if the votes are equal, also has a casting vote.

30. OTHER PROCEDURES AT MEETINGS.

(1) The Chairperson shall determine the other procedures for meetings of a Board in consultation with the other members and the secretariat.

(2) A Board may determine rules of attendance for member of the public who attend meetings of the Board and any member of the public who attends a meeting shall comply with the rules of attendance.

31. COMMITTEES.

(1) A Board may establish committees and appoint members of the Board to be members of the committees.

(2) Subject to subsection (3), the Board is to determine the responsibilities and procedures of committees.

(3) A committee may provide advice or recommendations to the Board and shall not make decisions for the Board.

(4) The regulations may prescribe the sitting fees and allowances of members of committees.

32. DELEGATION.

A Board of an Authority may, in writing, delegate to a member of the Board all or any of the Board's functions or powers, except this power of delegation.

PART VII. – MISCELLANEOUS.

33. QUARTERLY REPORTS.

(1) A Board shall prepare, for each quarter of the year, a report on the operations of the Authority and shall give the report to the Provincial Governor by the end of the next quarter.

(2) The Board may give copies of its quarterly report to such persons as it considers appropriate.

(3) The Minister shall prescribe the form for the quarterly report.

34. ANNUAL REPORTS.

(1) A Board shall prepare an annual report, including details of any action taken under sections 18, 19 or 20, and shall give the annual report to the Minister on or before 31 March of the next year.

(2) A copy of the annual report shall be available for inspection by members of the public free of charge at the office of the District Administration.

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(3) The Board shall give a copy of its annual report to the Provincial Assembly for tabling by a member of the Provincial Assembly.

(4) The Minister shall provide an overview of the performance of the Authorities to the Parliament on or before 31 July of each year.

(5) The Minister shall prescribe the form for the annual report.

35. ADVISORY GUIDELINES.

(1) A Board may issue advisory guidelines on any matter relating to the operations of the Authority.

(2) A guideline does not have the force of law.

36. BREACH OF CONFIDENTIALITY.

(1) This section applies to a person who is a member of a Board of an Authority or a member of the staff of the Authority.

(2) A person to whom this section applies shall not disclose information about the operations of the Authority to another person unless the disclosure –

(a) is authorised or required by or under this Act or any other law; or

(b) is necessary for the performance of a function or the exercise of a power by the Authority or the Board of an Authority; or

(c) is made in the performance of the person's official duties.

(3) A person to whom this section applies shall not disclose, for personal, gain any information about the operations of the Authority.

(4) A person who contravenes Subsections (2) or (3) is guilty of an offence.

Penalty: A fine not exceeding K5, 000.00 or imprisonment for a term not exceeding two years, or both.

37. DISPUTE RESOLUTION.

(1) If there is a dispute between –

(a) the Chief Executive Officer and a Provincial Administrator; or

(b) the Chief Executive Officer and a Board member; or

(c) a Board member and the Provincial Government; or

(d) an Authority and any other government entity or State agency,

a party may bring the matter to the attention of the Minister and make a written submission to the Minister.

(2) The Minister shall consider the submission (if any) made by the parties to the dispute and may meet with one or more of those parties, together or separately, to mediate a solution to the dispute.

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(3) Legal proceedings are not to be taken in relation to a dispute, unless mediation has been held but failed to resolve the dispute.

38. REGULATIONS.

(1) The Head of State acting on advice may make regulations not inconsistent with this Act prescribing all matters that –

- (a) are required or permitted to be prescribed by this Act; or
- (b) are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting Subsection (1), the regulations may prescribe fees and charges to be paid to an Authority for work done or services provided by the Authority.

