

**Explanatory Memorandum for the *District
Development Authorities Act 2014***

Background

1. In February 2014, Parliament amended the *Organic Law on Provincial Governments and Local level Governments* to remove the Joint District Planning and Budget Priorities Committees. The Organic Law now establishes a District Development Authority in each district. The details of the authority will be contained in an ordinary Act. This Bill contains the details of the authorities.

Commencement

2. The Bill will commence in accordance with a notice published in the gazette on the advice of the Prime Minister.

Section 1 – compliance with Constitutional Requirements

3. This section is contained in all legislation and confirms that the Bill is consistent with the Constitution.

Section 2 - Application to the NCD and Autonomous Region of Bougainville

4. No district development authorities will be established in the National Capital District (NCD) or the Autonomous Region of Bougainville. The NCD has very different arrangements in place and is not considered a Province under the organic Law on Provincial Governments and Local level Governments. Similarly the Autonomous Region of Bougainville has its own arrangements in place. It would be more suitable for the Autonomous Bougainville Government to make any decisions about governance and administration within Bougainville.

Section 3 – interpretation

5. Section 3 provides the interpretation of a number of terms used in the Bill.

Section 4 – Characteristics of Authorities

6. This is a standard section found in all Acts that establish a statutory authority. The District Development Authority is a statutory authority capable of holding property, suing and being sued. This means it is now a legal entity so it can enter contracts for works and services and become the legal owner of any equipment that it chooses to purchase.

Section 5 – Functions of Authorities

7. The authority retains the same functions as the former Joint District Planning and Budget Priority Committee but would also be responsible for the service delivery functions and responsibilities specified in a Ministerial Determination issued by the responsible Minister.

8. Authorities will also be able to develop, build, repair, improve and maintain roads and other infrastructure. Many JDPBPC's have already been doing this. Now authorities can enter binding contracts with third parties for the delivery of these projects and the authority will be able to take legal action to enforce contracts.

Section 6 – determination of service delivery functions and responsibilities

9. The Ministerial Determination in the *Intergovernmental Relations (Functions and Funding) Act* would be used as the basis for identifying which functions would be shifted to the new district development authority. However, the functions would remain assigned to the Provincial Government under the *Intergovernmental Relations (Functions and Funding) Act* and funding would continue to flow to the Provincial Government.
10. It is envisaged that different district development authorities would have different responsibilities depending on their capacity. The Board in consultation with the PEC would make a request for an additional function to the Minister.
11. The Minister would be able to amend the determination to remove a function.

Section 7 – powers of authorities

12. An authority has all powers to do all things necessary or convenient for its functions. This includes entering contracts, charging for work done, engaging staff, forming companies and so on.

Section 8 – Authorities to co-operate with Provincial Government

13. The District Authority does not replace the Provincial Government. The Provincial Government and its administration will continue to be an important part of the decentralised system of government. Therefore, it is important that district development authorities work in close co-operation with the provincial administration. The authority cannot perform any of its functions or powers in a way that is inconsistent or conflicts with the plans or work of the Provincial Government.

Section 9 – monitoring of authorities

14. The Provincial and Local level Services Monitoring Authority shall monitor the performance of authorities and the implementation of this Act. As result of its monitoring the Provincial and Local level Services Monitoring Authority is able to make recommendations and give advice to the Minister to improve the performance of Authorities. These recommendations and advice can be in relation to a single authority or it may apply generally.

Section 10 – establishment of a Board for each authority

15. This section establishes a Board for each authority.

Section 11 – functions and powers of a Board

16. The functions of the Board are :
- a. ensure the proper, efficient and economical performance of the authorities operation to the maximum benefit of the people in the district; and
 - b. give directions to the chief executive officer.

Section 12 – membership of a Board

17. A Board made up of the following members would govern the Authority:
- the open member for that district (Chairperson);
 - Heads of the Local-level Governments in the district; and
 - three other members appointed by the open member (with at least one member being a women)
18. If the office of the Member of Parliament representing the open electorate is vacant, the members of the Board must elect a new chairperson from among the heads of the Local level Governments.
19. If the office of the head of a Local level Government becomes vacant then the Deputy head of the Local level Government is deemed to be a member of the authority.

Section 13 – appointed members

20. As far as practical the period of appointment for Board members runs concurrently with the term of the National Parliament.
21. Members are paid fees and allowances determined by the Minister Salaries after receiving advice from the Salaries and Conditions Monitoring Committee. This is to prevent any Boards from authorising excessive fees and allowances. The fees and allowances cannot exceed the fees and allowances payable to members of the Provincial Assembly.
22. The member of Parliament may terminate the appointment of an appointed member by written notice where the member is satisfied that:
- a. it is not in the best interests of the authority for the member to continue;
 - b. the performance of the member has been unsatisfactory; or
 - c. the member is unable to perform his or her duties to due physical or mental incapacity.

Section 14 – disclosure of interests

23. Section 14 requires that if any member must declare any possible conflict of interest as soon as the conflict of interest comes to their attention. For example, if a contract to build a foot bridge has been awarded to Lightfoot Company and the open member's brother in law is the managing director and the open member is the sole shareholder of that company he/she will need to declare this interest to the Board as soon the Board discusses the awarding of this contract. The open member must excuse him/herself from the meeting and the Deputy will chair the meeting in his/her absence.

Section 15 – suspension of a Board by the National Executive Council

24. In order to improve the accountability of authorities the National Executive Council will be able to suspend a Board if it is satisfied that:
- a. the Authority is incapable of effectively performing its functions; or
 - b. the Authority has or is conducting its affairs in a grossly improper manner; or
 - c. the Authority has or is misappropriating funds; or
 - d. the Authority is performing its functions or 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 by the Minister for Intergovernmental Relations under this Bill.
25. In deciding whether to suspend an authority the National Executive Council must consider a report given to the Minister.

Section 16 – Report on the proposed suspension of authority

26. In order to safeguard against any unwarranted suspensions and provide natural justice to Board members the Departmental head of the Department of Provincial and Local level Government Affairs must prepare a report on the proposed suspension. A copy of the report must be provided to the Board of the authority and with 28 days for them to respond to the allegations. A copy of this report and any response must be provided to the Minister.

Section 17 – Boards duties and responsibilities on suspension

27. On the suspension of a Board the duties and responsibilities are transferred to the Minister.

Section 18 – entry, search and other powers

28. This section will increase the accountability of the authority by allowing the Minister to gain access to information and documents on the operation of the authority. The Minister may use information gained through this section to suspend an authority in accordance with section 14.

Section 19 – directions by the Minister

29. This section allows the Minister to issue a direction to the Board of the authority to ensure the proper performance of the authority. For example, if an authority has failed to properly publicize its meetings and has repeatedly prevented public attendance the Minister can direct that minutes of the last two meetings are made available at the district administration office, the next meeting is open to the public and the agenda for the next meeting is broadcast on the local radio. This section does not give the Minister any power to interfere with the day to day management of the authority or to issue directions to the Board which are contrary to the law.

Section 20 – request by the Minister for advice or information

30. The Minister may request advice or information from the Board in relation to the operation of the authority. This will mean that the Minister is able to be properly informed about any authorities and he or she is able to seek further information if he or she has any concerns about the operations or management of an authority.

Section 21 – chief executive officer

31. The District Administrator would be the Chief Executive Officer (CEO) of the authority and would perform a dual role as both CEO of the authority and District Administrator. He/she would continue to report to the Provincial Administrator in relation to his/her responsibilities under the *Organic Law on Provincial Governments and Local Level Governments*.
32. The CEO would continue to be engaged and appointed as a public servant in accordance with the *Public Services (Management) Act*. However, he/she would have an additional duty (as CEO) attached to his/her job description.
33. The primary function of the CEO is to implement the policy and decisions of the authority in accordance with the directions of the Board.
34. If a province has only once district (such as Manus) meaning there is no district administrator then some other public servant appointed under the *Public Services (Management) Act 2014* will be appointed the CEO.

Section 22 – secretariat and other staff

35. A secretariat and other technical staff would service the authority. Staff would be comprised of existing public servants from the Provincial Administration.
36. In order to ensure some control over staffing the Secretary for the Department of Personal Management must approve any proposed staffing structure for the authority.

Section 23- Part VIII of the Public Finance (Management) Act

37. Part VIII of the *Public Finance (Management) Act* which deals with statutory authorities would apply. All expenditure must be through the PGAS.

Section 24 - Funding of authorities

38. The authority would be funded by:
- grants from the National Government; and
 - grants from the Provincial Government.
39. The authority would receive a “staffing grant” from the National Government for personnel emoluments.
40. The Provincial Government would continue to be entitled to funding in accordance with the *Intergovernmental Relations (Functions and Funding) Act*. However, the

Provincial Government may choose to appropriate funding to the authority for its recurrent activities.

41. The National Economic and Fiscal Commission may provide advice to the Treasurer on the kind of grants and the amount of grants made to authorities.

Section 25 – estimates of expenditure

42. In order to keep the Local level Governments and Provincial Government informed about the activities of the authority within their Province the Chief Executive Officer is required to submit before the 30 November the estimated expenditure of the District Development Authority for the next year.

Section 26 – Supply and Tenders procedures

43. Section 26 contains specific requirements for supply and tenders. Where a Provincial Supply and Tenders Board exist in a Province, an authority shall use the Provincial Supply and Tenders Board for the purchase or disposal of stores above an amount determined by the Minister responsible for finance matters.
44. However, the Minister responsible for finance matters may approve for the establishment of a District Supply and Tenders Board if the Minister is satisfied that the District Authority has fully complied with the *Public Finance (Management) Act* and qualified and reputable persons are available in the district to be appointed to the Board.
45. The Minister may dissolve the District Supply and Tenders Board if he is satisfied that:
 - a. the Board is incapable of effectively performing its functions; or
 - b. the Board has or is conducting its affairs in a grossly improper manner; or
 - a. the Board has or is misappropriating funds.
46. In order to ensure the Minister is properly informed about the conduct of the Board, the Minister is able to request advice or information from the Board on any matter relating to its operation.
47. The Minister may issue financial instructions providing further guidance about the operation and procedures of the tenders board.

Sections 27 – 31 meetings and other administrative arrangements of a Board

48. Section 27 contains basic meeting requirements for the Board. These requirements are intended to increase the transparency and accountability of the Board.
49. Section 28 and 29 deal with other procedures in relation to quorum and decision making.

50. Section 30 allows for the establishment of Committees. However, committees can only provide advice or recommendation. All final decision making is retained by the full Board.

Sections 32 – 35 other reporting and miscellaneous matters

51. These sections provide for quarterly and annual reports and other general matters such as for the Board to issue guidelines on its operation, confidentiality and the issuing of regulations.

Section 36 – dispute resolution

52. If there is a dispute between the CEO and Board member or a board member and the Provincial Government or the authority and a government department or agency, a party may bring the matter to the attention of the Minister and make a written submission to the Minister.

53. The Minister shall consider the submissions and may meet with the parties with a view to mediating a resolution to the dispute. Legal proceedings are not to be taken in relation to a dispute, unless mediation has been attempted and failed to resolve the issue.

54. The intention of this section is to encourage parties to use alternative dispute resolution rather than resorting to costly and time consuming legal proceedings. It is in the best interests of the people of the district that any disputes are resolved quickly and amicably and the district development authority is able to operate.

Explanatory Memorandum for *Teaching Services (Amendment) Act 2014*

1. The intention of this amendment is to give the CEO of the
2. The *Teaching Services Act* section 84 provides that if a person authorised by the Commission to deal with minor disciplinary offences has reason to believe a member of the teaching service has committed a disciplinary offence he may charge the member. Section 84 of the *Teaching Services Act* is amended so that the CEO of the district development authority is specifically authorised to charge a teacher for a minor disciplinary offence.
3. Section 85 provides that an authorised officer can charge a teacher for a serious disciplinary offence. Similarly, the section has been amended so that the CEO of the district development authority is specifically authorised to charge a teacher for a serious disciplinary offence.
4. Section 90 deals with suspension of teachers for serious disciplinary offences. It is proposed that the CEO is able to provisionally suspend the teacher when a charge is laid if it is a serious disciplinary offence. The suspension remains in effect for 14 days, after which time it must be affirmed by the Provincial Education Board. If it has not been affirmed by the Provincial Education Board the teacher resumes duties and the disciplinary charge is dropped.

Explanatory memorandum for the *Local level Government Administration (Amendment) Act 2014*

The Joint District Planning and Budget Priorities Committees is defined in section 2(1) of the *Local level Government Administration Act*. Since the *Organic Law on Provincial Government and Local level Government* has been amended to repeal the Joint District Planning and Budget Priorities Committee this definition is no longer relevant. The term does not appear at any other point in the *Local level Government Administration Act*.

Explanatory Memorandum to the *Police (Amendment) Act 2014*

A new section 2 and subsection 19(1A) of the *Police Act* is inserted so that the chief executive officer of a district development authority is deemed to be a disciplinary officer in relation to minor offences. This means that the chief executive officer of a district development authority can commence disciplinary action against a police officer in the district for minor disciplinary offences.

The chief executive officer will be able to lay the charge and then refer the matter to the Provincial Police Commander in accordance with the *Police Act*. The Provincial Police Commander would then deal with the matter in the usual manner.

Explanatory Memorandum for *Public Services (Management) (Amendment) Act 2014*

Section 66 of the Public Services (Management) Act 2014 outlines the additional functions of the district administrator. The district administrator now has a new function, as the chief executive officer of the district development authority. To give effect to this paragraphs (b), (c) and (d) of section 66 are repealed and replaced them with a new paragraph which provides that the district administrator is also the chief executive officer of the district development authority.

Explanatory Memorandum for *Electoral Development Authority (Repeal) Act 2014*

The *Electoral Development Authority Act 1992* was passed in 1992 but has not commenced. The Act would have established a statutory authority in each district similarly to a district development authority. In order to avoid any possible confusion or uncertainty the *Electoral Development Authority Act 1992* will be commenced and then immediately repealed.

Explanatory Memorandum for *District Authority (Repeal) Act 2014*

The *District Authority Act 2006* was passed in 2006 but has not commenced. The Act would have established a statutory authority in each district similarly to a district development authority. In order to avoid any possible confusion or uncertainty the *District Authority Act 2006* will be commenced and then immediately repealed.