



National Gazette

PUBLISHED BY AUTHORITY

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

No. G89]

PORT MORESBY, FRIDAY, 6th FEBRUARY

[2015

Draft of 29/10/2014

THE *CONSTITUTION*

ALTERATION TO THE *CONSTITUTION*

The Government proposes to alter the *Constitution* and, pursuant to the requirements Section 14(2) (*Making of Alterations to the Constitution and the Organic Laws*) of the *Constitution*, I, **THEO ZURENUOC**, the Speaker of the National Parliament, hereby publish the following proposed Law —

Draft of 29/10/2014



entitled

Constitutional Amendment (Court Restructure) Law 2014.

ARRANGEMENT OF CLAUSES.

1. Original interpretative jurisdiction of the Supreme Court (Amendment of Section 18).
2. Purpose of Schedule 2 (Amendment of Section 21).
3. “Reasonably Justifiable in democratic society”, etc (Amendment of Section 39).
4. Liberty of the person (Amendment of Section 42).
5. Enforcement of guaranteed rights and freedoms (Amendment of Section 57).
6. Structure of Government (Amendment of Section 99).

Alteration to the Constitution—continued

7. The National Judicial System (Amendment of Section 155).
8. Tribunals, etc., outside the National Judicial System (Amendment of Section 159).
9. Composition of the Supreme Court (Amendment of Section 161).
10. New Subdivision VI.4.CA.

“Subdivision CA.—The Court of Appeal.

- “162A. ESTABLISHMENT OF THE COURT OF APPEAL.”
 “162B. COMPOSITION OF THE COURT OF APPEAL.”
 “162C. JURISDICTION OF THE COURT.”

11. Repeal and replacement of Section 164.
12. Appointment, etc., of the Chief Justice (Amendment of Section 169).
13. Repeal and replacement of Section 171.
14. Establishment of other Courts (Amendment of Section 172).
15. Functions of the Public Prosecutor and the Public Solicitor (Amendment of Section 177).
16. Constitution, etc., of Tribunals (Amendment Section 181).
17. Rules of Court (Amendment Section 184).
18. Repeal and replacement of Section 187.
19. Parliamentary responsibility (Amendment of Section 209).
20. The Ombudsman Commission (Amendment of Section 217).
21. Rules for shortening and interpretation of the Constitutional Laws (Amendment of Schedule 1).
22. Adoption, etc., of certain laws (Amendment of Schedule 2).

Draft of 29/10/2014

**PROPOSED LAW TO ALTER THE *CONSTITUTION***

entitled

Constitutional Amendment (Court Restructure) Law 2014.

Being A Law to alter the *Constitution* by making changes to the National Judicial System 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. ORIGINAL INTERPRETATIVE JURISDICTION OF THE SUPREME COURT (AMENDMENT OF SECTION 18).

Section 18 of the *Constitution* is amended in Subsection (2) by adding the following new subsection:

- “(3) The Supreme Court may refer to the Court of Appeal for an advisory opinion any question relating to the interpretation or application of any provision of a Constitutional Law.”

Proposed Law to Alter the Constitution—continued**2. PURPOSE OF SCHEDULE 2 (AMENDMENT OF SECTION 21).**

Section 21 of the *Constitution* is amended in Subsection (2), by inserting, after the words, “Supreme Court”, the following expression:

“, the Court of Appeal”.

3. “REASONABLY JUSTIFIABLE IN A DEMOCRATIC SOCIETY”, ETC (AMENDMENT OF SECTION 39).

Section 39 of the *Constitution* is amended in Subsection (2) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”.

4. LIBERTY OF THE PERSON (AMENDMENT OF SECTION 42).

Section 42 of the *Constitution* is amended in Subsection (7) Paragraph (b) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”.

5. ENFORCEMENT OF GUARANTEED RIGHTS AND FREEDOMS (AMENDMENT OF SECTION 57).

Section 57 of the *Constitution* is amended in Subsection (1) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”.

6. STRUCTURE OF GOVERNMENT (AMENDMENT OF SECTION 99).

Section 99 of the *Constitution* is amended in Subsection (2) Paragraph (c) by inserting, after the words “Supreme Court of Justice”, the following expression:

“, the Court of Appeal”.

7. THE NATIONAL JUDICIAL SYSTEM (AMENDMENT OF SECTION 155).

Section 155 of the *Constitution* is amended —

(a) in Subsection (1) by adding after Paragraph (a), the following new paragraph:

“(aa) the Court of Appeal; and”;

(b) in Subsection (2) by inserting immediately before the words “the National Court” in Paragraph (b), the following words:

“the Court of Appeal and”;

(c) by adding immediately after Subsection (2), the following new subsection:

“(2A) The Court of Appeal —

(a) is a court of appeal; and

(b) has an inherent power to review all judicial acts of the National Court; and

(c) has such other jurisdiction and powers as are conferred on it by this *Constitution*, except where —

(i) jurisdiction is conferred upon the Supreme Court to the exclusion of the Court of Appeal; or

(ii) the Supreme Court assumes jurisdiction under Subsection (4); or

(iii) the power of review is removed or restricted by a Constitutional Law or an Act of Parliament.”;

Proposed Law to Alter the Constitution—continued

(d) in Subsection (3) Paragraphs (c) and (d), by inserting after the words “Supreme Court”, the following words:

“or the Court of Appeal”; and

(e) in Subsection (4) by deleting the words “Both the Supreme Court” and replacing it with the following expression:

“The Supreme Court, the Court of Appeal”; and

(f) by adding the following new subsection after Subsection (4):

“(4A) In a case referred to in Subsection (2A)(c), the Court of Appeal has an inherent power to review where, in its opinion, there are over-riding considerations of public policy in the special circumstances of a particular case.”.

8. TRIBUNALS, ETC., OUTSIDE THE NATIONAL JUDICIAL SYSTEM (AMENDMENT OF SECTION 159).

Section 159 of the *Constitution* is amended in Subsection (2) by inserting immediately after “Section 155(4)” the expression “,(4A)”.

9. COMPOSITION OF THE SUPREME COURT (AMENDMENT OF SECTION 161).

Section 161 of the *Constitution* is amended —

(a) in Subsection (1) by deleting the words “the other Judges of the National Court (excluding the acting Judges)” and substituting the following words:

“not more than 5 other Judges appointed by the Judicial and Legal Services Commission as Judges of the Supreme Court.”; and

(b) by adding after Subsection (3) the following new subsections:

“(4) An Act of Parliament may make provision in respect of those Judges who, by virtue of their appointment as National Court judges were Judges of the Supreme Court before the commencement of this subsection, and who have not been appointed pursuant to Subsection (1), to remain *ex-officio* Judges of the Supreme Court until the expiry of their current appointment as Judges of the National Court notwithstanding Subsection (1) and their seniority.

(5) When there are insufficient Judges appointed pursuant to Subsection (1) available without conflict of interest to hear a proceeding, the Chief Justice may appoint one or more of the *ex-officio* Judges to sit on that proceeding.

(6) Subject to Subsections (4) and (5) a Judge who was, by virtue of his appointment as a National Court Judge, immediately before the commencement of this subsection, a Judge of the Supreme Court, and who is appointed to the Supreme Court, remains a Judge of the Supreme Court for a period of 12 months after the commencement of this subsection, but only for the purpose of completing the hearing and delivery of decisions in proceedings part heard before the Judge in the Supreme Court.”.

10. NEW SUBDIVISION VI.5.CA.

The *Constitution* is amended in Part VI by adding a new subdivision after Division 5 Subdivision C as follows:

“Subdivision CA.—The Court of Appeal.

“162A. ESTABLISHMENT OF THE COURT OF APPEAL.

(1) The Court of Appeal is hereby established.

(2) The Court of Appeal is a superior court of record and subject to any Act of Parliament, has the power to punish the offence against itself commonly known as contempt of court.

Proposed Law to Alter the Constitution—continued**“162B. COMPOSITION OF THE COURT OF APPEAL.**

- (1) The Court of Appeal shall consist of —
 - (a) the President of the Court of Appeal appointed by the Judicial and Legal Services Commission; and
 - (b) not more than 10 other Judges appointed by the Judicial and Legal Services Commission as Judges of the Court of Appeal.
- (2) Subject to Section 162C(2) and for the purposes of any hearing, the Court of Appeal shall consist of at least 3 Judges.
- (3) In a hearing that consists of at least three Judges under Subsection (2), the President of the Court of Appeal or the most senior Judge of the Court available shall preside over the Court.

“162C. JURISDICTION OF THE COURT OF APPEAL.

- (1) The jurisdiction of the Court of Appeal is as set out in —
 - (a) Section 18 (*original interpretative jurisdiction of the Supreme Court*); and
 - (b) Subdivision III.3.D (*enforcement*); and
 - (c) Section 155 (*the National Judicial System*), as provided by this **Constitution** or any other law.
- (2) The jurisdiction of the Court of Appeal may be exercised —
 - (a) by a single Judge of that Court or by a number of Judges sitting together as provided by or under an Act of the Parliament or the Rules of Court of the Court of Appeal; or
 - (b) by a Judge or Judges of the Court notwithstanding it being exercised at the same time by another such Judge or Judges; or
 - (c) either in court or in chambers, as provided for by an Act of Parliament or the Rules of Court of the Court of Appeal.”.

11. REPEAL AND REPLACEMENT OF SECTION 164.

The **Constitution** is amended by repealing Section 164 and replacing it with the following:

“164. COMPOSITION OF THE NATIONAL COURT.

The National Court shall consist of —

- (a) the Principal Judge appointed by the Judicial and Legal Services Commission; and
- (b) subject to Section 165(2), such other number of Judges as is determined by or under an Act of Parliament and appointed by the Judicial and Legal Service Commission as Judges of the National Court; and
- (c) a Judge of the National Court who is appointed as Judge of the Supreme Court or the Court of Appeal, remains a Judge of the National Court, but only for a period of 12 months after that appointment, and only for the purposes of completing proceedings part heard before the Judge in the National Court.”.

12. APPOINTMENT , ETC., OF THE CHIEF JUSTICE (AMENDMENT OF SECTION 169).

Section 169 of the Constitution is amended in Subsection (3) by inserting after the words “Supreme Court” the following expression:

“, the Court of Appeal”.

Proposed Law to Alter the Constitution—continued**13. REPEAL AND REPLACEMENT OF SECTION 171.**

Section 171 of the *Constitution* is repealed and replaced with the following new sections:

“171. SENIORITY OF JUDGES.

- (1) The Chief Justice is the most senior Judge and the Deputy Chief Justice is the second senior Judge.
- (2) The Chief Justice and the Deputy Chief Justice have seniority over all other Judges.
- (3) Judges of the Supreme Court have seniority over Judges of the Court of Appeal and Judges of the National Court.
- (4) Judges of the Court of Appeal have seniority over Judges of the National Court.

171A. SENIORITY AMONG SUPREME COURT JUDGES.

- (1) The Chief Justice and the Deputy Chief Justice have seniority over the other Judges of the Supreme Court.
- (2) The other Judges of the Supreme Court have seniority among themselves according to their dates of appointment as Judges of the Supreme Court.
- (3) Two or more of the other Judges of the Supreme Court appointed as Judges of the Supreme Court on the same date have seniority according to the precedence assigned to them by the Judicial and Legal Service Commission.
- (4) In this section, “date of appointment” in relation to a Judge of the Supreme Court means —
 - (a) if the Judge has been appointed to the Supreme Court on one occasion only, the date of his appointment; and
 - (b) if the Judge has been appointed to the Supreme Court on more than one occasion and has a continuous period of service as a Judge of the Supreme Court, the date of his first appointment to the Supreme Court; and
 - (c) in any other case, the date of his most recent appointment as a Judge of the Supreme Court.

171B. SENIORITY AMONG SUPREME COURT JUDGES.

- (1) The President of the Court of Appeal has seniority over the other Judges of the Court of Appeal.
- (2) The other Judges of the Court of Appeal have seniority among themselves according to their dates of appointment as Judges of the Court of Appeal.
- (3) Two or more of the other Judges of the Court of Appeal appointed as Judges of the Court of Appeal on the same date have seniority according to the precedence assigned to them by the Judicial and Legal Service Commission.
- (4) In this section, “date of appointment” in relation to a Judge of the Court of Appeal means —
 - (a) if the Judge has been appointed to the Court of Appeal on one occasion only, the date of his appointment; and
 - (b) if the Judge has been appointed to the Court of Appeal on more than one occasion and has a continuous period of service as a Judge of the Court of Appeal, the date of his first appointment to the Court of Appeal; and
 - (c) in any other case, the date of his most recent appointment as a Judge of the Court of Appeal.

Proposed Law to Alter the Constitution—continued

- (5) Where —
- (a) there is a vacancy in the office of the President of the Court of Appeal; or
 - (b) the President of the Court of Appeal is absent from the country or is absent from duty; or
 - (c) the President of the Court of Appeal is unable or unavailable to act; or
 - (d) the President of the Court of Appeal so directs, the powers, functions, duties and responsibilities of the President of the Court of Appeal may be exercised and performed by the next most senior Judge who is available.

171C. SENIORITY AMONG NATIONAL COURT JUDGES.

- (1) The Principal Judge of the National Court has seniority over the other Judges of the National Court.
- (2) The other Judges of the National Court have seniority among themselves according to their dates of appointment as Judges of the National Court.
- (3) Two or more of the other Judges of the National Court (excluding the acting Judges) appointed as Judges of the National Court on the same date have seniority according to the precedence assigned to them by the Judicial and Legal Service Commission.
- (4) In this section, “date of appointment” in relation to a Judge of the National Court means —
 - (a) if the Judge has been appointed to the National Court on one occasion only, the date of his appointment; and
 - (b) if the Judge has been appointed to the National Court on more than one occasion and has a continuous period of service as a Judge of the National Court, the date of his first appointment to the National Court; and
 - (c) in any other case, the date of his most recent appointment as a Judge of the National Court.
- (5) Where —
 - (a) there is vacancy in the office of the Principal Judge of the National Court; or
 - (b) the Principal Judge of the National Court is absent from the country or is absent from duty; or
 - (c) the Principal Judge of the National Court is unable or unavailable to act; or
 - (d) the Principal Judge of the National Court so directs, the powers, functions, duties and responsibilities of the Principal Judge of the National Court may be exercised and performed by the next most senior Judge who is available.
- (6) The seniority of the acting Judges and Assistant Judges of the National Court shall be provided for by an Act of Parliament.”.

14. ESTABLISHMENT OF OTHER COURTS (AMENDMENT OF SECTION 172).

Section 172 of the *Constitution* is amended in Subsection (1) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”.

Proposed Law to Alter the Constitution—continued**15. FUNCTIONS OF THE PUBLIC PROSECUTOR AND THE PUBLIC SOLICITOR (AMENDMENT OF SECTION 177).**

Section 177 of the *Constitution* is amended by inserting after the words “Supreme Court”, the following expression wherever occurring:

“, the Court of Appeal”.

16. CONSTITUTION, ETC., OF TRIBUNALS (AMENDMENT OF SECTION 181).

Section 181 of the *Constitution* is amended in Subsection (1) Paragraph (a) by inserting after the words “Supreme Court” the following expression:

“, the Court of Appeal”.

17. RULES OF COURT (AMENDMENT OF SECTION 184).

The *Constitution* is amended in Section 184 by inserting after the words “Supreme Court”, wherever they appear, the following expression:

“, the Court of Appeal”.

18. REPEAL AND REPLACEMENT OF SECTION 187.

Section 187 of the *Constitution* is repealed and replaced with the following:

“187. REPORT BY THE CHIEF JUSTICE.

- (1) The Chief Justice shall, as soon as practicable after the 30th June in each year, after consultation with other Judges, prepare and give to the Head of State for presentation in Parliament, a report on the work of the National Judicial System, with such recommendations as to the improvement as he thinks proper.
- (2) Nothing in Subsection (1) prevents the Chief Justice from making, on his own initiative or at the request of the Parliament or of the National Executive Council, other reports on any aspect of the work of the National Judicial System.”.

19. PARLIAMENTARY RESPONSIBILITY (AMENDMENT OF SECTION 209).

Section 209 of the *Constitution* is amended Subsection (2A) Paragraph (b) —

- (a) in Subparagraph (i) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”; and

- (b) in Subparagraph (ii) by inserting, after the words “Supreme Court” the following expression:

“, the Court of Appeal”; and

- (c) in Subparagraph (iii) by adding after the words and figure “established under the *National Judicial Staff Service Act 1987*” the following words:

“or a similar entity established under an Act of Parliament to perform those functions”; and

- (d) Subparagraph (iv) by deleting the words and figure “and the *Sheriff Act* (Chapter 55)” and replacing them with the following expression:

“, the *Sheriff Act* (Chapter 55) and any Act of Parliament pertaining to the Court of Appeal.”.

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

Section 217 of the *Constitution* is amended in Subsection (6) by adding after the words “Supreme Court” the following expression:

“, the Court of Appeal”.

Proposed Law to Alter the Constitution—continued**21. RULES FOR SHORTENING AND INTERPRETATION OF THE CONSTITUTIONAL LAWS (AMENDMENT OF SCHEDULE 1).**

Schedul 1 of the *Constitution* is amended in Sch. 1.2.2.(1) by repealing the definitions of “Judge”, “Judge of the National Court” and “Judge of the Supreme Court” and replacing them with the following new definitions:

““Judge” means a Judge of the Supreme Court, a Judge of the Court of Appeal or a Judge of the National Court;

“Judge of the Court of Appeal” means the President of the Court of Appeal or a Judge of the Court Appeal;

“Judge of the National Court” means the Principal Judge of the National Court or a Judge of the National Court, and includes an acting Judge of the National Court;

“Judge of the Supreme Court” means the Chief Justice, the Deputy Chief Justice or a Judge of the Supreme Court;”.

22. ADOPTION, ETC., OF CERTAIN LAWS (AMENDMENT OF SCHEDULE 2).

Schedule 2 of the *Constitution* is amended —

(a) in Sch. 2.3.3.(1) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”; and

(b) in Sch. 2.3.3.(2)(a) by inserting, before the words “the National Court”, the following words:

“, the Court of Appeal or the”; and

(c) in Sch. 2.3.4. by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”;

(d) in Sch. 2.3.5. by repealing the subsection and replacing it with the following:

“In his reports under Section 187(1) (*report by the Chief Justice*) and in any report under Section 187(2), if in his opinion it is desirable to do so, the Chief Justice shall comment on the state, suitability and development of the underlying law, with any recommendation as to improvements that he thinks it proper to make;”;

(e) in Sch. 2.5.9.(2) by inserting, after the words “Supreme Court”, the following words:

“or the Court of Appeal”; and

(f) in Sch. 2.5.9.(3) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”; and

(g) in Sch. 2.5.10.(1) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”; and

(h) in Sch. 2.5.12.(1) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”; and

(i) in Sch. 2.5.12.(1)(b) by inserting, after the words “Supreme Court”, the following expression:

“, the Court of Appeal”.