

No. 9 of 2009.

Hela Transitional Authority Act 2009.

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No. of 2009.

Helu Transitional Authority Act 2009,

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No. of 2009.

AN ACT

entitled

Hela Transitional Authority Act 2009.

Being an Act to establish the Hela Transitional Authority and to provide for the functions and powers of the Authority, and to make provision for administrative arrangements for and other matters relating to the Authority, and for related purposes,

MADE by the National Parliament.

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. INTERPRETATION.

In this Act, unless the contrary intention appears -

“appointed member” means a member of the Authority appointed under Section 8(1)(c);

“asset” means -

(a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and

(b) any right, power, privilege or immunity, whether actual, contingent or prospective;

“Authority” means the Hela Transitional Authority established by Section 3;

“Chairperson” means the Chairperson of the Authority appointed under Section 9;

“Chief Executive Officer” means the Chief Executive Officer appointed under Section 17;

“Deputy Chairperson” means the Deputy Chairperson of the Authority appointed under Section 9;

“liability” includes any liability, duty or obligation, whether actual, contingent or prospective;

“member” means a member of the Authority and includes the Chairperson, the Deputy Chairperson and an appointed member;

“Minister” means the Minister responsible for intergovernmental relations;

“responsible Minister” means the Prime Minister or a Minister nominated by the Prime Minister;

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“staff” means members of the staff of the Authority employed under Section 18;

“Treasurer” means the Minister responsible for the preparation of the annual recurrent budget of the National Government.

PART II. – ESTABLISHMENT, FUNCTIONS AND POWERS OF THE HELA TRANSITIONAL AUTHORITY.

3. ESTABLISHMENT OF THE AUTHORITY.

(1) The Hela Transitional Authority is established.

(2) The Authority -

(a) is a body corporate, with perpetual succession; and

(b) has a common seal; and

(c) has the capacity to acquire, hold and dispose of real and personal property; and

(d) may sue and be sued in its corporate name and style.

(3) The common seal of the Authority is to be used only as authorized by the Authority.

(4) All courts, judges, magistrates and other persons acting judicially must take judicial notice of the imprint of the common seal of the Authority on a document and must presume that it was duly affixed.

4. FUNCTIONS OF THE AUTHORITY.

(1) The functions of the Authority are -

(a) to establish the administrative, financial and other necessary arrangements for the proposed Hela Provincial Government; and

(b) to negotiate and enter into agreements in accordance with other legislation.

(2) Without limiting the generality of Subsection (1)(a), the Authority shall -

(a) in consultation with landowners and community leaders in the proposed Hela Province, secure land and buildings to be used as the provincial headquarters; and

(b) secure other assets and infrastructure appropriate for a provincial government; and

(c) develop and appropriate staffing structure for the proposed Hela Provincial Government in consultation with the Secretary of the department responsible for personnel matters.

(3) In performing its functions, the Authority shall -

(a) have regard to any relevant policies of the National Government; and

(b) consult with Provincial Governments and Local-level Governments.

(4) When negotiating agreements referred to in Subsection (1)(b) and before entering into such agreements, the Authority shall consult with landowners and community leaders in the proposed Hela Province having regard to -

(a) the short and long term interests of the people of the proposed Hela Province; and

(b) the principle of sharing for the benefit of all those people.

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5. POWERS OF THE AUTHORITY.

(1) The 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) To avoid doubt, the Authority cannot make laws nor impose taxes.

6. CO-OPERATION OF PROVINCIAL AND LOCAL-LEVEL GOVERNMENTS.

(1) The Provincial Governments and Local-level Governments shall so far as practicable co-operate with the Authority in the performance of its functions and the exercise of its powers.

(2) Without limiting the generality of Subsection (1), the Provincial Governments and Local-level Governments shall -

(a) make relevant information and documents within the control of the Provincial Governments and Local-level Governments available to the Authority; and

(b) ensure that staff of the Provincial Governments and Local-level Governments are available to consult with staff of the Authority.

7. DIRECTIONS BY THE MINISTER.

(1) Except as expressly provided by this section, the Authority is not subject to direction by the Minister.

(2) The Minister may in writing give a general direction to the Authority concerning the performance of its functions or the exercise of its powers.

(3) A direction -

(a) shall not relate to an individual, whether or not he or she is a member of the Authority; and

(b) shall not be inconsistent with this Act.

(4) Before giving a direction, the Minister shall -

(a) advise the National Executive Council of the proposed direction; and

(b) give the Authority a written notice stating that the Minister is proposing to give the direction; and

(c) discuss with the Chairperson the need for the proposed direction.

(5) The Authority shall comply with a direction so far as it is practicable to do so.

(6) The Minister shall as soon as practicable publish a direction in the National Gazette.

PART III. – MEMBERS OF THE AUTHORITY.

8. MEMBERS.

(1) The following persons are members of the Authority -

(a) the Member of the Parliament representing the following open electorate -

(i) Tari-Pori; and

(ii) Koroba-Kopiago; and

(iii) Komo-Magarima; and

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- (b) the Provincial Governor of the Southern Highlands Province; and
- (c) the following persons appointed by the National Executive Council on the recommendation of the Minister—
 - (i) a representative from Tari;
 - (ii) a representative of Tebi;
 - (iii) a representative of Tagali;
 - (iv) a representative of Haypuga;
 - (v) a representative of Hulia;
 - (vi) a representative of South Koroba;
 - (vii) a representative of North Koroba;
 - (viii) a representative of Komo;
 - (ix) a representative of Lake Kutubu;
 - (x) a representative of Lake KUPIAGO;
 - (xi) a representative of Awi Logaye;
 - (xii) a representative of Pori;
 - (xiii) a representative of upper Wage;
 - (xiv) a representative of lower Wage;
 - (xv) a representative of Mt. Bosavi;
 - (xvi) a person representing religious organisations in the proposed Hela Province;
 - (xvii) a woman representing women in the proposed Hela Province; and
 - (xviii) 2 other persons who do not have any association with the proposed Hela Province.

- (2) Subject to Subsections (3), (4) and (5), an appointed member is to be appointed for a term ending on the day on which the writs for the next general election are issued.
- (3) An appointed member may resign by giving his or her resignation in writing to the Minister.
- (4) An appointed member ceases to be an appointed member if he or she -
 - (a) becomes bankrupt; or
 - (b) is convicted of an offence and sentenced to a term of imprisonment of more than 9 months.
- (5) The National Executive Council may, on the recommendation of the Minister, terminate the appointment of a member if -
 - (a) the member has become permanently incapable of performing his or her duties; or
 - (b) the member has failed to comply with Section 10; or
 - (c) the Authority has failed to comply with a direction under Section 7; or
 - (d) the member ceases to be a representative of the interest group that he or she was appointed to represent.
- (6) The exercise of a power or performance of a function of the Authority is not invalidated by reason of a vacancy in the membership of the Authority.

9. CHAIRPERSON AND DEPUTY CHAIRPERSON.

The National Executive Council shall, on the recommendation of the Minister, appoint a Chairperson and a Deputy Chairperson of the Authority from amongst -

- (a) the Members of the Parliament representing the following open electorates:-

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- (i) Tari-Pori; and
 - (ii) Koroba-Kopiago; and
 - (iii) Komo-Magarima; and
- (b) the Provincial Governor of the Southern Highlands Province.

10. 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 Authority shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Authority.

(2) The disclosure must be recorded in the minutes of the meeting of the Authority and the member -

- (a) may take part, after the disclosure, in any deliberation or decision of the Authority in relation to the matter; and
- (b) is to be counted for the purpose of a quorum for any such deliberation or decision.

11. ALLOWANCES AND PAYMENT OF CERTAIN OTHER COSTS.

(1) In this section, "sitting allowances" means the sitting allowances specified in the most recent determination of the Salaries and Remuneration Commission.

(2) The Authority shall pay to -

- (a) the Chairperson, the sitting allowances payable to the Governor of a Province; and
- (b) the Deputy Chairperson, the sitting allowances payable to the Deputy Governor of a Province; and
- (c) a member of the Authority (other than the Chairperson and the Deputy Chairperson), the sitting allowances payable to a member of a Provincial Assembly.

(3) The Authority shall pay to a member his or her reasonable travel and accommodation costs for the purpose of attending a meeting of the Authority.

(4) The Authority shall pay to a member an allowance for meals of 100 kina for each day or 50 kina for each part of a day -

- (a) of travel necessary for attending a meeting of the Authority and returning to Port Moresby or the place where the member ordinarily resides; and
- (b) on which a meeting of the Authority is held and the member attends.

PART IV. - MEETINGS OF THE AUTHORITY.

12. MEETINGS.

(1) Subject to Subsections (2) and (3), the Authority shall meet at least once in every quarter at such places, dates and times as the Chairperson decides.

(2) The Authority shall not meet when the Parliament or the Southern Highlands Provincial Assembly is meeting.

(3) So far as practicable, the Authority shall meet at a place in the proposed Hela Province.

(4) Members of the Authority shall be given at least 7 days written notice of a meeting.

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- (5) The Authority shall keep minutes of its meetings.
- (6) Subject to Subsection (2) to (5) and in addition to the quarterly meetings, the Chairperson -
 - (a) may at any time convene other meetings of the Authority; and
 - (b) shall, on receipt of a written request signed by at least 3 other members, convene a meeting of the Authority within 7 days.

13. PRESIDING AT MEETINGS.

- (1) The Chairperson shall preside at all meetings at which he or she is present.
- (2) If the Chairperson is not present at a meeting, the Deputy Chairperson shall preside.

14. QUORUM.

- (1) A quorum for a meeting of the Authority is -
 - (a) the Chairperson or the Deputy Chairperson; and
 - (b) at least 2 of the Members of the Parliament representing the following open electorates:
 - (i) Tari-Pori; and
 - (ii) Koroba-Kopiago; and
 - (iii) Komo-Magarima; and
 - (c) the Provincial Governor of the Southern Highlands Province; and
 - (d) at least 5 other members of the Authority.

(2) To avoid doubt, there is no quorum for a meeting of the Authority if the Chairperson and the Deputy Chairperson are both absent from the meeting.

15. DECISION MAKING AT MEETINGS.

(1) Matters at a meeting of the Authority shall be decided by a majority of the votes of the members present.

(2) The Chairperson, the Deputy Chairperson, or the person presiding at a meeting, has a deliberative vote and, if the votes are equal on any matter also a casting vote.

16. OTHER PROCEDURES AT MEETINGS.

Subject to this Part, the Minister shall determine the meeting procedures of the Authority.

PART V. – CHIEF EXECUTIVE OFFICER AND STAFF.

17. CHIEF EXECUTIVE OFFICER.

(1) There shall be established a position of the Chief Executive Officer of the Authority from a list of 3 names submitted to the National Executive Council by the Minister on the recommendation of the Authority.

(2) The Chief Executive Officer shall be appointed by the National Executive Council.

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(3) The Authority shall determine the terms and conditions of appointment of the Chief Executive Officer which are to be the same as or substantially similar to, the terms and conditions of appointment of Provincial Administrator under the *Public Services (Management) Act 1995*.

(4) The Chief Executive Officer is responsible for managing the affairs of the Authority.

18. STAFF.

(1) The Authority shall employ not more than 5 staff.

(2) Staff shall be employed on merit in accordance with the same, or substantially similar, procedures for the employment of officers under the *Public Services (Management) Act 1995*.

(3) The Authority shall determine the terms and conditions of employment of its staff which are to be the same as, or substantially similar to, the terms and conditions of employment of officers employed under the *Public Services (Management) Act 1995* that are performing the same or substantially similar duties, for provincial administrations.

(4) As far as practicable, staff of the Authority are to be based in the proposed Hela Province.

PART VI. – FINANCES.

19. APPLICATION OF PART VIII OF THE *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.
Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Authority.

20. FUNDING OF THE AUTHORITY.

(1) The funds of the Authority consist of any monies appropriated to the Authority for all or any of the following -

- (a) the operational costs of the Authority; and
- (b) the upgrade and establishment of infrastructure required for the proposed Hela Province; and
- (c) any other purposes associated with the formation of the proposed Hela Province.

(2) Additional funds of the Authority include any monies received by the Authority by way of grants, donations or other contributions from any lawful source, including external sources.

(3) An appropriation to the Authority or a grant from the National Government may be made subject to such conditions as the Treasurer determines, including the purpose of the funding and reporting on expenditure.

(4) Without limiting the generality of this section, the Southern Highlands Provincial Government may enter into an agreement with the Authority for the provision of funding for the Authority.

21. BUDGET OF THE AUTHORITY.

(1) The Authority shall submit a draft budget for each year to the Treasurer and a copy of its draft budget to the Minister on or before 31 October of the immediately preceding year.

(2) The Treasurer shall approve or reject the draft budget of the Authority.

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(3) The Authority shall expend funds only in accordance with its budget approved by the Treasurer.

22. EXPENDITURE OF THE AUTHORITY.

(1) The Chief Executive Officer is responsible for managing the expenditure of the Authority through a district treasury office nominated by the Authority.

(2) The duties and responsibilities of the Chief Executive Officer in relation to the expenditure by the Authority are the same as, or substantially similar to, the duties and responsibilities of a Provincial Administrator in relation to the expenditure of funds by a Provincial Government.

PART VII. – MISCELLANEOUS.

23. HALF YEAR REPORTS.

(1) The Authority shall prepare for each half year a report summarizing the activities of the Authority and present the report to the responsible Minister within 30 days after the end of the half year to which the report relates.

(2) Without limiting the generality of Subsection (1), a half year report must specify for the half year details of -

- (a) all expenditure by the Authority; and
- (b) all action taken by the Authority to establish the necessary administrative, financial and other arrangements for the proposed Hela Provincial Administration; and
- (c) all consultation undertaken by the Authority; and
- (d) any obligations or liabilities incurred by the Authority.

24. ANNUAL REPORTS.

(1) The Authority shall prepare and present an annual report to the responsible Minister on or before 31 March of the year immediately following the year to which the report relates.

(2) The responsible Minister shall table the annual report in Parliament as soon as practicable.

25. COMMITTEES OF THE AUTHORITY.

(1) The Authority may -

- (a) establish such committees as it considers necessary to assist the Authority in performing its functions; and
- (b) appoint the members of a committee who must be members of the Authority; and
- (c) specify the functions and responsibilities of a committee.

(2) A committee shall determine its own procedures unless otherwise specified by the Authority.

26. TRANSFERS TO HELA PROVINCIAL GOVERNMENT.

(1) In this section, “establishment day” means the day on which the Hela Provincial Government is established which is the same day as the day on which the *Organic Law on Provincial Boundaries (Boundaries Description) (Amendment) Act 2009* commences.

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(2) This section applies if the *Organic Law on Provincial Boundaries (Boundaries Description) (Amendment) Act 2009* commences on a day before the day on which the writs are issued for the next general election.

(3) On the establishment day, the assets and liabilities of the Authority vest in the Hela Provincial Government without the need for any conveyance, transfer or assignment.

(4) On the establishment day, any agreement to which the Authority is a party continues to have effect on and after that day as if -

- (a) a reference to the Authority were a reference to the Hela Provincial Government; and
- (b) the rights and obligations of the Authority under that agreement were the rights and obligations of the Hela Provincial Government.

(5) If the Authority was a party to proceedings that -

- (a) were pending in any court immediately before the establishment day; and
- (b) related, in whole or in part, to an asset, liability, right or obligation mentioned in Subsections (3) or (4),

the Hela Provincial Government is, by force of this subsection, substituted for the Authority as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right or obligation.

(6) On the establishment day -

- (a) the person appointed as the Chief Executive Officer ceases to hold that office; and
- (b) the staff of the Authority cease to be employed by the Authority.

27. TRANSFERS TO THE STATE.

(1) In this section, "next general election writ day" means the day on which the writs for the next general election are issued.

(2) This section applies if the *Organic Law on Provincial Boundaries (Boundaries Description) (Amendment) Act 2009* does not commence on a day before the day on which the writs are issued for the next general election.

(3) On the next general election writs day, the assets and liabilities of the Authority vest in the State without the need for any conveyance, transfer or assignment.

(4) On the next general election writs day, any agreement to which the Authority is a party continues to have effect on and after that day as if -

- (a) a reference to the Authority were a reference to the State; and
- (b) the rights and obligations of the Authority under that agreement were the rights and obligations of the State.

(5) If the Authority was party to proceedings that -

- (a) were pending in any court immediately before the next general election writs day; and
- (b) related, in whole or in part, to an asset, liability, right or obligation mentioned in Subsections (3) or (4),

the State is, by force of this subsection, substituted for the Authority as a party to the proceedings to the extent to which the proceedings relate to the asset, liability, right or obligation.

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- (6) On the next general election writs day -
- (a) the person appointed as the Chief Executive Officer ceases to hold that office; and
 - (b) the staff of the Authority cease to be employed by the Authority.

28. GENERAL TRANSFER PROVISION.

(1) Section 26(3) and 27(3) apply to an asset or liability whether or not any Act or agreement relating to it -

- (a) permits a conveyance, transfer or assignment of the asset or liability; or
- (b) requires any consent to such a conveyance, transfer or assignment.

(2) A person or authority who has power under any law to register, record or otherwise give effect to -

- (a) transactions affecting assets or liabilities mentioned in Subsections 26(3) or 27(3); or
- (b) documents relating to such transactions,

must do whatever is necessary or desirable to give effect to, or reflect, the vesting (for example, making entries in a register).

29. REGULATIONS.

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.

30. CESSATION OF OPERATION OF ACT.

This Act ceases to be in force in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

I hereby certify that the above is a fair print of the *Hela Transitional Authority Act 2009* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Hela Transitional Authority Act 2009* was made by the National Parliament on 21 October 2009 by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.