

No. 10 of 2009.

Jiwaka Transitional Authority Act 2009.

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ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY

1. Compliance with Constitutional Requirements.
2. Interpretation -
 - “appointed member”
 - “asset”
 - “Authority”
 - “Chairperson”
 - “Chief Executive Officer”
 - “Deputy Chairperson”
 - “liability”
 - “member”
 - “Minister”
 - “responsible Minister”
 - “staff”
 - “Treasurer”

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

3. Establishment of the Authority.
4. Powers of the Authority.
5. Functions of the Authority.
6. Co-operation of Provincial and Local-level Governments.
7. Directions by the Minister.

PART III. – MEMBERS OF THE AUTHORITY.

8. Members.
9. Chairperson and Deputy Chairperson.
10. Disclosure of Interest.
11. Allowances and Payment of Certain Other Costs.

PART IV. – MEETINGS OF THE AUTHORITY.

12. Meetings.
13. Presiding at Meetings.
14. Quorum.
15. Decision Making at Meetings.
16. Other Procedures at Meetings.

PART V. – CHIEF EXECUTIVE OFFICER AND STAFF.

17. Chief Executive Officer.
18. Staff.

PART VI. – FINANCES.

19. Application of Part VIII of the *Public Finances (Management) Act 1995*.
20. Funding of the Authority.
21. Budget of the Authority.
22. Expenditure of the Authority.

PART VII. – MISCELLANEOUS.

23. Half Year Reports.
24. Annual Reports.
25. Committees of the Authority.
26. Transfers to Jiwaka Provincial Government.
27. Transfers to the State.
28. General Transfer Provision.
29. Regulations.
30. Cessation of operation of Act.



No. 2009

AN ACT

entitled

Jiwaka Transitional Authority Act 2009.

Being an Act to establish the Jiwaka Transitional Authority and to provide for the powers and functions 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)(b);

“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 Jiwaka Transitional Authority established by Section 3;

“Chairperson” means the Chairperson of the Authority elected by the members under Section 9;

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

“Deputy Chairperson” means the Deputy Chairperson of the Authority elected by the members under Section 9;

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

Jiwaka Transitional Authority

- “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 affairs;
- “responsible Minister” means the Prime Minister or a Minister nominated by the Prime Minister;
- “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 JIWAKA TRANSITIONAL AUTHORITY.

3. ESTABLISHMENT OF THE AUTHORITY.

- (1) The Jiwaka Transitional Authority is hereby 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 authorised 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. 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.

5. FUNCTIONS OF THE AUTHORITY.

- (1) The function of the Authority is to establish the administrative, financial and other necessary arrangements for the proposed Jiwaka Provincial Government.
- (2) Without limiting the generality of Subsection (1), the Authority must -
 - (a) in consultation with landowners and community leaders in the proposed Jiwaka 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 an appropriate staffing structure for the proposed Jiwaka Provincial Government in consultation with the Secretary of the department responsible for personnel matters.
- (3) In performing its function, the Authority must -
 - (a) have regard to any relevant policies of the National Government; and
 - (b) consult with Provincial Governments and Local-Level Governments.

Jiwaka Transitional Authority

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

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

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

- (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 and control by the Minister.

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

(3) A direction -

- (a) must not relate to an individual, whether or not he or she is a member of the Authority; and
- (b) must not be inconsistent with this Act.

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

- (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 must comply with a direction so far as it is practicable to do so.

(6) The Minister must, 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 Members of Parliament representing the following open electorates –
 - (i) Jimi; and
 - (ii) North Waghi; and
 - (iii) Anglimp South Waghi; and
- (b) the following persons appointed by the National Executive Council on the advice of the Minister –
 - (i) a representative of North Waghi Western End; and
 - (ii) a representative of North Waghi Central; and
 - (iii) a representative of North Waghi Eastern End; and

Jiwaka Transitional Authority

- (iv) a representative of South Waghi Western End; and
- (v) a representative of South Waghi Central; and
- (vi) a representative of South Waghi Eastern End; and
- (vii) a representative of Kambia; and
- (viii) a representative of Jimi; and
- (ix) a woman representing women in the proposed Jiwaka Province; and
- (x) a person representing youth in the proposed Jiwaka Province; and
- (xi) a person representing religious organisations in the proposed Jiwaka Province; and
- (xii) a person representing the business community in the proposed Jiwaka Province.

(2) Subject to Subsections (3), (4) and (5), an appointed member is appointed for a term ending on the day on which the writs for the next general elections 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) he or she has become permanently incapable of performing his or her duties; or
- (b) he or she 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 the 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 must, on the recommendation of the Minister, appoint a Chairperson and a Deputy Chairperson of the Authority.

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 must, 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.

Jiwaka Transitional Authority

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 is to 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 is to 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 is to pay 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 must meet at least once in every quarter at such places, dates and times as the Chairperson decides.
- (2) The Authority must not meet when the Parliament or the Western Highlands Provincial Assembly is meeting.
- (3) So far as practicable, the Authority must meet at a place in the proposed Jiwaka Province.
- (4) Members of the Authority must be given at least 7 days written notice of a meeting.
- (5) The Authority must keep minutes of its meetings.
- (6) Subject to Subsections (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) must, 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 must preside at all meetings at which he or she is present.
- (2) If the Chairperson is not present at a meeting, the Deputy Chairperson must preside.

Jiwaka Transitional Authority

14. QUORUM.

(1) A quorum for a meeting of the Authority is the Chairperson or the Deputy Chairperson, and 7 other members.

(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 must be decided by a majority of the votes of the members present.

(2) If the Chairperson, or the Deputy Chairperson, is presiding at a meeting, he or she has a deliberative vote and, if the votes are equal, also a casting vote.

16. OTHER PROCEDURES AT MEETINGS.

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

PART V. – CHIEF EXECUTIVE OFFICER AND STAFF.

17. CHIEF EXECUTIVE OFFICER.

(1) The National Executive Council is to appoint a person to be known as 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 Authority is to 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 Administrators under the *Public Service (Management) Act 1995*.

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

18. STAFF.

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

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

(3) The Authority is to 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 Service (Management) Act 1995* who 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 Jiwaka 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.

Jiwaka Transitional 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 Jiwaka Province; and
- (c) any other purposes associated with the formation of the proposed Jiwaka 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 Western 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 must submit a draft budget for each year to the Treasurer and a copy of the draft budget to the Minister on or before 31 October of the immediately preceding year.

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

(3) The Authority may 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 District Administrator in relation to the expenditure of funds by a Provincial Government.

PART VII. – MISCELLANEOUS.

23. HALF YEAR REPORTS.

(1) The Authority must prepare for each half year a report summarising 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

Jiwaka Transitional Authority

- (b) all actions taken by the Authority to establish the necessary administrative, financial and other arrangements for the proposed Jiwaka 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 must 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 must 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 such committees who must be members of the Authority;

and

- (c) specify the functions and responsibilities of such committees.

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

26. TRANSFERS TO JIWAKA PROVINCIAL GOVERNMENT.

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

(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 vests in the Jiwaka 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 Jiwaka Provincial Government; and
- (b) the rights and obligations of the Authority under that agreement were the rights and obligations of the Jiwaka Provincial Government.

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

- (a) were pending in any court immediately before the establishment day; and

Jiwaka Transitional Authority

- (b) related, in whole or in part, to an asset, liability, right or obligation mentioned in Subsection (3) or (4),

the Jiwaka 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 writs day*” means the day on which the writs for the next general elections 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 vests 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 a 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 Subsection (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.

- (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.

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 Subsection 26(3) or 27(3);
- or

Jiwaka Transitional Authority

(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 are -

- (a) required or permitted to be prescribed by this Act; or
- (b) 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 *Jiwaka Transitional Authority Act 2009* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Jiwaka 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.