



**CONSTITUTION  
(AMENDMENT)(NO.3) BILL 2009**

**(BILL NO. ... OF 2009)**





**CONSTITUTION (AMENDMENT)(NO.3) BILL 2009**  
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A  
BILL  
Entitled

**AN ACT OF PARLIAMENT TO ALTER THE CONSTITUTION**

**ENACTED** by the National Parliament of Solomon Islands.

**ARRANGEMENT OF CLAUSES**

1. Short title and commencement
2. Section 12 amended
3. Section 13 amended
4. Section 33 amended
5. Section 34 amended
6. New section 34A added
7. Section 37 amended
8. Section 39 amended
9. Section 50 amended
10. Section 66 substituted
11. Section 69C amended
12. New section 69D added
13. Section 93 amended
14. Section 145 amended
15. Schedule 2 substituted
16. Consequential amendment and transitional

**CONSTITUTION (AMENDMENT)(NO.3) BILL 2009**

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|---|-------------------------------------|
| <p><b>1.</b> This Act may be cited as the Constitution (Amendment) (No.3) Act 2009, and commences on a date appointed by the Minister, by notice in the <i>Gazette</i>.</p>   | <p>Short title and commencement</p> |
| <p><b>2.</b> Section 12 of the Constitution is amended in subsection (2) –</p> <p style="margin-left: 40px;">(a) by deleting “or” at the end of paragraph (b), and by deleting the comma at the end of paragraph (c) and substituting “; or” at the end of paragraph (c); and</p> <p style="margin-left: 40px;">(b) by adding the following paragraph –</p> <p style="margin-left: 80px;">“(d) for the purpose of regulating the conduct and activities of persons or of political parties in relation to election of members of Parliament or provincial assemblies,”.</p> | <p>Section 12 amended</p>           |
| <p><b>3.</b> Section 13 of the Constitution is amended in subsection (2) –</p> <p style="margin-left: 40px;">(a) by deleting “or” at the end of paragraph (b), and by deleting the comma at the end of paragraph (c) and substituting “; or” at the end of paragraph (c); and</p> <p style="margin-left: 40px;">(b) by adding the following paragraph –</p> <p style="margin-left: 80px;">“(d) that imposes restrictions on or regulates political party membership,”.</p>  | <p>Section 13 amended</p>           |
| <p><b>4.</b> Section 33 of the Constitution is amended –</p> <p style="margin-left: 40px;">(a) by repealing subsection (1) and substituting the following subsection –</p> <p style="margin-left: 80px;">“(1) There shall be a Prime Minister who shall be appointed from the members of Parliament by the Governor General in accordance with the processes set out in Part 1 of Schedule 2.”; and</p> <p style="margin-left: 40px;">(b) by adding the following subsections –</p>   | <p>Section 33 amended</p>           |

“(4) If a Minister is unable, by reason of illness or absence from Solomon Islands, to perform the functions of such office for a period of ten days or more, the Governor General may, on the advice of the Prime Minister, appoint another Minister to act in the office of that Minister.

(5) The Prime Minister may, from amongst the members in Government, appoint such number of parliamentary secretaries, as are necessary, to perform the functions as may be specified in the instrument of appointment, and such appointments are not to be regarded as Cabinet positions.”.

Section 34  
amended

**5.** Section 34 of the Constitution is amended –

- (a) in subsection (1), by deleting “the members of Parliament shall meet as soon as possible during the same session of Parliament to elect a new Prime Minister in accordance with the provisions of Schedule 2 of this Constitution” and substituting “the Governor General shall appoint a new Prime Minister under section 33(1)”;
- (b) in subsection (3) –
  - (i) in paragraph (a), by deleting “the members of Parliament meet to elect a Prime Minister, in accordance with the provisions of Schedule 2 of this Constitution” and substituting “the Governor General appoints a new Prime Minister under section 33(1)”; and
  - (ii) by deleting “or” at the end of paragraph (c) and replacing the full stop at the end of paragraph (d) with “; or” and by adding the following paragraph –
    - “(e) if he is dismissed under section 34A.”;

- (c) in subsection (4), by deleting “elected to the office of Prime Minister in accordance with the provisions of Schedule 2 of this Constitution” and substituting “appointed to the office of Prime Minister under section 33(1)”;
- (d) in subsection (5), by deleting “elected to the office of Prime Minister in accordance with the provisions of Schedule 2 of this Constitution” and substituting “appointed to the office of Prime Minister under section 33(1)”;
- (e) in subsection (6), by repealing paragraph (a) and substituting the following paragraph –
  - “(a) upon the appointment of a member of Parliament to the office of Prime Minister under section 33(1);”.

**6.** The Constitution is amended by adding after section 34 the following section –

New section 34A  
added

Dismissal of the  
Prime Minister if  
refused to resign

“34A. (1) Notwithstanding section 34, if the governing political party or coalition of political parties in Government has lost confidence in the Prime Minister, the governing political party or coalition of political parties may request the Prime Minister to resign pursuant to section 34(3)(d) and submit the name of a member of the governing political party or coalition of political parties in Government to the Governor General for appointment as the new Prime Minister under section 33(1).

(2) If the Prime Minister refuses to resign upon a request made under subsection (1), the governing political party or coalition of political parties in Government shall –

- (a) by a written petition signed by at least three-quarters of all the members of the governing political party or coalition of political parties, request the Governor General to dismiss the Prime Minister, who shall act on such request

within seven days of receiving the request;  
and

- (b) submit the name of a member of the governing political party or coalition of political parties in Government to the Governor General for appointment as the new Prime Minister under section 33(1).”.

Section 37 amended

**7.** The Constitution is amended in section 37 –

- (a) by adding, “and written laws” at the end of the section; and
- (b) by renumbering the current provision as subsection (1) and by adding the following subsection –

“(2) Any business of Government, department or written law that is not specifically assigned under subsection (1) comes under the responsibility of the Prime Minister, including the responsibility to perform the functions of the office of a Minister who is for any reason unable to perform his functions for a period of less than ten days.”.

Section 39 amended

**8.** The Constitution is amended in section 39 by adding, “and, subject to modifications of the oaths, parliamentary secretaries appointed under section 33(5)” after “Cabinet”.

Section 50 amended

**9.** Section 50 of the Constitution is amended –

- (a) by deleting “or” at the end of paragraph (f) and by replacing the full stop with a semi-colon at the end of paragraph (g);
- (b) by adding the following paragraphs –
  - “(h) if he defects or voluntarily resigns from the political party of which he was a member when he was elected to Parliament; or
  - (i) if he contravenes subsection (3)(c).”;

- (c) by renumbering the current provision as subsection “(1)” and by adding the following subsections –

“(2) For the purpose of subsection (1)(h), the political party shall give notice, in writing, to the Speaker of such defection or voluntary resignation, and the member shall vacate his seat on the date the Speaker receives a notice under this subsection, or otherwise the Speaker shall, in writing, determine the date of vacation.

(3) A member of Parliament who is removed by his political party –

- (a) shall not vacate his seat;
- (b) shall not be given any ministerial position or other parliamentary or Government assignment or appointment; and
- (c) shall remain with the side of Parliament of which he was a member before such removal.”.

**10.** The Constitution is amended by repealing section 66 and substituting the following section –

Section 66  
substituted

Leader and  
Deputy Leader of  
the Opposition

“66. (1) The Governor General shall appoint from the members of the opposition in Parliament a Leader of the Opposition and a Deputy Leader of the Opposition in accordance with Part 2 of Schedule 2.

(2) The power of the Governor General to make appointment under subsection (1) includes the power to terminate such appointment.

(3) The Leader of the Opposition may, in writing, assign responsibilities, corresponding to any Government ministerial portfolio, as are necessary to members of Parliament in opposition.

(4) The office of the Leader of the Opposition or Deputy Leader of the Opposition shall become vacant if –

- (a) he ceases to perform his functions as a member of Parliament pursuant to section 51;
- (b) his appointment is terminated;
- (c) he ceases to be a member of Parliament or is removed by his political party as mentioned in section 50(3);
- (d) he is elected as Deputy Speaker;
- (e) in the case of the Deputy Leader of the Opposition, he ceases to be the Deputy Leader of the Opposition by virtue of his appointment as Leader of the Opposition.”.

Section 69C  
amended

**11.** Section 69C of the Constitution is amended in subsection (2)(b) by deleting “the Leader of the Independent Group”.

New section 69D  
added

**12.** The Constitution is amended by adding the following new section –

“Political Parties  
Integrity  
Commission and  
regulation of  
political parties”

“69D. (1) There shall be a Political Parties Integrity Commission consisting of the following Commissioners who are to be appointed in accordance with the prescribed procedures –

- (a) a Chairman;
  - (b) a Deputy Chairman; and
  - (c) three other commissioners.
- (2) Parliament may prescribe –
- (a) the functions, powers and duties of the Political Parties Integrity Commission;

- (b) the registration, development and management of political parties; and
- (c) any other matter necessary to give effect to or for the purposes of this section.”.

**13.** Section 93 of the Constitution is amended by repealing paragraph (c) and substituting the following paragraph –

Section 93  
amended

- “(c) the Leader of the Opposition or Deputy Leader of the Opposition;”.

**14.** Section 145 of the Constitution is amended in subsection (1)(b) by deleting “Leader of the Official Opposition, Leader of the Independent Members” and substituting “Leader of the Opposition, Deputy Leader of the Opposition”.

Section 145  
amended

**15.** The Constitution is amended by repealing Schedule 2 and substituting a new Schedule 2, as set out in this Act.

Schedule 2  
substituted

**16.** (1) Any other reference to “Leader of the Independent Members” or “independent group” in the Constitution or any other written law is repealed.

Consequential  
amendment and  
transitional

- (3) Notwithstanding the repeal of section 66, the existing independent group and the Leader of the Independent Member shall continue as if section 66, any related provision of the Constitution and of other written law have not been repealed and continue in operation, until the current Parliament is dissolved, including the appointment of another Leader of such group if the position is vacant before the current Parliament is dissolved.

**“SCHEDULE 2 TO THE CONSTITUTION**

(Sections 33(1) and 66)

**PART 1 – PROCESSES FOR APPOINTMENT OF PRIME  
MINISTER**

**Political party with absolute majority to nominate Prime  
Minister**

- 1.** (1) The Governor General shall, within seven consecutive days –
- (a) after a general election of members of Parliament; or
  - (b) whenever there is a vacancy in the office of the Prime Minister,

give written invitation to the political party which has absolute majority of all seats in Parliament to nominate the name of the leader, or otherwise the name of a member of the political party for appointment as Prime Minister, as soon as is practicable or otherwise within seven consecutive days from the date of receiving the written invitation by the Governor General.

- (2) In determining whether a political party has absolute majority of all seats in Parliament, any independent member who joins the political party after a general election or any coalition agreement signed before a general election, pursuant to any law that regulates political parties, shall not be taken into account in determining the number of seats won by the political party.

**Political parties without absolute majority to nominate Prime  
Minister**

- 2.** (1) The Governor General shall, within seven consecutive days –

- (a) if, after a general election, no political party has won absolute majority of all seats in Parliament;
- (b) if no person is appointed as Prime Minister under paragraph 1; or
- (c) whenever there is a vacancy in the office of the Prime Minister,

give written invitation to the political party which has the highest number of seats in Parliament to nominate the name of the leader, or otherwise the name of a member of the political party, for appointment as Prime Minister, as soon as is practicable or otherwise within seven consecutive days (“nomination days”) from the date of receiving the written invitation by the Governor General.

- (2) For the purposes of subparagraph (1), if two or more political parties have equal number of seats in Parliament, the invitation shall be given to such political parties.
- (3) The political party invited under subparagraph (1) –
  - (a) shall, in writing, invite all other political parties or coalition of political parties for the purpose of forming a coalition Government which has absolute majority of all seats in Parliament; and
  - (b) may, in writing, invite any independent member of Parliament if necessary for the purpose of forming a coalition Government which has absolute majority of all seats in Parliament.
- (4) All political parties or coalition of political parties or any independent candidate invited under subparagraph (3) shall, within five consecutive days from the date of invitation under that subparagraph, respond to the invitation in writing stating whether or not they wish to join the coalition Government.

(5) The Governor General shall take into account any agreement on mutual cooperation or coalition agreement of the coalition of political parties made in accordance with any law that regulates political parties.

**Coalition of parties with absolute majority to nominate Prime Minister**

3. (1) If no person is appointed as Prime Minister pursuant to paragraphs 1 and 2, the Governor General shall –

- (a) within seven consecutive days from the expiration of the nomination days mentioned in paragraph 2(1); and
- (b) on the advice of the Political Parties Integrity Commission established by section 69D,

invite the coalition of parties, formed under a coalition agreement made before a general election in accordance with any law that regulates political parties, which has absolute majority of all seats in Parliament to nominate the name of the leader, or otherwise of a member of the coalition of parties, for appointment as Prime Minister, as soon as is practicable or otherwise within seven consecutive days (“nomination days”) from the date of receiving the written invitation by the Governor General.

(2) In determining whether the coalition of political parties has won absolute majority of all seats in Parliament, any independent member who joins a political party in the coalition after a general election, pursuant to any law that regulates political parties, shall not be taken into account in determining the number of seats won by the coalition of political parties.

**Formation of Government of National Coalition or Dissolution**

4. (1) If no person is appointed Prime Minister under paragraphs 1, 2, and 3, the Governor General shall, within ten consecutive days after the expiration of the nomination days in paragraph 3(1), summon and address Parliament for the purposes of forming a national coalition of political parties by the political parties, coalition of political parties and individual independent members willing to form a Government of National Coalition to nominate a member of Parliament for appointment as Prime

Minister within seven consecutive days (“nomination days”) from the date of address given by the Governor General.

- (2) The person nominated as Prime Minister under this paragraph shall be a member of a political party.
- (3) The Governor General shall –
  - (a) take into account any agreement on mutual cooperation or agreement of the political parties or members willing to form a Government of National Coalition when appointing a member as Prime Minister;
  - (b) if no Government of National Coalition is formed after the expiration of the nomination days under subparagraph (1), dissolve Parliament pursuant to this paragraph, notwithstanding section 73.

**PART 2 – PROCESS FOR THE APPOINTMENT OF THE  
LEADER OF THE OPPOSITION AND DEPUTY LEADER OF  
THE OPPOSITION**

**Party with highest number of seats in opposition to nominate  
Leader of the Opposition**

1. The Governor General shall within seven consecutive days after –
  - (a) the appointment of the Prime Minister; or
  - (b) whenever there is a vacancy in the office of Leader of the Opposition,

invite the political party or coalition of political parties with the highest number of seats in opposition to nominate the name of its leader or a member for appointment as Leader of the Opposition within seven consecutive days of receiving the invitation from the Governor General.

**Two or more political parties with equal seats to nominate Leader and Deputy Leader of the Opposition**

2. For the purposes of paragraph 1, if two or more political parties have equal number of seats, all the political parties shall endorse the names of two members of the political parties for appointment as Leader of the Opposition and Deputy Leader of the Opposition.

**Political party with the second highest number of seats to nominate Deputy Leader of the Opposition**

3. The political party or coalition of political parties with the second highest number of seats in opposition is entitled to nominate its leader or a member for appointment as Deputy Leader of the Opposition.

**Two or more political parties with equal seats to nominate Deputy Leader of the Opposition**

4. For the purposes of paragraph 3, if two or more political parties have equal number of seats, such political parties shall endorse the name of member for appointment as Deputy Leader of the Opposition.

**All political parties and independent members resolved to nominate Leader and Deputy Leader of the Opposition**

5. All the political parties and independent members in the opposition may resolve not to invoke paragraphs 1 to 4 and agree to nominate two members in opposition to be respectively appointed as Leader of the Opposition and Deputy Leader of the Opposition.

**Termination of appointments**

6. If a political party, coalition of political parties or all the political parties and members have lost confidence in the Leader of the Opposition or Deputy Leader of the Opposition –

- (a) in the case of the Leader of the Opposition or Deputy Leader of the Opposition appointed under paragraphs 1 to 4, the political party or coalition of political parties may by written petition signed by at least three-quarters of all the members, request the Governor General to terminate under section 66 the appointment of the Leader of the Opposition or

Deputy Leader of the Opposition and nominate a member for such appointment; or

- (b) in the case of the Leader of the Opposition or Deputy Leader of the Opposition appointed under paragraph 5, all political parties and members may by written petition signed by at least three-quarters of all the members, request the Governor General to terminate under section 66 the appointment of the Leader of the Opposition or Deputy Leader of the Opposition and nominate a member for such appointment.

**CONSTITUTION (AMENDMENT) (NO. 3) BILL 2009****OBJECTS AND REASONS**

The objects of this Bill are –

- (a) to facilitate the registration, administration and development of political parties and stability of the Government, including the establishment of the Political Parties Integrity Commission under the Constitution;
- (b) to ensure that the regulation of political parties does not violate the relevant fundamental rights and freedoms of individuals under the Constitution;
- (c) to alter the rule on the election of Prime Minister to appointment by the Governor General;
- (d) to provide for dismissal of Prime Minister when members of his political party or coalition of parties in Parliament have lost confidence in the Prime Minister;
- (e) to abolish the provision for independent group and provide for one opposition side in Parliament;
- (f) to provide for other amendments relating to acting appointments of Ministers and assignment of responsibilities, including appointment of parliamentary secretaries.

**EXPLANATORY MEMORANDUM**

Clause 1 provides for the short title and commencement provisions.

Clause 2 amends section 12 to insulate regulating the conduct of persons and political parties in relation to elections under the proposed Political Parties Act.

Clause 3 amends section 13 to allow imposition of restrictions and regulation of membership to political parties under a law, such as the proposed Political Parties Act.

Clause 4 amends section 33 to allow for the appointment of Prime Minister by the Governor General rather than by election, including provisions for appointment of acting Ministers when absent for 10 days or more and parliamentary secretaries.

Clause 5 amends section 34 amended as consequential to the appointment and dismissal of Prime Minister.

Clause 6 adds new section 34A to provide for the dismissal of Prime Minister when his political party or coalition of political parties have lost confidence in the Prime Minister and the Prime Minister refuses to resign when called upon to do so.

Clause 7 amends section 37 to provide for the assignments of written laws in Ministerial Assignments. It also gives the responsibility to the Prime Minister for any business that is not specifically assigned, including performing the functions of the office of a Minister who is unable to perform the function of his office for less than ten consecutive days.

Clause 8 amends section 39 to cover oath of offices for parliamentary secretaries.

Clause 9 amends section 50 to provide for vacation of seat if the member defects or voluntarily from retires his political party. A member of Parliament that is removed by his party does not vacate his membership in Parliament but will lose any right to be appointed as a Minister or other parliamentary appointments and cannot “cross-the-floor”.

Clause 10 amends section 66 to remove the official independent group and provide only for an opposition party and provides for appointment of the Leader and Deputy Leader of the Opposition. It will also include assignment of shadow ministers to members in the opposition.

Clauses 11, 13 and 14 amend section 69C amended as consequential to the removal of official independent group.

Clause 12 adds new section 69D to establish the Political Parties Integrity Commission and to provide a constitutional basis for making a law to further provide the functions, powers and duties of the Commission and the regulation of political parties.

Clause 15 Replaces Schedule 2 which sets out the process for appointing a Prime Minister, the Leader of the Opposition and the Deputy Leader of Opposition.

Clause 16 provides for consequential amendments and transitional in relation to the current independent group and its leader to continue until the current Parliament is dissolved.

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**DR. DEREK SIKUA**  
**PRIME MINISTER**