

**THE CONSTITUTION (AMENDMENT) BILL**  
(No. VI of 2008)

**Explanatory Memorandum**

The object of this Bill is to amend the Constitution in order to set up a Tribunal which shall have jurisdiction to hear appeals made by public officers against decisions of such Commission established under the Constitution, and by employees of such public bodies, as may be prescribed.

**N. RAMGOOLAM**  
*Prime Minister,*  
*Minister of Civil Service & Administrative*  
*Reforms*  
*Minister of Rodrigues and Outer Islands*

**11 April 2008**

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ARRANGEMENT OF CLAUSES

*Clause*

1. Short title
2. Section 91A inserted in Constitution
3. Section 118 of Constitution amended
4. Commencement

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**A BILL**

**To amend the Constitution in order to set up a Public Bodies Appeal Tribunal**

ENACTED by the Parliament of Mauritius, as follows –

**1. Short title**

This Act may be cited as the Constitution (Amendment) Act 2008.

**2. Section 91A inserted in Constitution**

The Constitution is amended by inserting after section 91, the following section –

## **91A. Public Bodies Appeal Tribunal**

(1) There shall be a Public Bodies Appeal Tribunal which shall, notwithstanding section 119 but subject to subsection (3), have jurisdiction to hear and determine appeals made by public officers against such final decisions of such Commission established under this Constitution, as may be prescribed, or of any Commissioner or other person exercising powers delegated by that Commission.

(2) The Public Bodies Appeal Tribunal may also hear and determine appeals made against final decisions of such other public bodies as may be prescribed.

(3) No appeal shall lie to the public Bodies Appeal Tribunal from any decision taken by a Commission prescribed under subsection (1) or by a public body prescribed under subsection (2), where the decision has been taken after consultation with, or with the concurrence of, or on the advice of, the Prime Minister.

(4) The Public Bodies Appeal Tribunal shall consist of –

- (a) a Chairperson who is a barrister of not less than 10 years' standing;
- (b) 2 other members who hold such qualifications as may be prescribed.

(5) The members of the Public Bodies Appeal Tribunal shall be appointed by the President on the advice of the Prime Minister, given after consultation with the Leader of the Opposition.

(6) No person shall be appointed under subsection (5) where –

- (a) he is a member of the Assembly or a local authority;
- (b) he is an office bearer of a political party or other political organisation;
- (c) at any time during the 10 years preceding such proposed appointment, he was engaged in politics;
- (d) he is a public officer, a local government officer or an employee of a statutory body; or
- (e) he is a person who receives, or is entitled to receive, fees or allowances specified in section 112(3).

(7) A member of the Public Bodies Appeal Tribunal shall cease to hold office as such where any circumstances arise that, if he did not hold that office, would cause him to be disqualified for appointment.

(8) Where an appointment lapses or is terminated under subsection (7), no compensation shall or become payable to the holder for loss of office by reason of the lapse or termination of his appointment.

(9) Notwithstanding any other provision of the Constitution –

- (a) proceedings before the Public Bodies Appeal Tribunal shall not be held in public, except where the Tribunal decides otherwise with the agreement of the parties to an appeal;
- (b) the Public Bodies Appeal Tribunal shall not be bound to communicate to any other person the contents of any report, document or other material produced by any Commission or public body and, except where necessary for the purpose of making its decision, the Tribunal shall make no reference to the contents thereof in its decision.

(10) A member of the Public Bodies Appeal Tribunal shall hold office for such term and on such conditions as may be determined by the President.

(11) A member of the Public Bodies Appeal Tribunal may be removed from office only for inability to discharge the functions of his office whether arising from infirmity of body or mind, or any other causes, or for misbehaviour and shall not be removed except in accordance with subsections (12) to (14).

(12) A member of the Public Bodies Appeal Tribunal shall be removed from office by the President where the question of his removal from that office has been referred to a tribunal appointed under subsection (13) and the tribunal has recommended to the President that he ought to be removed from office for inability to discharge the functions of his office or for misbehaviour.

(13) Where the President, acting in his own deliberate judgment, considers that the question of removing a member of the Public Bodies Appeal Tribunal ought to be investigated –

- (a) the President, acting in his own deliberate judgment, shall appoint a tribunal which shall consist of a Chairperson and not less than 2 other members, being persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or of a court having jurisdiction in appeals from such a court; and
- (b) that tribunal shall enquire into the matter and report on the facts to the President and recommend to the President whether the member of the Public Bodies Appeal Tribunal ought to be removed under this section.

(14) Where the question of removing a member has been referred to a tribunal under subsection (13), the President, acting in his own deliberate judgment, may suspend the member from performing the functions of his office and any such suspension may at any time be revoked by the President, acting in his own deliberate judgment, and shall in any case cease to have effect where the tribunal recommends to the President that the member should not be removed.

(15) The offices of the staff of the Public Bodies Appeal Tribunal shall be public offices.

(16) There shall be such provision as may be prescribed for such supplementary or ancillary matters as may appear necessary or expedient in consequence of any of the provision of this section.

### **3. Section 118 of Constitution amended**

Section 118 of the Constitution is amended, in sub-section (4), by deleting the word "In" and replacing it by the words "Subject to section 91A, in".

### **4. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.