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INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

*ORGANIC LAW ON PEACE-BUILDING IN BOUGAINVILLE—AUTONOMOUS BOUGAINVILLE GOVERNMENT AND BOUGAINVILLE REFERENDUM*

The Government proposes to introduce the *Organic Law on Peace Building in Bougainville—the Autonomous Bougainville Government and the Bougainville Referendum*, and pursuant to Section 14(2)(making of alterations to the Constitution and Organic Laws) of the *Constitution*, I, BERNARD NAROKOBI, Speaker of the National Parliament, hereby publish the proposed Law:—

INDEPENDENT STATE OF PAPUA NEW GUINEA

A PROPOSED ORGANIC LAW

entitled

*The Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum.*

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**SCHEDULE 1.**

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Draft (12/11/01).  
**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

*Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government  
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Being an Organic Law to implement Part XIV (*Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*) of the *Constitution* by providing for –

- (a) arrangements for the establishment and operation of autonomous government for Bougainville; and
- (b) the holding of a referendum on Bougainville's future political status, and for related purposes,

MADE by the National Parliament to come into operation of even date with the coming into operation of the *Constitutional Amendment (Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum)* other than Section 2 of that Constitutional Amendment.

**PART I. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Organic Law, 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 freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
  - (b) the right to freedom of conscience, thought and religion conferred by Section 45 of the *Constitution*; and
  - (c) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
  - (d) the right to freedom of assembly and association conferred by Section 47 of the *Constitution*; and
  - (e) the right to privacy conferred by Section 49 of the *Constitution*; and
  - (f) the right to vote and stand for public office conferred by Section 50 of the *Constitution*; and
  - (g) 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.

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2. INTERPRETATION.

(1) In this Organic Law, unless the contrary intention appears –

“Agreement” means the Bougainville Peace Agreement signed at Arawa on 30 August 2001 and published in National Gazette No. G 141 on 9 November 2001;

“Bougainville” means -

(a) the areas of land within the boundaries of Bougainville Province as described in the Schedule to the *Organic Law on Provincial Boundaries*; and

(b) the areas of sea extending to three nautical miles from the low water mark of the areas of land referred to in Paragraph (a);

“Bougainville Constitution” means the Bougainville Constitution endorsed and gazetted in accordance with Section 285 (*Endorsement of Bougainville Constitution*) of the *Constitution*;

“Bougainville Correctional Service” means Bougainville Correctional Service for which provision is made under Section 310(1)(c) (*Bougainville State Services*) of the *Constitution*;

“Bougainville Executive” means the accountable executive body of the Bougainville Government;

“Bougainville Government” means the autonomous Bougainville Government established in accordance with Part XIV (*Peace Building in Bougainville – the Autonomous Bougainville Government and the Bougainville Referendum*) of the *Constitution*;

“Bougainville law” means a law made in accordance with the Bougainville Constitution;

“Bougainville Legislature” means the legislature of the Bougainville Government;

“Bougainville Police” means the Bougainville Police for which provision is made under Section 310(1)(b) (*Bougainville State Services*) of the *Constitution*;

“Bougainville Public Service” means the Bougainville Public Service for which provision is made under Section 310(1)(b) of the *Constitution*;

“Bougainville Referendum” means the Referendum for which provision is made under Division XIV.7 (*Bougainville Referendum*) of the *Constitution*;

“dispute resolution procedure” means the dispute resolution procedure for which provision is made under Division XIV.6 (*Intergovernmental relations and review*) of the *Constitution*;

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“fiscal self-reliance” means the first year in which the revenues from company tax, customs duties and 70% of value added tax collected in Bougainville are equal to the value of the recurrent grant on a sustainable basis;

“National Correctional Service” means the National Correctional Service established under the *Correctional Service Act 1995*;

“National law” means a law made by the National Parliament;

“Referendum” means the Bougainville Referendum.

(2) Consultation between the National Government and the Bougainville Government shall be conducted in accordance with Section 278(2) (*Interpretation*) of the *Constitution*..

(3) The Agreement may be used, so far as it is relevant, as an aid to the interpretation where any question relating to the interpretation or application of this Organic Law arises.

(4) The Agreement shall be interpreted liberally, by reference to its intentions and without undue reference to technical rules of construction.

(5) For the avoidance of doubt, a reference in a Part of this Law to ‘this Part’ shall be deemed to include a Schedule provided for by that Part.

(6) An instrument under this Law may make provision with respect to a particular aspect of a matter even though this Law makes provision in relation to another aspect of the matter.

**PART II. - TRANSFER OF FUNCTIONS AND POWERS.**

***Division 1. - Transfer of Powers and Functions Generally.***

**3. AGREED PLANS FOR IMPLEMENTATION OF TRANSFER.**

(1) The National Government and the Bougainville Government shall jointly prepare agreed plans for co-operating in implementing the transfer of functions and powers for which the Bougainville Government shall become responsible.

(2) The agreed plans referred to in Subsection (1) -

(a) shall include criteria, indicators and targets of capacity and resources available to or required by the Bougainville Government that should be taken into account in making proper preparations for the transfer of particular functions and powers; and

(b) in relation to transfer of police and other agreed functions and powers, may provide for a gradual transfer.

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**4. TRANSFER AFFECTED BY CIRCUMSTANCES AFFECTING RESOURCES.**

(1) Where the capacity or economic circumstances affecting the resources necessary for a transfer of a function or power to the Bougainville Government are such as to prevent effective exercise by the Bougainville Government of that function or power, the National Government and the Bougainville Government shall consult with a view to preparing an agreed plan for overcoming the difficulties.

(2) In the event of -

(a) failure to agree whether the capacity or economic circumstances -

(i) should prevent the exercise of a function or power; or

(ii) should delay the transfer; or

(b) failure to agree the plan; or

(c) differences over the implementation of an agreed plan,

either Government may seek to resolve the issues in dispute through the dispute resolution procedure.

(3) For the purposes of this section, the dispute resolution procedure may provide for the National Government and the Bougainville Government to agree to appoint a panel of independent persons with relevant expertise to make recommendations on issues concerning capacity or economic circumstances or the content or implementation of an agreed plan under Subsection (1).

(4) A panel of independent persons referred to in Subsection (3) may make recommendations as to remedying the situation arising from Subsection (2).

(5) The recommendations made under Subsections (3) and (4) may be considered in the dispute resolution procedure.

**5. TRANSFER OF CLOSELY LINKED FUNCTIONS AND POWERS.**

(1) Where -

(a) the Bougainville Government requests the transfer from the National Government of a function or power available to the Bougainville Government under the *Constitution*; and

(b) it appears to either Government that the function or power is so closely linked to another function or power or to other functions and powers available to the Bougainville Government that it is appropriate that the closely linked functions and powers be transferred together,

either Government may propose that the closely linked functions and powers be transferred together.

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- (2) Where -
- (a) both Governments agree that closely linked functions and powers should be transferred together, the transfer shall take place accordingly; and
  - (b) there is any difference between the Governments in relation to any aspect of a request under Subsection (1), the matter shall be resolved through the dispute resolution procedure.

**6. TRANSFER OF NATIONAL AND REGIONAL INSTITUTIONS AND SERVICES.**

(1) Where it is proposed to transfer to the Bougainville Government an institution or service which is organized on a National basis or regionally and either the National Government or the Bougainville Government believes that the personnel, assets or funding associated with the institution or service cannot be readily divided on a basis that is viable regionally, nationally and in Bougainville, the National Government and the Bougainville Government shall agree to –

- (a) a plan for achieving a mutually acceptable division; and/or
- (b) subject to Subsection (2), an arrangement which ensures that the existing institution or service continues, together with guaranteed access for the Bougainville Government and Bougainvilleans.

(2) An arrangement referred to in Subsection (1)(b), to have access to or the use of an institution or service, may make provision for cost-sharing.

(3) Differences arising between the National Government and the Bougainville Government –

- (a) over whether personnel, assets or funding of an institution or service can be readily divided; or
- (b) in agreeing or implementing a plan or agreement for shared access or use, shall be resolved through the dispute resolution procedure.

(4) Subsections (1), (2) and (3) do not prevent the Bougainville Government from establishing and supporting institutions or services equivalent to those operating Nationally or regionally.

(5) For the purposes of this section, “regionally” means on a basis which involves Bougainville and one or more other areas of Papua New Guinea.

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*Division 2. - Matters relating to establishment, etc., of Bougainville Courts.*

**7. CONSTITUTIONAL REGULATIONS.**

The Constitutional Regulations may provide for transitional arrangements necessary with respect to -

- (a) the establishment of Bougainville courts and consequential changes within the National Judicial System; and
- (b) co-operation between the National and Bougainville courts administration; and
- (c) the development and implementation of plans for restoring courts in Bougainville, including courts at village level.

*Division 3. - Provisions applying generally to Public Service, Police and Correctional Service.*

**8. BASIS OF IMPLEMENTATION.**

The arrangements under Part XIV (*Peace-Building in Bougainville – Autonomous Government and Bougainville Referendum*) of the *Constitution* and this Organic Law for the Public Service, Police and Correctional Service in Bougainville will each be planned on a comprehensive and integrated basis, while implementation may be gradual.

**9. APPLICATION TO OTHER BODIES.**

The provisions of Part XIV (*Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*) of the *Constitution* and this Organic Law applying to the Bougainville Public Service shall also apply to any Teaching Service and all public authorities established by the Bougainville Government (except where other arrangements have been specifically provided for in Part XIV (*Peace-Building in Bougainville – Autonomous Government and Bougainville Referendum*) and this Organic Law).

**10. RECRUITMENT, EMPLOYMENT AND INDUSTRIAL RELATIONS.**

(1) Bougainville law shall provide for recruitment and terms and conditions of employment for the Bougainville Government Services based on individual merit.

(2) The National industrial relations system shall continue to apply in Bougainville.

**11. NATIONAL PUBLIC SERVICE, POLICE FORCE AND THE NATIONAL CORRECTIONAL SERVICE TO REMAIN NATIONAL ORGANIZATIONS.**

The National Public Service, the Police Force established by Section 188(1)(1)(b) (*establishment of the State Services*) of the *Constitution*, the National Correctional Service and the National Judicial System shall remain as national organizations, which recruit throughout Papua New Guinea.

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**12. CO-OPERATIVE ARRANGEMENTS.**

The National Government and the Bougainville Government shall agree to arrangements to

- (a) facilitate transfers, secondment and exchanges of personnel of; and
- (b) provide for core training and personnel development programmes, together with utilization of common training facilities in Bougainville and the rest of Papua New Guinea for; and
- (c) provide for regular consultations between the senior officers responsible for, and other senior officers of,

the National Public Service, the Police Force established under Section 188(1)(b) (*establishment of State Services*) of the *Constitution* and the National Correctional Service in the National Government, and the Bougainville Government and Provincial Governments.

***Division 4. - Matters relating to the National Public Service  
and Bougainville Public Service.***

**13. BOUGAINVILLE LAW ON PUBLIC SERVICE MATTERS.**

(1) Bougainville law shall provide for the matters referred to in Section 311(2) (*Bougainville Public Service*) of the *Constitution*.

(2) Bougainville laws on the matters referred to in Subsection (1) shall be made following consultation with the National Government.

(3) The National Government and the Bougainville Government, through their respective Ministers and responsible Public Service Heads, shall consult with a view to reaching agreement before deciding on general pay increases which will impact on the National and Bougainville budgets.

(4) The Bougainville Government shall consult the National Government before making or amending the Bougainville Public Service General Orders (or their equivalent).

**14. ARRANGEMENTS FOR APPOINTMENT OF MOST SENIOR OFFICER IN BOUGAINVILLE PUBLIC SERVICE.**

The Bougainville Government shall consult the Departmental Head of the Department responsible for personnel management matters before appointing a person to be the most senior Public Officer responsible for Public Service matters in Bougainville.

**15. INFORMATION AND MONITORING.**

(1) The National Government shall monitor developments in the Bougainville Public Service.

(2) The Bougainville Government shall -

- (a) keep the National Government informed about developments in the

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- Bougainville Public Service, including proposed changes of policy and budgetary allocations for personnel; and
- (b) facilitate monitoring by the National Government.

***Division 5 - Transitional Provisions relating to National  
Public Service and Bougainville Public Service.***

**16. DELEGATION OF AUTHORITY.**

(1) The transitional arrangements for which provision is made in Subsection (2) shall be initiated on receipt of a request from –

- (a) the Bougainville Interim Provincial Government; or  
(b) the Bougainville Government.

(2) Until such time as the autonomous Bougainville Government establishes the Bougainville Public Service, the National Government shall facilitate progress towards greater autonomy in the management of the Public Service in Bougainville through delegations by the Departmental Head of the Department responsible for personnel management matters in the National Public Service, to –

- (a) while the Bougainville Interim Provincial Government continues in existence – the Provincial Administrator of Bougainville; and  
(b) thereafter – to the person appointed in accordance with Section 14.

**17. IMPLEMENTATION PLAN.**

(1) During the transitional period, the Provincial Administrator for Bougainville, in consultation with the Departmental Head of the Department responsible for personnel management matters, shall plan for implementation of the Bougainville Public Service, including determination of -

- (a) organization structures; and  
(b) terms and conditions; and  
(c) Bougainville General Orders in accordance with Subsection (2); and  
(d) manpower budgets.

(2) The transitional arrangements shall include the development and publication of Bougainville General Orders executed by the Provincial Administrator for Bougainville under powers of delegation to be granted under the *Public Service (Management) Act 1995*.

(3) The plan under Subsection (1) shall be subject to the authority of the Bougainville Government.

**18. INTERPRETATION.**

In this Division, “transitional period” means a period commencing on the date on which the Bougainville Interim Provincial Government or the Bougainville Government requests that

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the agreed arrangement for the delegation of powers in relation to Public Service, the Police and the Correctional Service should commence.

**19. OFFICERS OF THE NATIONAL PUBLIC SERVICE DURING THE TRANSITIONAL PERIOD.**

(1) During the transitional period, officers of the National Public Service will remain as officers of the National Public Service.

(2) On the expiry of the transitional period, officers of the National Public Service shall become officers of the Bougainville Public Service, except for those officers who choose to remain as officers of the National Public Service.

(3) The National Government shall be responsible for the accrued rights and entitlements to the date of expiry of the transitional period of officers who become officers of the Bougainville Public Service.

(4) The rights and entitlements referred to in Subsection (3) shall be fully portable between the National Public Service and the Bougainville Public Service.

(5) During the transitional period, the National Public Service and the Bougainville Public Service shall give proper consideration to –

- (a) the transfer of officers of the National Public Service, who wish to remain in the National Public Service, and who wish to serve elsewhere in Papua New Guinea; and
- (b) the integration or secondment into the Bougainville Public Service of officers who wish to serve in the Bougainville Public Service.

*Division 6. - Functions of Bougainville Police and  
Co-operation with the Police Force.*

**20. MAINTENANCE AND ENFORCEMENT OF NATIONAL LAWS.**

(1) The Bougainville Police and the Police Force established under Section 188(1)(b) (*Establishment of State Services*) of the *Constitution* shall agree to arrangements for maintaining and enforcing National laws.

(2) The National Government, where appropriate working through the Police Force established under Section 188(1)(b) (*Establishment of State Services*) of the *Constitution*, shall inspect and audit the compliance of the Bougainville Police in respect of maintaining and enforcing National laws, and the Bougainville Government shall facilitate such inspections and audits.

(3) Any differences between the National Government and the Bougainville Government in relation to agreed arrangements under Subsection (1) shall be

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resolved through the dispute resolution procedures.

**21. EXERCISE BY THE POLICE FORCE OF ITS POWERS IN BOUGAINVILLE.**

(1) The Police Force established under Section 188(1)(b) (*Establishment of the State Services*) of the *Constitution* shall continue to operate in Bougainville subject to conditions specified in this Organic Law.

(2) The Bougainville Government and the Bougainville Police, and the National Government and the Police Force established under Section 188(1)(b) (*Establishment of the State Services*) of the *Constitution*, shall develop agreed co-operative arrangements to facilitate the exercise of the functions referred to in Subsection (1).

(3) The Bougainville Government and the Bougainville Police shall provide all reasonable assistance to the Police Force established under Section 188(1)(b) (*Establishment of the State Services*) of the *Constitution*, in the exercise of the functions referred to in Subsection (1).

(4) Police Mobile Units of the Police Force established under Section 188(1)(b) (*Establishment of the State Services*) of the *Constitution*, or similar units may be deployed to Bougainville only after consultation (through procedures appropriate to the urgency of the particular situation) and agreement is reached between the National Government and the Bougainville Government in support of that deployment.

(5) The Bougainville Police shall not develop the equivalent of an armed Police Mobile Unit.

**22. CO-OPERATIVE POLICING.**

- (1) The co-operative arrangements for the Bougainville Police shall include -
- (a) mutual assistance in law enforcement; and
  - (b) compatible policing standards, procedures and equipment, including co-operative procurement arrangements.

(2) The Bougainville Police and the Police Force established under Section 188(1)(b) (*Establishment of the State Services*) of the *Constitution*, shall develop agreed arrangements for continuing access by the Bougainville Police to specialist services and other support from the Police Force established under Section 188(1)(b) (*Establishment of the State Services*) of the *Constitution*.

(3) Policing arrangements referred to in this section shall reflect a balance between the following needs:-

- (a) for the fundamentals of criminal law to be consistent and capable of consistent

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- enforcement throughout Papua New Guinea;  
(b) for Bougainville to be able to develop its own approaches to criminal law.

**23. FUNDING OF BOUGAINVILLE POLICE.**

(1) The National Government shall provide to the Bougainville Government funding by way of -

- (a) a guaranteed annual conditional grant for the specific purpose of meeting the recurrent costs of policing by the Bougainville Police in Bougainville; and  
(b) guaranteed conditional grants for the purpose of -  
(i) restoring civilian peacetime policing in Bougainville in accordance with the Agreement; and  
(ii) providing for further development of policing in Bougainville.

(2) The guaranteed annual conditional grant under Subsection (1)(a) -

- (a) shall be of a minimum amount sufficient to support levels of police activities in Bougainville at the date of coming into operation of this Organic Law; and  
(b) shall be adjusted annually on the same basis as the adjustment of the recurrent unconditional grant under Section 48.

(3) Grants to the Bougainville Government under Subsection (1) shall be taken into account when determining progress toward fiscal self-reliance.

(4) The costs of policing in Bougainville consequent upon establishment of the Bougainville Police under the Bougainville Constitution (other than the costs met by the grants in Subsection (1)) that are in excess of the costs of providing the same level of policing in Bougainville by the Police Force established under Section 188(1)(b) (*establishment of the State Services*) of the *Constitution*, will be equitably shared between the National Government and the Bougainville Government.

***Division 7 - Transitional Arrangements for Bougainville  
Policing.***

**24. NATIONAL GOVERNMENT TO FACILITATE PROGRESS TOWARDS  
AUTONOMY IN POLICING ARRANGEMENTS.**

(1) Until such time as the Bougainville Government establishes the Bougainville Police under the Bougainville Constitution, the National Government shall facilitate progress towards greater autonomy in the policing arrangements in Bougainville through delegations by the Commissioner of Police of administrative and operational powers and functions to the Provincial Police Commander in Bougainville.

(2) Arrangements referred to in Subsection (1) shall be implemented on receipt of a request from the Bougainville Interim Provincial Government or the Bougainville Government.

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**25. INITIAL COMPOSITION OF BOUGAINVILLE POLICE.**

The Bougainville Police shall initially consist of members of the Police Force established under Section 188(1)(b) (*Establishment of the State Services*) of the *Constitution* who shall serve on a basis to be agreed.

**26. APPOINTMENT OF POLICE COMMANDER IN BOUGAINVILLE.**

(1) The Commissioner of Police shall consult the Bougainville Executive on the appointment of the Police Commander in Bougainville and shall appoint the nominee of the Bougainville Executive.

(2) The National Government shall make the delegations of administrative and operational powers and functions in accordance with Section 24(1) in such a way that the Police Commander in Bougainville is, in practice, responsible (through a Minister or equivalent) to the Bougainville Interim Provincial Government, and, when it is established, to the Bougainville Government.

**27. DEVELOPMENT OF RECRUITMENT AND TRAINING PLAN.**

The National Government and the Bougainville Government shall develop a recruitment and training plan for building Bougainville Police capacity.

**28. PERSONNEL.**

The Commissioner of Police and the head of the Bougainville Police shall give reasonable consideration to -

- (a) the transfer of Police Force personnel in Bougainville who wish to serve elsewhere in Papua New Guinea; and
- (b) the integration or secondment into the Bougainville Police of those members of the Police Force established under Section 188(1)(b) (*Establishment of State Services*) of the *Constitution* who wish to serve in the Bougainville Police.

**29. NATIONAL POLICE ACT.**

The *Police Act 1998* shall continue to apply in Bougainville, subject to necessary modifications, until legislation passed by the Bougainville Government concerning police comes into operation, and thereafter to the extent necessary to provide for the presence in Bougainville in accordance with the Agreement of members of the Police Force established under Section 188(1)(b) (*establishment of the State Services*) of the *Constitution*.

***Division 8. - Functions of Bougainville Correctional Service  
and Co-operation with the Correctional Service.***

**30. MAINTENANCE AND ENFORCEMENT OF NATIONAL LAWS.**

(1) The Bougainville Correctional Service and the National Correctional Service shall agree to arrangements for co-operating in the management of correctional institutions and

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services under National laws and Bougainville laws.

(2) The National Government, where appropriate working through the National Correctional Service, shall inspect and audit the compliance of the Bougainville Correctional Service in respect of maintaining and enforcing National laws and standards regarding correctional services, and the Bougainville Government shall facilitate such inspections and audits.

(3) Any differences between the National Government and the Bougainville Government in relation to agreement under Subsection (1) shall be resolved through the dispute resolution procedure.

**31. CO-OPERATIVE ARRANGEMENTS.**

(1) The co-operative arrangements for the Bougainville Correctional Service shall include -

- (a) mutual assistance; and
- (b) compatible professional standards, procedures and equipment; and
- (c) co-operative procurement measures including weapons to the extent permitted by the Agreement.

(2) The Bougainville Correctional Service and the National Correctional Service shall develop agreed arrangements for -

- (a) promoting compatible professional standards; and
- (b) procedures concerning the storage, access and use of weapons to the extent permitted by the Agreement; and
- (c) continuing access by the Bougainville Correctional Service to specialist services; and
- (d) exchanges of personnel.

(3) The National Correctional Service may deploy personnel to Bougainville on receipt of a request for assistance from the Bougainville Correctional Service.

(4) Correctional service arrangements referred to in this section shall reflect a balance between the following needs:-

- (a) for the standards of correctional services to be consistent and capable of consistent application throughout Papua New Guinea;
- (b) for Bougainville to be able to develop its own approaches to the containment and rehabilitation of offenders.

**32. FUNDING OF BOUGAINVILLE CORRECTIONAL SERVICE .**

(1) The recurrent costs of the Bougainville Correctional Service shall be met out of the recurrent unconditional grant made by the National Government to the Bougainville Government under Section 48.

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(2) The National Government shall provide to the Bougainville Government funding by way of guaranteed conditional grants for the purpose of -

- (a) restoring civilian peacetime civil authority in Bougainville with a view to reaching normal levels of correctional services elsewhere in Papua New Guinea; and
- (b) providing for restoration and development of correctional services in Bougainville,

such funding to be taken into account in the calculation of the amount of the recurrent unconditional grant in subsequent years.

(3) The costs of establishing and maintaining correctional institutions and services consequent on the establishment of the Bougainville Correctional Service under the Bougainville Constitution (other than the costs referred to in Subsections (1) and (2)) that are in excess of the costs of providing the same level of correctional institutions and services under the National Correctional Service will be equitably shared between the National Government and the Bougainville Government

*Division 9 - Transitional Arrangements for Bougainville  
Correctional Service.*

**33. NATIONAL GOVERNMENT TO FACILITATE PROGRESS TOWARDS AUTONOMY IN ARRANGEMENTS.**

(1) Until such time as the Bougainville Government establishes the Bougainville Correctional Service under the Bougainville Constitution, the National Government shall facilitate progress towards greater autonomy in the correctional service arrangements in Bougainville through delegations by the Commissioner of the National Correctional Service of administrative and operational powers and functions to the Provincial Correctional Service Commander in Bougainville.

(2) Delegations under Subsection (1) of administrative and operational functions and powers shall be made so that the Provincial Correctional Service Commander is, in practice, responsible (through a Provincial Minister or the equivalent) to the Bougainville Interim Provincial Government and, when it is established to the Bougainville Government.

(3) Arrangements referred to in Subsection (1) shall be implemented on receipt of a request from the Bougainville Interim Provincial Government.

**34. DEVELOPMENT OF RECRUITMENT AND TRAINING PLAN.**

The National Government and the Bougainville Government shall develop a recruitment and training plan for building Bougainville Correctional Service capacity.

**35. PERSONNEL.**

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The National Correctional Service shall give reasonable consideration to -

- (a) the transfer of National Correctional Service personnel in Bougainville who wish to serve elsewhere in Papua New Guinea; and
- (b) the integration or secondment into the Bougainville Correctional Service of those members of the National Correctional Service who wish to serve in the Bougainville Correctional Service.

**36. APPOINTMENT OF CORRECTIONAL SERVICE COMMANDER IN BOUGAINVILLE.**

The Commissioner of the Correctional Service shall consult the Bougainville Executive on the appointment of the Correctional Service Commander in Bougainville and shall appoint the nominee of the Bougainville Executive.

**37. NATIONAL CORRECTIONAL SERVICE ACT.**

The National Correctional Service Act shall continue to apply in Bougainville, subject to necessary modifications, until the autonomous Bougainville Government passes its own legislation concerning correctional services.

**PART III. - FISCAL ARRANGEMENTS.**

*Division 1. - Preliminary.*

**38. INTERPRETATION.**

In this Part, unless the contrary intention appears -

- “Bougainville tax office” means an office (by whatever name known) established under Bougainville law by the Bougainville Government for the purpose of administering taxes in Bougainville;
- “conditional grant” means a grant under Section 51;
- “Internal Revenue Commission” means the Internal Revenue Commission of the National Government;
- “recurrent unconditional grant” means a grant under Section 49;
- “restoration” means the time when Bougainville has returned to a standard of peace and development approximating to that of the remainder of Papua New Guinea;
- “restoration and development grant” means a grant under Section 50;
- “trust account” means a trust account established under the *Public Finances (Management) Act 1995*;
- “value added tax” means value added tax under the *Value Added Tax Act 1998*.

*Division 2. - Revenue Raising Arrangements.*

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**39. CERTAIN REVENUE TO BE CREDITED TO TRUST ACCOUNT.**

(1) For the purposes of this section and Section 41, “company tax” means tax on the profits of companies whose principal place of business or whose main business activity is in Bougainville.

(2) For the purposes of this section, the National Minister responsible for internal revenue matters shall establish a trust account for Bougainville into which shall be paid all revenue from company tax, duties of customs collected in Bougainville and 70% of value added tax collected in Bougainville.

(3) The revenues referred to in Subsection (2) shall be credited against the annual recurrent unconditional grant at least until fiscal self-reliance.

**40. CERTAIN REVENUES AFTER FISCAL SELF-RELIANCE.**

(1) After fiscal self-reliance all company tax, duties of customs collected in Bougainville and 70% of value added tax collected in Bougainville (in excess of the costs of recurrent activities) shall be shared between the National Government and the Bougainville Government so as to contribute to both National and Bougainville development.

(2) Issues involved in revenue-sharing under Subsection (1) shall be considered during the review under Section 337 (*reviews*) of the *Constitution*.

**41. PERSONAL INCOME TAX.**

(1) The National Government shall impose and collect personal income tax from Bougainville in accordance with this section until restoration.

(2) Revenue from personal income tax collected from Bougainville shall be paid directly to a trust account established for the purpose by the National Minister responsible for internal revenue matters.

(3) Moneys held in the trust account under Subsection (2) shall be -  
(a) distributed to the Bougainville Government at its request; and  
(b) used by the Bougainville Government for the purpose of supporting development.

(4) The Bougainville Government may, until fiscal self-reliance, adjust the rate of personal income tax by no more than five from the number of percent at which personal income tax is fixed for that time by the National Government.

(5) The Bougainville Government shall, after restoration, assume the functions and powers to impose, set rates of and collect personal income tax in Bougainville.

**42. REVENUES FROM OTHER NATIONAL GOVERNMENT TAXES.**

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The revenues from all taxes imposed under National law, excepting those taxes referred to in Sections 40(2)(a) and 41(1), but including 30% of value added tax, shall be paid directly to the Bougainville Government.

**43. POWER TO SET RATES FOR TAXES.**

(1) The power to set rates for taxes, additional to and other than income tax, shall be as follows:-

- (a) the National Government shall have the power to set rates for -
  - (i) subject to Paragraph (b), company tax; and
  - (ii) value added tax; and
  - (iii) customs duties;
- (b) the Bougainville Government shall have the power to set rates for:-
  - (i) after fiscal self-reliance, company tax, subject to Subsection (2); and
  - (ii) all other taxes under its own tax administration under Section 44.

(2) The rate of company tax which may be set by the Bougainville Government under Subsection (1)(b)(i) shall not vary at any time by more or less than five from the number of percent at which company tax is fixed for that time by the National Government.

**44. BOUGAINVILLE GOVERNMENT MAY ESTABLISH ITS OWN TAX ADMINISTRATION, ETC.,**

The Bougainville Government has power –

- (a) to establish its own tax administration for all taxes imposed by the National Government other than those referred to in Section 43(b); and
  - (i) fees for the licensing of places where intoxicating liquor is sold; and
  - (ii) fees for licences to operate or carry on gambling, lotteries and games of chance; and
  - (iii) developed property tax; and
  - (iv) motor vehicles registration tax; and
  - (v) road-users tax; and
  - (vi) such other taxes as ever have been available to a Provincial Government under the *Organic Law on Provincial Governments and Local-level Governments* and the *Organic Law on Provincial Government (repealed)*; and
- (b) to fix rates in respect of all taxes under its own tax regime.

**45. COLLECTION OF TAXES.**

(1) The Internal Revenue Commission shall, for and on behalf of the Bougainville Government, collect all taxes of the Bougainville Government under Section 44(a) until such time as the Bougainville Government has established a Bougainville tax office.

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(2) On and after the establishment of a Bougainville tax office, the Bougainville tax office may collect -

- (a) all or any taxes under the Bougainville Government's tax administration under section 44; and
- (b) by agreement with the Internal Revenue Commission, for and on behalf of the Internal Revenue Commission, company tax, value added tax and customs duties.

**46. AUDIT OF TAXES.**

The National Government and the Bougainville Government shall each have the right to audit –

- (a) taxes paid into the trust accounts established under Sections 39(2) and 41(2); and
- (b) all taxes collected by the Internal Revenue Commission for and on behalf of the Bougainville Government and all taxes collected by the Bougainville Government for and on behalf of the Internal Revenue Commission.

***Division 3. - Financial Grants and Assistance.***

**47. GRANTS GENERALLY.**

(1) The National Government shall make grants including the following grants to the Bougainville Government in accordance with this Division:-

- (a) recurrent unconditional grants; and
- (b) a Police grant; and
- (c) restoration and development grants; and
- (d) conditional grants for specific purpose; and
- (e) an establishment grant, in accordance with the Agreement.

(2) The amount of grants specified in Subsection (1)(b) and (c) shall vary, in accordance with formulae agreed between the National Government and the Bougainville Government, in relation to increase in the revenue of the Bougainville Government.

**48. RECURRENT UNCONDITIONAL GRANTS.**

(1) For each fiscal year up to and including fiscal self-reliance the National Government shall, out of moneys lawfully available for the purpose, make an unconditional grant to the Bougainville Government to meet the costs of functions –

- (a) for which the Bougainville Government is responsible; and
- (b) for which the Bougainville Government will become responsible during the year in respect of which the grant is made,

based on the cost of such functions.

(2) The amount of grant payable under Subsection (1) in each fiscal year

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shall be –

- (a) adjusted annually in the same manner as annual grants for a Provincial Government activity under the *Organic Law on Provincial Governments and Local-level Governments*; and
- (b) paid in such a way that it can be effectively and efficiently used and applied for the purposes for which it was provided in the year for which it was provided.

(3) Where a development project is proposed, the National Government and the Bougainville Government shall consult on the funding of future maintenance and operational costs of the project.

(4) Consultation under Subsection (3) shall be based on mutual recognition of financial constraints on the National Government, the particular situation in Bougainville during the early phase of restoration, and cost sharing.

(5) The Bougainville Government shall have full control over the use of the recurrent unconditional grant.

(6) The Bougainville Government will prepare plans and consult with the National Government in cases where it proposes to re-allocate funds in ways which affect the continued employment of officers of the National Public Service or the Bougainville Public Service or other forward commitments.

**49. RESTORATION AND DEVELOPMENT GRANT.**

(1) The National Government shall make to the Bougainville Government an annual restoration and development grant no less than the 2001 Public Investment Programme appropriations for Bougainville.

(2) The annual restoration and development grant under Subsection (1) shall be adjusted upwards *pro rata* in accordance with the National Public Investment Programme averaged over a rolling five year period.

(3) The National Government and the Bougainville Government shall agree to the establishment by the Bougainville Government of a mechanism, including both National Government and Bougainville Government representation, which shall be controlled by the Bougainville Government or by an authority of the Bougainville Government, to coordinate the restoration and development programme in Bougainville.

(4) The National Government representation in the mechanism referred to in Subsection (3) shall be subject to review in the future review process under Section 337(*Reviews*) of the *Constitution*.

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**50. CONDITIONAL GRANTS.**

The National Government may make to the Bougainville Government, conditional grants, for specific purposes –

- (a) proposed by the National Government after consultation with the Bougainville Government and implemented after consultation and agreement between the Governments; or
- (b) provided for in the Agreement.

*Division 4. - Fiscal Accountability.*

**51. PROCEDURE TO FOLLOW AUDITS IN CERTAIN CIRCUMSTANCES.**

Where an audit carried out by the Auditor-General under Part XIV (*Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*) of the *Constitution* or the Agreement discloses systematic and widespread abuse (or misuse) of funding provided to the Bougainville Government by way of recurrent unconditional grants or conditional grants, the following procedure shall be followed:-

- (a) the National Government shall advise the Bougainville Government of the details of the abuse (or misuse);
- (b) the Bougainville Government shall immediately investigate the concerns raised by the National Government and shall take appropriate steps to remedy the situation as soon as is reasonably possible;
- (c) where the Bougainville Government, after investigation, disagrees with the concerns of the National Government or where the National Government is not satisfied with the response of the Bougainville Government, the National Government and the Bougainville Government shall consult with each other to resolve the differences;
- (d) where consultation under Paragraph (c) does not resolve the matter, the Auditor-General and the auditor responsible for auditing accounts for the Bougainville Government shall consider the matters in question and provide a report making joint recommendations to resolve these matters;
- (e) the Bougainville Government shall implement the reasonable joint recommendations under Paragraph (d) to the satisfaction of the Auditor-General and the auditor responsible for auditing accounts on behalf of the Bougainville Government;
- (f) where the Bougainville Government fails to implement recommendations under Paragraph (d) within a reasonable time, the National Government may withhold the further release of funds (other than the costs of essential services, such as salaries and medical supplies) until such time as the recommendations have been attended to;
- (g) where the National Government or the autonomous Bougainville Government disagrees on reasonable grounds as to the recommendations, or should there be

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a dispute as to whether the Bougainville Government has implemented the recommendations, the dispute resolution procedures may be invoked.

**PART IV. - BOUGAINVILLE REFERENDUM.**

***Division 1. - Preliminary.***

**52. APPLICATION OF THIS PART.**

This Part applies to and in respect of the Referendum.

**53. INTERPRETATION.**

In this Part, unless the contrary intention appears -

"available newspaper" -

- (a) if a newspaper circulates in Bougainville and in the rest of the country - means that newspaper; and
- (b) if there is no newspaper referred to Paragraph (a) but at least one newspaper circulates in Bougainville and another circulates in the rest of the country – means each of those newspapers;

"Bougainville constitutional office-holder" means a Bougainville constitutional office-holder appointed under or in pursuance of the provisions of Section 321 (*Bougainville Constitutional office-holders*) of the *Constitution*;

"Bougainville Gazette" means the official journal of the Bougainville Government (by whatever name known);

"electoral authority" means the Electoral Commission or the Bougainville Electoral authority;

"the Agency" means the agency or agencies through which the Referendum is to be conducted by virtue of an arrangement under Section 20C(8);

"the Bougainville Electoral authority" means the authority responsible for conducting elections to the legislature of the Bougainville Government;

"the Electoral Commission" means the body continued in establishment by Section 5(1) of the *Organic Law on National and Local-level Government Elections*;

"the Gazettes" means the National Gazette and the Bougainville Gazette;

"the Governments" means the National Government and the Bougainville Government.

**54. PREPARATORY STEPS MAY BE TAKEN BEFORE 10TH ANNIVERSARY.**

(1) Before the tenth anniversary of the election of the first Bougainville Government after the commencement of this Law, the electoral authorities and the Governments may begin consultations and agree on any matters required for the purposes of this Law.

(2) Without limiting the generality of Subsection (1), the matters required for the purposes of this Law include funding and budgetary requirements.

***Division 2. – Eligibility to Vote.***

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**55. DETAILED CRITERIA TO BE FINALISED.**

(1) Before the date for the Referendum is agreed in accordance with Section 338 (*Referendum to be held*) of the *Constitution*, the Governments shall consult and agree, in writing, on the detailed criteria to determine the link or links with Bougainville that a person (referred to in the Agreement as a "non-resident Bougainvillean") must have in order to be entitled to vote at the Referendum.

(2) The agreed criteria shall be notified in the Gazettes and in an available newspaper.

(3) Any differences between the Governments in reaching agreement on the detailed criteria shall be resolved in accordance with the dispute resolution procedure.

***Division 3. – Provision for Exercise of Administrative Functions.***

**56. INTERGOVERNMENTAL AGREEMENT RELATING TO THE AGENCY.**

(1) The Governments and the electoral authorities shall consult and agree on the administrative requirements for conducting the Referendum.

(2) An agreement under Subsection (1) shall reflect the joint responsibility of the electoral authorities for the conduct of the Referendum and -

(a) shall provide for the electoral authorities to implement the agreement through -

- (i) the Electoral Commission; or
- (ii) the Bougainville Electoral authority; or
- (iii) the electoral authorities acting jointly; or
- (iv) a body established under Section 58; and

(b) shall provide for the inclusion of provisions corresponding in substance to Part VIII of the *Public Finances (Management) Act 1995*; and

(c) may provide for -

- (i) the creation of administrative structures within one or both of the electoral authorities; and
- (ii) the secondment of staff from one electoral authority to the other; and
- (iii) the secondment of staff from the electoral authorities to a body established under Section 58; and
- (iv) one or more members of the management of the authority or body referred to in Paragraph (a) to be a constitutional office holder or a Bougainville constitutional office-holder.

(3) For the purposes of Subsection (1), the requirement for the Governments and the

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electoral authorities to consult is satisfied by -

- (a) the Governments consulting together without the electoral authorities; and
- (b) the electoral authorities consulting together without the Governments.

**57. ADMINISTRATIVE ARRANGEMENTS RELATING TO THE AGENCY.**

(1) Subject to Subsection (8), the electoral authorities shall consult and agree on a draft arrangement to implement an agreement under Section 56.

(2) As soon as practicable after a draft arrangement has been agreed under Subsection (1), the electoral authorities shall forward a copy of the draft to the Governments.

(3) The National Government or the Bougainville Government may object to a draft arrangement within 14 days after it has been agreed to.

(4) The Governments shall consult on any objections under Subsection (3).

(5) Where the Governments are unable to resolve an objection under Subsection (3), the draft arrangement shall be reconsidered and, if necessary, but subject to Subsection (8), revised in accordance with the dispute resolution procedure.

(6) Where -

- (a) no objection is made to a draft arrangement; or
- (b) a draft arrangement is revised in accordance with Subsection (5),

the electoral authorities shall, by instrument in writing, enter into an arrangement in accordance with the terms of the draft or the terms of the draft as revised, as the case may be.

(7) The electoral authorities shall notify the arrangement in the Gazettes and in an available newspaper, and the arrangement so notified shall take effect according to its terms.

(8) Where a draft arrangement or a revised draft arrangement provides for the electoral authorities to act jointly, the arrangement shall provide for the nomination of one of the electoral authorities to enter into contracts, hold property and take or defend legal proceedings on behalf of both electoral authorities.

(9) Where the arrangement includes a nomination under Subsection (8), the electoral authorities shall notify the nomination in the notice under Subsection (7) or in a separate notice in the Gazettes and in an available newspaper, and the nomination so notified shall take effect according to its terms.

(10) In this section, "arrangement" means an arrangement entered into under Subsection (6).

**58. OPTIONAL ADMINISTRATIVE AGENCY.**

(1) This section only applies where an arrangement is made for the Referendum to be conducted through a body to be established under this section.

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(2) Subject to Subsection (3), the Head of State, acting with, and in accordance with, the advice of the Electoral Commission, may issue a charter, to take effect according to its terms, to establish a body for the purposes of this Part.

(3) The charter may only be issued, amended or revoked after consultation and agreement between the Electoral Commission and the Bougainville Electoral authority.

(4) Without limiting Subsection (2), the charter may provide for -

- (a) the body to be a body corporate, with a common seal and capacity to enter into contracts, hold property, and sue and be sued; and
- (b) the body to issue reports relating to its affairs as required by the charter to persons specified in the charter; and
- (c) the body to be wound up after the holding of the Referendum and for the discharge of its liabilities and disposal of its assets.

**59. INDEPENDENCE OF AGENCY.**

Except as expressly provided in this Law, the Agency is not subject to direction by any person including the National Government or the Bougainville Government.

**60. PROHIBITION ON POLITICAL ACTIVITY.**

(1) The Agency shall carry out its duties in an impartial manner without regard to the outcome of the Referendum.

(2) In particular, the Agency shall not engage in promoting any particular outcome of the Referendum, or support any person or group promoting a particular outcome of the Referendum.

***Division 4 - Conduct of Referendum***

**61. RULES RELATING TO THE CONDUCT OF THE REFERENDUM.**

(1) The Referendum shall be conducted in accordance with the provisions of Schedule 1.

(2) The headings and section headings following Section 71 and preceding the heading to Schedule 1 are set out for information only and do not form part of this law.

***Division 5 - Further provision and contingencies***

**62. RESOLVING DIFFICULTIES.**

(1) In the event of a difficulty arising from an inconsistency, gap or uncertainty in the operation of the provisions of this Part -

- (a) the Courts, for the purpose of the interpretation and enforcement; or

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(b) the Governments, for the purpose of consultations with one another; or  
(c) the Agency, for the purpose of administration,  
may proceed to resolve the difficulty in the light of the primary sources, and by way of  
analogy from relevant laws.

(2) In this section -

"primary sources" means -

(a) the Constitution including, in particular, the National Goals and  
Directive Principles; and

(b) the Agreement;

"relevant laws" means -

(a) the *Organic Law on National and Local-level Government  
Elections*; and

(b) other laws of Papua New Guinea relating to elections and  
referendums; and

(c) similar legislation from other jurisdictions.

**63. LAWS MAY CONFER ADDITIONAL POWERS, ETC.**

(1) The purpose of this section is to avoid any doubt about the capacity of legislation  
to make provision for matters that cannot be anticipated at the time of making this Law.

(2) Subject to this Law, an applicable law may confer powers, functions, duties or  
responsibilities on the Agency or make other provision in relation to the conduct of the  
Referendum.

(3) A provision of an applicable law has no effect to the extent that it is inconsistent  
with this Law but such a provision shall be taken to be consistent with this Law to the extent that  
it is capable of operating concurrently with this Law.

(4) In this section -

"applicable law" means -

(a) an Act of the National Parliament passed after, and reciting  
consultation and agreement with, the Bougainville Government; and

(b) a law of Bougainville passed after, and reciting consultation and  
agreement with, the National Government.

**PART V - MISCELLANEOUS**

**64. BOUGAINVILLE GOVERNMENT PURPOSES TO BE PUBLIC PURPOSES**

(1) The purposes of this Organic Law and of the system of Autonomous  
Government for Bougainville established by Part XIV (*Peace-Building in Bougainville –  
Autonomous Bougainville Government and Bougainville Referendum*) of the  
*Constitution* are public purposes for the purposes of the *Constitution* and of all Acts of

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the Parliament.n

(2) A Bougainville law may declare that a purpose is a public purpose for the purposes of Section 53 (*protection from unjust deprivation of property*) of the *Constitution*.

**65. POWERS, PRIVILEGES AND IMMUNITIES**

A Bougainville law may make provision declaring the powers (other than legislative powers), privileges and immunities of the Bougainville legislature and of its members and committees.

**66. CONSTITUTIONAL REGULATIONS.**

(1) The Head of State, acting with, and in accordance with, the advice of the National Executive Council may make regulations, not inconsistent with this Law, prescribing all matters that by this Law are required or permitted to be prescribed, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Law.

(2) Without limiting the generality of Subsection (1), the Regulations made for the purposes of Part IV may provide for and in relation to -

- (a) penalties not exceeding K200.00 for contraventions of the Regulations; and
- (b) the procedure in relation to the imposition and recovery of penalties for offences against the compulsory enrolment provisions of that Part.

(3) The Regulations may not be made, amended or repealed except after consultation and agreement with the Bougainville Executive.

**PART.VI. - ADDITIONAL TRANSITIONAL PROVISIONS.**

**67. TRANSFER OF ASSETS, ETC.,**

All assets and liabilities of the Bougainville Interim Provincial Government immediately before the establishment of the Bougainville Government are, on that establishment, transferred to and become assets and liabilities of the Bougainville Government.

**68. FORMER PROVINCIAL LAWS.**

(1) Laws made by the Bougainville Interim Provincial Government are deemed to have been repealed on the establishment of the Bougainville Government.

(2) All or any laws or any part of a law -

- (a) made by the Bougainville Interim Provincial Government under the

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*Organic Law on Provincial Governments and Local-level Governments*, notwithstanding the repeal effected by Subsection (1); and

- (b) made by any Provincial Government (by whatever name known) of Bougainville Province (by whatever name known) (other than a Provincial Constitution) under the *Organic Law on Provincial Government (repealed)*, notwithstanding any repeal or deemed repeal of such laws,

are, on the establishment of the Bougainville Government, deemed to be in force insofar as not inconsistent with Part XIV (*Peace-Building on Bougainville – Autonomous Bougainville Government and Bougainville Referendum*) of the *Constitution* and this Organic Law, and may be amended or repealed by the Bougainville Government.

(3) Any references in a law or part of a law adopted under Subsection (2) to offices or bodies under –

- (a) the *Organic Law on Provincial Government (repealed)*; or  
(b) the *Organic Law on Provincial Governments and Local-level Governments*,

shall be read as references to corresponding offices and bodies established under the Bougainville Constitution or Bougainville laws.

**69. SAVING OF CONTRACTS, ETC.,**

All contracts and arrangements, other than contracts of employment, entered into, made with or addressed to the Bougainville Interim Provincial Government are, to the extent that they were immediately before the establishment of the Bougainville Government binding on and enforceable against the Bougainville Interim Provincial Government, binding on and of full force and effect against or in favour of the Bougainville Government as fully and effectually as if the Bougainville Government had been a party to them or bound by them or entitled to the benefit of them.

**70. REGISTRATION OF TITLE OF LAND.**

(1) Where any property vested in the Bougainville Interim Provincial Government is land registered under the *Land Registration Act* (Chapter 191) the Registrar of Titles, shall, without formal transfer, on application in that behalf by the Bougainville Government, enter the Bougainville Government on the register kept under that Act, and on entry or registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

(2) No stamp duty or other duty, tax or fee is payable on a registration made under Subsection (1).

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**71. PENDING LEGAL PROCEEDINGS.**

Where, immediately before the establishment of the Bougainville Government, any arbitration, action or proceeding was pending or existing by, against or in favour of the Bougainville Interim Provincial Government, it does not, on the commencement date, abate or discontinue but it may be prosecuted, continued or enforced by, against or in favour of the Bougainville Government.

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  - "officer"
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  - "Police officer"
  - "polling booth"
  - "polling period"
  - "presiding officer"
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Law Sec. 61.

**SCHEDULE 1.**

RULES RELATING TO THE CONDUCT OF THE REFERENDUM

**PART I. - PRELIMINARY.**

**Sch.1.1 INTERPRETATION**

- (1) In this Schedule, unless the contrary intention appears -
- "Assistant" means a person who assists in the compilation of rolls for voting purposes;
  - "Bougainville" means the areas of land and sea defined in accordance with Section 278(1) (*Interpretation*) of the *Constitution*;
  - "Bougainville Gazette" means the official journal of the Bougainville Government (by whatever name known);
  - "Bougainville Government" means the Bougainville Government established in accordance with Part XIV.2 (*Arrangements for the establishment of Bougainville Government*) of the *Constitution*;
  - "fax" means a facsimile message sent by electronic means;
  - "interested party" means the National Government, the Bougainville Government or a recognised interest group;
  - "international observer" means an international observer invited under Section Sch.1.11;
  - "local-level government" means a local-level government (by whatever name

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- known) established under a law of Bougainville;
- "non-resident voter" means a person who is entitled to vote at the Referendum according to the criteria determined under Section Sch. 1.55(1);
- "officer" means an officer or employee of the National Public Service, a member of the Defence Force, a member of the Police Force, a member of the Correctional Service, an officer or employee of a Bougainville Government Service or an officer or employee of a local-level government or an officer or employee of a governmental body;
- "Police Force" means the Police Force established under Paragraph 188(1)(b) (*Establishment of the State Services*) of the *Constitution* or the Bougainville Police;
- "Police Officer" means a member of the Police Force;
- "polling booth" means the polling place or part of the polling place determined by the presiding officer to be a polling booth under Section Sch.1.69(2);
- "polling period", in relation to the Referendum, means the period for polling the first and last days of which are specified in the writ for that Referendum and includes any extension of that period granted under Section Sch.1.125;
- "presiding officer" means a person appointed under Section Sch.1.69(1)(a);
- "recognised interest group" means, subject to Subsection Sch.1.10(7), a group declared under Section Sch.1.10(4);
- "Referendum" means the referendum provided for under Part XIV.7 (*Bougainville Referendum*) of the *Constitution*;
- "roll" means a roll of voters under Section Sch.1.15(1);
- "the Agency" means the agency or agencies through which the Referendum is to be conducted by virtue of an arrangement under Section 57(6).
- "the Gazettes" means the National Gazette and the Bougainville Gazette;
- "the Governments" means the National Government and the Bougainville Government.
- "the Returning Officer", in relation to a voting district, means the Returning Officer for that voting district;
- "the writ" means the writ issued under Section Sch.1.43;
- "voter" means a person whose name appears on a roll;
- "voting district" means an area that is a voting district under Section Sch.1.12;
- "voting officer" includes a Returning Officer, presiding officer, substitute presiding officer, assistant presiding officer, poll clerk, interpreter and doorkeeper.

(2) Notwithstanding any other law, where a time limit is imposed under this Schedule for the taking of an action, then unless the contrary intention appears, that time limit is mandatory.

**PART II. - ADMINISTRATION.**

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***Division 1. - Exercise of Powers and Performance of Functions***

**Sch.1.2. DELEGATION.**

- (1) The Agency may, by instrument in writing, delegate to a person -
  - (a) all or any of its powers and functions under this Schedule (except this power of delegation and any prescribed power or function); and
  - (b) all or any of the powers and functions of a Returning Officer under this Schedule.
- (2) A power or function delegated under Subsection (1) may be had, exercised and performed by the delegate in relation to such voting district or voting districts, or to such matters or class of matters, or to the whole of the country, as is specified in the instrument of delegation.
- (3) A delegation under Subsection (1) is revocable, in writing, at will.
- (4) A delegation referred to in Subsection (1)(a) does not prevent the exercise or performance of a power or function by the Agency.
- (5) A delegation referred to in Subsection (1)(b) does not prevent the exercise or performance of a power or function by the Agency.

***Division 2. - Resources***

**Sch.1.3. PROVISION OF RESOURCES, ETC.**

- (1) It is the duty of the Governments, to ensure, as far as it is within their respective legal powers, that all arrangements are made, staff, facilities and funding provided and all steps taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the functions of the Agency and of each Returning Officer.
- (2) Without derogating from Subsection (1), the National Department responsible for personnel matters and the corresponding Bougainville Government organisation shall, when so requested by the Agency, make available to the Agency, and to each Returning Officer, such staff as may be necessary for the proper and convenient performance of their functions.

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*Division 3. - Personnel*

**Sch.1.4. RETURNING OFFICERS.**

The Agency shall, by instrument in writing, appoint a Returning Officer for each voting district, who shall be charged with the duty of giving effect to this Law within or for his voting district, subject to any directions of the Agency.

**Sch.1.5. ASSISTANT RETURNING OFFICERS.**

The Agency may, by instrument in writing, appoint a person to be an Assistant Returning Officer for a portion of a voting district for which less than the prescribed number of voters are enrolled.

**Sch.1.6. ASSISTANTS.**

(1) The Agency, by instrument in writing, may appoint persons to assist in the compilation and revision of the rolls.

(2) A person appointed under this Section has such functions and duties as are prescribed or as the Agency directs.

**Sch.1.7. NOTIFICATION OF APPOINTMENTS.**

Appointments under this Division shall be notified in the Gazettes and in an available newspaper.

*Division 4. - Political Activity*

**Sch.1.8. PROHIBITION ON POLITICAL ACTIVITY.**

(1) Referendum personnel shall carry out their duties in an impartial manner without regard to the outcome of the Referendum.

(2) In particular, Referendum personnel shall not engage in promoting any particular outcome of the Referendum, or support any person or group promoting a particular outcome of the Referendum.

- (3) In this section, "Referendum personnel" means
- (a) the staff and management of the Agency; and
  - (b) Returning Officers, Assistant Returning Officers and Assistants.

**PART III. - PROMOTION OF REFERENDUM.**

**Sch.1.9. PROMOTION OF PUBLIC INVOLVEMENT.**

- (1) The functions of the Agency include -
- (a) the promotion of informed debate on each side of the question or questions to be put at the Referendum ; and
  - (b) encouraging wider public interest and involvement in ensuring that the

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Referendum is conducted in a free and fair manner for the purposes of Section 341 of the *Constitution*.

(2) The steps that the Agency may take include the holding of public meetings, and the preparation and distribution of literature to raise public awareness of the issues referred to in Subsections (1)(a) and (b).

(3) The Agency shall develop a policy for promoting public involvement, including the criteria for the recognition of groups under Section Sch.1.10.

(4) The Agency shall publicise its policy by notice published in the Gazettes and in an available newspaper.

**Sch.1.10. RECOGNISED INTEREST GROUPS.**

(1) The Agency may, by notice published in the Gazettes and in an available newspaper, and by notice to local-level governments, invite persons representing groups whose members have a common interest in the Referendum to apply in writing for recognition under this section.

(2) An application under this section shall specify the nature of the group's interest in the Referendum and such other matters as are prescribed.

(3) In its consideration of an application under this section, the Agency shall take into account the policy developed under Section Sch.1.9, and without limiting the considerations that the Agency may take into account, shall consider -

- (a) the appropriate number of groups that ought to be recognised in respect of a particular area (which may be none), having regard to -
  - (i) the need to avoid unreasonably large crowds of people in the vicinity of polling places whose presence might intimidate voters; and
  - (ii) the need to ensure that the proceedings of the poll and the scrutiny are not disrupted by the presence of too many scrutineers in the limited space available for those purposes; and
  - (iii) the need to avoid communal friction; or
- (b) the character of a particular group seeking recognition, having regard to -
  - (i) the extent to which the group represents a significant part of the population in a voting district; and
  - (ii) the desirability of ensuring, as far as reasonably practicable, that a reasonable balance is achieved in the areas in relation to which groups are recognised of views representing all sides of the referendum question or questions.

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- (4) Where the Agency is satisfied that the group has a sufficient interest, it shall declare the group to be a recognised interest group for the purposes of this Schedule.
- (5) A declaration under Subsection (4) may declare a group to be a recognised interest group in relation to a particular place or a particular aspect of the Referendum.
- (6) Without limiting the scope of Subsection (5), a declaration under Subsection (4) may declare a group to be a recognised interest group in relation to any one or more of the following:-
- (a) a particular area or areas; or
  - (b) a specified polling booth or booths; or
  - (c) the poll only (whether or not at a particular place); or
  - (d) the scrutiny only (whether or not at a particular place); or
- (7) For the purposes of this Schedule, a provision that refers to a recognised interest group that has been declared in relation to a particular place or a particular aspect of the Referendum in accordance with Subsection (5), shall apply only to the extent to which its application is consistent with the scope of that declaration.
- (8) A declaration under Subsection (4) shall be notified in the Gazettes and in an available newspaper.
- (9) The Agency may issue identifying insignia to one or members of a recognised interest group on such terms as the Agency determines.

**Sch.1.11. INTERNATIONAL OBSERVERS.**

- (1) The Governments shall consult and agree on the international observers to be invited to observe the conduct of the Referendum, and resolve any disagreement relating to an invitation in accordance with the dispute resolution procedure.
- (2) The Agency shall issue identifying insignia to each international observer.
- (3) The Agency, a Returning Officer, presiding officer or other person in authority in relation to the conduct of the Referendum at a particular time and place shall afford an international observer full and free access to enable the observer to observe all aspects of the conduct of the Referendum consistently with the requirements of secrecy of the ballot and respect for the integrity of the referendum process.
- (4) Without limiting Subsection (3) but Subject to Subsection (5), an international observer is deemed to be an approved person for the purpose of any provision of this Schedule that limits the presence of persons at any particular time and place to those "approved" (or words to similar effect) by the Agency, a Returning Officer, presiding officer or other person in

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authority in relation to the conduct of the Referendum at that time and place.

(5) The fact that an international observer is deemed to be an approved person for the purpose of a provision of this Schedule does not permit the international observer to sign an endorsement or other record required under this Schedule.

(6) In this section -

"conduct of the Referendum " includes -

- (a) the polling; and
- (b) delivery of the ballot-boxes to the counting centre; and
- (c) the scrutiny (including any re-counts);

"full and free access" includes -

- (a) the provision of information (including, in particular, the polling schedule); and
- (b) the provision of transport having regard to the resources available at the time and the need to ensure that ballot-boxes are forwarded for the purposes of scrutiny with the least possible delay.

**PART IV. – VOTING DISTRICTS AND POLLING PLACES.**

**Sch.1.12. ESTABLISHMENT OF VOTING DISTRICTS.**

(1) The Agency shall, by instrument, determine the areas that in its view are most appropriate to be voting districts for the purposes of the Referendum including one or more areas outside Bougainville to be voting districts for non-resident voters.

(2) For the purposes of Subsection (1), the Agency may adopt existing electorates in Bougainville to be voting districts.

(3) The Agency shall publicise the location, extent and boundaries of each voting district by notice in the Gazettes, in an available newspaper and to local-level governments.

(4) A notice under Subsection (3) may describe a voting district by means of a map, description or any other means (or a combination of these) that sufficiently identifies the voting district for persons in the area of the voting district.

(5) In this section, "electorate" means an electorate established under a law made by the National Parliament, or an electorate established under a law of Bougainville.

**Sch.1.13. POLLING PLACES.**

Subject to Section Sch.1.14, the Agency shall, by instrument, appoint such number of polling places for each voting district as it thinks necessary and practicable.

**Sch.1.14. PROCEDURE FOR APPOINTING POLLING PLACES.**

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(1) Where the Agency proposes to appoint polling places it shall notify its proposals in the Gazettes and in an available newspaper and shall notify local-level governments.

(2) Subject to Subsection (2A) an interested person may object to a proposed appointment of one or more polling places within 21 days of notification of the proposal in the National Gazette and the Bougainville Gazette.

(2A) Where the notification referred to in Subsection (2) appears in the National Gazette and the Bougainville Gazette on different days, the period of 21 days shall be calculated from the later of those days of publication.

(5) Subject to Subsection (6), where -  
(a) no objection is made to a proposed appointment; or  
(b) an objection is made and in accordance with the dispute resolution procedure it has been decided to appoint a polling place,  
the Agency shall make the appointment accordingly.

(6) When all objections (if any) for all voting districts have been resolved, the Agency shall notify the appointments in the Gazettes and in an available newspaper, and shall notify local-level governments.

(7) In this Section, "interested person" means -  
(a) the National Government, the Bougainville Government or a local-level government; or  
(b) a voter.

**PART V. – ROLLS OF VOTERS.**

**Sch.1.15. REQUIREMENT FOR ROLLS OF VOTERS.**

(1) There shall be a roll of voters for each voting district.

(2) The only persons on a roll of voters for a voting district shall be persons entitled to vote in the Referendum under Section Sch.1.23.

(3) For the purpose of effectively administering the Referendum, the Agency may arrange for the roll for a voting district to be divided into smaller units corresponding to different areas.

**Sch.1.16. ADOPTION OF EXISTING ROLLS.**

(1) The Agency may adopt existing electoral rolls in Bougainville for the purposes of the Referendum.

(2) Upon the receipt by the Returning Officer of a roll referred to in Subsection (1),

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the Returning Officer shall –

- (a) make additions, alterations and corrections in it; and
- (b) remove names from it,

in accordance with Section Sch.1.23 and information received by him.

(3) In this section, "electoral rolls" means electoral rolls prepared under a law made by the National Parliament, or electoral rolls prepared under a law of Bougainville.

**Sch.1.17. PREPARATION OF NEW ROLLS.**

(1) Where the Agency considers that there are no appropriate voting rolls for a voting district, it may in writing, direct the preparation of new voting rolls.

(2) A direction under Subsection (1) shall be published in the Gazettes and in an available newspaper, and the Agency shall notify local-level governments.

(3) A direction under Subsection (1)

- (a) may specify the manner in which the rolls are to be prepared; and
- (b) may require any person, or member of a class of persons, entitled to enrolment on a new roll and whose name does not appear on it to sign and send to the proper officer a form of claim for enrolment and otherwise comply with the provisions of this Schedule relating to compulsory enrolment.

(4) The Agency shall, as soon as it is practicable to do so after the preparation of a new roll, notify that a new roll has been prepared in the Gazettes and in an available newspaper, and notify local-level governments.

**Sch.1.18. CHANGES TO NEW ROLLS.**

(1) Upon the receipt by the Returning Officer of a new roll for a voting district, the Returning Officer shall make the following changes in accordance with Section Sch.1.23 and relevant information -

- (a) add to, alter and correct the roll; and
- (b) remove names from it,

(2) In this section, "relevant information" means information received by the Returning Officer between the date of the direction under Section Sch.1.17(1) and the notification under Section Sch.1.17(4) where the changes under Subsection (1) have not already been made.

**Sch.1.19. EFFECT OF OBJECTIONS, ETC., AND IN RELATION TO NEW ROLLS.**

Where objections have been lodged under Section Sch.1.35, or notices of objection have been issued under Section Sch.1.38, and action in respect of those objections or notices has not

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been completed before the notification of the preparation of new rolls, the objections or notices have effect in relation to the new rolls as if those rolls had been in existence at the time of the lodging of the objections or the issuing of the notice.

**Sch.1.20. PRINTING OF ROLLS.**

The Agency shall, as soon as it is practicable to do so after the preparation of new rolls or the adoption of electoral rolls, arrange for them to be printed.

**Sch.1.21. INSPECTION.**

(1) Copies of the latest print of the rolls shall be open for public inspection at the office of the Returning Officer at all convenient times during his ordinary office hours without fee, and at such other places as the Returning Officer appoints for the purpose.

(2) Copies of the latest print of the rolls shall be obtainable at the office of the Returning Officer on payment of the prescribed fee.

**Sch.1.22. INFORMATION MAY BE REQUIRED.**

(1) An authorized person, on production of evidence of his authority under this section, may require a person to furnish information that it or he requires in connection with the preparation, maintenance or revision of the rolls.

(2) A person who, without reasonable excuse, refuses or fails to comply with a requirement under Subsection (1) is guilty of an offence.

(3) In this section, "authorized person" means a Returning Officer, or a person appointed by the Agency for the purposes of this section.

**PART VI. – QUALIFICATIONS, ETC., FOR ENROLMENT AND VOTING.**

**Sch.1.23. PERSONS ENTITLED TO ENROLMENT.**

(1) A person other than a non-resident voter is entitled to enrolment if the person -

- (a) has a right to vote under Section 50 (*right to vote and stand for public office*) of the *Constitution*; and
- (b) has resided in the area of a voting district for a period of not less than six months immediately preceding the date of his claim for enrolment; and
- (c) complies with the requirements of Part VII for enrolment for a voting district.

(2) A non-resident voter is entitled to enrolment.

(3) A person whose name is on the roll for a voting district shall, subject to this Schedule and to the provisions of any other law in force, vote at the Referendum, but is not entitled to vote more than once at the Referendum.

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**PART VII. – ENROLMENT.**

**Sch.1.24. ADDITION OF NAMES TO ROLLS.**

In addition to any other method provided for by law, names may be added to rolls in accordance with claims for enrolment or transfer of enrolment.

**Sch.1.25. CLAIMS FOR ENROLMENT.**

(1) Subject to this section, a person who is entitled to enrolment under Section Sch.1.23, is entitled to have his name placed on the roll in respect of his current place of residence .

(2) A claim for enrolment shall be in the prescribed form, signed by the claimant and attested by a prescribed person who shall sign his name as witness in his own handwriting.

**Sch.1.26. DUTY OF WITNESS IN RELATION TO APPLICATION .**

A person witnessing a claim for enrolment or transfer of enrolment shall, before he affixes his signature to it, satisfy himself, by inquiry from the claimant or otherwise, that the statements contained in the claim are true, unless he knows that the statements contained in the claim are true.

Penalty: A fine not exceeding K400.00.

**Sch.1.27. COMPULSORY ENROLMENT AND TRANSFER.**

(1) A person who is entitled to have his name placed on the roll for a voting district, whether by way of enrolment or transfer of enrolment, and whose name is not on that roll shall, at the first reasonably practicable opportunity, make a claim in the prescribed form to the Returning Officer for that voting district.

(2) A person who is entitled to have his name placed on the roll for a voting district, whether by way of enrolment or transfer of enrolment, and whose name is not on that roll on the expiration of 21 days from the date on which he became so entitled, is guilty of an offence unless he proves that his non-enrolment is not in consequence of his failure to comply with the provisions of Subsection (1).

(3) It is a defence to a charge of an offence against Subsection (2), if the defendant shows that he did not know, and had no reasonable opportunity of knowing, that his name was not on a roll for which he was entitled to be enrolled.

(4) Where a person who is enrolled changes address and fails to notify, in the prescribed form, his new address to a Returning Officer, or the Agency, at the first reasonably practicable opportunity, he is guilty of an offence.

(5) A person who is guilty of an offence against this section is punishable, upon

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conviction –

- (a) in the case of a first offence - by a fine not exceeding K10.00; or
- (b) in any other case - by a fine not exceeding K25.00.

(6) A prosecution for an offence against this section shall not be instituted without the consent of the Agency.

**Sch.1.28. REGISTRATION OF CLAIM.**

(1) Upon receipt of a claim for enrolment or transfer of enrolment, notification of change of address within a voting district, or application for the alteration or correction of particulars of an existing enrolment, the Returning Officer shall note the date of its receipt by him.

(2) If the claim, notification or application referred to in Subsection (1) is in order and the Returning Officer is satisfied that the claimant is entitled to be enrolled or to have his name transferred or the particulars of his enrolment altered or corrected, as the case may be, the Returning Officer shall, subject to Section Sch.1.30 -

- (a) enter on the roll kept by him the name of the claimant and the particulars relating to him; and
- (b) notify the claimant in writing that he has been enrolled; and
- (c) in the case of a transfer of enrolment, give notice of the transfer to the Returning Officer keeping the roll from which the voter's name has been transferred.

(3) An interim acknowledgment of the receipt, after the issue of the writ and before the close of the polling, of a claim for enrolment or transfer of enrolment may be issued to the claimant by the Returning Officer in a form approved by the Agency.

(4) The Returning Officer keeping the roll from which a voter's name has been transferred shall, upon receipt of notice of the transfer in the prescribed form, remove the voter's name from the roll kept by him.

**Sch.1.29. NOTIFICATION OF REJECTION OF CLAIM.**

The Returning Officer, on receipt of a claim under Section Sch.1.27, shall, subject to Section Sch.1.30, after making such inquiry as he considers necessary if he is satisfied that the claimant is not entitled to enrolment or transfer of enrolment in accordance with the claim, notify the claimant as soon as practicable in the prescribed manner that his claim has been rejected, specifying the reason for the rejection, and advise the claimant that he is entitled, at any time within three months after the receipt of the notification, to appeal against the rejection in accordance with this Schedule.

**Sch.1.30. TIME FOR ALTERING ROLLS.**

Notwithstanding anything in this Schedule -

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- (a) claims for enrolment or transfer of enrolment which are received after the issue of the writ shall not be registered; and
- (b) except by direction of the Returning Officer, no name shall be removed from a roll under a notification of transfer of enrolment received after the issue of the writ.

**Sch.1.31. OFFICERS NEGLECTING TO ENROL CLAIMANTS.**

An officer who receives a claim for enrolment or transfer of enrolment and who, without just excuse, the burden of proof of which lies upon him, fails to do everything necessary on his part to be done to secure the enrolment of the claimant in pursuance of the claim is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

**Sch.1.32. ALTERATION OF ROLLS.**

(1) In addition to other powers of alteration conferred by this Schedule, a Returning Officer may alter a roll kept by him by –

- (a) correcting a mistake or omission in the roll; and
- (b) correcting a mistake or omission in the particulars of the enrolment of a voter; and
- (c) altering, on the application of a voter, the original name, address or occupation of the voter on the same roll; and
- (d) removing the name of a deceased voter; and
- (e) striking out the superfluous entry where the name of the same voter appears more than once on the same roll; and
- (f) reinstating a name removed by mistake; and
- (g) reinstating a name removed as the result of an objection where he is satisfied that the objection was based on a mistake as to fact and that the person objected to still retains and has continuously retained his right to the enrolment in respect of which the objection was made; and
- (h) removing a name from the roll where he is satisfied that the voter is not, or has ceased to be, qualified for enrolment on the roll and has secured enrolment on another roll.

(2) Where the name of a voter has, in error, been incorrectly placed on the roll for a voting district for which he is not entitled to be enrolled, and the voter is entitled to have his name placed on the roll for another voting district, the Returning Officer for the voting district for which the voter is wrongly enrolled shall remove the name of the voter from that roll and shall notify the Returning Officer for the voting district for which the voter is entitled to be enrolled accordingly, and that last-mentioned Returning Officer shall place the name of the voter on his roll and shall notify the voter of the change of enrolment.

(3) No alteration of a roll shall be made under this section after the cut-off day specified in the writ.

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**Sch.1.33. INCORRECT ENROLMENT.**

Where a person whose name has been placed on the roll for a voting district is not entitled to enrol for that voting district, the Returning Officer may remove the name of that person from that roll at any time.

**Sch.1.34. ALTERATIONS TO BE INITIALLED.**

Every alteration of a roll shall be made in such manner that the original entry shall not be obliterated, and the reason for each alteration and the date of the alteration shall be set against the alteration, together with the initials of the Returning Officer or of the person who makes the alteration on behalf of the Returning Officer.

**PART VIII. – OBJECTIONS.**

**Sch.1.35. NAMES ON ROLL MAY BE OBJECTED TO.**

(1) A name on a roll may be objected to by objection in writing lodged with or made by the Returning Officer.

(2) A sum of K4.00 shall be deposited in respect of each objection lodged by a person other than a voting officer, to be forfeited to the Agency if the objection is held by the Returning Officer to be frivolous.

**Sch.1.36. OBJECTION.**

An objection under Section Sch.1.35 shall be in the prescribed form, and shall be signed by a voter enrolled on the same roll as the person objected to, or by the Returning Officer or a prescribed officer.

**Sch.1.37. DUTY TO OBJECT.**

It is the duty of the Returning Officer and of any prescribed officer to lodge or make an objection in writing, setting out the grounds of the objection, in respect of any name which he has reason to believe ought not to be retained on the roll.

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**Sch.1.38. NOTICE OF OBJECTION.**

(1) When an objection is made by or lodged with a Returning Officer, the Returning Officer shall, subject to Subsection (3), give notice as soon as practicable of the objection to the person objected to.

(2) A notice under Subsection (1) shall be in the prescribed form, and may be served on the person objected to by being posted or delivered to his last-known place of residence or his address of enrolment.

(3) Where the Returning Officer is satisfied that the ground of objection stated in an objection is not a good ground of objection or is frivolous, he may dismiss the objection, in which case no notice of the objection need be given to the person objected to.

(4) An objection on the ground that a person does not reside in the voting district for which he is enrolled shall not be made unless it alleges that the person objected to -

- (a) has not resided in the voting district for the period necessary to qualify him for enrolment for that voting district; or
- (b) has ceased to reside in the voting district.

**Sch.1.39. ANSWER TO OBJECTION.**

A person objected to under this Part may, orally or in writing in the prescribed manner, answer the objection.

**Sch.1.40. DETERMINATION OF OBJECTION.**

(1) Subject to Subsection (2), the Returning Officer shall determine an objection under this Part as soon as practicable after receipt by him of the answer of the person objected to, or, if no answer is received within a period of one month after the posting or delivery of the notice referred to in Section Sch.1.38 and if it appears that the person objected to is not entitled to be enrolled on the roll in respect of which the objection has been made, the Returning Officer shall -

- (a) remove the name of the person from the roll; and
- (b) cause a copy of the notice of determination to be posted to or served on the objector and the person objected to.

(2) No name shall be removed from a roll under this section after the cut-off day specified in the writ.

**PART IX. – APPEALS.**

**Sch.1.41. APPEAL TO COURT.**

(1) A person -

- (a) who has made a claim for enrolment or transfer of enrolment in accordance with this Schedule, and has not been enrolled; or

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(b) whose name has been removed from a roll by the Returning Officer after an objection,

may at any time within two months after the receipt of notice of the rejection of the claim or of notice of the determination of the objection, as the case may be, make application in the prescribed manner to a Court for an order directing that his name be enrolled or reinstated on the roll, as the case requires.

(2) Where an objection has been determined by the Returning Officer adversely to the person objecting, that person may in the prescribed manner apply to a Court for an order sustaining the objection.

(3) Where an application under this section has reference to the decision of the Returning Officer upon an objection, the applicant shall, as prescribed, serve the objector or the person objected to, as the case requires, with notice of the application, and the person so served may appear, or may in writing authorize any person to appear on his behalf, to oppose the application.

(4) The court may hear and determine an application under this section, and may make such order as it thinks fit as to the costs of the application.

(5) Costs ordered by the court to be paid may be recovered in the same manner as the costs of any other proceeding before the Court.

(6) The Clerk of the Court shall send by post to the Returning Officer a certified copy of the order of the court, and the Returning Officer shall make such entries (if any) upon the roll as are necessary to give effect to the order.

(7) In this section, "Court" means -

(a) a District Court under the *District Courts Act 1963*; or

(b) a court established under the Bougainville Constitution and having a similar jurisdiction to a District Court.

**PART X. – WRIT FOR REFERENDUM.**

**Sch.1.42. REQUIREMENTS FOR WRIT.**

(1) The writ shall be in the form set out in Section Sch.1.177.

(2) Subject to Section 338 (*Referendum to be held*) of the *Constitution*, the day specified in the writ as the first day of the polling period shall be a Saturday and shall be not less than eight weeks nor more than 11 weeks after the date of the writ.

(3) The day specified in the writ as the last day of the polling period shall not be more than 14 days after the first day of the polling period.

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(4) The day specified in the writ for its return shall not be more than 21 days after the end of the polling period.

**Sch.1.43. ISSUE OF WRIT.**

(1) Subject to Part XIV.7 (*Bougainville Referendum*) of the *Constitution*, the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation and agreement between the Governments, shall issue his writ for the Referendum.

(2) For the purposes of this Schedule, the writ shall be deemed to have been issued at the hour of 4 p.m. on the day on which the writ was issued.

(3) The Agency shall, as soon as practicable after the issue of the writ -

- (a) notify its issue and particulars in the Gazettes and in an available newspaper; and
- (b) notify its issue and particulars to Returning Officers and local-level governments; and
- (c) take such further steps as it considers desirable to ensure adequate publicity throughout the country.

**Sch.1.44. COPY OF WRIT BY FAX.**

(1) The Agency may notify a Returning Officer by fax.  
(2) Where a Returning Officer receives a copy of the writ by fax, he may use the copy for the purposes of Section Sch.1.45.

**Sch.1.45. RECEIPT OF WRIT BY RETURNING OFFICER .**

On receiving of a copy of the writ, the Returning Officer shall endorse on it the date of its receipt.

**PART XI. – VOTING BY POST.**

**Sch.1.46. INTERPRETATION .**

In this Part, unless the contrary intention appears -

"application" means an application for a postal vote certificate and a postal ballot-paper under Section Sch.1.47(1);  
"Returning Officer", in relation to an application, means the Returning Officer for the voting district declared in the application to be the voter's voting district;  
"voting district", in relation to an application, means the voting district for which the applicant is enrolled.

**Sch.1.47. APPLICATION FOR POSTAL VOTE CERTIFICATE, ETC.**

(1) A voter may apply to the Returning Officer for a postal vote certificate and postal

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ballot-paper if the voter-

- (a) will not, throughout the polling period -
  - (i) be within his voting district; or
  - (ii) be within 16 km by the nearest practicable route of a polling booth open in his voting district; or
- (b) will be travelling or be away from his residence under conditions which will preclude him from voting at a polling booth open in his voting district; or
- (c) is seriously ill or infirm, and by reason of that illness or infirmity will be precluded from attending at a polling booth to vote; or
- (d) in the case of a woman – will, by reason of approaching maternity or of the necessity to care for her child, be precluded from attending at a polling booth to vote; or
- (e) is, by reason of his membership of a religious order or of his religious beliefs -
  - (i) precluded from attending at a polling booth; or
  - (ii) precluded from voting at a reasonably accessible polling place; or
- (f) is residing abroad.

(2) An application shall be in writing setting out the grounds upon which the applicant claims to vote by post.

(3) An application under this section may be made in person or by letter or fax after the tenth day after the issue of the writ to the Returning Officer.

(4) The Returning Officer shall not accept an application under this section if it reaches the officer after the commencement of the polling period.

**Sch.1.48. FALSE STATEMENTS OR IMPROPER INDUCEMENTS.**

(1) A voter shall not make, and a person shall not induce a voter to make, a false statement in an application.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

(2) A person shall not improperly persuade or induce, or associate himself with a person in improperly persuading or inducing, a voter to make an application.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one month.

**Sch.1.49. FORM OF POSTAL VOTE CERTIFICATES AND BALLOT-PAPERS.**

(1) The postal vote certificate and postal ballot-paper shall be in the prescribed form and a postal vote certificate shall be printed on an envelope addressed to the Returning Officer.

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(2) A postal vote certificate shall be printed on an envelope addressed to the Returning Officer.

**Sch.1.50. ISSUE OF POSTAL VOTE CERTIFICATES AND BALLOT-PAPERS.**

(1) Where a Returning Officer receives an application and is satisfied that it is properly made, he shall -

- (a) write on a postal vote certificate form the name, address, occupation and sex of the voter and, if necessary, the name of the voting district; and
- (b) complete the appropriate instructions on a postal ballot-paper form; and
- (c) deliver or, subject to Subsection (2), post to the applicant -
  - (i) the postal vote certificate and postal ballot-paper forms referred to in Paragraph (a) and (b); and
  - (ii) the prescribed directions.

(2) Where an application under this Part is received after 4 p.m. on the day preceding the first day of the polling period in the voting district, a Returning Officer shall not post to the voter a postal vote certificate or postal ballot-paper.

**Sch.1.51. APPLICATIONS OPEN FOR INSPECTION.**

Copies of applications shall be open to inspection by scrutineers at all convenient times during office hours from and including the third day after the last day of the polling period until the election can no longer be questioned.

**Sch.1.52. NUMBERING OF APPLICATIONS AND CERTIFICATES.**

(1) The Returning Officer shall number all applications received by him in consecutive order, and shall number each postal vote certificate he issues with a number corresponding with the number of the application.

(2) The Returning Officer shall initial the back of all postal ballot-papers issued, in such a position as to be easily seen when the ballot-paper is folded so as to conceal the questions on the ballot-paper after voting.

**Sch.1.53. NOTIFICATION OF ISSUE OF POSTAL VOTE CERTIFICATE, ETC.**

(1) The Returning Officer for a voting district in respect of which postal vote certificates and postal ballot-papers have been issued shall, if there is time conveniently to do so, note on the certified lists of votes the names of all voters to whom postal vote certificates and postal ballot-papers have been issued.

(2) If there is not time conveniently to note on a certified list of voters the issue of a postal vote certificate and postal ballot-paper, the Returning Officer shall, if practicable and reasonable, advise the presiding officer to whom the certified list of voters has been furnished of the issue of the postal vote certificate and postal ballot-paper.

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(3) A voter to whom a postal vote certificate has been issued is not entitled to vote at a polling booth unless he first delivers to the presiding officer for cancellation his postal vote certificate and postal ballot-paper.

**Sch.1.54. AUTHORIZED WITNESSES.**

The following persons are authorized witnesses for the purposes of this Schedule:-

- (a) a voter or person who is qualified to be a voter; and
- (b) where the vote is recorded outside the country, a person to whom the voter is well known.

**Sch.1.55. DIRECTIONS FOR POSTAL VOTING.**

The following directions for regulating voting by means of postal ballot-papers shall be substantially observed:-

- (a) the voter shall exhibit his postal ballot-paper (unmarked) and his postal vote certificate to an authorized witness; and
- (b) the voter shall mark the postal vote certificate to indicate the grounds applicable to him on which he wishes to vote by post, and also strike out the inapplicable grounds; and
- (c) the form of declaration printed on the envelope bearing the postal vote certificate shall, after being filled in, be signed by the voter in the space provided for the signature of the voter in the presence of the authorized witness; and
- (d) the authorized witness shall then and there sign his name in his own handwriting in the declaration printed on the envelope bearing the postal vote certificate in the place provided for the signature of the authorized witness, and shall add the title under which he acts as an authorized witness and the date; and
- (e) the voter shall then and there, in the presence of the authorized witness but so that the authorized witness cannot see the vote, mark his vote on the ballot-paper in the prescribed manner, fold the ballot-paper, place it in the envelope addressed to the Returning Officer for the voting district in which he is entitled to vote; and
- (f) the voter shall promptly post or deliver the envelope or cause it to be posted or delivered, to the Returning Officer for the voting district in which he is entitled to vote; and
- (g) in the case of a voter suffering from a disability referred to in Section Sch.1.87 the authorized witness shall mark the voter's vote on the ballot-paper and shall then and there fold the ballot-paper so that the vote cannot be seen, place it in the envelope addressed to the Returning Officer, fasten the envelope, and hand it to the voter, who shall post or deliver it, or cause it to be posted or delivered, to the Returning Officer for the voting district in which he is entitled to vote; and
- (h) the authorized witness shall not suffer or permit any person (other than the

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voter) to see or become acquainted with the voter's vote, or to assist the voter to vote, or to interfere in any way with the voter in relation to his vote.

**Sch.1.56. DUTY OF AUTHORIZED WITNESS.**

(1) An authorized witness shall –

- (a) comply with the provisions of Section Sch.1.55 insofar as they are to be complied with on his part; and
- (b) see that the directions in that section are complied with by every voter voting by post before him, and by every person present when the voter votes; and
- (c) refrain from disclosing any knowledge of the vote of a voter voting by post before him.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months

(2) An authorized witness shall not influence, or attempt to influence, in any way the vote of a voter voting by post before him.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year.

**Sch.1.57. PENALTY FOR UNLAWFULLY MARKING POSTAL BALLOT-PAPER.**

No person other than -

- (a) the voter to whom the postal ballot-paper has been issued; or
- (b) an authorized witness, acting under Section Sch.1.55, assisting a voter in accordance with that section,

shall mark a vote upon a postal ballot-paper.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding one year.

**Sch.1.58. UNLAWFULLY OPENING POSTAL BALLOT-PAPER.**

No person other than the Returning Officer for the voting district in respect of which a postal ballot-paper has been issued, or an officer acting under his directions, shall open the envelope in which a postal ballot-paper has been placed under Section Sch.1.55 and which has been fastened by the voter or by an authorized witness in accordance with the provisions of that section.

Penalty: A fine not exceeding K500.00.

**Sch.1.59. FAILURE TO POST OR DELIVER POSTAL BALLOT-PAPER.**

A person to whom an application for a postal vote certificate and postal ballot-paper, or an envelope containing or purporting to contain a postal ballot-paper, is entrusted by a voter for the purpose of posting or delivering to a Returning Officer or Assistant Returning Officer, or delivery to a presiding officer, and who fails as soon as practicable to post or deliver the

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application or envelope, is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding three months.

**Sch.1.60. INDUCING VOTER TO HAND OVER POSTAL BALLOT-PAPER.**

A person who persuades or induces a voter to hand over to him a postal ballot-paper upon which a vote has been recorded is guilty of an offence.

**Sch.1.61. DUTY OF PERSONS PRESENT WHEN VOTER VOTES BY POST.**

A person present when a voter is before an authorized witness for the purpose of voting by post shall -

- (a) obey all directions of the authorized witness; and
- (b) refrain from making any communication whatever to the voter in relation to his vote; and
- (c) refrain from assisting the voter or in any manner interfering with him in relation to his vote; and
- (d) refrain from looking at the voter's vote or from doing anything whereby he may become acquainted with the voter's vote.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months.

**Sch.1.62. BALLOT-BOX FOR POSTAL VOTES.**

The Returning Officer shall keep a locked ballot-box on which the words "Postal Ballot-Box" are conspicuously marked, and shall place and keep in that ballot-box, until the preliminary scrutiny under Section Sch.1.105, all envelopes containing or bearing a postal vote certificate and purporting to contain a postal ballot-paper issued in respect of his voting district which -

- (a) are delivered to him before the end of the polling period; or
- (b) are received by him through the post up to the end of the polling period.

**PART XII. – THE POLLING.**

***Division 1. – Preliminary.***

**Sch.1.63. INTERPRETATION .**

In this Division, unless the contrary intention appears –  
"scrutineer" means a person appointed under Section 82B.

**Sch.1.64. SCRUTINEERS.**

(1) An interested party may, by notice in writing or by fax addressed to the Returning Officer or presiding officer, appoint scrutineers to represent it at polling places during the polling.

(2) Where the appointment is made by fax, the fax shall be signed on behalf of the interested party before it is tendered for transmission.

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(3) An appointment under Subsection (1) shall specify the name and address of the scrutineer and be signed by or on behalf of the interested party.

(4) At the polling, no more than one scrutineer shall be allowed on behalf of an interested party at each polling booth or subdivision of a polling booth on any one day.

(5) A scrutineer shall not -

- (a) interfere with or attempt to influence a voter within the polling booth; or
- (b) communicate with a person in the polling booth except so far as is necessary in the discharge of his functions; or
- (c) enter a compartment of a polling booth whilst a voter is present in that compartment.

Penalty: A fine not exceeding K100.00.

(6) A scrutineer shall not be prevented from entering or leaving a polling booth during the polling, and during his absence, a relieving scrutineer may act in his place, but so that only one scrutineer for each interested party shall be present in the polling booth or a subdivision of the polling booth at any one time.

(7) A scrutineer who commits a breach of this section, or who misconducts himself or fails to obey the lawful directions of the presiding officer may be removed from the polling booth by a member of the Police Force or by a person authorized by the presiding officer to remove him.

(8) A scrutineer may not assist a voter to vote under Section Sch.1.87 or 1.90.

*Division 2. - Polling Schedule.*

**Sch.1.65. POLLING SCHEDULE.**

(1) Subject to any directions given by the Agency, the Returning Officer shall, as soon as practicable after the issue of the writ, prepare a polling schedule showing the anticipated dates and times, within the polling period for the voting district, during which the polling booths will open at the polling places in the voting district, in such manner as he considers will give all voters in the voting district a reasonable and sufficient opportunity to vote at the Referendum.

(2) Nothing in Subsection (1) or in this Schedule shall be construed to mean that polling shall be conducted on each day throughout the polling period or on any particular day in the polling period.

**Sch.1.66. PUBLICATION OF POLLING SCHEDULE.**

(1) The polling schedule shall be published in the Gazettes and in an available

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newspaper, and the Returning Officer shall take such other action as he considers necessary or desirable, or as is directed by the Agency, to ensure adequate publicity for the polling schedule.

(2) A copy of the polling schedule shall be forwarded to each local-level Government in the voting district and shall be exhibited at such other places in the voting district as the Returning Officer appoints.

(3) A copy of the polling schedule for a voting district shall be forwarded to each interested party in the voting district.

(4) Failure to forward a copy of the polling schedule to an interested party in the voting district does not affect the validity of the poll in that district.

**Sch.1.67. ADHERENCE TO POLLING SCHEDULE.**

(1) As far as possible, polling booths shall be open in accordance with the polling schedule, and the Returning Officer and presiding officers shall take all such action as is necessary or desirable for that purpose, whether expressly authorized by this Schedule or not.

(2) Subject to any directions given by the Agency, the Returning Officer may, where it becomes impracticable to adhere to a polling schedule, vary the schedule, in which case the provisions of Section Sch.1.66 shall, as far as practicable, be observed in relation to the variation.

(3) Subject to any directions given by the Returning Officer, a presiding officer may where in his opinion it is necessary or desirable in order to meet an unforeseen contingency or emergency and it is impracticable for the Returning Officer to vary the polling schedule under Subsection (2), depart from the polling schedule in relation to a polling place, and shall advise the Returning Officer of the departure and of the reasons for it as soon as practicable.

(4) Where the presiding officer departs from the polling schedule in relation to a polling place, he shall take such action as is practicable to ensure adequate publicity for that departure at that polling place and amongst the voters likely to vote at it.

**Sch.1.68. APPEAL.**

(1) A voter may, not less than 14 days before the commencement of the polling period for a voting district, appeal to the Agency for an order varying a polling schedule on the ground that it does not give to all voters in the voting district or in a part of the voting district a reasonable opportunity for voting in the Referendum.

(2) Notwithstanding an appeal under Subsection (1), but subject to Section Sch.1.67, a polling schedule remains valid and in force until varied by order of the Agency under Subsection (1).

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(3) In making an order under Subsection (1) the Agency shall give such directions as it considers desirable and practicable to ensure adequate publicity for the order.

***Division 3. – General Provisions.***

**Sch.1.69. RETURNING OFFICER TO MAKE ARRANGEMENTS.**

(1) The Returning Officer shall, as soon as practicable after the issue of the writ, make all necessary arrangements for taking the poll, and in particular shall –

- (a) appoint a presiding officer to preside at each polling place and all necessary assistant presiding officers, poll clerks, and door-keepers; and
- (b) provide and furnish proper polling booths and ballot-boxes; and
- (c) provide ballot-papers and all necessary certified lists of voters.

(2) The presiding officer shall, on or before the day of polling, determine the whole or the part of the polling place that shall be the polling booth in relation to that polling place.

(3) In an emergency during the polling due to the absence of an assistant presiding officer, poll clerk or door-keeper, or to unforeseen and continued pressure at the polling which cannot be met by the duly appointed voting officers, the presiding officer may appoint a person to act as assistant presiding officer, poll clerk or door-keeper, and the person so appointed or acting shall be deemed to have duly been appointed if the Returning Officer afterwards ratifies the appointment.

(4) No person under the age of 18 years shall be appointed to be or to act as a presiding officer or assistant presiding officer.

(5) An assistant presiding officer may, subject to any directions of the presiding officer, exercise all or any of the powers of the presiding officer, and shall, in respect of the exercise of those powers, be deemed to be the presiding officer.

**Sch.1.70. SUBSTITUTE PRESIDING OFFICER.**

A presiding officer may appoint an assistant presiding officer or a poll clerk over the age of 18 years to be his substitute to perform his duties during his temporary absence, and the substitute may, while so acting, exercise all the powers of the presiding officer and shall, in the exercise of those powers, be deemed to be the presiding officer.

**Sch.1.71. NO LICENSED PREMISES TO BE USED.**

Premises shall not be used for the purpose of a polling booth if they, or any part of them, are licensed, or the subject of a permit, under –

- (a) the *Liquor (Licensing) Act* (Chapter 312); or
- (b) a Bougainville law relating to liquor licensing.

**Sch.1.72. SEPARATE VOTING COMPARTMENTS.**

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Polling booths shall have one or more separate voting compartments, constructed so as to screen the voters from observation while they are marking their ballot-papers, and each voting compartment shall be furnished with a pen for the use of voters.

**Sch.1.73. BALLOT-BOXES.**

(1) Each polling booth shall be provided with the necessary ballot-box or ballot-boxes.

(2) A ballot-box shall have a cleft in the cover through which the ballot-papers may be deposited in the box, and shall be provided with means for securely closing the cleft so that, when the cleft is so closed, no ballot-papers or other matters or things can be deposited or placed in the box or withdrawn from it.

(3) A ballot-box shall be capable of being securely fastened with a lock.

**Sch.1.74. CERTIFIED LIST OF VOTERS.**

(1) The Returning Officer shall certify a list of voters for the guidance of the presiding officer at a polling place during the polling.

(2) The certified list shall be a list of the voters on the roll enrolled for the voting district for which the polling place is prescribed.

(3) The certified list of voters shall be delivered to the presiding officer before the hour of commencing the poll in the polling area.

**Sch.1.75. FORM OF BALLOT-PAPERS.**

(1) Subject to Subsection (2), the ballot-papers to be used in the Referendum shall be in the form determined by the Agency.

(2) Where more than one question is to be voted on at the Referendum, the ballot-papers shall be prepared in accordance with the directions of the Agency.

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**Sch.1.76. BALLOT-PAPERS TO BE INITIALLED.**

(1) No ballot-paper shall be delivered to a voter without being first initialled or affixed with an official mark as prescribed by the presiding officer, and an exact account shall be kept of all initialled ballot-papers.

(2) The initials of the presiding officer shall be placed on the back of the ballot-paper in such a position as to be easily seen when the ballot-paper is folded so as to conceal the questions on the ballot-paper after voting.

**Sch.1.77. PERSONS PRESENT AT POLLING.**

(1) No person, other than an authorised person shall enter or remain or be permitted to enter or remain in the polling booth during the polling except by permission of, and on such conditions as are determined by, the presiding officer.

(2) In this section, "authorised person" means the Returning Officer, Assistant Returning Officer, presiding officer, assistant presiding officers, officers, poll clerks, interpreters, door-keepers and scrutineers, and the voters voting and about to vote.

**Sch.1.78. THE POLLING.**

(1) Subject to Subsection (2), the polling shall be conducted as follows:-

- (a) before the first ballot-paper is placed in an empty ballot-box, the Returning Officer or, if he is not present, the presiding officer, shall publicly exhibit the ballot-box empty, and shall then securely fasten its cover; and
- (b) the poll shall open at each polling place at 8 a.m. on each day (other than a Sunday or a public holiday) during the period for taking the poll at that polling place, and shall not close until all voters present in the polling booth at 6 p.m. and desiring to vote, have voted; and
- (c) the doors of the polling booth shall be closed at 6 p.m. and no person shall be admitted after that hour to the polling booth for the purpose of voting; and
- (d) at the close of the polling on each day of the polling period at a polling place, the presiding officer shall, in the presence of the poll clerk and of any scrutineers who are in attendance, publicly close, fasten, lock and take charge of the ballot-box; and
- (e) when a ballot-box is full or no longer required for the polling, or at the end of the polling period for all polling places for which he is the presiding officer, whichever first occurs, the presiding officer shall, subject to Subsection (2), forward the ballot-box by secure means for the purposes of scrutiny, and it shall not be opened except in accordance with this Schedule.

(2) The presiding officer shall ensure that -

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- (a) the ballot-box is forwarded with the least possible delay; and
  - (b) any scrutineer who wishes to accompany the ballot-box is able to do so, having regard to the resources available at the time and the requirements of Paragraph (a).
- (3) Notwithstanding anything in Subsection (1), where -
- (a) the Returning Officer or the presiding officer considers it necessary the polling may commence at any particular polling place at a time later than 8 a.m. and, except on the last day of the polling period for the voting district, may close at a time later than 6 p.m.; and
  - (b) the presiding officer considers that all voters entitled and likely to vote at any particular polling place have done so, or the Returning Officer so directs, the poll may close at that polling place at a time earlier than 6 p.m.

**Sch.1.79. WHERE VOTERS MAY VOTE.**

(1) A voter is entitled to vote at any prescribed polling place for the voting district for which he is enrolled while that polling place is open.

(2) Nothing in this section authorizes a voter to vote more than once at the Referendum.

**Sch.1.80. PERSONS CLAIMING TO VOTE TO GIVE PARTICULARS.**

A person claiming to vote at a polling booth shall -

- (a) state his full name or names; and
- (b) if so desired by the presiding officer for the purpose of identifying the name under which the vote is claimed, give any other particulars necessary to be stated in the roll or to enable him to be identified in the roll.

**Sch.1.81. QUESTIONS PUT TO VOTER.**

(1) Subject to this Schedule, the presiding officer -

- (a) may, and at the request of a scrutineer shall, put to a person claiming to vote the following questions:-
  - (i) "Have you already voted either here or elsewhere in this Referendum?"; and
  - (ii) "Are you at least 18 years of age?"; and
  - (iii) for voters on a roll for a voting district in Bougainville - "Did you reside within this voting district for a period of more than six months before your claim for enrolment?"; and
  - (iv) for voters on a roll for a voting district in Bougainville - "Are you qualified to vote in National Elections?"; and
  - (v) for non-resident voters - "Are you a non-resident Bougainvillean entitled to vote?"; and
- (b) may, and at the request of a scrutineer shall, also put to any person

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claiming to vote, whose name appears on the certified list of voters the following question:-

"Are you the person whose name appears as [*here state that name*] on the certified list of voters for this voting district?"

- (2) A person claiming to vote to whom any of the questions specified in Subsection (1) are put shall have his claim to vote rejected if he-
- (a) refuses to answer fully a question so put to him; or
  - (b) does not answer the question specified in Subsection (1)(a)(i) absolutely in the negative, if so put to him; or
  - (c) being a voter on a roll for a voting district in Bougainville - does not answer the question specified in Subsection (1)(a)(ii), (iii) or (iv) or (1)(b) absolutely in the affirmative when put to him; or
  - (d) being any other voter - does not answer a question specified in Subsection (1)(a)(ii) or (v) or (1)(b) absolutely in the affirmative when put to him.

(3) The voter's answer to a question put to him by the presiding officer under this section is conclusive, and the matter shall not, subject to this section, be further inquired into during the polling.

**Sch.1.82. CERTAIN ERRORS NOT TO FORFEIT VOTE.**

No error or omission in the roll for a voting district of part of a name or entry of a wrong name, address or occupation and no mistake in the spelling of a name warrants the rejection of a claim to vote, and no person shall be disqualified from voting under the name appearing on the roll because of a change of name.

**Sch.1.83. RIGHT OF VOTER TO RECEIVE BALLOT-PAPER.**

- (1) The presiding officer or a poll clerk shall, at the polling, hand to each person claiming to vote a ballot-paper duly initialled or affixed with an official mark as prescribed by the presiding officer -
- (a) if the name under which he claims to vote is on the certified list of voters for the polling place and his right to vote is not challenged; or
  - (b) if the name under which he claims to vote is on the certified list of voters for the polling place and his right to vote is challenged, and his answers to the prescribed questions show that he is entitled to vote; or
  - (c) if he claims to vote under Division 4 and complies with the provisions of that Division.

(2) The presiding officer, at the request of a scrutineer, shall note any objection by the scrutineer to the right of a person to vote, and shall keep a record of that objection.

(3) If the presiding officer puts to a person all or any of the questions referred to in Section Sch.1.81, person's right to vote shall be deemed to have been challenged.

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**Sch.1.84. LIST OF VOTERS MARKED WHEN BALLOT-PAPER ISSUED.**

Immediately upon handing the ballot-paper to a person claiming to vote, the presiding officer or a poll clerk shall place a mark against the person's name on the certified list of voters.

**Sch.1.85. VOTE MARKED IN PRIVATE.**

Except as otherwise prescribed, a voter upon receipt of a ballot-paper shall without delay -

- (a) retire alone to an unoccupied compartment of the booth, and in there, in private, mark his vote on the ballot-paper in the prescribed manner; and
- (b) fold the ballot-paper so as to conceal his vote and to show clearly the initials of the presiding officer or the affixed mark and exhibit it so folded to the presiding officer, and then openly, and without unfolding it, deposit it in the ballot-box; and
- (c) leave the booth.

**Sch.1.86. METHOD OF MARKING BALLOT-PAPER.**

Subject to this Schedule, a voter shall record his vote on his ballot-paper by placing an "X" in the square to indicate his choice on the question, or on each question, on the ballot-paper.

**Sch.1.87. ASSISTANCE TO CERTAIN VOTERS.**

(1) If a voter satisfies the presiding officer that -

- (a) his sight is impaired; or
- (b) that he is so physically incapacitated that he is unable to vote without assistance; or
- (c) that he is illiterate and also unable to vote without assistance,

the presiding officer shall permit no more than two persons appointed by the voter to enter an unoccupied compartment of the booth with the voter, and mark, fold and deposit the voter's ballot-paper for him.

(2) A person appointed under Subsection (1) to assist a voter shall restrain from disclosing any knowledge of the vote of the voter.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding three months.

***Division 4. - Special Provisions in Certain Cases.***

**Sch.1.88. VOTER'S NAME ON ROLL MARKED.**

(1) Notwithstanding anything in this Schedule, where a voter, against whose name on the certified list of voters used at a polling place prescribed for the voting district for which he is enrolled a mark has been placed in accordance with Section 116, claims to vote in the Referendum at that polling place he may, subject to Sections 40 and 113 and to the Regulations be permitted to vote.

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(2) The ballot-paper of a voter voting under this section shall be dealt with as prescribed.

**Sch.1.89. ISSUE OF POSTAL VOTE CERTIFICATE, ETC., NOTED**

(1) Where a person whose name has been noted on the certified list of voters used at a polling place prescribed for the voting district for which he is enrolled as a voter to whom a postal vote certificate and postal ballot-paper have been issued, claims to vote in the Referendum at that polling place and states, when requested to deliver to the presiding officer for cancellation his postal vote certificate and postal ballot-paper, that he has not received a postal vote certificate and postal ballot-paper, he may, subject to this Schedule, be permitted to vote, if he makes a declaration in the prescribed form before the presiding officer at the polling place.

(2) The ballot-paper of a voter voting under this section shall be dealt with as prescribed, but no such ballot-paper shall be scrutinized unless the Returning Officer is satisfied that the voter is entitled to vote in the Referendum, and that a postal vote certificate or postal ballot-paper has not been received by him.

**Sch.1.90. BLIND OR PHYSICALLY INCAPACITATED VOTERS.**

(1) If a voter who claims to vote under Section Sch.1.88 or 1.89 satisfies the presiding officer that his sight is so impaired or that he is so physically incapacitated that he is unable to vote without assistance, the presiding officer shall -

- (a) fill in the form of declaration with the required particulars relating to the enrolment of the voter as required by the voter; and
- (b) read over to the voter the form of declaration; and
- (c) require the voter to sign the form of declaration -
  - (i) in his own handwriting if he is able to do so; or
  - (ii) with his mark as his personal signature if he is unable to sign his name in his own handwriting; and
- (d) cause the signature of the voter, if made by means of a mark, to be witnessed by a scrutineer present, or if no scrutineer be present, by the poll clerk; and
- (e) complete and attest the declaration; and
- (f) permit such number of persons appointed by the voter to enter an unoccupied compartment of the booth with the voter and to mark and fold the ballot-paper for the voter; and
- (g) enclose the ballot-paper in the envelope bearing the declaration of the voter, securely fasten the envelope and deposit it in the ballot-box.

(2) If a voter to whom Subsection (1) applies fails to appoint a person under that subsection, the presiding officer shall take action in accordance with Subsection (1)(a) to (e) (inclusive) and shall, in the presence of a person appointed by the voter for the purpose if the voter so desires, or, in the absence of any such appointment, the poll clerk -

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- (a) mark and fold the ballot-paper for the voter; and
- (b) enclose the ballot-paper in the envelope bearing the declaration of the voter, securely fasten the envelope and deposit it in the ballot-box.

**Sch.1.91. DEALING WITH VOTERS, ETC., UNDER THIS DIVISION.**

(1) The presiding officer shall, upon receiving a ballot-paper from a person voting under this Division, in the presence of the voter and of such scrutineers as are present and without unfolding the ballot-paper, enclose it in an envelope bearing the declaration of the voter under Section Sch.1.90, and addressed to the Returning Officer, and shall securely fasten the envelope and deposit it in the ballot-box.

(2) An Assistant Returning Officer who is authorized under this Schedule to open the ballot-box shall, without opening the envelope, transmit it to the Returning Officer.

(3) Where the claim of a person to vote under this Division is refused, the presiding officer shall make a note in writing of the fact of the claim and the reasons for the refusal, and the presiding officer and a poll clerk shall sign a note in the presence of such scrutineers as are present, who may also sign the note.

***Division 5. - Miscellaneous.***

**Sch.1.92. SPOILT BALLOT-PAPERS.**

If a voter, before depositing his ballot-paper in the ballot-box, satisfies the presiding officer that he has spoilt the ballot-paper by mistake or accident, he may, on giving it up, receive a new ballot-paper from the presiding officer, who shall there and then cancel the spoilt ballot-paper, write the word "Spoilt" across the face of it, place it in an endorsed envelope and forward it to the Returning Officer after the polling.

**Sch.1.93. ADJOURNMENT OF POLLING ON ACCOUNT OF RIOT, ETC.**

(1) The presiding officer may adjourn the polling from day to day where the polling is interrupted or obstructed by riot, open violence or intimidation.

(2) If from any cause a polling booth at a polling place is not open on any day during the period for taking the poll at that polling place, the presiding officer may adjourn the polling for a period not exceeding seven days but in no event beyond the end of the polling period, and shall forthwith give public notice of the adjournment.

(3) Where for any reason the polling is adjourned at a polling place, those voters only -

- (a) who are enrolled for the voting district for which the polling place is prescribed; or
- (b) who are otherwise entitled to vote as voters for the voting district, and have not already voted, are entitled to vote at the adjourned polling at that polling place.

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- (4) Nothing in this section shall be deemed to affect the provisions of Division 2.

**PART XIII. - THE SCRUTINY.**

*Division 1. - Preliminary.*

**Sch.1.94. INTERPRETATION .**

In this Division, unless the contrary intention appears –  
"scrutineer" means a person appointed under Section Sch.1.95.

**Sch.1.95. SCRUTINEERS.**

(1) An interested party may appoint scrutineers to represent it at the scrutiny by notice in writing or by fax given or sent to the officer who is to conduct, or who is sent to the officer who is to conduct, or who is conducting, the scrutiny at the counting centre.

(2) Where the appointment is made by fax, the fax shall signed on behalf of the interested party before it is tendered for transmission.

(3) An appointment under Subsection (1) shall specify the name and address of the scrutineer and be signed by or on behalf of the interested party.

(4) The ballot papers shall be counted in such a manner as to afford the scrutineers a proper scrutiny of each ballot paper.

*Division 2. - General Provisions.*

**Sch.1.96. SCRUTINY.**

The result of the polling shall be ascertained by scrutiny.

**Sch.1.97. COUNTING CENTRES.**

The scrutiny shall be conducted at such places, to be known as "counting centres", as are appointed by the Returning Officer for the purpose.

**Sch.1.98. OFFICERS TO CONDUCT SCRUTINY.**

The scrutiny at a counting centre shall be conducted by the Returning Officer or, in the absence of the Returning Officer from that counting centre, by an Assistant Returning Officer.

**Sch.1.99. COMMENCEMENT OF SCRUTINY.**

The scrutiny shall commence at a time determined by the Agency so as to ensure that as far as practicable the scrutiny begins at the same time in all major centres.

**Sch.1.100. CONDUCT OF SCRUTINY.**

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The scrutiny shall be conducted as follows:-

- (a) any scrutineers and any persons approved by the officer conducting the scrutiny, may be present; and
- (b) all the proceedings at the scrutiny (including, in particular, the count) shall be open to the inspection of the scrutineers; and
- (c) the scrutiny may be adjourned from time to time as necessary until the counting of the votes is complete.

**Sch.1.101. BALLOT-PAPERS CLAIMED TO BE INFORMAL.**

(1) If a scrutineer claims that a ballot-paper is informal, the officer conducting the scrutiny shall mark the back of the ballot-paper “Admitted” or “Rejected”, according to his decision to admit or reject the ballot-paper.

(2) Nothing in this section prevents the officer conducting the scrutiny from rejecting a ballot-paper as being informal although it is not objected to.

**Sch.1.102. INFORMAL BALLOT-PAPERS.**

(1) A ballot-paper shall not be informal except as provided in this section.

(2) A ballot-paper is informal if -

- (a) it is not authenticated by the initials of the presiding officer or by an official mark as prescribed; or
- (b) subject to Subsections (1), (3) and (4), it has no vote indicated on it, or it does not indicate the voter's intention; or
- (c) it has on it any mark or writing (not authorized by this Schedule to be put on it) by which, in the opinion of the officer conducting the scrutiny, the voter can be identified.

(3) Subsection (2)(c) does not apply to a mark or writing placed on a ballot-paper by an officer, notwithstanding that the placing of the mark or writing on the ballot-paper is a contravention of this Schedule.

(4) Subject to Subsection (2), a vote shall not be rejected as informal if there is no possibility of confusion, and the voter's intention is clear and, in particular, is not informal merely because the mark is not an 'X'.

(5) Where more than one question is to be voted on at the Referendum, failure to vote on a choice for one or more of the questions does not invalidate a vote given on a choice for another question or questions.

***Division 3. - Scrutiny of Ordinary Votes.***

**Sch.1.103. SCRUTINY OF ORDINARY VOTES.**

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(1) The scrutiny shall, subject to the provisions of Divisions 4 and 5 be conducted in accordance with the succeeding provisions of this section.

(2) The scrutiny shall, subject to the provisions of Divisions 4 and 5, be conducted in the presence of -

- (a) a presiding officer, poll clerk or an officer; and
- (b) any scrutineers who choose to attend; and
- (c) any other person approved by the Returning Officer.

(3) The officer conducting the scrutiny shall -

- (a) open all ballot-boxes received from polling places within the voting district; and
- (b) reject all informal ballot-papers and place them in a parcel; and
- (c) arrange the unrejected ballot-papers and place them into a separate parcels according to each choice voted on; and
- (d) count the votes given for each choice to the question in a manner sufficient to allow a proper scrutiny of the ballot-papers; and
- (e) if more than one question was asked at the Referendum – in respect of each of the questions, count the votes given for each choice in a manner sufficient to allow a proper scrutiny of the ballot-papers; and
- (f) make out and sign a statement (which may be counter-signed by the presiding officer, poll clerk or officer present and, if they so desire, by such scrutineers as are present) setting out the number of votes given for each choice, and the number of informal ballot-papers; and
- (g) where an Assistant Returning Officer conducts the scrutiny, transmit the following information, by fax or in some other expeditious manner, to the Returning Officer :-
  - (i) the number of votes given for each choice; and
  - (ii) the total number of ballot-papers rejected as informal; and
- (h) seal up the parcels and endorse on each parcel a description of the contents of it, and permit any scrutineers present, if they so desire, to counter-sign the endorsement; and
- (i) where an Assistant Returning Officer conducts the scrutiny, transmit the parcels to the Returning Officer with the least possible delay, together with the statement referred to in Paragraph (e).

(4) No person other than a Returning Officer or an Assistant Returning Officer shall touch the ballot-papers during the scrutiny.

***Division 4. - Scrutiny of Postal Votes.***

**Sch.1.104. SCRUTINY OF POSTAL VOTES.**

The scrutiny of postal votes shall be conducted by the Returning Officer with the

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assistance of an Assistant Returning Officer or an officer, in the presence of any scrutineers who choose to attend, and any other persons approved by the Returning Officer.

**Sch.1.105. PRELIMINARY SCRUTINY OF POSTAL VOTES.**

- (1) The Returning Officer conducting the scrutiny shall -
- (a) subject to Subsection (2), as soon as practicable after the end of the polling period for a voting district, produce and open the postal voters' ballot-box in which the envelopes containing the voters' ballot-papers have been placed and produce unopened all envelopes containing postal votes received by him before the end of the polling period; and
  - (b) examine each certificate and, if satisfied that -
    - (i) the person making the vote is a voter enrolled for the voting district; and
    - (ii) the declaration purports to be witnessed by an authorized witness, accept the ballot-paper for further scrutiny, and place a mark against the name of the voter on a certified copy of the roll used by him for the purpose of the scrutiny, but, if not so satisfied, disallow the ballot-paper without opening the envelope in which it is contained; and
  - (c) place in one parcel the unopened envelopes bearing the duly signed and attested declarations of those persons whose ballot-papers have been accepted for further scrutiny; and
  - (d) place in another parcel the unopened envelopes bearing the declarations of those persons whose ballot-papers he has disallowed, fasten and seal the parcel, endorse on it the words "Postal voters' ballot-papers rejected at the preliminary scrutiny" and add the name of the voting district, his signature and the date; and
  - (e) place the envelopes containing the ballot-papers which he has decided to accept for further scrutiny before him on a table in such a manner that the address side of each envelope is visible; and
  - (f) number each envelope consecutively from one upwards in the top right-hand corner until all of the envelopes have been dealt with; and
  - (g) without further examining the certificate or declaration of any voter or permitting any other person to do so, withdraw from the envelope each ballot-paper contained in it, and, without inspecting or unfolding the ballot-paper or allowing any other person to do so, place on it a number corresponding with that placed on the envelope from which the ballot-paper has been withdrawn and deposit the folded ballot-paper in a locked ballot-box for further scrutiny; and
  - (h) place the envelopes in a parcel endorsed with the words "Envelopes bearing postal voters' declarations from which ballot-papers have been withdrawn for further scrutiny", fasten the parcel, and add the name of the voting district, his signature and the date.

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(2) The Returning Officer shall, as far as practicable, keep in the Postal Voters' Ballot-box sufficient envelopes containing ballot-papers to ensure that all ballot-papers, when counted, shall be taken from a number sufficient to prevent the identity of voters from being disclosed.

(3) No person other than a Returning Officer or an Assistant Returning Officer shall touch the ballot-papers during the scrutiny.

**Sch.1.106. FURTHER SCRUTINY OF POSTAL VOTES.**

At the further scrutiny, the officer conducting the scrutiny shall, as soon as practicable after the preliminary scrutiny under Section Sch.1.105 open the ballot-box referred to in Section Sch.1.105(g), examine the postal voters' ballot-papers contained in the ballot-box, and take similar action to that set out in Section Sch.1.103(3)(b), (c), (d), (e), (f) and (h).

**Division 5. - Scrutiny of Votes under Division 4 of Part XII.**

**Sch.1.107. CONDUCT OF SCRUTINY.**

The scrutiny of votes under Division XII.4 shall be conducted by the Returning Officer and shall commence as soon as practicable after the end of the polling period for a voting district in the presence of an Assistant Returning Officer or an officer and such scrutineers as chosen to attend.

**Sch.1.108. ACTION ON RECEIPT OF BALLOT-PAPERS UNDER DIVISION XII.4.**

The Returning Officer shall produce unopened all envelopes containing ballot-papers used for voting under Division XII.4 and shall, before opening an envelope or allowing any other person to do so, examine the declaration of the voter and, if it is in order and shall deal with the ballot-paper in accordance with this Division, and make such correction (if any) to the roll as is necessary.

**Sch.1.109. PRELIMINARY SCRUTINY OF VOTES CAST UNDER DIVISION XII.4.**

(1) The Returning Officer shall, in relation to envelopes containing ballot-papers used for voting under Division XII.4 -

- (a) place in one parcel the envelopes bearing the declarations of persons who he is satisfied are entitled to vote in respect of the voting district, accept for further scrutiny the ballot-papers contained in the envelopes and in respect of envelopes under Sections Sch.1.88 and 1.89, make a notation on a certified copy of the roll used by him for the purposes of the scrutiny against the names of the persons voting that those persons have been permitted to vote under Section Sch.1.88 or 1.89, as the case may be; and
- (b) place in another parcel the envelopes bearing the declarations of persons who he is satisfied are not entitled to vote in respect of the voting district, or whose declarations are not signed and attested, fasten and seal the

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- parcel, endorse thereon the words "Division XII.4 voters' ballot-papers rejected at the preliminary scrutiny", and add the name of the voting district, his signature and the date; and
- (c) place the envelopes containing the ballot-papers accepted for further scrutiny before him on a table in such a manner that the face only of each envelope bearing the address of the Returning Officer is visible; and
  - (d) number each envelope consecutively from one upwards in the top right-hand corner until all of the envelopes have been dealt with; and
  - (e) without further examining the declaration of a voter, or permitting any other person to do so, withdraw from the envelope each ballot-paper contained in it, and, without inspecting or unfolding the ballot-paper or allowing any other person to do so, place on it a number corresponding with that placed on the envelope from which the ballot-paper has been withdrawn, and deposit the folded ballot-paper in a locked ballot-box for further scrutiny; and
  - (f) place the envelopes in a parcel, endorsed with the words "Envelopes bearing Division 4 voters declarations from which ballot-papers have been withdrawn for further scrutiny", fasten the parcel and add the name of the voting district, his signature and the date.

(2) A Division 4 voter's ballot-paper shall not be rejected at the preliminary scrutiny by reason only of the fact that the presiding officer has omitted to attest the declaration of the voter.

(3) No person other than a Returning Officer or an Assistant Returning Officer shall touch the ballot-papers during the scrutiny.

**Sch.1.110. FURTHER SCRUTINY.**

At the further scrutiny, the officer conducting the scrutiny shall, as soon as practicable after the preliminary scrutiny under Section Sch.1.109, open the ballot-box referred to in Section Sch.1.109(1)(e), examine the Division 4 voters' ballot-papers contained in the ballot-box, and take similar action to that set out in Section Sch.1.103(3)(b), (c), (d), (e), (f) and (h).

**Sch.1.111. INFORMAL BALLOT-PAPERS.**

In addition to the matters specified in Section Sch.1.102, a Division 4 voter's ballot-paper is informal if it is not contained in an envelope bearing the declaration of the voter.

**Sch.1.112. PARCELLING OF BALLOT-PAPERS.**

The officer conducting the scrutiny shall place in separate parcels -

- (a) all Division 4 voters' ballot-papers allowed or admitted as formal; and
- (b) all Division 4 voters' ballot-papers disallowed or rejected as informal,

and shall fasten and seal each parcel, and endorse on it particulars of the contents of it and the name of the voting district, and add his signature and the date.

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**Sch.1.113. OPENING OF SEALED PARCELS OF BALLOT-PAPERS.**

The sealed parcels of Division 4 voters' ballot-papers may only be opened for the purposes of an authorized re-count.

**Sch.1.114. OPENING OF SEALED PARCELS OF DECLARATIONS.**

The sealed parcels of Division 4 voters' declarations may only be opened as provided in the Regulations.

**Sch.1.115. PRESERVATION OF BALLOT-PAPERS AND DECLARATIONS.**

Subject to any action referred to in Section Sch.1.113 or 1.114, the Returning Officer shall preserve the sealed parcels of -

- (a) Division 4 voters' ballot-papers allowed or admitted to the scrutiny; and
- (b) Division 4 voters' ballot-papers disallowed or rejected at the scrutiny; and
- (c) envelopes bearing Division 4 voters' declarations from which ballot-papers have been withdrawn for further scrutiny; and
- (d) envelopes bearing Division 4 voters' declarations and containing ballot-papers rejected at the preliminary scrutiny,

until their destruction has been authorized by the Agency.

***Division 6. - Further Provisions Relating to Scrutiny.***

**Sch.1.116. FURTHER PROVISIONS RELATING TO SCRUTINY.**

The officer conducting the scrutiny shall, in respect of ballot-papers scrutinized by him -

- (a) place in a separate parcel all the ballot-papers which have been rejected as informal; and
- (b) place in a separate parcel the unrejected ballot-papers; and
- (c) seal up the parcels and endorse on each parcel a description of its contents, and permit any scrutineers present, if they so desire to countersign the endorsement.

***Division 7. – Re-count of Ballot-papers.***

**Sch.1.117. RE-COUNT.**

(1) At any time before the writ is returned to the Head of State, the Agency may direct the Returning Officer, or another member of the staff of the Agency, to re-count some or all of the ballot-papers for the Referendum.

(2) On receipt of a direction under Subsection (1) the Returning Officer shall re-count the ballot papers.

(3) The officer conducting a re-count has the same powers as if the re-count were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance and

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admission or disallowance and rejection of any ballot-paper.

**Sch.1.118. RESERVATION OF DISPUTED BALLOT-PAPERS.**

(1) The officer conducting a re-count may, and at the request of a scrutineer shall, reserve any ballot-paper for the decision of the Agency.

(2) The Agency shall decide whether a ballot-paper reserved for its decision under this section is to be allowed and admitted or disallowed and rejected.

**Sch.1.119. CONDUCT OF RE-COUNT.**

(1) Before proceeding to re-count any ballot-papers, the Returning Officer shall send to each interested party, notice of the time and place of the re-count.

(2) The Returning Officer shall, at the time and place fixed for the re-count, in the presence of the scrutineers in attendance and of an officer, open every sealed parcel of ballot-papers to be re-counted and count the votes in it.

(3) Each parcel of ballot-papers to be re-counted shall be opened separately without destroying or rendering illegible any endorsement on the parcel, and every care shall be taken to prevent the ballot-papers in the parcel from being mixed with the ballot-papers in any other parcel.

(4) After a parcel has been opened and the votes in it counted, the Returning Officer shall replace the ballot-papers in their original cover, which he shall reseal, refasten and then place in a new cover which he shall also seal and fasten and endorse with the fact and date of the re-count, and the Returning Officer and such persons authorized to be present at the re-count shall sign the endorsement.

(5) When any ballot-papers at a re-count are reserved for the decision of the Agency, the Returning Officer shall, in the presence of the scrutineers in attendance, place the ballot-papers in a properly fastened and sealed parcel bearing his signature and the signatures of the scrutineers, together with an endorsement setting out the number of ballot-papers contained in the parcel, the name of the voting district and the date, and shall place the parcel in a fastened and sealed outer cover fully addressed to the Agency, and transport the parcel to it by hand or registered post.

(6) On receipt of the parcel, the Agency shall, in the presence of an officer and, if an interested party so desires, of a person appointed by the interested party, open the parcel and scrutinize the ballot-papers, and shall mark each ballot-paper "Admitted" or "Rejected", according to its decision to admit or reject the ballot-paper.

(7) When the Agency has given its decision on the ballot-papers reserved for its decision, it shall restore them to their original cover, refasten and reseal the cover, and endorse

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on it -

- (a) the number of ballot-papers contained in the cover; and
- (b) a statement that the ballot-papers have been the subject of decision by it; and
- (c) the signature of the Agency and the date,

and shall request the persons in whose presence it scrutinized the ballot-papers to add their signatures, and shall then place the parcel in a new cover, which it shall cause to be fastened, sealed and returned by hand or registered post to the Returning Officer.

(8) The Agency shall advise the Returning Officer, in writing, as to the number of ballot-papers admitted or rejected by it, and the decision of the Agency shall be accepted by the Returning Officer in completing his re-count of the ballot-papers.

(9) The receipt of every parcel of ballot-papers shall be acknowledged in writing by the Agency and the Returning Officer respectively.

**PART XIV. - INTERPRETERS.**

**Sch.1.120. INTERPRETERS.**

(1) Notwithstanding the provisions of this Schedule, for the purposes of, and at any stage of, the proceedings at the polling or at the scrutiny, a person may, with the approval of the presiding officer or the officer conducting the scrutiny, as the case requires, make use of the services of a person as an interpreter.

(2) An interested party shall not be an interpreter, and a scrutineer shall not be an interpreter except for another scrutineer.

(3) In this section, "interested party" means the National Government, the Bougainville Government or a recognised interest group.

**Sch.1.121. DUTY OF INTERPRETERS.**

(1) An interpreter referred to in Section Sch.1.120 shall -

- (a) to the best of his ability, correctly interpret any matter that he is required to interpret; and
- (b) comply with any directions given by the presiding officer or the officer conducting the scrutiny, as the case may be; and
- (c) refrain from disclosing any knowledge of the vote of a voter for or to whom he interprets.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding six months, or both.

(2) An interpreter shall not influence, or attempt to influence, in any way, the vote of a voter for or to whom he interprets.

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Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months, or both.

**PART XV. - RETURN OF WRIT.**

**Sch.1.122. REPORTING RESULTS OF REFERENDUM.**

(1) As soon as practicable after the scrutiny is completed in a voting district, the Returning Officer shall notify the Agency of the results of the Referendum in the district in accordance with this section.

- (2) The Returning Officer shall notify the Agency of -
- (a) if one question was voted on at the Referendum - the total number of votes given for each choice on the question; and
  - (b) if more than one question was voted on at the Referendum – in respect of each of the questions, the total number of votes given for each choice on the question; and
  - (c) the total number of informal ballot-papers.

(3) A Returning Officer shall not delay complying with Subsection (1) even if it is clear, on the advice of the Agency, that the outstanding ballot-papers could not possibly affect the Referendum result.

**Sch.1.123. RETURN OF WRIT.**

(1) As soon as practicable after the Agency has received notice under section Sch.1.122 from the Returning Officers for all voting districts, the Agency shall comply with Subsections (2) and (3).

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- (2) The Agency shall -
- (a) on receipt of the count from each of the Returning Officers, calculate the total number of votes given for each choice on the question; and
  - (b) write on the writ the total number of votes given for each choice on the question, or on each question, as the case may be; and
  - (c) return the writ to the Head of State; and
  - (d) publish the Referendum result in the Gazettes and in an available newspaper.

(3) The Agency shall, as soon as conveniently may be after the result of the Referendum has been ascertained, at a place appointed by the Agency, publicly declare the result of the Referendum.

**Sch.1.124. CORRECTION OF ERRORS.**

(1) Without derogating from Section 62, any delay, error or omission in the printing, preparation, issue, transmission or return of any roll, writ, ballot-paper or certified list of voters may be remedied, removed, rectified and supplied by the Agency by instrument in writing, specifying the matter dealt with and providing for the course to be followed, and that course shall be valid and sufficient.

(2) An instrument under Subsection (1) shall be notified in the Gazettes and in an available newspaper.

**Sch.1.125. EXTENSION OF TIME.**

(1) Subject to Subsections (2) and (3), within one month before or at any time during the polling period for the Referendum, the Head of State, acting with, and in accordance with, the advice of the Agency may, where he is of the opinion that it is necessary for the proper conduct of the Referendum, provide for -

- (a) extending the time -
  - (i) for polling; or
  - (ii) for returning the writ; or
- (b) meeting any difficulty which might otherwise interfere with the due course of the Referendum,

and provision so made shall be valid and sufficient.

(2) Where an extension of time granted under Subsection (1) does not apply to all voting districts in which the Referendum is being conducted at the same time -

- (a) the last day of the polling period shall not be more than two weeks after the date originally fixed as the last day; and
- (b) the date fixed for the return of the writ shall not be more than two weeks after the date originally fixed for its return.

(3) In the case of an extension of time under Subsection (1), public notice of the

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extension shall be immediately given in the voting district or the portion of the voting district for which the Referendum is to be held.

**PART XVI. - OFFENCES.**

**Sch.1.126. ILLEGAL PRACTICES.**

(1) Subject to Subsection (2), the following are illegal practices at the Referendum:-

- (a) publishing an advertisement, handbill or pamphlet relating to the Referendum or issuing a notice (other than the announcement by advertisement in a newspaper of the holding of a meeting) relating to the Referendum without the name and address of the person authorizing the publication or issue being printed at the foot of it; and
- (b) printing or publishing a printed advertisement, handbill or pamphlet (other than an advertisement in a newspaper) relating to the Referendum without the name and place of business of the printer being printed at the foot of it; and
- (c) printing, publishing or distributing an advertisement, notice, handbill, pamphlet or card containing a representation of a ballot-paper or a representation apparently intended to represent a ballot-paper, and having on it any directions intended or likely to mislead or improperly interfere with a voter in or in relation to the casting of his vote; and
- (d) printing, publishing or distributing an advertisement, notice, handbill, pamphlet or card containing an untrue or incorrect statement intended or likely to mislead or improperly interfere with a voter in or in relation to the casting of his vote; and
- (e) wilfully informing a voter during the polling period that he is not enrolled or entitled to be enrolled for a particular voting district, or is not entitled to vote, when as a fact he is enrolled or entitled to be enrolled, or is enrolled or entitled to be enrolled for that voting district, or is entitled to vote, as the case may be.

(2) Nothing in Subsection (1)(c) or (d) prevents the printing, publishing or distributing of a card, not otherwise illegal, which contains advice on how to vote on a particular question, so long as those instructions are not intended or likely to mislead a voter in or in relation to the casting of his vote.

(3) A person guilty of an illegal practice is liable to a penalty of a fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months.

**Sch.1.127. HEADING TO VOTING ADVERTISEMENT.**

The proprietor of a newspaper shall cause the word "advertisement" to be printed as a headline, in letters not smaller than 10 point or long primer, to each article or paragraph in his newspaper containing matter relating to the Referendum, the insertion of which is or is to be paid for or for which a reward or compensation or promise of reward or compensation is or is to be

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made.

Penalty: A fine not exceeding K500.00.

**Sch.1.128. ARTICLES ABOUT REFERENDUM TO BE SIGNED.**

(1) On and after the date of issue and before the return of the writ for the Referendum, an article about the Referendum, printed and published in a newspaper or pamphlet shall be signed by the author giving his true name and address at the end of the article or, where part only of the article appears in an issue of a newspaper or pamphlet, at the end of that part.

Penalty: A fine not exceeding K500.00.

(2) A newspaper editor or proprietor is guilty of an offence if he permits, in a newspaper which he edits or owns, the publication of an article about the Referendum not signed by the author in accordance with Subsection (1), after the issue and before the return of the writ for the Referendum.

Penalty: A fine not exceeding K500.00.

(3) This section does not apply to the publication in a newspaper of -

(a) a leading article; or

(b) an article which consists solely of a report of a meeting and does not contain any comment (other than comment made by a speaker at the meeting) upon a question to be voted on at the Referendum.

(4) In this section -

"article about the Referendum" means an article commenting upon a question to be voted on at the Referendum, and includes a report, letter or other matter commenting upon such a question;

"pamphlet" includes a circular.

**Sch.1.129. BROADCAST ANNOUNCEMENTS ABOUT REFERENDUM.**

(1) On and after the date of issue and before the return of the writ for the Referendum, a person is guilty of an offence if he broadcasts, or permits to be broadcast, from a broadcasting station an announcement about the Referendum, unless that announcement includes the true name and address of its author.

Penalty: A fine not exceeding K500.00.

(2) Where an announcement is broadcast in contravention of Subsection (1), the person who supplied the announcement to the broadcasting station for broadcasting is guilty of an offence unless he proves that the true name and address of the author were included in the announcement, statement or other material so supplied.

Penalty: A fine not exceeding K500.00.

(3) This section does not apply to the inclusion in a summary of news of a report of a meeting that contains no comment (other than comment made by a speaker at the meeting)

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about the Referendum.

- (4) In this section -  
"announcement about the Referendum" means an announcement commenting upon a question to be voted on at the Referendum, and includes a statement or other material commenting upon such a question;  
"broadcast" includes distribute or relay;  
"broadcasting station" means a station broadcasting radio or television (including cable television).

**Sch.1.130. WRITING OR DISPLAYING CERTAIN MATERIAL PROHIBITED.**

(1) Subject to this section, a person who writes or displays referendum material directly on a place open to public view, is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(2) The application of Subsection (1) extends in relation to the Referendum although the writ for the Referendum has not been issued.

- (3) Nothing in this section prohibits -
- (a) the displaying of a sign on or at the office or room of an interested party or political party indicating only that the office or room is the office or room of the party, and specifying the name of the party concerned; or
  - (b) the display, whether by video, disk or the Internet access, of referendum material ; or
  - (c) the projection, by means of a movie projector or other similar apparatus, of referendum material on to a screen in a public theatre, hall or premises used for public entertainment.

- (4) In this section -  
"display" includes depicting, posting up or exhibiting (whether or not by means of a poster);  
"place open to public view" includes a roadway, footpath, building, vehicle, vessel, hoarding (whether it is or is not a public place or in a public place, and whether on land or water or in the air);  
"referendum material" means any matter intended or calculated to affect the result of the Referendum.  
"write" includes draw or spray.

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**Sch.1.131. REMOVAL OF PROHIBITED VOTING POSTERS.**

(1) A member of the Police Force may, and shall, if so directed by the Agency or by a Returning Officer remove or obliterate referendum material written or displayed in contravention of Section Sch.1.130.

(2) A person shall not obstruct or hinder a member of the Police Force in the exercise or attempted exercise of any power or in the discharge or attempted discharge of any duty, conferred or imposed upon him under this section.

Penalty: A fine not exceeding K500.00.

**Sch.1.132. INJUNCTIONS.**

(1) For the purpose of ensuring compliance with Section Sch.1 130, the Court may, upon the application of an officer, grant an injunction -

- (a) restraining an apprehended contravention of that section; or
- (b) directing the removal or obliteration of referendum material written or displayed in contravention of that section.

(2) The Court may make an order incidental or supplementary to an order under this section, including an order as to costs.

(3) In this section -

"Court" means the National Court or a court established under the Bougainville Constitution having a similar jurisdiction.

**Sch.1.133. LOUD-HAILERS, ETC.**

(1) Subject to Subsection (2), a person, who uses a loud-hailer, megaphone or other similar device during the polling period, is guilty of an offence.

Penalty: A fine not exceeding K600.00.

(2) Subsection (1) does not apply to a police officer or voting officer who uses a loud-hailer, megaphone or other similar device for the purposes of maintaining order or giving instructions.

**Sch.1.134. CARDS IN POLLING BOOTHS.**

(1) A person who exhibits or leaves in a polling booth a card or paper having on it a direction or instruction as to how a voter should vote or as to the method of voting is guilty of an offence.

Penalty: A fine not exceeding K300.00.

(2) This section does not apply to official instructions exhibited by voting officers at the direction of the Agency at a polling booth.

**Sch.1.135. UNTRUE STATEMENT IN DOCUMENTS, ETC.**

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A person who makes an untrue statement in a document provided for under this Schedule, in answer to a question under this Schedule, or in any other information supplied under this Schedule is guilty of an offence.

Penalty: A fine not exceeding K300.00.

**Sch.1.136. SIGNATURE TO DOCUMENTS.**

(1) A document provided for under this Schedule that has to be signed by a person shall be signed by that person with his personal signature and in the case of the Agency by the personal signature of a person nominated by the Agency for the purpose.

(2) Where a person who is unable to sign his name in writing makes his mark as his signature to a document provided for under this Schedule, the mark shall be deemed to be his personal signature, if it is identifiable as such and is made in the presence of a witness who signs the document as a witness to the signature.

(3) A person who makes the signature of any other person on a voting paper is guilty of an offence.

Penalty: A fine not exceeding K500.00.

**Sch.1.137. WITNESSING VOTING PAPERS.**

A person is guilty of an offence who -

- (a) signs his name as witness on a blank document provided for under this Schedule; or
- (b) signs his name as witness on a document provided for under this Schedule that has been prepared for signature by another person without that person having signed it; or
- (c) signs his name as witness on a document provided for under this Schedule purporting to witness the signature of a person without having seen the person sign his signature; or
- (d) writes on a voting paper as his own name -
  - (i) the name of another person; or
  - (ii) any name not being his own name.

Penalty: A fine not exceeding K500.00.

**Sch.1.138. MAKING OF MARKS ON BALLOT-PAPERS.**

Except where expressly authorized by or under this Schedule, a person, other than the voter to whom the ballot-paper has been lawfully issued, who makes a mark or writing on the ballot-paper of a voter is guilty of an offence.

Penalty: A fine not exceeding K500.00.

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**Sch.1.139. VOTING OFFENCES.**

The matters specified in Column 1 of the table in this section are voting offences punishable on conviction, in accordance with the provision in Column 2 of that table opposite the statement of the offence in Column 1.

**TABLE OF VOTING OFFENCES AND PUNISHMENTS.**

Item.	Column 1 Offences	Column 2 Punishments
1	Voting more than once at the Referendum	K400.00 or imprisonment for three months.
2	Wagering on the result of the Referendum	K400.00
3	Wilfully defacing, mutilating, destroying or removing a notice, list or other document affixed by a Returning Officer or by his authority	K20.00
4	Knowingly making a false statement in a claim, application, return or declaration, or in answer to a question under this Schedule	Imprisonment for two years
5	Any offence under this Schedule for which no other punishment is provided	K500.00
6	Falsely personating a person to secure a ballot-paper to which the personator is not entitled, or personating any other person for the purposes of voting	Imprisonment for two years
7	Fraudulently destroying or defacing a ballot-paper	Imprisonment for two years
8	Fraudulently putting a ballot-paper or other paper into a ballot-box	Imprisonment for six months
9	Fraudulently taking a ballot-paper out of a polling booth	Imprisonment for six months
10	Taking a ballot-paper out of a polling booth	K500.00
11	Forging ballot-paper, or uttering knowing it to be forged	Imprisonment for two years
12	In a polling booth during the polling, misconducting himself, or failing to obey the lawful directions of the presiding officer	K200.00 or imprisonment for one month
13	Supplying ballot-papers without authority	Imprisonment for six months
14	Unlawfully destroying, taking, opening, or otherwise interfering with ballot-boxes or ballot-papers	Imprisonment for six months

**Sch.1.140. PROHIBITION OF CANVASSING NEAR POLLING BOOTH.**

(1) The following acts are, during the polling period and on all days to which the

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polling is adjourned, prohibited at an entrance of or within a polling booth, or within 7m of an entrance of a polling booth:-

- (a) canvassing for votes; or
- (b) soliciting the vote of a voter; or
- (c) inducing a voter not to vote for a particular choice on the Referendum question; or
- (d) inducing a voter not to vote at the Referendum; or
- (e) exhibiting a notice or sign (other than an official notice) relating to the Referendum.

Penalty: A fine not exceeding K500.00.

(2) Where -

- (a) a building used as a polling booth is situated in grounds within an enclosure; and
- (b) the presiding officer at the polling booth causes to be displayed throughout the polling period at each entrance to those grounds a notice signed by him stating that those grounds are part of the polling booth,

those grounds shall, for the purposes of Subsection (1), be deemed to be part of a polling booth.

**Sch.1.141. BADGES OR EMBLEMS IN POLLING BOOTHS.**

An officer or scrutineer is guilty of an offence if he who wears or displays in a polling booth during the polling period -

- (a) a badge or emblem of a political party or recognised interest group; and
- (b) a garment or item indicating a position upon a question to be voted on at the Referendum.

Penalty: A fine not exceeding K500.00.

**Sch.1.142. FAILURE TO TRANSMIT CLAIMS.**

A person who accepts a claim for enrolment or transfer of enrolment for transmission to a Returning Officer shall promptly transmit the claim to the Returning Officer.

Penalty: A fine not exceeding K500.00.

**Sch.1.143. FORGING OR UTTERING VOTING PAPERS.**

A person is guilty of an offence if he -

- (a) forges a document provided for under this Schedule; or
- (b) utters a document provided for under this Schedule, knowing it to be forged,

Penalty: Imprisonment for a term not exceeding two years.

**Sch.1.144. EMPLOYERS TO ALLOW EMPLOYEES LEAVE TO VOTE.**

(1) If an employee who is a voter notifies his employer that he desires leave of absence to enable him to vote at the Referendum, the employer shall, if the absence desired is necessary to enable the employee to vote at the Referendum, allow him leave of absence without

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any penalty or disproportionate deduction of pay for such reasonable period as is necessary to enable the employee to vote at the Referendum.

Penalty: A fine not exceeding K500.00.

(2) An employee who obtains leave of absence under this section under pretence that he intended to vote at the Referendum but without the *bona fide* intention of doing so, is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) This section does not apply to a voter whose absence may cause danger or substantial loss in respect of the employment in which he is engaged.

**Sch.1.145. PROTECTION OF OFFICIAL MARK.**

(1) A person is guilty of an offence if he, without lawful authority, the burden of proof of which lies upon him -

- (a) makes an official mark on or in a paper; or
- (b) has in his possession a paper bearing an official mark; or
- (c) makes use of or has in his possession an instrument capable of making on or in a paper an official mark.

Penalty: A fine not exceeding K500.00.

(2) A person who, without lawful authority, the burden of proof of which lies upon him, makes on or in a ballot-paper, or on or in a paper purporting to be a ballot-paper, an official mark, shall be deemed to have forged a ballot-paper and is punishable accordingly.

(3) All paper bearing an official mark, and all instruments capable of making on or in paper an official mark, made or used by, or in the possession of, a person without lawful authority (the burden of proof of which authority lies upon him) is forfeited to the Agency, and may without warrant be seized by any member of the Police Force and destroyed or dealt with as prescribed.

(4) In this section, "official mark" means a prescribed mark to be placed or made on or in a voting paper, and includes a mark so nearly resembling an official mark as to be likely to deceive.

**Sch.1.146. DISORDERLY BEHAVIOUR AT MEETING.**

(1) This section applies to any lawful public political meeting held in relation to the Referendum between the date of the issue of the writ for the Referendum and the date of the return of the writ.

(2) A person who, at a meeting, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is held is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding

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two months.

(3) Where the chairman of a meeting is of the opinion that a person is preventing the business of the meeting being transacted, the chairman may direct a member of the Police Force to remove the person from the meeting, and a the member of the Police Force may take such reasonable steps as are necessary for the removal of the person from the room, building or place.

(4) A person -

- (a) who has been removed from a room or building in accordance with a direction given under Subsection (3); or
- (b) whose removal from a room, building or place has been directed under Subsection (3) and who has left that room, building or place,

and who, without the authority of the chairman (proof of which authority lies upon that person) returns to that room or building while the meeting is in progress, is guilty of an offence.

Penalty: A fine not exceeding K500.00 or imprisonment for a term not exceeding two months.

(5) A member of the Police Force may arrest without warrant a person who commits an offence against Subsection (4).

**Sch.1.147. NEGLECT TO INITIAL BALLOT-PAPER, ETC.**

An officer who, contrary to his duty, fails to initial a ballot-paper or affix as official mark as prescribed, correctly to mark a certified list of voters, or properly to attest a declaration is guilty of an offence.

Penalty: A fine not exceeding K500.00.

**Sch.1.148. REMOVAL OF OFFENDER FROM POLLING BOOTH.**

(1) A person who, in a polling booth during the polling, misconducts himself, or fails to obey the lawful direction of the presiding officer, may be removed from the polling booth by a member of the Police Force or by a person authorized by the presiding officer.

(2) A person who has been removed from a polling booth by direction of the presiding officer under Subsection (1) and who re-enters the polling booth without the permission of the presiding officer is guilty of a further voting offence, punishable on conviction by twice the penalty prescribed by Section Sch.1.139 for the original offence.

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**Sch.1.149. VOTING WHEN NO LONGER QUALIFIED TO VOTE.**

A person is guilty of an offence if he is enrolled in respect of a voting district and votes at the Referendum knowing that at some time after the date he was enrolled and before the date of the issue of the writ for the Referendum he ceased to be qualified for such enrolment.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months.

**Sch.1.150. LIABILITY FOR INDIRECT ACTS.**

A person is liable for an illegal practice or an offence against this Part committed directly or indirectly by himself, or by any other person on his behalf and with his knowledge or authority.

**Sch.1.151. APPLICATION OF CRIMINAL CODE.**

(1) Nothing in this Schedule shall derogate or be deemed to derogate the provisions of the Criminal Code, but a person is not liable to be prosecuted or punished both under this Schedule and under the Criminal Code for the same offence.

(2) If the Criminal Code is adopted by a law of Bougainville in accordance with Section 291 (*Functions and powers of the National Government and of the Bougainville Government in relation to Criminal law*) of the *Constitution*, the term "Criminal Code" in Subsection (1) means the law of Bougainville corresponding to the Criminal Code.

**PART XVII. - DISPUTED RETURNS.**

**Sch.1.152. INTERPRETATION .**

In this Part, unless the contrary intention appears –

"Court" means the National Court or a court established under the Bougainville Constitution having a similar jurisdiction.

**Sch.1.153. REFERENDUM MAY BE DISPUTED.**

The result of a Referendum may be disputed under this Part by a petition addressed to the Court and not otherwise.

**Sch.1.154. JURISDICTION OF COURT EXERCISABLE BY SINGLE JUDGE.**

The jurisdiction of the Court in relation to any matter under this Part may be exercised by a single judge.

**Sch.1.155. WHO MAY DISPUTE REFERENDUM.**

The result of a Referendum may be disputed by -

- (a) the Agency; or
- (b) a voter.

**Sch.1.156. COPY OF PETITION TO CLERK OF PARLIAMENT , ETC.**

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The staff of the Court shall give a copy of the petition to -

- (a) the Clerk of the National Parliament and the presiding officer of the Bougainville legislature; and
- (b) the Agency, unless the Agency filed the petition.

**Sch.1.157. REQUIREMENTS FOR PETITION TO BE EFFECTIVE.**

- (1) A petition shall -
  - (a) state the facts relied on to dispute the referendum result; and
  - (b) specify the relief to which the petitioner claims to be entitled.
- (2) A petition by the Agency shall be signed by the executive head of the Agency.
- (3) A petition by a voter shall -
  - (a) be signed by the voter; and
  - (b) be attested by two witnesses whose occupations and addresses are stated.
- (4) A petition shall be filed within 40 days after the declaration of the result of the Referendum in accordance with Section Sch.1.123 (3) -
  - (a) in the case of the National Court – in the registry of the court at Port Moresby; or
  - (b) in the case of the Bougainville court – at the registry or principal registry of the Court.
- (4) The preceding provisions of this Schedule do not, by implication, prevent the amendment of the petition.

**Sch.1.158. DEPOSIT AS SECURITY FOR COSTS.**

At the time of filing the petition, the petitioner shall deposit with the Registrar of the Court the sum of K2,500.00 as security for costs.

**Sch.1.159. REQUIREMENTS FOR PROCEEDINGS.**

Proceedings shall not be heard on a petition unless the requirements of Sections Sch.1.157 and 1.158 are complied with.

**Sch.1.160. PARTIES TO PETITION.**

- (1) The parties to a petition are the person who filed it and any respondent under this section.
- (2) The Agency is a respondent to any petition by another person under this Part.

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**Sch.1.161. APPLICATION TO COURT FOR DOCUMENTS, ETC.**

(1) The petitioner may apply to the Court for an order requiring the Agency to give the Court stated documents and other things held by the Agency in relation to the Referendum.

(2) The Court may make any order relating to the application it considers appropriate.

**Sch.1.162. HOW PETITION DEALT WITH BY COURT.**

(1) The Court may conduct hearings and other proceedings in relation to the petition.

(2) The Court shall not have regard to legal forms and technicalities, and is not required to apply the rules of evidence.

(3) The Court shall deal with the petition as quickly as is reasonable in the circumstances.

(4) In giving effect to Subsection (3), the Court shall use its best efforts to ensure that -

- (a) the proceeding begins within 28 days after the petition is filed; and
- (b) the Court's final orders are given within 14 days after the end of the proceeding.

(5) Notwithstanding Subsections (3) and (4), the Court shall give all parties to the proceeding at least 10 day's notice before it begins the proceeding.

(6) The rules of court of the Court may include provision, not inconsistent with this Part, relating to the practices and procedures of the Court for this Part.

(7) Without derogating Subsection (6), the rules of court may make provision regarding the withdrawal of petitions, the consequences of the death of petitioners and the substitution of petitioners in these circumstances.

**Sch.1.163. APPLICATION FOR DISMISSAL OF PETITION.**

(1) The Agency may apply to the Court for an order dismissing the petition on the ground that there has been excessive delay by the petitioner in relation to the petition.

(2) The Court may make any order relating to the application it considers appropriate.

**Sch.1.164. POWERS OF COURT.**

(1) The Court may make any order or exercise any power in relation to the petition that the Court considers just and equitable.

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(2) To avoid doubt, it is declared that the Court may order the opening of a sealed declaration vote envelope.

(3) Notwithstanding Subsection (2), the Court shall ensure, as far as practicable, that the secrecy of the ballot is maintained.

**Sch.1.165. REFERENDUM NOT TO BE DISPUTED FOR MINOR DEFECTS, ETC.**

The Referendum shall not be liable to be disputed in view of -

- (a) any defect affecting the office, power or authority of the Agency or a person appointed by it; or
- (b) any formal error or defect in any declaration or other instrument or in any distribution or publication, or any failure to give a notification provided for under this Schedule; or
- (c) any distribution or publication referred to in Paragraph (b) being out of time.

**Sch.1.166. COPY OF FINAL ORDERS TO CLERK OF PARLIAMENT, ETC.**

The Court shall arrange for a copy of its final orders to be sent to the Clerk of the Parliament and to the presiding officer of the Bougainville legislature as soon as possible after they are made.

**Sch.1.167. COSTS.**

(1) The Court may order an unsuccessful party to the petition to pay the reasonable costs of the other parties to the petition.

(2) Where costs are awarded against the person who filed the petition, the deposit filed with the petition shall be applied towards payment of the costs, otherwise the deposit shall be returned to the person.

**Sch.1.168. DECISIONS AND ORDERS TO BE FINAL, ETC.**

A decision of, or order made by, the Court relating to the petition is subject to appeal on points of law but otherwise is final and conclusive.

**Sch.1.169. RIGHT OF AGENCY TO ACCESS DOCUMENTS.**

Unless the Court otherwise orders, the filing of a petition shall not deprive the Agency of any right to have access to a document for the purpose of performing its functions.

**PART XVIII. - MISCELLANEOUS.**

**Sch.1.170. INSTITUTION OF PROCEEDINGS FOR OFFENCES.**

(1) The Agency shall, where the Public Prosecutor so advises, institute legal proceedings against a person committing an offence against this Schedule.

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(2) Nothing in Subsection (1) affects the rights of any person to institute proceedings in respect of an offence against this Schedule.

(3) In this section, "Public Prosecutor" includes any equivalent office established under the Bougainville Constitution.

**Sch.1.171. MATERIAL MAY BE SENT BY FAX.**

Where it is impracticable to communicate material relating to the Referendum by post without occasioning undue delay, a fax communicated in the ordinary course shall be deemed to comply with the requirements of this Schedule as if the matter sent through electronic means had been communicated in the manner prescribed by this Schedule.

**Sch.1.172. AVERMENTS DEEMED TO BE PROVED.**

In a prosecution in a court of summary jurisdiction in respect of a contravention of the provisions of this Schedule relating to compulsory enrolment, instituted by an officer or by a person acting under the direction of an officer, the averments of the prosecutor contained in the information or complaint shall be deemed to be proved in the absence of evidence to the contrary.

**Sch.1.173. DEFENDANT MAY BE CALLED UPON TO GIVE EVIDENCE.**

Where a person has secured enrolment in pursuance of a voting claim, or has made a claim for enrolment or transfer of enrolment, and proceedings arise in a court of competent jurisdiction in respect of the claim for enrolment or transfer of enrolment, the person may be called upon to give evidence upon oath to the court as to the truth of the statements contained in the claim for enrolment or transfer of enrolment.

**Sch.1.174. PRODUCTION OF CLAIMS FOR ENROLMENT, ETC.**

(1) A person who is, or has been, an officer shall not, except for the purposes of this Schedule, be required -

- (a) to produce in court, or give evidence of, a claim for enrolment or transfer of enrolment under this Schedule; or
- (b) to divulge or communicate to a court any matter or thing in relation to a claim for enrolment or transfer of enrolment under this Schedule, being a matter or thing that has come to his notice in the performance of his duties or functions under this Schedule.

(2) In this section, "officer" includes any person performing duties, or exercising powers or functions, under or in relation to this Schedule.

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**Sch.1.175. PRESERVATION AND DESTRUCTION OF BALLOT-PAPERS.**

(1) All ballot-papers, certified lists of voters, declarations and applications used at or in connexion with the Referendum shall be preserved until the Referendum can no longer be challenged under Part XVII, when they shall be destroyed.

(2) Ballot-papers, certified list of voters and declarations referred to in Subsection (1) shall be preserved until the later of -

- (a) 45 days after the date of the return of the writ; or
- (b) the final disposition of any proceedings under Part XVII.

**Sch.1.176. PRESCRIBED OFFENCES.**

For the purposes of Section 50(1)(b) (*right to vote and stand for public office*) of the *Constitution* the offences contained in the sections specified hereunder are prescribed offences:-

Sections Sch.1.56, 1.57, 1.121(2), 1.126(1)(c), (d) and (e), 1.136(3), 1.139, items 1, 4, 7, 8, 9, 10, 12 and 14, and 1.143 and 1.145(1).

**Sch.1.177. FORM OF WRIT.**

The writ shall be in the following form :-

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

***Organic Law on Bougainville Government and Bougainville Referendum***

**WRIT FOR A REFERENDUM ON BOUGAINVILLE.**

To: The Agency

**GREETING:**

This is to command you to cause a referendum to be held for the purposes of Part XIV.7 of the *Constitution*, and I appoint the following dates for the purposes of the referendum:-

1. For the issue of this writ, in accordance with Section Sch.1.43: [*insert day and date*]
2. For the cut-off day for the voting rolls, for the purposes of Section Sch.1.32(3) and Section Sch.1.40(2): [*insert day and date*]
3. For the first day of the polling period, for the purposes of Section Sch.1.42(2): [*insert day and date*]
4. For the last day of the polling period, for the purposes of Section Sch.1.42(3): [*insert day and date*]
5. For the return of this writ, for the purposes of Section Sch.1.42(4): [*insert day and date*]

GIVEN under my hand at

*Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government  
and Bougainville Referendum.*

*(Head of State)*

**INDEPENDENT STATE OF PAPUA NEW GUINEA.*****THE CONSTITUTION.*****ALTERATION TO THE CONSTITUTION.**

The Government proposes to alter the *Constitution* and, pursuant to Section 14 (2) (*Making of alterations to the Constitution and Organic Laws*) of the *Constitution*, I, **BERNARD NAROKOBI**, Speaker of the National Parliament, hereby publish the proposed Law –

Draft of 12/11/2001.

**INDEPENDENT STATE OF PAPUA NEW GUINEA.*****Constitutional Amendment (Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum).*****ARRANGEMENT OF CLAUSES.****PREAMBLE.**

1. Compliance with Constitutional requirements.
2. Date of verification.
3. New Part XIV.

**“PART XIV. – BOUGAINVILLE GOVERNMENT  
AND BOUGAINVILLE REFERENDUM.*****Division 1. –Preliminary.***

- “276. APPLICATION OF THIS PART.
- “277. APPLICATION OF PART VIA.
- “278. INTERPRETATION.

***Division 2. - Arrangement for the Establishment of Bougainville Government.***

- “279. AUTONOMOUS GOVERNMENT FOR BOUGAINVILLE.
- “280. BOUGAINVILLE CONSTITUTION.
- “281. BOUGAINVILLE CONSTITUTIONAL COMMISSION.
- “282. STRUCTURES OF BOUGAINVILLE GOVERNMENT TO BE CONTAINED IN BOUGAINVILLE CONSTITUTION.
- “283. CONSULTATION WITH NATIONAL EXECUTIVE COUNCIL.
- “284. BOUGAINVILLE CONSTITUENT ASSEMBLY.
- “285. ENDORSEMENT OF BOUGAINVILLE CONSTITUTION.

*Constitutional Amendment*

- “286. LEGAL STATUS OF BOUGAINVILLE CONSTITUTION.
- “287. AMENDMENT OF BOUGAINVILLE CONSTITUTION.

*Division 3 – Division of Functions and Powers between National Government and Bougainville Government and transfer of functions and powers to the Bougainville Government.*

- “288. DIVISION OF FUNCTIONS AND POWERS OF GOVERNMENT.
- “289. FUNCTIONS AND POWERS OF THE NATIONAL GOVERNMENT.
- “290. FUNCTIONS AND POWERS AVAILABLE TO THE BOUGAINVILLE GOVERNMENT.
- “291. FUNCTIONS AND POWERS OF THE NATIONAL GOVERNMENT AND OF THE BOUGAINVILLE GOVERNMENT IN RELATION TO CRIMINAL LAW.
- “292. SUBJECTS NOT SPECIFIED IN SECTIONS 289, 290 AND 291.
- “293. INTERNATIONAL OBLIGATIONS OF THE STATE IN RESPECT OF POWERS AND FUNCTIONS OF BOUGAINVILLE GOVERNMENT.
- “294. FUNCTIONS AND POWERS OF THE BOUGAINVILLE GOVERNMENT ON ESTABLISHMENT AND WITHIN 12 MONTHS THEREAFTER.
- “295. PROCESS FOR TRANSFER OF FUNCTIONS AND POWERS.
- “296. RELATIONSHIP OF NATIONAL AND BOUGAINVILLE LAWS.
- “297. MANNER OF IMPLEMENTATION OF TRANSFER OF FUNCTIONS AND POWERS.
- “298. NATIONAL GOVERNMENT ASSETS AND LAND.
- “299. TRANSFER OR DELEGATION OF POWERS AND FUNCTIONS.

*Division 4. – Powers and Functions of the Bougainville Government and matters relative thereto affecting other Provisions of this Constitution.*

**Subdivision A. – Preliminary.**

- “300. BOUGAINVILLE CONSTITUTION AND BOUGAINVILLE LAWS TO FORM PART OF THE LAWS OF PAPUA NEW GUINEA.
- “301. SPECIAL REFERENCES TO THE SUPREME COURT.

**Subdivision B. – Code of Conduct, etc., and Leadership Code.**

- “302. CODE OF CONDUCT, ETC., AND LEADERSHIP CODE.

**Subdivision C. – Rights and Freedoms.**

- “303. QUALIFICATIONS ON QUALIFIED RIGHTS.
- “304. GUARANTEED RIGHTS AND FREEDOMS.

**Subdivision D. – Administration of Justice.**

- “305. OPERATION OF NATIONAL JUDICIAL SYSTEM IN BOUGAINVILLE.

*Constitutional Amendment*

- “306. ESTABLISHMENT OF COURTS IN BOUGAINVILLE.
- “307. ESTABLISHMENT OF TRIBUNALS IN BOUGAINVILLE.
- “308. JURISDICTION OF BOUGAINVILLE COURTS.
- “309. APPOINTMENT OF JUDGES, ETC.,

**Subdivision E – Bougainville Government Services.**

- “310. BOUGAINVILLE GOVERNMENT SERVICES.

**Subdivision F. - Bougainville Public Service.**

- “311. BOUGAINVILLE PUBLIC SERVICE.
- “312. NATIONAL PUBLIC SERVICE IN BOUGAINVILLE.

**Subdivision G. – Bougainville Police.**

- “313. BOUGAINVILLE POLICE.
- “314. FUNDING OF THE BOUGAINVILLE POLICE.
- “315. POLICE FORCE ETC., IN BOUGAINVILLE.

**Subdivision H. – Bougainville Correctional Service.**

- “316. BOUGAINVILLE CORRECTIONAL SERVICE.
- “317. FUNDING OF THE BOUGAINVILLE CORRECTIONAL SERVICE.
- “318. CORRECTIONAL SERVICE OF THE NATIONAL GOVERNMENT IN BOUGAINVILLE.

**Subdivision I. – Bougainville Salaries and Remuneration Commission.**

- “319. BOUGAINVILLE SALARIES AND REMUNERATION COMMISSION.
- “320. SALARIES AND REMUNERATION COMMISSION.

**Subdivision J. – Powers relating to Constitutional Office-Holders.**

- “321. BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDERS.

**Subdivision K. – Emergency Powers.**

- 322. BOUGAINVILLE CONSTITUTION MAY PROVIDE FOR EMERGENCIES.
- “323. DECLARATION OF NATIONAL EMERGENCY IN BOUGAINVILLE.

*Division 5. – Fiscal Arrangements.*

- “324. BASIC PRINCIPLES OF FISCAL ARRANGEMENTS.
- “325. REVENUE RAISING, ETC., ARRANGEMENTS.

*Constitutional Amendment*

- “326. GRANTS.
- “327. FOREIGN AID.
- “328. OTHER FINANCIAL POWERS AND ACCOUNTABILITY.
- “329. FOLLOW-UP TO AUDIT REPORTS.

*Division 6. – Intergovernmental Relations and Review.*

- “330. INTERPRETATION.
- “331. PRINCIPLES OF INTERGOVERNMENTAL RELATIONS.
- “332. JOINT SUPERVISORY BODY.
- “333. DISPUTE RESOLUTION PROCEDURE.
- “334. MEDIATION AND ARBITRATION.
- “335. DISPUTE RESOLUTION IN THE COURTS.
- “336. PANEL OF PERSONS WITH APPROPRIATE EXPERTISE.
- “337. REVIEWS.

*Division 7. – Bougainville Referendum*

- “338. REFERENDUM TO BE HELD.
- “339. THE QUESTION OR QUESTIONS TO BE PUT.
- “340. MANNER OF CONDUCTING REFERENDUM.
- “341. REFERENDUM TO BE FREE AND FAIR.
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- “349. CONSTITUTIONAL REGULATIONS.

Draft of 12/11/2001.

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

**A PROPOSED LAW TO ALTER THE CONSTITUTION**

entitled

*Constitutional Amendment (Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum).*

**PREAMBLE.**

**WHEREAS** the Government of the Independent State of Papua New Guinea and Leaders representing the people of Bougainville have agreed to resolve the Bougainville conflict and to secure a lasting peace by peaceful means;

**AND WHEREAS** the Government of the Independent State of Papua New Guinea and Leaders representing the people of Bougainville have entered into the Bougainville Peace Agreement which sets out the matters agreed;

**AND WHEREAS** the Bougainville Peace Agreement provides that there shall be a system of autonomous government for Bougainville and a referendum among Bougainvilleans on the future political status of Bougainville;

**AND WHEREAS** it is necessary to amend the *Constitution* so as to make provision in the laws of Papua New Guinea for that system of autonomous government and for that referendum;

**THEREFORE** it is hereby provided as follows:-

Being a Law to alter the *Constitution* to make provision, in accordance with the Bougainville Peace Agreement, for a system of autonomous government for Bougainville and for a referendum among Bougainvilleans on the future political status of Bougainville, and for related purposes,

MADE by the National Parliament to come into operation –

- (a) insofar as relating to Sections 2 and to Section 3 (to the extent necessary to bring into operation Section 344) on certification; and
- (b) insofar as relating to the remainder of this Law-in accordance with a notice published in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister, given after notification to the Minister, in accordance with Section 2, of the date of verification.

*Constitutional Amendment***1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Law, to the extent that it –

- (a) regulates or restricts; or
- (b) provides for the regulation or restriction by the Bougainville Legislature of,

a right or freedom referred to in Subsection III.3.C (*qualified rights*) of the *Constitution*, namely –

- (c) the right to freedom from forced labour conferred by Section 43 of the *Constitution*; and
- (d) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (e) the right to freedom of conscience, thought and religion conferred by Section 45 of the *Constitution*; and
- (f) the right to freedom of expression conferred by Section 46 of the *Constitution*; and
- (g) the right to freedom of assembly and association conferred by Section 47 of the *Constitution*; and
- (h) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (i) the right to privacy conferred by Section 49 of the *Constitution*; and
- (j) the right to vote and stand for public office conferred by Section 50 of the *Constitution*; and
- (k) the right to freedom of information conferred by Section 51 of the *Constitution*; and
- (l) the right to freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made -

- (m) for the purpose of giving effect to the public interest in public safety, public order, public welfare, public health (including animal and plant health), the protection of children and persons under disability (whether legal or practical) and the development of under-privileged or less advanced groups or areas; or
- (n) in order to protect the exercise of the rights and freedoms of others.

(2) To the extent that the provisions of this Law, insofar as it gives to the Bougainville Legislature the power to regulate or restrict the qualified rights referred to in Subsection (1), are not envisaged by Section 38 (*general qualifications on qualified rights*) of the *Constitution*, it is hereby declared that Subsection (1) complies with the requirements of Section 38 (2)(a) and (b).

**2. DATE OF VERIFICATION, ETC.,**

(1) The date of verification is the date on which the Director of the United

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Nations Observer Mission in Bougainville verifies that the weapons in Bougainville to which the weapons disposal agreement applies are in secure, double-locked containers under the supervision of the United Nations Observer Mission in Bougainville in accordance with the weapons disposal plan.

(2) The Minister responsible for Bougainville matters shall, on receiving notification of the date of verification, forthwith advise the Head of State to bring this Law, other than this section and Section 3 (to the extent necessary to bring into operation Section 344), into operation.

**3. NEW PART XIV.**

The *Constitution* is amended by inserting after Part XIII the following new Part:-

**“PART XIV.- BOUGAINVILLE GOVERNMENT AND  
BOUGAINVILLE REFERENDUM.**

*Division 1. – Preliminary.*

**“276. APPLICATION OF THIS PART.**

(1) This Part applies in and in relation to Bougainville only.

“(2) This Part shall apply notwithstanding the provisions of this *Constitution* and where the other provisions of this *Constitution* are inconsistent with the provisions of this Part, the provisions of this Part shall prevail.

**“277. NON-APPLICATION OF PART VIA.**

After the establishment of the Bougainville Government following elections, in accordance with this Part and the Bougainville Constitution, the provisions of Part VIA shall not apply to Bougainville.

**“278. INTERPRETATION.**

(1) In this Part, unless the contrary intention appears –

“Agreement” means the Bougainville Peace Agreement signed at Arawa on 30 August 2001 and published in National Gazette No. G141 of 9 November 2001;

“Bougainville” means –

(a) the areas of land within the boundaries of Bougainville Province as described in the Schedule to the *Organic Law on Provincial Boundaries*; and

(b) the areas of sea extending to three nautical miles from the low water mark of the areas of land referred to in Paragraph (a);

“Bougainville Constituent Assembly” means the Bougainville Constituent Assembly established in accordance with Section 284 (*Bougainville Constituent Assembly*);

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- “Bougainville Constitution” means the Bougainville Constitution endorsed and gazetted in accordance with Section 285 (*Endorsement of Bougainville Constitution*);
- “Bougainville Constitutional Commission” means the Bougainville Constitutional Commission established in accordance with Section 281 (*Bougainville Constitutional Commission*);
- “Bougainville Constitutional Office-holder” means a Bougainville Constitutional Office-holder appointed under or in pursuance of the provisions of Section 321 (*Bougainville Constitutional office-holders*);
- “Bougainville Correctional Service” means Bougainville Correctional Service for which provision is made under Section 310(c) (*Bougainville Government Services*);
- “Bougainville court” means a court established under Section 306 (1) (*Establishment of courts in Bougainville*);
- “Bougainville Executive” means the accountable executive body of the Bougainville Government;
- “Bougainville Government” means the autonomous Bougainville Government established in accordance with this Part;
- “Bougainville Interim Provincial Government” means the Bougainville Interim Provincial Government established under the *Organic Law on Provincial Governments and Local-level Governments*;
- “Bougainville law” means a law made in accordance with the Bougainville Constitution and this Part;
- “Bougainville Legislature” means the legislature of the Bougainville Government;
- “Bougainville Police” means the Bougainville Police for which provision is made under Section 310 (1)(b) (*Bougainville Government Services*);
- “Bougainville Public Service” means the Bougainville Public Service for which provision is made under Section 310 (1)(a) (*Bougainville Government Services*);
- “Bougainville Referendum” means the Referendum for which provision is made under Division 7 (*Bougainville Referendum*);
- “Bougainville Salaries and Remuneration Commission” means the Bougainville Salaries and Remuneration Commission established in accordance with Section 320 (*Bougainville Salaries and Remuneration Commission*);
- “dispute resolution procedure” means the dispute resolution procedure for which provision is made under Division 6 (*Intergovernmental Relations and Review*);
- “fiscal self-reliance” means the first year in which the revenue from company tax, customs duties and 70% of value added tax collected in Bougainville is equal to the value of the recurrent grant on a sustainable basis;

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“National law” means a law made by the National Parliament;  
“Referendum” means the Bougainville Referendum;  
“review” means a review under Division 6.

“(2) Where this Part or an Organic Law authorized by this Part provides for consultation between the National Government and the Bougainville Government, such consultation shall be conducted on the following basis:-

- (a) views shall be communicated in a timely manner in writing (or, by prior written agreement, by electronic equivalent) to a specified point of contact;
- (b) adequate opportunity shall be given to respond in a similar manner;
- (c) where there are differences, meaningful views shall be exchanged within an adequate time-frame, either agreed or specified in a written document (or, by prior written agreement, by electronic equivalent) with a view to reaching agreement;
- (d) a clear, written record of the outcome of a consultation shall be prepared and made available for all parties.

“(3) The Agreement may be used, so far as it is relevant, as an aid to interpretation where any question relating to the interpretation or application of any provision of this Part or an Organic Law authorized by this part arises.

“(4) The Agreement shall be interpreted liberally, by reference to its intentions and without undue reference to technical rules of construction.

*Division 2. – Arrangements for the Establishment of Bougainville Government.***“279. AUTONOMOUS GOVERNMENT FOR BOUGAINVILLE.**

(1) There shall be a system of autonomous government for Bougainville in accordance with this Part.

- “(2) Elections to the Bougainville Legislature may be held only –
- (a) in accordance with an agreement reached in accordance with Paragraph 8 (a) of the weapons disposal plan contained in the Agreement; or
  - (b) on verification and certification by the Director of the United Nations Observer Mission in Bougainville, of substantial compliance with, and generally in accordance with Paragraph 8(b) of, the weapons disposal plan according to the Agreement.

“(3) An Organic Law shall make provision for such matters pertaining to the system of autonomous government as are authorized by this Part.

**“280. BOUGAINVILLE CONSTITUTION.**

There shall be a Bougainville Constitution made and endorsed in accordance

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with this Part, which shall make provision for the organization and structures of the government for Bougainville under the autonomy arrangements in a manner consistent with this Part and with the Agreement.

**“281. BOUGAINVILLE CONSTITUTIONAL COMMISSION.**

(1) The Bougainville Interim Provincial Government, after consultation in accordance with the Agreement, shall establish a Bougainville Constitutional Commission which shall be broadly representative of the people of Bougainville.

“(2) The Bougainville Constitutional Commission shall –

- (a) consult widely with the people of Bougainville to obtain their views on a Bougainville Constitution; and
- (b) prepare a draft Bougainville Constitution.

“(3) Where, prior to the coming into operation of this Part, the Bougainville Interim Provincial Government has established a body, after consultation in accordance with the requirements of the Agreement in relation to the Bougainville Constitutional Commission, with functions equivalent to those given to the Bougainville Constitutional Commission by Subsection (2) -

- (a) such body may be adopted by the Bougainville Interim Provincial Government as the Bougainville Constitutional Commission; and
- (b) any consultation by, and reports, findings and drafts prepared by such body may be adopted by the Bougainville Interim Provincial Government as consultation by, and reports, findings and drafts of the Bougainville Constitutional Commission.

**“282. STRUCTURES OF BOUGAINVILLE GOVERNMENT TO BE CONTAINED IN BOUGAINVILLE CONSTITUTION.**

(1) The Bougainville Constitution shall make provision for the Bougainville Government generally and in particular shall provide, subject to this Part and to any Organic Law authorized by this Part –

- (a) that the Bougainville Government shall include a mainly elective (either directly or indirectly) legislature, but which may include persons appointed, elected or nominated to represent community, youth or other interests; and
- (b) that the Bougainville Government shall include an accountable executive body; and
- (c) for a head of the executive body and for his title, the method of his appointment and his powers and functions; and
- (d) for the establishment of an independent and impartial judiciary for Bougainville in accordance with this Part; and

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- (e) for the powers, functions and procedures of the legislature, executive and judiciary, in accordance with the terms of the Agreement; and
- (f) for the establishment of such institutions as are necessary or desirable to enable the Bougainville Government to carry out its powers effectively; and
- (g) for the accountability of all institutions established by or under the Bougainville Constitution; and
- (h) for Bougainville Constitutional Office-holders and for their powers and functions; and
- (i) for the manner in which the Bougainville Constitution will come into operation after its endorsement by the Head of State, acting on advice; and
- (j) for the naming of Bougainville, the Bougainville Government and institutions of the Bougainville Constitution or Bougainville Government; and
- (k) for any other matters required by this Part.

“(2) The structures and procedures of the Bougainville Government shall meet internationally accepted standards of good governance, as they are applicable and implemented in the circumstance of Bougainville and Papua New Guinea as a whole, including democracy, the opportunity for participation by Bougainvilleans, transparency, accountability, and respect for human rights and the rule of law, including this Constitution.

**“283. CONSULTATION WITH NATIONAL EXECUTIVE COUNCIL.**

The Bougainville Constitutional Commission shall –

- (a) keep the National Executive Council informed as proposals for the Bougainville Constitution are developed; and
- (b) allow the National Executive Council adequate opportunity to make its views known as proposals for the Bougainville Constitution are developed.

**“284. BOUGAINVILLE CONSTITUENT ASSEMBLY.**

(1) The Bougainville Interim Provincial Government, after consultation in accordance with the Agreement, shall establish a Bougainville Constituent Assembly which shall be broadly representative of the people of Bougainville.

“(2) The Bougainville Constituent Assembly –

- (a) shall consider and debate the draft Bougainville Constitution; and
- (b) may amend the draft Bougainville Constitution; and
- (c) shall submit the draft Bougainville Constitution to the National Executive Council and consult with the National Executive Council on its contents; and

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- (d) may adopt the Bougainville Constitution; and
- (e) following adoption by it of the Bougainville Constitution, send a copy of that Bougainville Constitution to the Minister responsible for Bougainville matters.

“(3) The Bougainville Government and the National Government shall cooperate in facilitating the establishment of the Constituent Assembly.

**“285. ENDORSEMENT OF BOUGAINVILLE CONSTITUTION.**

(1) The Minister responsible for Bougainville matters shall submit that Bougainville Constitution to the National Executive Council at the first practicable opportunity.

“(2) The National Executive Council shall consider the Bougainville Constitution within 14 days of its being submitted under Subsection (1) and, where it meets the requirements of this Part and any Organic Law authorized by this Part, shall advise the Head of State to endorse the Bougainville Constitution.

“(3) The Head of State, acting on advice in accordance with Subsection (2), shall endorse the Bougainville Constitution.

“(4) After the Bougainville Constitution has been endorsed under Subsection (3), the National Executive Council shall cause it to be published promptly in the National Gazette.

“(5) Following publication in the National Gazette, the Bougainville Constitution shall come into operation in accordance with the manner provided in the Bougainville Constitution.

**“286. LEGAL STATUS OF BOUGAINVILLE CONSTITUTION.**

(1) Subject to this Constitution, the Bougainville Constitution shall be the supreme law as regards matters that fall within the jurisdiction of the Bougainville Government in accordance with this Part and the Agreement, and Bougainville laws and institutions shall be consistent with the Bougainville Constitution.

- “(2) The Bougainville Constitution shall be enforceable –
- (a) in the Supreme Court; and
  - (b) in the Bougainville Court established under Section 306 (4)(a) (**establishment of courts in Bougainville**), to the extent provided by the Bougainville Constitution.

**“287. AMENDMENT OF BOUGAINVILLE CONSTITUTION.**

(1) The Bougainville Constitution shall provide that the Bougainville Constitution may be amended and shall provide for the manner in which it may be amended so as to comply with this section.

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(2) Where any amendment to the Bougainville Constitution is proposed, the Bougainville Executive shall give notification of it to the Minister responsible for Bougainville matters.

(3) The National Government may consult with the Bougainville Government in relation to any proposed amendment of the Bougainville Constitution.

*Division 3 – Division of Functions and Powers between National Government and Bougainville Government and transfer of functions and powers to Bougainville Government.*

**“288. DIVISION OF FUNCTIONS AND POWERS OF GOVERNMENT.**

The functions and powers of government relating to Bougainville shall be divided between the National Government and the Bougainville Government in accordance with this Part and the Agreement.

**“289. FUNCTIONS AND POWERS OF THE NATIONAL GOVERNMENT.**

(1) Subject to this Part and to the Agreement, the functions and powers of the National Government in and in relation to Bougainville are as specified in this section.

“(2) The functions and powers of the National Government in and in relation to Bougainville are the following:-

- (a) central banking;
- (b) currency;
- (c) customs (imposition, administration and collection);
- (d) defence;
- (e) foreign relations (including foreign aid);
- (f) highly migratory and straddling fish stocks;
- (g) industrial relations;
- (h) international civil aviation;
- (i) international shipping;
- (j) international trade;
- (k) legislation specifically required to implement this Constitution;
- (l) legislation required to amend this Constitution;
- (m) migration in and out of the country;
- (n) quarantine;
- (o) posts;
- (p) telecommunications;
- (q) such other powers and functions for which, in accordance with this Part and the Agreement, the National Government is responsible.

“(3) The National Government is responsible in and in relation to Bougainville for the operation of the functions and powers of a Constitutional office or State Service to the extent necessary –

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- (a) where an equivalent Bougainville Constitutional office or Bougainville Government Service has not been established or is not fully operational; or
- (b) as otherwise provided for or required by this Part or the Agreement.

“(4) The National Government shall have the function and power relating to firearms control until full implementation of decisions made at stage 3 of the weapons disposal plan in the agreement.

“(5) The National Government shall have the function and power relating to foreign investment to the extent permitted by Section 290(6) (*functions and powers available to the Bougainville Government*).

“(6) The National Government shall have the functions and powers necessary to develop the infrastructure relative to its functions and powers under this section.

“(7) The –

- (a) Bougainville Government shall not obstruct the National Government in the exercise of its functions and powers under this section; and
- (b) the exercise by the National Government of its functions and powers under this section shall respect the Bougainville laws.

**“290. FUNCTIONS AND POWERS AVAILABLE TO THE BOUGAINVILLE GOVERNMENT.**

(1) Subject to this Part and the Agreement, the functions and powers available to the Bougainville Government in and in relation to Bougainville are as specified in this section.

“(2) The functions and powers available to the Bougainville Government in and in relation to Bougainville are the following:-

- (a) agriculture;
- (b) arts;
- (c) building regulation;
- (d) cemeteries;
- (e) censorship;
- (f) children;
- (g) churches and religion;
- (h) civil registration;
- (i) communications and information services within Bougainville;
- (j) community development;
- (k) corporation law;
- (l) culture;
- (m) education;

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- (n) energy (including electricity and power generation and distribution);
- (o) environment;
- (p) family law;
- (q) fire service;
- (r) fisheries (other than highly migratory or straddling stocks);
- (s) forestry and agro-forestry;
- (t) gambling, lotteries and games of chance;
- (u) harbours and marine;
- (v) health;
- (w) heritage;
- (x) home affairs, including youth and social welfare;
- (y) housing (but not State-owned housing);
- (z) information technology;
- (za) insurance;
- (zb) intellectual property;
- (zc) labour and employment (other than industrial relations);
- (zd) land and natural resources;
- (ze) land, sea and air transport;
- (zf) language;
- (zg) libraries and measures;
- (zh) licensing of public entertainment;
- (zi) liquor;
- (zj) livestock;
- (zk) local-level government;
- (zl) manufacturing;
- (zm) mining;
- (zn) non-banking financial institutions;
- (zo) oil and gas;
- (zp) parks and reserves;
- (zq) physical planning;
- (zr) professions;
- (zs) public holidays;
- (zt) public works;
- (zu) science and technology;
- (zv) sports and recreations;
- (zw) statistics (other than National Census);
- (zx) symbols of the Bougainville Government;
- (zy) time zones;
- (zz) tourism;
- (zza) trade, commerce and industry;
- (zzb) waste management;
- (zzc) water and sewerage;
- (zzd) water resources;

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- (zze) wild life preservation;
- (zzf) wills and succession;
- (zzg) such other functions and powers for which, in accordance with this Part and the Agreement, the Bougainville Government may be responsible.

- “(3) The Bougainville Government is responsible for –
- (a) administration of justice including dispute resolution; and
  - (b) the operation and the functions and powers of Bougainville Constitutional Office-holders; and
  - (c) the operation of and the powers and functions of Bougainville Government Services,

in accordance with the Agreement and this Part.

“(4) Subject to Subsection (5), the function and power relative to firearms control may be transferred to the Bougainville Government only after full implementation of the decisions made at stage 3 of the weapons disposal plan.

“(5) The timing of the transfer of the function and power of firearms control in accordance with Subsection (4) may be addressed in the review procedure under Section 337 (*Reviews*).

“(6) Where the function and power relating to foreign investment applications has been transferred to the Bougainville Government, it shall be exercised in the following manner:-

- (a) each application for foreign investment relating to Bougainville shall be lodged in duplicate, one for the National Government and one for the Bougainville Government;
- (b) each application must satisfy the National Government’s reasonable foreign investment requirements for Papua New Guinea as a whole;
- (c) the Bougainville Government, through the Bougainville Public Service or by an authority established by the Bougainville Government for the purpose, shall be responsible for considering each application and for determining whether the requirements referred to in Paragraph (b) are met;
- (d) where satisfied that an application meets the requirements referred to in Paragraph (b), the Bougainville Government through the Bougainville Public Service or by an authority established by the Bougainville Government for the purpose, may accept the application, or without limit to its discretion, may refuse it or accept it subject to conditions;

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- (e) the Bougainville Government, through the Bougainville Public Service or by an authority established by the Bougainville Government for the purpose, and the National Government, and any authority established by the National Government for the purpose, shall consult and co-operate at all stages of the consideration of an application;
- (f) there shall be joint and ongoing review and development of foreign investment policy by the two Governments and the authorities referred to in Paragraph (e) to promote restoration and development in Bougainville;
- (g) a dispute as to whether an application does or does not comply with the requirements referred to in Paragraph (b) shall be resolved through the dispute resolution procedure.

“(7) The Bougainville Government shall have the functions and powers necessary to develop the infrastructure relative to its powers and functions under this section.

**“291. FUNCTIONS AND POWERS OF THE NATIONAL GOVERNMENT AND OF THE BOUGAINVILLE GOVERNMENT IN RELATION TO CRIMINAL LAW.**

(1) The provisions of Sections 295 (*process for transfer of functions and powers*), 296 (*relationships of National and Bougainville laws*) and 298 (*National Government assets and land*) do not apply to this section.

- (2) The Bougainville Government shall have power, subject to Subsection (2) –
- (a) to adopt the *Criminal Code*; and
  - (b) to create and set penalties for offences incidental to the exercise of its agreed powers and functions; and
  - (c) to amend National laws relating to summary offences and other laws relating to criminal law as they apply in Bougainville; and
  - (d) to make laws relating to criminal law, other than a law equivalent to the *Criminal Code*.

“(3) The *Criminal Code* shall apply in and to Bougainville until adopted under Subsection (2)(a).

“(4) Where the Bougainville Government has adopted the *Criminal Code* under Subsection (2)(a), it may amend the *Criminal Code* as adopted –

- (a) with the consent of the National Government; or
- (b) in accordance with the following:-
  - (i) the principles contained in the Agreement being: -
    - (A) changes to the principles of the criminal law shall be evolutionary;

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- (B) there shall be no large scale changes to the coverage of subjects by the criminal law;
- (ii) the procedures contained in the Agreement being:-
  - (A) the Bougainville Government will cause to be published in the National Gazette amendments to the *Criminal Code* as adopted proposed by the Bougainville Government and such amendments shall not come into operation without the agreement of the National Government;
  - (B) in the event that the National Government does not accept any amendments proposed by the Bougainville Government, it may require further consultation with the Bougainville Government in the event of failure to agree, the dispute resolution procedure shall apply.

**“292. SUBJECTS NOT SPECIFIED IN SECTIONS 289, 290 AND 291.**

(1) Subject to Subsection (2), the function and power in relation to any subject –

- (a) not specified in Section 289 (*powers and functions of the National Government*), Section 290 (*powers and functions available to the Bougainville Government*) and Section 291 (*functions and powers of the National Government and of the Bougainville Government in relation to criminal law*); and
- (b) not coming within the category of any subject specified in Section 289 (*powers and functions of the National Government*) Section 290 (*powers and functions available to the Bougainville Government*) and Section 291 (*functions and powers of the National Government and of the Bougainville Government in relation to criminal law*),

shall be a power and function of the National Government, until otherwise determined in accordance with this section.

“(2) Where the National Government or the Bougainville Government proposes to legislate on a subject to which Subsection (1) applies, it shall notify the other Government of its proposals and consult with the other Government with a view to reaching agreement on which Government should be responsible for the subject, and where agreement is not reached, it shall not legislate.

“(3) Where either the National Parliament or the Bougainville Legislature passes a law on a subject to which Subsection (1) applies, the other Government may invoke the dispute resolution procedure, and -

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- (a) pending final determination of the dispute the law shall not take effect, unless both Governments agree that it should take effect; and
- (b) on the determination of the dispute resolution procedure, the law shall or shall not take effect in accordance with that determination.

“(4) Any dispute between the National Government and the Bougainville Government over which Government is responsible for a function or power shall be resolved by applying the principles governing the division of powers as specified in the Agreement.

**“293. INTERNATIONAL OBLIGATIONS, ETC., OF THE STATE IN RESPECT OF THE POWERS AND FUNCTIONS OF THE BOUGAINVILLE GOVERNMENT.**

(1) In this section, “international obligations” includes treaties and other written international agreements to which the State is or becomes a party.

“(2) The powers and functions available to the Bougainville Government specified in Section 290 (*powers and functions available to the Bougainville Government*) will not be exercised in a manner inconsistent with Papua New Guinea’s international obligations and human rights regime –

- (a) in existence on the date of the coming into operation of this Part; and
- (b) entered into after the date of coming into operation of this Part, in accordance with this section.

“(3) The National Government –

- (a) shall consult with the Bougainville Government on –
  - (i) any proposed new international obligations likely to affect the exercise by the Bougainville Government of the functions and powers available to it under this Part; or
  - (ii) any proposed future border agreement (other than one concerning defence or national security) affecting the jurisdiction of the Bougainville Government; and
- (b) shall not enter into a border agreement (other than one concerning defence or national security) affecting the jurisdiction of the Bougainville Government without the agreement of the Bougainville Government.

“(4) For the purposes of Section 117 (3) (*treaties*), the consent of Papua New Guinea to be bound as a party to a treaty which –

- (a) has a purpose of altering the autonomy arrangements contained in the Agreement; or

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- (b) being a border agreement (other than one concerning defence or national security) affects the jurisdiction of the Bougainville Government,

shall not be given unless –

- (b) the National Government and the Bougainville Government have agreed on the contents of the treaty; and  
 (c) the provisions of Section 117 (3)(a) or (b) (*treaties*) have been complied with.

“(5) Any disagreement between the National Government and the Bougainville Government as to whether any treaty has a purpose of altering the autonomy arrangement contained in the Agreement shall be resolved in accordance with the dispute resolution procedure.

“(6) Any differences between the National Government and the Bougainville Government arising from generally accepted rules of international law shall be resolved in accordance with the dispute resolution procedure.

“(7) The Bougainville Government may, through an agreed mechanism, request the assistance or concurrence of the National Government –

- (a) to participate in the negotiation of international agreements of particular relevance to Bougainville; or  
 (b) to negotiate international agreements on its own account.

**“294. FUNCTIONS AND POWERS OF THE BOUGAINVILLE GOVERNMENT ON ESTABLISHMENT AND WITHIN 12 MONTHS THEREAFTER.**

(1) Prior to the establishment of the Bougainville Government the Bougainville Interim Provincial Government may give to the National Government reasonable notice of –

- (a) functions or powers available to the Bougainville Government to be transferred; and  
 (b) institutions expected to be established under the Bougainville Constitution,

within the period of 12 months commencing on the date of the establishment of the Bougainville Government.

“(2) The Bougainville Government shall, on its establishment, have the same functions and powers as the Bougainville Interim Provincial Government, together with such other functions and powers transferred under Subsection (1).

**“295. PROCESS OF TRANSFER OF FUNCTIONS AND POWERS.**

Where the Bougainville Government wishes a function or power available to it to be transferred to it, it shall –

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- (a) take full account of its needs and capacity in relation to the function or power; and
  - (b) initiate the transfer by giving to the National Government 12 months' notice of its intention to seek the transfer of the function or power; and
  - (c) consult with the National Government concerning the transfer.
- unless both Governments otherwise agree.

**“296. RELATIONSHIP OF NATIONAL AND BOUGAINVILLE LAWS.**

(1) National laws relating to the functions and powers available to the Bougainville Government shall continue to apply until replaced by Bougainville laws.

“(2) The –

- (a) National Government may legislate on subjects specified in Section 290 (*functions and powers available to the Bougainville Government*) but not so as to be inconsistent with Bougainville laws on such subjects; and
- (b) the Bougainville Government may legislate on subjects specified in Section 289 (*functions and powers available to the National Government*) but not so as to be inconsistent with National laws on such subjects.

**“297. MANNER OF IMPLEMENTATION OF TRANSFER OF FUNCTIONS AND POWERS.**

An Organic Law shall make provision for –

- (a) the transfer together of closely linked functions and powers; and
- (b) the manner of overcoming difficulties of capacity or economic circumstances preventing the effective exercise of a function or power; and
- (c) the resolution of issues in dispute in the event of failure to overcome difficulties referred to in Paragraph (b); and
- (d) the resolution of difficulties in dividing the personnel, assets or funding of an institution or service organized on a regional or National basis; and
- (e) the making of arrangements to share access to or use of an institution or service organised on a regional or National basis to include cost-sharing; and
- (f) the plans prepared and agreed by the National Government and the Bougainville Government for co-operating in implementing the transfer of functions for which the Bougainville Government will become responsible.

**“298. NATIONAL GOVERNMENT ASSETS AND LAND.**

(1) Subject to Subsection (2), the National Government shall transfer to the Bougainville Government, at the same time as the transfer of a function or power, such assets and land as are associated with the function or power.

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“(2) Where the National Government has a continuing responsibility in respect of a function or power transferred to the Bougainville Government, it may retain assets and land associated with that function or power to the extent necessary to carry out its continuing responsibility.

**“299. TRANSFER OR DELEGATION OF FUNCTIONS AND POWERS.**

The National Government or the Bougainville Government may, by agreement, transfer or delegate any function or power (including a financial function or power) to the other Government.

*Division 4. – Powers and Functions of the Bougainville Government and Matters relative thereto affecting other Provisions of this Constitution.*

**Subdivision A. – Preliminary.**

**“300. BOUGAINVILLE CONSTITUTION AND BOUGAINVILLE LAWS TO FORM PART OF THE LAWS OF PAPUA NEW GUINEA.**

The Bougainville Constitution and laws made by the Bougainville Legislature in accordance with the Bougainville Constitution form part of the laws of Papua New Guinea as specified in Section 9 (*The Laws*).

**“301. SPECIAL REFERENCES TO THE SUPREME COURT.**

The –

- (a) Bougainville Legislature; and
- (b) Bougainville Executive,

are authorities entitled to make application to the Supreme Court, in accordance with Section 19 (*Special references to the Supreme Court*), for an opinion on any question relating to the interpretation or application of any provision of a Constitutional Law including (but without limiting the generality of that expression) any question as to the validity of a law or proposed law.

**Subdivision B. – Code of Conduct, etc., and Leadership Code.**

**“302. CODE OF CONDUCT, ETC., AND LEADERSHIP CODE.**

(1) The Bougainville Constitution may make provision for a code of conduct or rules of conduct, similar to and requiring standards of conduct not less than those required by, the Leadership Code for which provision is made in Division III.2 (*Leadership Code*), to apply to and in relation to the holders of public offices –

- (a) established under the Bougainville Constitution; and
- (b) specified in the Bougainville Constitution as offices to which the code of conduct or rules of conduct applies or apply.

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“(2) A person to whom the code of conduct or rules of conduct referred to in Subsection (1) applies or apply shall not be subject to Division III.2 (*Leadership Code*) in respect of –

- (a) the office held by him under the Bougainville Constitution to which the code of conduct or rules of conduct referred to in Subsection (1) applies or apply; and
- (b) matters to which the code of conduct or rules of conduct referred to in Subsection (1) applies or apply.

“(3) The Bougainville Constitution –

- (a) may provide for penalties to be imposed for breaches of the code of conduct or rules of conduct referred to in Subsection (1) by persons to whom the code of conduct or rules of conduct apply; and
- (b) where the code of conduct or rules of conduct have been breached by a person to whom, but for Subsection (2), Division III.2 (*Leadership Code*) would have applied, shall provide for penalties the same as those imposed by or under Division III.2 (*Leadership Code*) for an equivalent breach.

“(4) Until such time as a code of conduct or rules of conduct referred to in Subsection (1) have been provided for and applied, the following public offices shall be offices to which Division III.2 (*Leadership Code*) applies:-

- (a) members of the Bougainville Legislature;
- (b) Bougainville Constitutional Office-holders;
- (c) the heads of the Bougainville Government Services.

**Subdivision C. – Rights and Freedoms.****“303. QUALIFICATIONS ON QUALIFIED RIGHTS.**

(1) The Bougainville Constitution may make provision for the regulation or restriction by a Bougainville law which complies with the requirement of this section, of a right or freedom referred to in Subdivision III.3.C (*qualified rights*) where the law –

- (a) regulates or restricts the right or freedom to the extent that the regulation or restriction is necessary –
  - (i) taking account of the National Goals and Directive Principles and the Basic Social Obligations, for the purpose of giving effect to the public interest in –
    - (A) public safety; or
    - (B) public order; or
    - (C) public welfare; or
    - (D) public health (including plant and animal health); or
    - (E) the protection of children and persons under disability (whether legal or practical); or

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(F) the development of under-privileged or less advanced groups or areas; or

(ii) in order to protect the exercise of the rights and freedoms of others; or

(b) makes reasonable provision for cases where the exercise of one such right may conflict with the exercise of another.

to the extent that the law is reasonably justifiable in a democratic society having a proper regard for the rights and dignity of mankind.

“(2) A Bougainville law referred to in Subsection (1) shall –

(a) be expressed to be a law regulating or restricting a right or freedom referred to in Subdivision III.3.C (*qualified rights*); and

(b) specify the right or freedom that it regulates or restricts; and

(c) specify the purpose for which the regulation or restriction was necessary; and

(d) be made and certified in the manner provided in the Bougainville Constitution.

“(3) The burden of showing that a Bougainville law is a law that complies with the requirements of this Section is on the party relying on its validity.

**“304. GUARANTEED RIGHTS AND FREEDOMS.**

(1) Subject to Subsection (3), the Bougainville Constitution may make provision for guarantees in Bougainville of basic and qualified rights in addition to those otherwise guaranteed in this Constitution.

“(2) Subject to Subsection (3), the Bougainville Constitution may make provision for the establishment of procedures, institutions or courts to ensure the enforcement of guaranteed rights and freedoms.

“(3) Guarantees provided for under Subsection (1) and procedures established under Subsection (2) shall not abrogate the guaranteed rights and freedoms or procedures to ensure their enforcement provided for in this Constitution.

**Subdivision D. – Administration of Justice.****“305. OPERATION OF NATIONAL JUDICIAL SYSTEM IN BOUGAINVILLE.**

The National Judicial System shall continue to carry out its responsibilities in Bougainville, in accordance with this Part.

**“306. ESTABLISHMENT OF COURTS IN BOUGAINVILLE.**

(1) The Bougainville Constitution may make provision for the establishment under Bougainville law of courts and tribunals in Bougainville in accordance with this Part and the Agreement, and may authorize Bougainville laws to make further provisions in respect of such courts and tribunals.

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- “(2) Bougainville may operate –
- (a) wholly under courts and tribunals established under Subsection (1); or
  - (b) partly under courts and tribunals established under Subsection (1) and partly under other courts within the National Judicial System and tribunals established under National Laws.

“(3) A court established under Subsection (1) (other than a court with a jurisdiction similar to that of a Village Court) shall be within the National Judicial System.

- “(4) The courts which may be established under Subsection (1) may range from –
- (a) a court with jurisdiction equivalent to that of the National Court; to
  - (b) a court with jurisdiction similar to that of a Village Court, such jurisdiction to be limited to and in relation to Bougainville.

“(5) National laws and Bougainville laws shall be enforceable in all courts in the National Judicial System.

“(6) The name “National Court” shall not be used in any form for any court established under Subsection (1).

**“307. ESTABLISHMENT OF TRIBUNALS IN BOUGAINVILLE.**

The Bougainville Constitution may make provision for the establishment within Bougainville by or in accordance with a Bougainville law, or by consent of the parties concerned, of arbitral or conciliatory tribunals, whether *ad hoc* or other, outside the National Judicial System and such tribunals shall be subject to Section 159 (*tribunals, etc., outside the National Judicial System*).

**“308. JURISDICTION OF BOUGAINVILLE COURTS.**

(1) The Bougainville Constitution may provide that the powers of a Bougainville court with jurisdiction similar to that of the National Court may include power to –

- (a) make orders in the nature of prerogative writs and such other orders as are necessary to do justice in the circumstances of a particular case; and
- (b) exercise jurisdiction under the *Criminal Code*; and
- (c) subject to Subsection (2), review the exercise of judicial authority by Bougainville courts and by Bougainville tribunals; and
- (d) determine questions of interpretation of the Bougainville Constitution; and
- (e) protect and enforce human rights.

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“(2) The Bougainville Constitution shall provide that, where a person has a right of appeal from a Bougainville court to a Bougainville court established under Section 306 (4)(a) (*Establishment of courts in Bougainville*), he has an alternative (but not an additional) right of appeal to the National Court.

“(3) A resident of Bougainville may commence an action for the enforcement of human rights in the National Court or in a Bougainville Court or institution with competent jurisdiction.

- “(4) The National Court shall have the power –
- (a) to review the exercise of judicial authority by Bougainville courts (other than a Bougainville court established under Section 306 (4)(a) (*Establishment of courts in Bougainville*)) and by Bougainville tribunals; and
  - (b) equal to the power of a Bougainville court established under 306 (4)(a) (*Establishment of courts in Bougainville*), to hear appeals from Bougainville courts, but such power shall be exercised only as an alternative appeal and not as an appeal additional to that which by law may be made to the Bougainville court established under section 306 (4)(a) (*Establishment of courts in Bougainville*).

“(5) The Supreme Court shall be the final court of appeal for Bougainville including appeals on determinations made under Subsection (1)(d).

“(6) An Organic Law may make further provision for the relationship between Bougainville courts and other courts in the National Judicial System and for the manner in which the responsibilities of other courts in Bougainville in the National Judicial System shall be transferred to Bougainville courts of equivalent jurisdiction.

**“309. APPOINTMENT OF JUDGES, ETC.,**

(1) The Bougainville Constitution may make provision for an independent appointments body to appoint Judges to a Bougainville court established under Section 306 (4)(a) (*Establishment of courts in Bougainville*).

“(2) The appointments body referred to in Subsection (1) shall include two members of the Judicial and Legal Services Commission, appointed by that Commission.

“(3) The Bougainville Constitution shall otherwise provide for the appointment, terms and conditions of employment, seniority and removal from office of judges of a Bougainville court.

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- “(4) A –
- (a) Judge of the National Court may hold an appointment as a Bougainville Judge concurrently with his tenure of appointment as a Judge of the National Court; and
  - (b) Bougainville Judge may hold an appointment as a Judge of the National Court concurrently with his tenure of appointment as a Bougainville Judge.

**Subdivision E. – Bougainville Government Services.**

**“310. BOUGAINVILLE GOVERNMENT SERVICES.**

(1) The Bougainville Constitution may make provision for Bougainville Government Services being -

- (a) a Bougainville Public Service; and
- (b) Bougainville Police; and
- (c) a Bougainville Correctional Service; and
- (d) such other Bougainville Government Services as may be necessary,

in accordance with this Part, and may provide for Bougainville laws to make further provision in respect of Bougainville Government Services.

“(2) The Bougainville Constitution shall make provision for a head of a Bougainville Government Service to be responsible to the Bougainville Executive, and for the manner in which he is to be so responsible.

“(3) Members of a Bougainville Government Service shall take an Oath of Allegiance or make an Affirmation of Allegiance in accordance with Section 7 (*Oath of Allegiance*), Section 250 (*Making of Declaration of Loyalty, etc.*), and Section 251 (*taking certain oaths, etc., by non-citizens*).

“(4) Any official marking on the uniforms, vehicles, premises and stationery of Bougainville Police and Bougainville Correctional Service shall include the National Emblem or Name.

“(5) An Organic Law may make provision for co-operative and transitional arrangements between National State Services and Bougainville Government Services.

**Subdivision F – Bougainville Public Service.**

**“311. BOUGAINVILLE PUBLIC SERVICE.**

(1) The Bougainville Constitution may make provision for a Bougainville Public Service under Bougainville law to be responsible for the administration of the powers and functions of the Bougainville Government.

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“(2) Where the Bougainville Constitution makes provision for a Bougainville Public Service, it shall provide for –

- (a) Bougainville laws for and in respect of –
  - (i) standards for management and control of the Bougainville Public Service; and
  - (ii) work value and standard for pay for the Bougainville Public Service; and
  - (iii) classification and grade structures in the Bougainville Public Service,  
compatible with those of the National Public Service; and
- (b) an independent body (which may be the Public Services Commission) which will be responsible for reviewing decisions on personnel matters connected with the Bougainville Public Service.

“(3) For the purposes of Subsection (2)(b), “personnel matters” means decisions and other service matters concerning an individual whether in relation to his appointment, promotion, demotion, transfer, suspension, disciplining or cessation or termination of employment (except cessation or termination at the end of his normal period of employment as determined in accordance with law) or otherwise.

“(4) An Organic Law shall make provision for –

- (a) the Bougainville Government to consult with the National Government before making laws relating to the Bougainville Public Service; and
- (b) arrangements for implementation of the Bougainville Public Service; and
- (c) transitional arrangements between the National Public Service and Bougainville Public Service.

**“312. NATIONAL PUBLIC SERVICE IN BOUGAINVILLE.**

The National Public Service shall continue to operate in Bougainville –

- (a) to carry out the functions and powers of the National Government as specified in Section 289 (*powers and functions of the National Government*); and
- (b) to carry out the functions and powers available to the Bougainville Government as specified in Section 290 (*powers and functions available to the Bougainville Government*) until such time as the Bougainville Public Service has been established and the function or power has been transferred to the Bougainville Government.

**Subdivision G. – Bougainville Police.**

**“313 BOUGAINVILLE POLICE.**

- (1) The Bougainville Constitution may make provision under Bougainville

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law for the Bougainville Police which will be responsible in Bougainville for preserving peace and good order and for maintaining and as necessary enforcing National laws and Bougainville laws in an impartial and objective manner, with full regard for human rights.

“(2) Where the Bougainville Constitution makes provision for the Bougainville Police, it shall provide for –

- (a) Bougainville laws for and in respect of –
  - (i) the structures and organization of the Bougainville Police; and
  - (ii) the terms and conditions of service of the Bougainville Police; and
  - (iii) the core training and personnel development arrangements of the Bougainville Police, consistent with those of the Police Force established by Section 188 (1)(b) (*Establishment of the State Services*); and
- (b) an independent body, which shall include the Commissioner of Police or his representative and one other representative of the National Government appointed by the National Government, to be responsible for the appointment and removal for just cause of the head of the Bougainville Police; and
- (c) the head of the Bougainville Police to have a title other than Commissioner and to hold a rank below that of the Commissioner of Police.

“(3) Insofar as it is a function of the Bougainville Police to lay, prosecute or withdraw charges in respect of offences, the members of the Bougainville Police are not subject to direction or control by –

- (a) any person outside the Bougainville Police; or
- (b) where acting under any agency arrangement with the Police Force established by Section 188 (1)(b) (*Establishment of the State Services*), by any person outside that Police Force.

**“314. FUNDING OF THE BOUGAINVILLE POLICE.**

(1) The National Government shall provide the Bougainville Government with funding by way of –

- (a) guaranteed annual conditional grants for the specific purpose of meeting the recurrent costs of policing in Bougainville; and
- (b) guaranteed conditional grants for the purpose of restoring and further developing civilian peacetime policing in Bougainville.

“(2) An Organic Law may make provision for and in respect of all matters relating to the grants referred to in Subsection (1).

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**“315. POLICE FORCE ETC., IN BOUGAINVILLE.**

(1) The Police Force established by Section 188 (1)(b) (*Establishment of the State Services*) shall continue to operate and the Act of Parliament under which it operates shall continue to apply in Bougainville to enable the Police Force established by Section 188 (1)(b) (*Establishment of the State Services*) –

- (a) to carry out its functions in Bougainville; and
- (b) to enforce National laws and Bougainville laws prior to the establishment of the Bougainville Police; and
- (c) to fulfil the co-operative arrangements with the Bougainville Police as specified in the Agreement.

“(2) An Organic Law shall make provision for -

- (a) the transitional arrangements to apply until the Bougainville Police are established and operational; and
- (b) co-operative arrangements between the Police Force established under Section 188(1)(b) (*Establishment of the State Services*) and the Bougainville Police.

**Subdivision H. – Bougainville Correctional Service.**

**“316. BOUGAINVILLE CORRECTIONAL SERVICE.**

(1) The Bougainville Constitution may make provision for the Bougainville Correctional Service under Bougainville law which will be responsible for the supervision and administration of correctional institutions in Bougainville.

“(2) Where the Bougainville Constitution makes provision for the Bougainville Correctional Service it shall provide for –

- (a) Bougainville laws for and in respect of –
  - (i) the structures and organizations of the Bougainville Correctional Service; and
  - (ii) the terms and conditions of service of the Bougainville Correctional Service; and
  - (iii) the core training and personnel development arrangements of the Bougainville Correctional Service,  
consistent with those of the Correctional Service of the National Government; and
- (b) an independent body, which shall include the Commissioner of the Correctional Service or his representative and one other representative of the National Government appointed by the National Government to be responsible for the appointment and removal for just cause of the head of the Bougainville Correctional Service; and

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- (c) the head of the Bougainville Correctional Service to have a title other than Commissioner and to hold a rank below that of the Commissioner of the Correctional Service of the National Government; and
- (d) co-operation with the Correctional Service of the National Government in the provision and management of correctional institutions and services.

**“317. FUNDING OF THE BOUGAINVILLE CORRECTIONAL SERVICE.**

An Organic Law shall make provision for and in respect of the funding of the Bougainville Correctional Service.

**“318. CORRECTIONAL SERVICE OF THE NATIONAL GOVERNMENT IN BOUGAINVILLE.**

(1) The Correctional Service of the National Government shall continue to operate and the Act of the Parliament under which it operates shall continue to apply in Bougainville in accordance with the Agreement until the Bougainville Correctional Service has been established and is operational and an appropriate Bougainville law has been made.

- “(2) An Organic Law shall make provision for –
  - (a) the transitional arrangements to apply until the Bougainville Correctional Service are established and operational; and
  - (b) co-operative arrangements between the National Correctional Service and the Bougainville Correctional Service.

**Subdivision I. – Bougainville Salaries and Remuneration Commission.****“319. BOUGAINVILLE SALARIES AND REMUNERATION COMMISSION.**

(1) The Bougainville Constitution may establish a Bougainville Salaries and Remuneration Commission.

“(2) The Bougainville Salaries and Remuneration Commission shall be responsible for recommending to the Bougainville Legislature the salaries, allowances and benefits, financial or otherwise (including pensions or retirement benefits if they are not otherwise provided for by law) of all –

- (a) persons holding elective office under the Bougainville Constitution; and
- (b) Bougainville Constitutional office-holders (including Bougainville Judges); and
- (c) the heads of Bougainville Government Services; and
- (d) such other persons as are specified in the Bougainville Constitution.

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“(3) In making recommendations under Subsection (2), the Bougainville Salaries and Remuneration Commission shall take into account advice from the Salaries and Remuneration Commission established by Section 216A (*The Salaries and Remuneration Commission*) on the maintenance of relativities of salaries and conditions of employment with those applicable to similar offices elsewhere in Papua New Guinea and at National level.

- “(4) The Bougainville Legislature –
- (a) shall determine the salaries, allowances and benefits, financial or otherwise (including pensions or retirement benefits if they are not otherwise provided for by law) of persons referred to in Subsection (2) in accordance with a recommendation of the Bougainville Salaries and Remuneration Commission; and
  - (b) may accept or reject, but may not amend, any recommendation from the Bougainville Salaries and Remuneration Commission.

**“320. SALARIES AND REMUNERATION COMMISSION.**

(1) Subject to Subsection (2), until the establishment of the Bougainville Salaries and Remuneration Commission, the Salaries and Remuneration Commission established by Section 216A (*Salaries and Remuneration Commission*) shall be responsible for recommending to the Bougainville Legislature the salaries, allowances and benefits, financial or otherwise (including pensions or retirement benefits if they are not otherwise provided for by law) of all persons referred to in Section 319 (2) (*Bougainville Salaries and Remuneration Commission*).

“(2) In carrying out its functions under Subsection (1) the Salaries and Remuneration Commission shall include two persons nominated by the Bougainville Executive in accordance with a Bougainville Law.

- “(3) The Bougainville Legislature –
- (a) shall determine the salaries, allowances and benefits, financial or otherwise (including pensions and retirement benefits if they are not otherwise provided for by law) of persons referred to in Section 319 (2) (*Bougainville Salaries and Remuneration Commission*) in accordance with a recommendation of the Salaries and Remuneration Commission under this section; and
  - (b) may accept or reject, but may not amend, any recommendation from the Salaries and Remuneration Commission under this Section.

“(4) Where the Bougainville Salaries and Remuneration Commission has been established, the Salaries and Remuneration Commission established by Section 216A (*Salaries and Remuneration Commission*) shall not be responsible for the salaries, allowances and benefits, financial or otherwise (including pensions and retirement benefits if they are not otherwise provided for by law) of persons referred to in Section 319(2) (*Bougainville Salaries and Remuneration Commission*).

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(1) The Bougainville Constitution may make provision for Bougainville Constitutional Office-holders with powers and functions in Bougainville equivalent to the powers and functions of a Constitutional Office-holder, referred to in Section 221 (*Definitions*).

“(2) The Bougainville Constitution may make provision for any other office established under the Bougainville Constitution or a Bougainville law to be declared a Bougainville Constitutional Office and for the holder of such office to be declared a Bougainville Constitutional Office-holder.

“(3) The Bougainville Constitution shall make provision for and in respect of the qualifications, appointment and terms and conditions of employment of Bougainville Constitutional Office-holders and shall –

- (a) subject to any express provisions in this Part, provide that any body established by or under the Bougainville Constitution to appoint a Bougainville Constitutional Office-holder shall include two persons appointed by the body responsible for the appointment of the equivalent Constitutional office-holder under Section 221 (*definitions*) or where there is no such equivalent, by the National Executive Council; and
- (b) guarantee the rights and independence of Bougainville Constitutional Office-holders similar to the protections of office of Constitutional Office-holders under Section 221 (*Definitions*)

“(4) A Constitutional Office-holder referred to in Section 221 (*Definitions*) may enter into co-operative or agency arrangements with the equivalent Bougainville Constitutional office-holder to avoid gaps and duplication and to encourage common standards.

“(5) Subject to this Part, a Constitutional Office-holder under Section 221 (*Definitions*) shall, in Bougainville, where an equivalent Bougainville Constitutional office –

- (a) has not been established—carry out his responsibilities in respect of powers and functions specified in Section 289 (*powers and functions of the National Government*) and Section 290 (*powers and functions available to the Bougainville Government*); and
- (b) has been established—carry out his responsibilities in respect of –
  - (i) the powers and functions specified in Section 289 (*powers and functions of the National Government*); and

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- (ii) such powers and functions specified in Section 290 (*powers and functions available to the Bougainville Government*) as have not been transferred to the Bougainville Government.

“(6) The Bougainville Government will meet the costs of the establishment and maintenance of Bougainville Constitutional Office-holders.

**Subdivision K. - Emergency Powers.**

**“322. BOUGAINVILLE CONSTITUTION MAY PROVIDE FOR EMERGENCIES.**

The Bougainville Constitution may make provision for procedures to be followed by the Bougainville Government to deal with an emergency as defined in Section 226 (**Definitions**).

**“323. DECLARATION OF NATIONAL EMERGENCY IN BOUGAINVILLE.**

(1) Subject to Subsection (2), where circumstances arise in Bougainville which make it necessary that the existence of a national emergency be declared under Section 228 (*declaration of national emergency*) in relation to Bougainville or part of Bougainville, the following provisions shall apply:-

- (a) the Bougainville Constitution shall make provision for a procedure whereby the Bougainville Government may request the National Executive Council to advise the Head of State to declare the existence of a national emergency in relation to Bougainville or part of Bougainville;
- (b) where the National Executive Council agrees to a request under Paragraph (a), it shall advise the Head of State to declare the existence of a national emergency in relation to Bougainville or part of Bougainville;
- (c) where no request under Paragraph (a) has been received within a period reasonable in the circumstances, the National Executive Council through a Minister shall endeavour to consult with the Bougainville Government;
- (d) other than where the existence of a national emergency is declared under Paragraph (b), the only circumstance in which the National Executive Council may advise the Head of State to declare the existence of a national emergency is where no request under Paragraph (a) has been received and, due to the urgency of the circumstances, consultation under Paragraph (c) has not been possible and is not practicable.

“(2) Subsection (1) does not apply where the existence of a state of emergency is to be declared in respect of the whole of the country or in respect of Bougainville and substantial areas of the country other than Bougainville.

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“(3) Where a declaration of national emergency under Section 228 (*declaration of national emergency*) is in force in relation to Bougainville, the National Government and the Bougainville Government shall co-operate in the management of the emergency in so far as relating to Bougainville.

*Division 5. – Fiscal Arrangements.*

**“324. BASIC PRINCIPLES OF FISCAL ARRANGEMENTS.**

The basic principles of the fiscal arrangements between the National Government and the Bougainville Government are as follows:-

- (a) that the Bougainville Government shall have sufficient revenue raising powers to enable it to reach fiscal self-reliance, and the National Government shall support the Bougainville Government in reaching fiscal self-reliance;
- (b) that Bougainville shall continue to make a contribution, in accordance with this Part and the Agreement, to the National Government –
  - (i) prior to fiscal self-reliance-through the collection and application of company tax, value added tax and customs duties in Bougainville remaining with the National Government; and
  - (ii) after fiscal self-reliance, through an agreed revenue-sharing formula which may be determined through the review process;
- (c) except as otherwise provided in this Part or the Agreement, the costs involved in establishing and maintaining the Bougainville Government additional to those of the functions and powers covered by recurrent grants under Section 326 (1)(a)(i) (*grants*) shall be shared between the National Government and the Bougainville Government.

**“325. REVENUE RAISING, ETC., ARRANGEMENTS.**

Subject to the Agreement, an Organic Law shall make provision for –

- (a) the method of sharing, between the National Government and the Bougainville Government, of taxes collected in Bougainville and the manner in which such taxes shall be dealt with both before and after fiscal self-reliance; and
- (b) the Bougainville Government to have power to adjust the rate of –
  - (i) personal income tax collected from Bougainville; and
  - (ii) after fiscal self-reliance – company tax collected in Bougainville; and
- (c) the arrangements between the National Government and the Bougainville Government relating to the collection of taxes; and

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- (d) the Bougainville Government to have power to establish its own tax regime for all taxes (excluding customs duties, company tax and value added tax); and
- (e) existing tax incentives in Bougainville to continue and for the Bougainville Government to be empowered –
  - (i) to recommend persons as eligible for tax incentives; and
  - (ii) to request new tax incentives; and
- (f) the audit, by or on behalf of the National Government and by or on behalf of the Bougainville Government of all taxes collected; and
- (g) the manner of sharing revenues from activities in areas of sea and seabed beyond the guaranteed three mile limit and within the Exclusive Economic Zone and the continental shelf associated with Bougainville.

**“326. GRANTS.**

(1) The National Government shall provide grants to the Bougainville Government as follows:-

- (a) recurrent unconditional grant; and
- (b) restoration and development grant; and
- (c) conditional grants for specific purposes; and
- (d) a Police grant; and
- (e) an establishment grant.

- “(2) Subject to the Agreement, an Organic Law shall make provision for –
- (a) the manner of calculation, adjustment (including the effects of progress towards fiscal self-reliance), timing, payment and management of such grants; and
  - (b) methods of consultation between the National Government and the Bougainville Government in relation to such grants.

“(3) Grants provided to the Bougainville Government under Subsection (1) shall be subject to audit by the Auditor-General.

**“327. FOREIGN AID.**

- (1) The National Government shall use its best endeavours –
- (a) to obtain foreign aid to support restoration and development in Bougainville; and
  - (b) to facilitate the participation of the Bougainville Government in the management of aid projects.
- “(2) The Bougainville Government –
- (a) may seek and obtain foreign aid; and
  - (b) shall keep the National Government fully informed as to its efforts under Paragraph (a).

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- “(3) The National Government shall –
- (a) approve foreign aid obtained by the Bougainville Government, where the aid –
    - (i) does not reduce the value of aid already available to Papua New Guinea; and
    - (ii) does not conflict with overriding foreign policy considerations; and
  - (b) co-operate with the Bougainville Government by negotiating such international agreements as may be required to finalise foreign aid identified by the Bougainville Government.

**“328. OTHER FINANCIAL POWERS AND ACCOUNTABILITY.**

- (1) The Bougainville Constitution or a Bougainville Law, in addition to other powers conferred by this Division –
- (a) may provide for the Bougainville Government after consultation with the National Government –
    - (i) to raise foreign loans, in accordance with required approvals and other requirements of the Bank of Papua New Guinea; and
    - (ii) to raise domestic loans, in accordance with regulation of the banking system by the Bank of Papua New Guinea; and
  - (b) shall provide for the manner of approval and administration of annual budgets (and where appropriate, supplementary budgets) comprising estimates of revenue and expenditure and appropriation of the main functions of the Bougainville Government; and
  - (c) shall provide for the manner of approval of making expenditures; and
  - (d) shall provide for the maintenance of proper transparent and accurate accounts, compatible with international accounting standards.
- “(2) The Bougainville Constitution –
- (a) shall make provision for regular audits of the accounts of the Bougainville Government in addition to audits carried out by, or on behalf of, the Auditor-General in the exercise of his powers and the performance of his functions under this Constitution; and
  - (b) shall make provision, within the Bougainville Legislature, for a public accounts committee which shall receive, consider and make recommendations on reports of audits carried out under Paragraph (a); and
  - (c) shall make provision whereby, if at the beginning of a financial year the Bougainville Legislature has not made provision for

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expenditure for the services of the Bougainville Government for that year, the Bougainville Executive may expend amounts up to a limit specified in the Bougainville Constitution.

**“329. FOLLOW-UP TO AUDIT REPORTS.**

Subject to the Agreement, an Organic Law shall make provision in accordance with the Agreement for circumstances where any audit carried out by the Auditor-General discloses systematic and widespread abuse (or misuse) of funding provided to the Bougainville Government by way of recurrent or conditional grant and in particular shall make provision for-

- (a) the procedures to be followed by the National Government and by the Bougainville Government; and
- (b) the withholding by the National Government in certain circumstances of certain grants; and
- (c) recourse to the dispute resolution procedure,

in relation to any such abuse (or misuse).

**Division 6. – Intergovernmental Relations and Review.**

**“330. INTERPRETATION.**

In this Division unless the contrary intention appears –

“dispute” means any disagreement between the National Government and the Bougainville Government in relation to the autonomy for Bougainville and the referendum for Bougainville;

“dispute resolution procedure” means the dispute resolution procedure set out in Section 333 (*Joint Supervisory Body*);

“intergovernmental relations” means relations between the National Government and the Bougainville Government;

“Joint Supervisory Body” means the Joint Supervisory Body established by Section 332 (*Joint Supervisory Body*);

“review” means review under Section 337 (*reviews*).

**“331. PRINCIPLES OF INTERGOVERNMENTAL RELATIONS.**

The general principles of intergovernmental relations between the National Government and the Bougainville Government are as follows:-

- (a) that the autonomy arrangements, having been agreed through consultation and co-operation, should be implemented in like manner;
- (b) that there be a procedure to avoid, minimize and resolve disputes;
- (c) that the National Government has no power to withdraw powers from the Bougainville Government or to suspend it.

*Constitutional Amendment***“332. JOINT SUPERVISORY BODY.**

- (1) There is established a Joint Supervisory Body consisting of –
- (a) not less than two members appointed by the National Executive Council; and
  - (b) not less than two members appointed by the Bougainville Executive.
- “(2) There shall be an equal number of members appointed under Subsection (1)(a) and (b).
- “(3) The functions of the Joint Supervisory Body are –
- (a) to oversee implementation of the Agreement and of this Part, in accordance with the Agreement; and
  - (b) to provide a consultative forum at which consultation between the National Government and the Bougainville Government and their agencies can take place.
- “(4) The Joint Supervisory Body shall have such powers as are necessary to enable it to perform its functions under this Part and the Agreement.
- “(5) The Joint Supervisory Body –
- (a) subject to Paragraph (b), shall, at its first meeting, develop its own procedures and fix the frequency of its meeting (which shall be at least once in each year); and
  - (b) provide that any of its members may put matters on an agenda of a meeting; and
  - (c) at its first meeting elect one of the members under Subsection (1)(a) to be the Chairman and at its second meeting elect one of the members under Subsection (1)(b) to be the Chairman and thereafter elect a Chairman from Subsection (1)(a) and (b) in rotation.

**“333. DISPUTE RESOLUTION PROCEDURE.**

The dispute resolution procedure is as follows:-

- (a) subject to express provisions relating to consultation in this Part and the Agreement, the National Government and the Bougainville Government shall try to resolve a dispute by consultation –
  - (i) where appropriate, between the relevant agencies of each Government; or
  - (ii) where consultation under Subparagraph (i) is not practicable or successful, through the Joint Supervisory Body;

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- (b) where a dispute cannot be resolved by consultation under Paragraph (a), it shall be referred for mediation and arbitration under Section 334 (*mediation and arbitration*), unless otherwise agreed by the National Government and the Bougainville Government;
- (c) where a dispute cannot be resolved under Paragraph (a) or (b), or where the parties otherwise agree it may be submitted to the jurisdiction of the courts;
- (d) where a dispute involves a point of law, that point of law may be submitted to the jurisdiction of the courts without application of Paragraph (a) or (b).

**“334. MEDIATION AND ARBITRATION.**

(1) Where a dispute proceeds to arbitration, the National Government and the Bougainville Government shall agree on the Mediator or Arbitrator.

“(2) The Mediator or Arbitrator shall determine procedures to be followed in the initial consideration of a dispute referred to him and shall determine whether a dispute is or is not suitable for mediation or arbitration.

“(3) Where the Mediator or Arbitrator determines that a dispute is not suitable for arbitration or mediation, he shall issue to each of the parties to the dispute a certificate to that effect.

“(4) Where the mediation or arbitration proceeds, the Mediator or Arbitrator shall determine the procedures to be followed.

**“335. DISPUTE RESOLUTION IN THE COURTS.**

The Courts shall have jurisdiction in a dispute –

- (a) in accordance with Section 333 (d) (*dispute resolution procedure*), where a dispute involves a point of law; and
- (b) where the parties so agree; and
- (c) where the mediation or arbitration procedure fails to resolve the dispute and one or other party wishes to take the matter to Court; and
- (d) prescribed as a dispute in relation to which the Courts have jurisdiction.

**“336. PANEL OF PERSONS WITH APPROPRIATE EXPERTISE.**

(1) Subject to Subsection (2), at any stage in the dispute resolution procedure, the parties may agree to appoint a panel of persons with expertise appropriate to the matter in dispute.

“(2) Where a Mediator or Arbitrator has been appointed in respect of a dispute, his consent to the appointment of a panel under Subsection (1) shall be sought.

*Constitutional Amendment***“337. REVIEWS.**

- (1) The National Government and the Bougainville Government –
- (a) shall meet as close as is practicable to the fifth anniversary of the establishment of the Bougainville Government and every five years thereafter, jointly to review the autonomy arrangements; and
  - (b) may agree to additional reviews of the autonomy arrangements at any time; and
  - (c) shall present a report of each review under Paragraph (a) or (b) to the National Parliament and to the Bougainville Legislature.

“(2) A review under Subsection (1) of the autonomy arrangements shall follow and consider separate reviews by independent experts of particular aspects, including –

- (a) the financial arrangements – grants, taxes and progress towards fiscal self-reliance; and
- (b) the Bougainville Government Services and other aspects of public sector administration in Bougainville – including size, efficiency, effectiveness, and related matters; and
- (c) technical and legal aspects, including issues arising from judicial interpretation, and the distribution of powers and functions; and
- (d) such other areas as the Bougainville Government and the National Government may agree.

“(3) The terms of reference for a review shall specify that, unless otherwise agreed, they are intended to improve, clarify and strengthen the autonomy arrangements consistently with the objectives and principles in the Agreement.

“(4) The National Government and the Bougainville Government may, by agreement, defer the specialist reviews or incorporate the issues with which they deal in the general review.

“(5) The reports of the specialist reviews will include drafts or drafting instructions for any legislative amendments they recommend.

“(6) In the event that either the National Parliament or the Bougainville Legislature passes any amendments proposed under Subsection (5) according to its own constitutional procedures and the other does not, the Bougainville Government on behalf of the Bougainville Legislature and the National Government on behalf of the National Parliament shall follow the dispute resolution procedure up to the level of mediation or arbitration.

“(7) Any point of law arising from the application of Subsection (6) shall be referred to the Supreme Court.

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“(8) A Mediator or Arbitrator may not give directions to the National Parliament or the Bougainville Legislature but may order the National Government and the Bougainville Government to present a report in the National Parliament and the Bougainville Legislature recording the views of both Governments and containing their own recommendations on differences between them.

“(9) In addition to the reviews under Subsection (1), the National Government and the Bougainville Government shall hold annual, wide-ranging consultations on the general operation of the autonomy arrangements.

“(10) Unless the National Government and the Bougainville Government agree to some other method, the consultation under Subsection (9) shall be held through the Joint Supervisory Body.

*Division 7. Bougainville Referendum.*

**“338. REFERENDUM TO BE HELD.**

(1) Subject to this section, a Referendum on the future political status of Bougainville shall be held in accordance with this Division.

“(2) Subject to Subsection (7), the Referendum shall be held on a date agreed after consultation by the Bougainville Government with the National Government, which date shall be not earlier than 10 years and, notwithstanding any other provision, not more than 15 years after the election of the first Bougainville Government.

“(3) The date referred to in Subsection (2) shall be determined after considering whether -

- (a) weapons have been disposed of in accordance with the Agreement; and
- (b) in accordance with Subsection (4), it has been determined that the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance.

“(4) The question whether the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance shall be determined in accordance with the review and the dispute resolution procedure.

“(5) For the purposes of Subsection (4), the internationally accepted standards of good governance, as they are applicable and implemented in the circumstances of Bougainville and Papua New Guinea as a whole include democracy, the opportunity for participation by Bougainvilleans, transparency, accountability, and respect for human rights and the rule of law, including this Constitution.

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“(6) The National Government and the Bougainville Government shall co-operate in ensuring progress towards achieving and maintaining the standards referred to in Subsection (5).

“(7) The Referendum shall not be held where the Bougainville Government decides, in accordance with the Bougainville Constitution, after consultation with the National Government, that the Referendum shall not be held.

**“339. THE QUESTION OR QUESTIONS TO BE PUT.**

The question or questions to be put at the Referendum –

- (a) shall be agreed to by the National Government and the Bougainville Government; and
- (b) shall be formulated to avoid a disputed or unclear result; and
- (c) shall include a choice of separate independence for Bougainville.

**“340. MANNER OF CONDUCTING REFERENDUM.**

(1) An Organic Law shall make provision for the manner in which the Referendum is to be conducted and in particular shall make provision for and in relation to –

- (a) the authorities to be jointly responsible for preparing for and conducting the Referendum and for the arrangements whereby they shall exercise joint authority; and
- (b) electorates and polling places; and
- (c) electoral rolls, enrolment, objections to enrolment and appeals relating to enrolment; and
- (d) postal voting; and
- (e) polling and scrutiny; and
- (f) interpreters; and
- (g) offences; and
- (h) polling and scrutiny; and
- (i) communicating the results of the Referendum to the National Government and to the Bougainville Government; and
- (j) the invitation of international observers to observe the conduct of the Referendum; and
- (k) such other matters as may be required effectively to conduct the Referendum.

“(2) The Referendum may be held in conjunction with an election.

**“341. REFERENDUM TO BE FREE AND FAIR.**

The National Government and the Bougainville Government shall co-operate to ensure that the Referendum is free and fair.

**“342. REFERENDUM RESULTS AND IMPLEMENTATION.**

(1) The National Government and the Bougainville Government shall consult over the results of the Referendum.

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“(2) Subject to the consultation referred to in Subsection (1), the Minister responsible for the Bougainville Referendum shall table the results of the Referendum in the National Parliament and the Speaker of the National Parliament shall furnish to the Bougainville Executive a copy of the minutes of the relevant proceedings and of any decision made in the National Parliament regarding the Referendum.

**“343. RESOLUTION OF DIFFERENCES ON REFERENDUM.**

Any differences between the National Government and the Bougainville Government in relation to the Referendum shall be resolved in accordance with the dispute resolution procedure.

*Division 8. - Immunity from Prosecution.*

**“344. IMMUNITY FROM PROSECUTION.**

(1) The purpose of this section is to assist in the reconciliation process in Bougainville, and it is the intention of the Parliament that the provisions of this section be so applied as to assist in achieving this purpose.

“(2) There shall be immunity from prosecution in accordance with this section in respect of certain offences arising from crisis-related activities in relation to the Bougainville conflict.

“(3) The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may by declaration published in the National Gazette, declare -

- (a) subject to Paragraph (b), the class or classes of offences to which the immunity is to apply or not apply; and
- (b) the nature of crisis-related activities which shall qualify the offences for the immunity; and
- (c) the period of time to which the immunity shall apply; and
- (d) such other matters as are necessary to ensure that the immunity can be effected.

“(4) Where a declaration has been made under Subsection (1), no charge shall be laid and no prosecution -

- (a) shall be initiated; or
  - (b) if initiated, shall be pursued,
- in respect of an offence -
- (c) included in the class or classes of offences described pursuant to Subsection (2)(a); and
  - (d) of a nature described in Subsection (2)(b); and
  - (e) committed during the period specified in Subsection (2)(c).

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- “(5) The provisions of this section -
- (a) may be applied generally in respect of classes of offences and classes of circumstances without the need to identify –
    - (i) the specific offence; or
    - (ii) the specific circumstances; or
    - (iii) the alleged offenders; and
  - (b) shall apply to offences whether or not a charge has been laid in respect of them.

*Division 9. – Miscellaneous.***“345. REQUIREMENT FOR AMENDMENT OF THIS PART, ETC.,**

(1) The provisions of this section are in addition to and are not in derogation of the provision of Section 14 (*making of alterations to the Constitution and Organic Laws*).

(2) Where the National Government or the Bougainville Government seeks to present or have presented in the Parliament an amendment to this Part or to an Organic Law authorized by this Part, it shall –

- (e) consult with the other Government concerning the proposed amendments; or
- (f) submit the proposed amendment to a review, before presenting it or having it presented in the Parliament.

“(3) Where an amendment to this Part or to an Organic Law authorized by this Part is proposed to be presented in the Parliament, the Minister responsible for Constitutional Law matters in relation to Bougainville shall, as soon as practicable after the proposed amendment is published in the National Gazette (or earlier if the Minister has notification of the proposed amendment) send a copy of the proposed amendment to the Bougainville Government and the two Governments shall consult with each other concerning the proposed amendment.

“(4) An amendment referred to in Subsection (2) or (3) cannot become law unless –

- (a) it is passed by the National Parliament in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*); and
- (b) before the second vote in the National Parliament on the amendment in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*), on a motion in the Bougainville Legislature for approval of the amendment as presented to the Parliament, there is –
  - (i) in the case of an amendment to Division 7 or to this Subsection – a two-thirds absolute majority vote of members of the Bougainville Legislature in favour of the amendment; and

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- (ii) in the case of an amendment to this Part, other than to Division 7 or to this Subsection a simple majority vote of the members of the Bougainville Legislature in favour of the amendment.

“(5) The person presiding over the Bougainville legislature on the occasion of a vote taken under Subsection (4)(b)(i) or (ii) shall, as soon as practicable after the vote has been taken, send to the Speaker of the National Parliament details of the result of the vote.

**“346. PRESCRIBED MAJORITY OF VOTES REQUIRED FOR THIS PART, ETC.,**

(1) For the purposes of Section 14 (*making of alterations to the Constitution and Organic Laws*), the prescribed majority of votes for this Part is a two-thirds absolute majority vote.

“(2) For the purposes of Section 14 (5)(b)(i) (*making of alterations to the Constitution and Organic Laws*) the prescribed majority of votes for an Organic Law authorized by this Part is a two-thirds absolute majority.

**“347. ORGANIC LAWS.**

Where this Part authorizes an Organic Law to make provision for any matter, the Organic Law may make full provision for all aspects of that matter, notwithstanding that all such aspects have not been expressly referred to in the provision authorizing the Organic Law.

**“348. TRANSITIONAL PROVISIONS.**

An Organic Law may make provision for all matters relating to the transition of Bougainville from the system of Government immediately before the coming into operation of this Part to the system of Government for which provision is made in this Part.

**“349. CONSTITUTIONAL REGULATIONS.**

(1) The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make Constitutional Regulations not inconsistent with this Part prescribing all matters that by this Part are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out and giving effect to this Part.

(2) The Constitutional Regulations under Subsection (1) shall not be made, amended or repealed except with the approval of the Bougainville Executive in accordance with the Bougainville Constitution and the Agreement.

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