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# **Organic Law on Peace -Building in Bougainville- Autonomous Bougainville Government and Bougainville ← Referendum → 2002**

No. 0 of 2002.

*The Organic Law on Peace -Building in Bougainville-Autonomous Bougainville Government  
and Bougainville ← Referendum → 2002.*

Certified on: 25/6/2002.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. 0 of 2002.

*The Organic Law on Peace -Building in Bougainville-Autonomous Bougainville Government  
and Bougainville ← Referendum → 2002.*

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## **INDEPENDENT STATE OF PAPUA NEW GUINEA.**

AN ACT

entitled

*The Organic Law on Peace -Building in Bougainville-Autonomous Bougainville Government and Bougainville **← Referendum →** 2002,*

Being an Organic Law to implement Part XIV (Peace –Building in Bougainville –Autonomous Bougainville Government and Bougainville **← Referendum →**) of the Constitution by providing for –  
 arrangements for the establishment and operation of autonomous government for Bougainville; and  
 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 No.23 –Peace –Building in Bougainville – Autonomous Bougainville Government and Bougainville **← Referendum →** other than Section 2 of that Constitutional Amendment.

### **PART 1. – 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 vote and stand for public office 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 freedom of assembly and association 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.

## 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. G146 of 16 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** 

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

“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 2. – 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.

## **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 to 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.

(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.

### ***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)(b) (Establishment of 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.

#### **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 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 Finances (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 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 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 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 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 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 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 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 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 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 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.

### **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 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 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 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.

(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.**

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 3. – 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 50;

“Internal Revenue Commission” means the Internal Revenue Commission of the National Government;

“recurrent unconditional grant” means a grant under Section 48;

“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 49;

“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.

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

(1) For the purposes of this section and Section 40, “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.**

The revenues from all taxes imposed under National law, excepting those taxes referred to in Section 39(2) and Section 40(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 follow: –

(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(1)(a); 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.

(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 Section 39(2) and Section 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 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.

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

**PART 4. – 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 56(2);

“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.

### 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 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.

(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
- (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 5. – 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 the Parliament.

(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 4 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 6. – 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 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. SAVINGS OF CONTRACT, 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 1981 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).

#### **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.



## SCHEDULE 1 – .

### Section 61

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

##### PART 1. – PRELIMINARY.

(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 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 Section 188(1)(b) of the Constitution or the Bougainville Police;

“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 Gazette“ 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.**

### Division 1. – Exercise of Powers and Performances 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.

### 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 **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 Subsection (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.
- (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 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.

(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 (3) 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.

(3) 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.

(4) Subject to Subsection (5), 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.

(5) 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.

(6) 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), 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 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)?
- (4) 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 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** .

**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 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 –

(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 NELECTING 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.

#### 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 objections 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.

#### 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 OR 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. APPEALS 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

(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.

(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 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.

(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.

(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 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 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.

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

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.

(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 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).
- (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.

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.

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 –
  - (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 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, the person's right to vote shall be deemed to have been challenged.

#### 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 refrain 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 Sch.1.84, claims to vote in the **Referendum** at that polling place he may, subject to Sections Sch.1.23 and Sch.1.81 and to the Regulations be permitted to vote.

(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 Sections 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 –

- (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 spoiled 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 spoiled 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.

(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 be 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.

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 vote 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.

- (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 (f).
- (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 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.
- (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 Sections 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 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.

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 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 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.

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

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).

(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 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 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) 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.

#### 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.

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.

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.	Offences	Punishments
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1.	Voting more than once at the <b>Referendum</b>	K400.00 or imprisonment for three months.
2.	Wagering on the result of the <b>Referendum</b>	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 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 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 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 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 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. NEGLIGENCE TO INITIAL BALLOT-PAPER, ETC.

An officer who, contrary to his duty, fails to initial a ballot-paper or affix an 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.

#### 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)?

(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.

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.

(5) 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.

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.
- (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.

(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.

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 (10) 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 20 .

(Head of State)

I hereby certify that the above is a fair print of the Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville **Referendum** which has been made by the National Parliament.

Clerk of the National Parliament.

Constitution.

CERTIFICATE UNDER SECTION 14.

I, BERNARD NAROKOBI, Speaker of the National Parliament, hereby certify that the requirements of Section 14(1), (2) and (3) of the Constitution were complied with in respect of the Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville **Referendum** and that the Law was made by the National Parliament as follows: –

- (a) the first vote was taken on 23 January 2002 when the number of seats in the National Parliament were 109 and those voting for the proposal were 85 and none voted against the proposal; and
- (b) the second vote was taken on 27 March 2002 when the number of seats in the National Parliament were 109 and those voting for the proposal were 87 and none voted against the proposal.

Speaker of the National Parliament.

Office of Legislative Counsel, PNG

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