

**BASIC DOCUMENTS ON THE CONSTITUTIONAL ARRANGEMENTS  
FOR THE BOUGAINVILLE REFERENDUM**

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# **BOUGAINVILLE PEACE AGREEMENT – PROVISIONS** **ON THE REFERENDUM**

## **INTRODUCTION AND OUTLINE**

### **2. Referendum**

The agreement provides for the right, guaranteed in the National *Constitution*, for a referendum among Bougainvilleans on Bougainville's future political status.

The choices available in the referendum will include a separate independence for Bougainville.

The referendum will be held no sooner than ten years, and in any case no later than fifteen years, after the election of the autonomous Bougainville Government.

The actual date of the referendum will be set taking account of standards of good governance and the implementation of the weapons disposal plan.

The outcome of the referendum will be subject to ratification (final decision making authority) of the National Parliament.

### **C. AGREED PRINCIPLES ON REFERENDUM**

309. The National Government will move amendments to the National *Constitution* to guarantee a referendum on Bougainville's future political status.
310. The choices available in the referendum will include a separate independence for Bougainville.
311. (a) The amendments will provide that the outcome will be subject to ratification (final decision-making authority) of the National Parliament.
- (b) The autonomous Bougainville Government and the National Government will consult over the results of the referendum.
312. (a) The constitutional amendments will guarantee that the referendum will be held:
- no earlier than 10 years and, in any case, no later than 15 years after the election of the first autonomous Bougainville Government;
  - when the conditions listed below have been met;
  - unless the autonomous Bougainville Government decides, after consultation with the National Government and in accordance with the Bougainville Constitution, that the referendum should not be held.

- (b) The conditions to be taken into account include:
    - weapons disposal; and
    - good governance.
  - (c) The actual date of the referendum will be agreed after consultations by the autonomous Bougainville Government and the National Government.
313. (a) The benchmarks to be used in determining good governance will take account of internationally accepted standards of good governance as they are applicable and implemented in the circumstances of Bougainville and the rest of Papua New Guinea. These benchmarks include democracy and opportunities for participation by Bougainvilleans, transparency, and accountability, as well as respect for human rights and the rule of law, including the *Constitution of Papua New Guinea*.
- (b) The National Government and the autonomous Bougainville Government will co-operate in ensuring progress towards the achievement and maintenance of these benchmarks.
  - (c) The agreed procedures for review and resolution of disputes will be used to determine whether Bougainville has achieved the standard of good governance intended by this Agreement.
314. (a) The referendum on Bougainville's future political status will be conducted in accordance with agreed constitutional arrangements.
- (b) The constitutional amendments and any Organic Law required to implement the agreed referendum arrangements will be introduced into the National Parliament together, and drafted to take effect at the same time.
315. Eligibility to vote in the referendum will be the same as for national elections in Bougainville plus non-resident Bougainvilleans (detailed criteria to be finalised through consultation).
316. (a) The question(s) to be asked in the referendum should be clear and agreed by the National Government and the autonomous Bougainville Government.
- (b) The choices should be presented so as to facilitate a clear result.
317. The referendum will be free and fair.
318. The National Electoral Commission and the authority responsible for conducting elections in Bougainville will be jointly responsible for conducting the referendum.
319. International observers will be invited to observe the conduct of the referendum.
320. This agreement will be given effect through Constitutional Laws.

321. The National Government and the autonomous Bougainville Government will consult and co-operate to ensure that the conditions intended to apply before the referendum are met.
322. The agreed dispute resolution mechanism will be used to resolve any differences concerning any issues related to holding the referendum, including issues concerning the questions or method of choice in referendum, and the actual date of the referendum.
323. Consultations over the referendum will include:
- (a) timely communication of views in writing to a specified point of contact;
  - (b) adequate opportunity to respond in a similar way;
  - (c) where there are differences, meaningful exchange of views within an adequate, agreed and specified time-frame, either orally or in writing, with a view to reaching agreement; and
  - (d) clear, written record of outcome (either agreement or different views), provided for all parties.
324. Agreed plans for weapons disposal will be fully implemented before elections for the autonomous Bougainville Government are held.

**D. AMENDMENT OF CONSTITUTIONAL ARRANGEMENTS FOR AUTONOMY AND REFERENDUM**

325. The constitutional arrangements implementing this agreement may be amended only in accordance with both requirements (a) and (b) below:
- (a) after approval by the National Parliament in accordance with the amendment provisions contained in the National *Constitution*; and
  - (b) (i) in the case of the referendum provisions, after a vote in which a two-thirds absolute majority of members of the Bougainville legislature vote in support; or  
(ii) in the case of the autonomy provisions, after a vote in which a simple majority of members of the Bougainville legislature vote in support.
326. Voting in the Bougainville legislature must be concluded before the second vote on the same Bill to amend is held in the National Parliament.
327. The National Government and the autonomous Bougainville Government will inform each other of any proposed amendments; consult over them through the agreed consultation procedures or the agreed five-yearly reviews before they are formally moved (or, in the case of Private Members' Bills put to the vote for the first time); and resolve any differences through the agreed dispute resolution procedures.

328. The constitutional provisions concerning the above entrenchment arrangements will themselves be subject to the above procedures and requirements.

**PNG CONSTITUTION- PROVISIONS RELEVANT TO THE**  
**REFERENDUM**

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*Division 7. Bougainville Referendum.*

**338. REFERENDUM TO BE HELD.**

(1) Subject to this section, a Referendum on the future political status of Bougainville shall be held in accordance with this Division.

(2) Subject to Subsection (7), the Referendum shall be held on a date agreed after consultation by the Bougainville Government with the National Government, which date shall be not earlier than 10 years and, notwithstanding any other provision, not more than 15 years after the election of the first Bougainville Government.

(3) The date referred to in Subsection (2) shall be determined after considering whether -

- (a) weapons have been disposed of in accordance with the Agreement; and
- (b) in accordance with Subsection (4), it has been determined that the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance.

(4) The question whether the Bougainville Government has been and is being conducted in accordance with internationally accepted standards of good governance shall be determined in accordance with the review and the dispute resolution procedure.

(5) For the purposes of Subsection (4), the internationally accepted standards of good governance, as they are applicable and implemented in the circumstances of Bougainville and Papua New Guinea as a whole include democracy, the opportunity for participation by Bougainvilleans, transparency, accountability, and respect for human rights and the rule of law, including this Constitution.

(6) The National Government and the Bougainville Government shall co-operate in ensuring progress towards achieving and maintaining the standards referred to in Subsection (5).

(7) The Referendum shall not be held where the Bougainville Government decides, in accordance with the Bougainville Constitution, after consultation with the National Government, that the Referendum shall not be held.

**339. THE QUESTION OR QUESTIONS TO BE PUT.**

The question or questions to be put at the Referendum –

- (a) shall be agreed to by the National Government and the Bougainville Government; and
- (b) shall be formulated to avoid a disputed or unclear result; and
- (c) shall include a choice of separate independence for Bougainville.

**340. MANNER OF CONDUCTING REFERENDUM.**

- (1) An Organic Law shall make provision for the manner in which the Referendum is to be conducted and in particular shall make provision for and in relation to –
- (a) the authorities to be jointly responsible for preparing for and conducting the Referendum and for the arrangements whereby they shall exercise joint authority; and
  - (b) electorates and polling places; and
  - (c) electoral rolls, enrolment, objections to enrolment and appeals relating to enrolment; and
  - (d) postal voting; and
  - (e) polling and scrutiny; and
  - (f) interpreters; and
  - (g) offences; and
  - (h) polling and scrutiny; and
  - (i) communicating the results of the Referendum to the National Government and to the Bougainville Government; and
  - (j) the invitation of international observers to observe the conduct of the Referendum; and
  - (k) such other matters as may be required effectively to conduct the Referendum.

(2) The Referendum may be held in conjunction with an election.

**341. REFERENDUM TO BE FREE AND FAIR.**

The National Government and the Bougainville Government shall co-operate to ensure that the Referendum is free and fair.

**342. REFERENDUM RESULTS AND IMPLEMENTATION.**

(1) The National Government and the Bougainville Government shall consult over the results of the Referendum.

(2) Subject to the consultation referred to in Subsection (1), the Minister responsible for the Bougainville Referendum shall table the results of the Referendum in the National Parliament and the Speaker of the National Parliament shall furnish to the Bougainville Executive a copy of the minutes of the relevant proceedings and of any decision made in the National Parliament regarding the Referendum.

**343. RESOLUTION OF DIFFERENCES ON REFERENDUM.**

Any differences between the National Government and the Bougainville Government in relation to the Referendum shall be resolved in accordance with the dispute resolution procedure.

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***Division 9. – Miscellaneous.***

**345. REQUIREMENT FOR AMENDMENT OF THIS PART, ETC.,**

(1) The provisions of this section are in addition to and are not in derogation of the provision of Section 14 (*making of alterations to the Constitution and Organic Laws*).

(2) Where the National Government or the Bougainville Government seeks to present or have presented in the Parliament an amendment to this Part or to an Organic Law authorized by this Part, it shall –

- (a) consult with the other Government concerning the proposed amendments; or
- (b) submit the proposed amendment to a review, before presenting it or having it presented in the Parliament.

(3) Where an amendment to this Part or to an Organic Law authorized by this Part is proposed to be presented in the Parliament, the Minister responsible for Constitutional Law matters in relation to Bougainville shall, as soon as practicable after the proposed amendment is published in the National Gazette (or earlier if the Minister has notification of the proposed amendment) send a copy of the proposed amendment to the Bougainville Government and the two Governments shall consult with each other concerning the proposed amendment.

(4) An amendment referred to in Subsection (2) or (3) cannot become law unless

- (a) it is passed by the National Parliament in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*); and
- (b) before the second vote in the National Parliament on the amendment in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*), on a motion in the Bougainville Legislature for approval of the amendment as presented to the Parliament, there is –
  - (i) in the case of an amendment to Division 7 or to this Subsection – a two-thirds absolute majority vote of members of the Bougainville Legislature in favour of the amendment; and
  - ii) in the case of an amendment to this Part, other than to Division 7 or to this Subsection a simple majority vote of the members of the Bougainville Legislature in favour of the amendment.

(5) The person presiding over the Bougainville legislature on the occasion of a vote taken under Subsection (4)(b)(i) or (ii) shall, as soon as practicable after the vote has been taken, send to the Speaker of the National Parliament details of the result of the vote.

#### **346. PRESCRIBED MAJORITY OF VOTES REQUIRED FOR THIS PART, ETC.,**

(1) For the purposes of Section 14 (*making of alterations to the Constitution and Organic Laws*), the prescribed majority of votes for this Part is a two-thirds absolute majority vote.

(2) For the purposes of Section 14 (5)(b)(i) (*making of alterations to the Constitution and Organic Laws*) the prescribed majority of votes for an Organic Law authorized by this Part is a two thirds absolute majority.

**ORGANIC LAW ON PEACE-BUILDING IN BOUGAINVILLE –**  
**AUTONOMOUS BOUGAINVILLE GOVERNMENT AND**  
**BOUGAINVILLE REFERENDUM – PROVISIONS**  
**RELEVANT TO THE REFERENDUM**

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**PART IV. - BOUGAINVILLE REFERENDUM.**

*Division 1. - Preliminary.*

**52. APPLICATION OF THIS PART.**

This Part applies to and in respect of the Referendum.

**53. INTERPRETATION.**

In this Part, unless the contrary intention appears -  
available newspaper" -

(a) if a newspaper circulates in Bougainville and in the rest of the country - means that newspaper; and

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

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

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

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

the Agency" means the agency or agencies through which the Referendum is to be conducted by virtue of an arrangement under Section 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

- (c) 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 V. - MISCELLANEOUS.**

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#### **66. CONSTITUTIONAL REGULATIONS.**

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

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

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

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

**THE SCHEDULE TO THE ORGANIC LAW – RULES RELATING TO  
THE CONDUCT OF THE REFERENDUM**

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

AN ORGANIC LAW

entitled

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

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RULES RELATING TO THE CONDUCT OF THE REFERENDUM

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## **SCHEDULE 1.**

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

#### **PART I. - PRELIMINARY.**

##### **Sch.1.1 INTERPRETATION.**

- (1) In this Schedule, unless the contrary intention appears -  
 "Assistant" means a person who assists in the compilation of rolls for voting purposes;  
 "Bougainville" means the areas of land and sea defined in accordance with Section 278(1) (*Interpretation*) of the *Constitution*;  
 "Bougainville Gazette" means the official journal of the Bougainville Government (by whatever name known);  
 "Bougainville Government" means the Bougainville Government established in accordance with Part XIV.2 (*Arrangements for the establishment of Bougainville Government*) of the

***Constitution;***

"fax" means a facsimile message sent by electronic means;

"interested party" means the National Government, the Bougainville Government or a recognised interest group;

"international observer" means an international observer invited under Section Sch.1.11;

"local-level government" means a local-level government (by whatever name known) established under a law of Bougainville;

"non-resident voter" means a person who is entitled to vote at the Referendum according to the criteria determined under Section Sch. 1.55(1);

"officer" means an officer or employee of the National Public Service, a member of the Defence Force, a member of the Police Force, a member of the Correctional Service, an officer or employee of a Bougainville Government Service or an officer or employee of a local-level government or an officer or employee of a governmental body;

"Police Force" means the Police Force established under Paragraph 188(1)(b) (***Establishment of the State Services***) of the ***Constitution*** or the Bougainville Police;

"Police Officer" means a member of the Police Force;

"polling booth" means the polling place or part of the polling place determined by the presiding officer to be a polling booth under Section Sch.1.69(2);

"polling period", in relation to the Referendum, means the period for polling the first and last days of which are specified in the writ for that Referendum and includes any extension of that period granted under Section Sch.1.125;

"presiding officer" means a person appointed under Section Sch.1.69(1)(a);

"recognised interest group" means, subject to Subsection Sch.1.10(7), a group declared under Section Sch.1.10(4);

"Referendum" means the referendum provided for under Part XIV.7 (***Bougainville Referendum***) of the ***Constitution***;

"roll" means a roll of voters under Section Sch.1.15(1);

"the Agency" means the agency or agencies through which the Referendum is to be conducted by virtue of an arrangement under Section 57(6).

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

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

"the Returning Officer", in relation to a voting district, means the Returning Officer for that voting district;

"the writ" means the writ issued under Section Sch.1.43;

"voter" means a person whose name appears on a roll;

"voting district" means an area that is a voting district under Section Sch.1.12;

"voting officer" includes a Returning Officer, presiding officer, substitute presiding officer, assistant presiding officer, poll clerk, interpreter and doorkeeper.

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

**PART II. - ADMINISTRATION.**

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

**Sch.1.2. DELEGATION.**

(1) The Agency may, by instrument in writing, delegate to a person -

(a) all or any of its powers and functions under this Schedule (except this power of

delegation and any prescribed power or function); and

(b) all or any of the powers and functions of a Returning Officer under this Schedule.

(2) A power or function delegated under Subsection (1) may be had, exercised and performed by the delegate in relation to such voting district or voting districts, or to such matters or class of matters, or to the whole of the country, as is specified in the instrument of delegation.

(3) A delegation under Subsection (1) is revocable, in writing, at will.

(4) A delegation referred to in Subsection (1) (a) does not prevent the exercise or performance of a power or function by the Agency.

(5) A delegation referred to in Subsection (1) (b) does not prevent the exercise or performance of a power or function by the Agency.

### ***Division 2. - Resources.***

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

(1) It is the duty of the Governments, to ensure, as far as it is within their respective legal powers, that all arrangements are made, staff, facilities and funding provided and all steps taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the functions of the Agency and of each Returning Officer.

(2) Without derogating from Subsection (1), the National Department responsible for personnel matters and the corresponding Bougainville Government organisation shall, when so requested by the Agency, make available to the Agency, and to each Returning Officer, such staff as may be necessary for the proper and convenient performance of their functions.

### ***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 Subsections (1)(a) and (b).
- (3) The Agency shall develop a policy for promoting public involvement, including the criteria for the recognition of groups under Section Sch.1.10.
- (4) The Agency shall publicise its policy by notice published in the Gazettes and in an available newspaper.

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

- (1) The Agency may, by notice published in the Gazettes and in an available newspaper, and by notice to local-level governments, invite persons representing groups whose members have a common interest in the Referendum to apply in writing for recognition under this section.
- (2) An application under this section shall specify the nature of the group's interest in the Referendum and such other matters as are prescribed.
- (3) In its consideration of an application under this section, the Agency shall take into account the policy developed under Section Sch.1.9, and without limiting the considerations that the Agency may take into account, shall consider -
  - (a) the appropriate number of groups that ought to be recognised in respect of a particular area (which may be none), having regard to -

- (i) the need to avoid unreasonably large crowds of people in the vicinity of polling places whose presence might intimidate voters; and
  - (ii) the need to ensure that the proceedings of the poll and the scrutiny are not disrupted by the presence of too many scrutineers in the limited space available for those purposes; and
  - (iii) the need to avoid communal friction; or
- (b) the character of a particular group seeking recognition, having regard to -
  - (i) the extent to which the group represents a significant part of the population in a voting district; and
  - (ii) the desirability of ensuring, as far as reasonably practicable, that a reasonable balance is achieved in the areas in relation to which groups are recognised of views representing all sides of the referendum question or questions.
- (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) In this section, "authorized person" means a Returning Officer, or a person appointed by the Agency for the purposes of this section.

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

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

- (1) A person other than a non-resident voter is entitled to enrolment if the person -
  - (a) has a right to vote under Section 50 (*right to vote and stand for public office*) of the *Constitution*; and
  - (b) has resided in the area of a voting district for a period of not less than six months immediately preceding the date of his claim for enrolment; and
  - (c) complies with the requirements of Part VII for enrolment for a voting district.
- (2) A non-resident voter is entitled to enrolment.
- (3) A person whose name is on the roll for a voting district shall, subject to this Schedule and to the provisions of any other law in force, vote at the Referendum, but is not entitled to vote more than once at the Referendum.

**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 NEGLECTING TO ENROL CLAIMANTS.**

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

Penalty: A fine not exceeding K1,000.00.

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

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

(a) correcting a mistake or omission in the roll; and

(b) correcting a mistake or omission in the particulars of the enrolment of a voter; and

(c) altering, on the application of a voter, the original name, address or occupation of the voter on the same roll; and

(d) removing the name of a deceased voter; and

(e) striking out the superfluous entry where the name of the same voter appears more than once on the same roll; and

(f) reinstating a name removed by mistake; and

(g) reinstating a name removed as the result of an objection where he is satisfied that the objection was based on a mistake as to fact and that the person objected to still retains and has continuously retained his right to the enrolment in respect of which the objection was made; and

(h) removing a name from the roll where he is satisfied that the voter is not, or has ceased to be, qualified for enrolment on the roll and has secured enrolment on another roll.

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

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

**Sch.1.33. INCORRECT ENROLMENT.**

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

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

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

**PART VIII. – OBJECTIONS.**

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

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

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

**Sch.1.36. OBJECTION.**

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

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

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

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

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

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

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

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

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

(b) has ceased to reside in the voting district.

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

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

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

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

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

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

**PART IX. – APPEALS.**

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

(1) A person -

- (a) who has made a claim for enrolment or transfer of enrolment in accordance with this Schedule, and has not been enrolled; or
- (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 restrain from disclosing any knowledge of the vote of the voter.

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

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

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

- (1) Notwithstanding anything in this Schedule, where a voter, against whose name on the certified list of voters used at a polling place prescribed for the voting district for which he is enrolled a mark has been placed in accordance with Section 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.

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

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

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

(2) The Returning Officer shall notify the Agency of -

(a) if one question was voted on at the Referendum - the total number of votes given for each choice on the question; and

(b) if more than one question was voted on at the Referendum – in respect of each of the questions, the total number of votes given for each choice on the question; and

(c) the total number of informal ballot-papers.

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

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

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

(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.	Column 1 Offences	Column 2 Punishments
1	Voting more than once at the Referendum	K400.00 or imprisonment for three months.
2	Wagering on the result of the Referendum	K400.00
3	Wilfully defacing, mutilating, destroying or removing a notice, list or other document affixed by a Returning Officer or by his authority	K20.00
4	Knowingly making a false statement in a claim, application, return or declaration, or in answer to a question under this Schedule	Imprisonment for two years
5	Any offence under this Schedule for which no other punishment is provided	K500.00
6	Falsely personating a person to secure a ballot-paper to which the personator is not entitled, or personating	Imprisonment for two years

	any other person for the purposes of voting	
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.

(1) 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 the member of the Police Force may take such reasonable steps as are necessary for the removal of the person from the room, building or place.

(4) A person -

(a) who has been removed from a room or building in accordance with a direction given under Subsection (3); or

(b) whose removal from a room, building or place has been directed under Subsection (3) and who has left that room, building or place,

and who, without the authority of the chairman (proof of which authority lies upon that person) returns to that room or building while the meeting is in progress, is guilty of an offence.

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

(5) A member of the Police Force may arrest without warrant a person who commits an offence against Subsection (4).

**Sch.1.147. NEGLECT TO INITIAL BALLOT-PAPER, ETC.**

An officer who, contrary to his duty, fails to initial a ballot-paper or affix 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) Nothing in this Schedule shall derogate or be deemed to derogate the provisions of the Criminal Code, but a person is not liable to be prosecuted or punished both under this Schedule and under the Criminal Code for the same offence.

(2) If the Criminal Code is adopted by a law of Bougainville in accordance with Section 291 (*Functions and powers of the National Government and of the Bougainville Government in relation to Criminal law*) of the *Constitution*, the term "Criminal Code" in Subsection (1) means the law of Bougainville corresponding to the Criminal Code.

**PART XVII. - DISPUTED RETURNS.**

**Sch.1.152. INTERPRETATION .**

In this Part, unless the contrary intention appears –  
"Court" means the National Court or a court established under the Bougainville Constitution having a similar jurisdiction.

**Sch.1.153. REFERENDUM MAY BE DISPUTED.**

The result of a Referendum may be disputed under this Part by a petition addressed to the Court and not otherwise.

**Sch.1.154. JURISDICTION OF COURT EXERCISABLE BY SINGLE JUDGE.**

The jurisdiction of the Court in relation to any matter under this Part may be exercised by a single judge.

**Sch.1.155. WHO MAY DISPUTE REFERENDUM.**

The result of a Referendum may be disputed by -

- (a) the Agency; or
- (b) a voter.

**Sch.1.156. COPY OF PETITION TO CLERK OF PARLIAMENT , ETC.**

The staff of the Court shall give a copy of the petition to -

- (a) the Clerk of the National Parliament and the presiding officer of the Bougainville legislature; and
- (b) the Agency, unless the Agency filed the petition.

**Sch.1.157. REQUIREMENTS FOR PETITION TO BE EFFECTIVE.**

- (1) A petition shall -
  - (a) state the facts relied on to dispute the referendum result; and
  - (b) specify the relief to which the petitioner claims to be entitled.
- (2) A petition by the Agency shall be signed by the executive head of the Agency.
- (3) A petition by a voter shall -
  - (a) be signed by the voter; and
  - (b) be attested by two witnesses whose occupations and addresses are stated.

- (4) A petition shall be filed within 40 days after the declaration of the result of the Referendum in accordance with Section Sch.1.123 (3) -
- (a) in the case of the National Court – in the registry of the court at Port Moresby; or
  - (b) in the case of the Bougainville court – at the registry or principal registry of the Court.

(4) The preceding provisions of this Schedule do not, by implication, prevent the amendment of the petition.

**Sch.1.158. DEPOSIT AS SECURITY FOR COSTS.**

At the time of filing the petition, the petitioner shall deposit with the Registrar of the Court the sum of K2,500.00 as security for costs.

**Sch.1.159. REQUIREMENTS FOR PROCEEDINGS.**

Proceedings shall not be heard on a petition unless the requirements of Sections Sch.1.157 and 1.158 are complied with.

**Sch.1.160. PARTIES TO PETITION.**

(1) The parties to a petition are the person who filed it and any respondent under this section.

(2) The Agency is a respondent to any petition by another person under this Part.

**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 (1) shall be preserved until the later of -

(a) 45 days after the date of the return of the writ; or

(b) the final disposition of any proceedings under Part XVII.

**Sch.1.176. PRESCRIBED OFFENCES.**

For the purposes of Section 50(1)(b) (*right to vote and stand for public office*) of the *Constitution* the offences contained in the sections specified hereunder are prescribed offences:-

Sections Sch.1.56, 1.57, 1.121(2), 1.126(1)(c), (d) and (e), 1.136(3), 1.139, items 1, 4, 7, 8, 9, 10, 12 and 14, and 1.143 and 1.145(1).

**Sch.1.177. FORM OF WRIT.**

The writ shall be in the following form :-

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

***Organic Law on Bougainville Government and Bougainville Referendum***

**WRIT FOR A REFERENDUM ON BOUGAINVILLE.**

To: The Agency

GREETING:

This is to command you to cause a referendum to be held for the purposes of Part XIV.7 of the *Constitution*, and I appoint the following dates for the purposes of the referendum:-

1. For the issue of this writ, in accordance with Section Sch.1.43: [*insert day and date*]
2. For the cut-off day for the voting rolls, for the purposes of Section Sch.1.32(3) and Section Sch.1.40(2): [*insert day and date*]
3. For the first day of the polling period, for the purposes of Section Sch.1.42(2): [*insert day and date*]
4. For the last day of the polling period, for the purposes of Section Sch.1.42(3): [*insert day and date*]
5. For the return of this writ, for the purposes of Section Sch.1.42(4): [*insert day and date*]

GIVEN under my hand at

20 .

(*Head of State*)

**CONSTITUTION OF THE AUTONOMOUS REGION OF  
BOUGAINVILLE – PROVISIONS RELEVANT TO THE  
REFERENDUM**

**THE PREAMBLE**

**WE, THE PEOPLE OF BOUGAINVILLE**, under the sovereignty of God

**Conscious** of the noble heritage and customs of our Ancestors and of the freedom and autonomy which they enjoyed in time immemorial;  
**Mindful** of the restrictions wrought on our freedom, autonomy and customs by colonial aggression, foreign influences and the devastation of foreign wars;  
**Proud** of our long struggle to free ourselves from adverse colonial and foreign influences and to renew our freedom, autonomy and customs;  
**Chastened** by internal conflict that arose during our struggle for freedom;  
**Recognizing** the sacrifice of Bougainvilleans for the causes of autonomy and self-determination;  
**Heartened** by the process of healing, reconciliation and unity pursued during the years of conflict and thereafter;

**WE, THE PEOPLE OF BOUGAINVILLE** under the sovereignty of God our Father believing and trusting in HIM do now, with His guidance and blessing, hail the dawn of a new era of government for Bougainville to enable us with His help-

- (a) to uphold Christian and similar moral and spiritual principles; and
- (b) to honour our heritage and ancestral spirits and our worthy customs and traditions; and
- (c) to provide for the self-determination of the People through both autonomy arrangements and the referendum on independence; and
- (d) to recognize the sovereignty of the People; and
- (e) to recognize the autonomy of family and clan lineages and other customary communities; and
- (f) to govern through democracy, accountability, equality and social justice; and
- (g) to protect the land, the sea, our environment and our cultural identity for present and future generations; and
- (h) to strive to eliminate universal problems in Bougainville of poverty, illiteracy, corruption, pollution, unemployment, overpopulation and other ills; and
- (i) to meet the obligations of Bougainvilleans under this Constitution and in particular to uphold this Constitution with dignity and integrity; and
- (j) to provide for the legislative, executive and judicial powers of the People of Bougainville to be vested in the respective arms of an Autonomous Bougainville Government;

**WE, THE PEOPLE OF BOUGAINVILLE ACTING UNDER THE AUTHORITY OF OUR TRADITIONAL CLAN SYSTEM AND LEADERSHIP DO NOW THEREFORE DECLARE**

that we, having resolved to enact a Constitution for the Autonomous Region of Bougainville,

**AND ACTING** with the guidance of God through decision of our representatives in the Bougainville Constituent Assembly on the twelfth day of November 2004, following

consultation with the People through our Bougainville Constitutional Commission **HEREBY**, under the authority of the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution, **ESTABLISH, ADOPT AND GIVE TO OURSELVES** this Constitution-

.....

**7. BOUGAINVILLEAN.**

- (1) A person –
  - (a) who is a member (whether by birth or by adoption according to custom by the clan lineage) of a Bougainvillean clan lineage (matrilineal or patrilineal) owning customary land in Bougainville; or
  - (b) who is married (whether by law or custom) to a person to whom Paragraph (a) applies; or
  - (c) who is a child one of whose parents is a Bougainvillean,

is a Bougainvillean.

(2) For the purposes of Subsection (1)(a), a person who was not born in Bougainville, or who is not of Bougainvillean descent or who is a non-citizen may be adopted as a member of a Bougainville clan according to custom.

(3) A Bougainville law made by an absolute majority vote shall make provision for all or any matters relating to this section including-

- (a) the nature of providing evidence of customary practices; and
- (b) the nature of providing evidence of birth outside Papua New Guinea; and
- (c) all matters relevant to the consequences of dissolution of a marriage involving a person to whom Subsection (1) refers; and
- (d) all other matters arising from the provisions of this section.

.....

**PART XVII. - BOUGAINVILLE REFERENDUM.**

**193. BOUGAINVILLE REFERENDUM.**

The provisions of the Bougainville Peace Agreement, as implemented in Division XIV.7 (*Bougainville Referendum*) of the National Constitution relating to the referendum on the future political status of Bougainville are as set out in Schedule 7 (*National Constitution provisions relating to Bougainville Referendum*) to this Constitution.

**194. PROCEDURE IN RELATION TO THE BOUGAINVILLE REFERENDUM.**

(1) The Bougainville Referendum shall be held except in accordance with a decision of the House of Representatives under this section.

(2) A decision of the House of Representatives, as provided for in Section 338(7) (*Referendum to be held*) of the National Constitution, that the Bougainville Referendum shall not be held, may be made only during the period commencing on the ninth anniversary of the establishment of the Autonomous Bougainville Government and ending on the fifteenth anniversary of that establishment, and only in accordance with the following procedure:-

- (a) subject to Subsection (3), there must firstly be moved in the House of Representatives a motion that the House of Representatives consider whether the Bougainville Referendum shall not be held;
- (a) the motion under Paragraph (a) must be passed by a three-quarters absolute majority vote;
- (b) where the motion under Paragraph (a) is not passed by a three-quarters absolute majority vote no further procedure may be followed;
- (d) where a motion under Paragraph (a) is passed by a three-quarters absolute majority vote, there shall be widespread consultation with the People of Bougainville;
- (e) not less than three months after the motion under Paragraph (a) is passed by a three-quarters absolute majority vote and after –
  - (i) widespread consultation with the People of Bougainville as required by Paragraph (d); and
  - (ii) consultation between the Autonomous Bougainville Government and the National Government,
 there shall be moved in the House of Representatives, subject to Subsection (3), a further motion that the Bougainville Referendum shall not be held;
- (f) the motion under Paragraph (e) must be passed by a three-quarters absolute majority vote;
- (g) where the motion under Paragraph (e) is passed by a three-quarters absolute majority vote, the President shall inform the National Executive Council and the Bougainville Referendum shall not be held;
- (h) where the motion under Paragraph (e) is not passed by a three-quarters absolute majority vote no further procedure shall follow.

(3) A motion under Subsection (2)(a) or (e) shall not be moved in the House of Representatives unless written notice of the motion has been -

- (a) delivered to the Speaker; and
- (b) intimated by the Speaker to the members of the House of Representatives,

at least 14 sitting days of the House of Representatives prior to the moving of the motion.

(4) The failure of a motion under Subsection (2) (a) or (e) to obtain a three-quarters absolute majority vote prevents a further motion under Subsection (2) (a) or (e) from being moved.

(5) A Bougainville law made by an absolute majority vote may make provision for or in respect of any aspect of the procedure referred to in Subsection (2), particularly in respect of the manner of consultation with the People of Bougainville referred to in Subsection (2)(d) and (e).

.....

**PART XXII. - ALTERATION OF THIS CONSTITUTION AND OF  
PART XIV (BOUGAINVILLE GOVERNMENT AND  
BOUGAINVILLE REFERENDUM) OF THE  
NATIONAL CONSTITUTION, ETC.,**

***Division I. - Amendment of Part XIV (Bougainville Government and Bougainville Referendum) of the National Constitution, etc.,***

**217. REQUIREMENT FOR AMENDMENT OF PART XIV (BOUGAINVILLE GOVERNMENT AND BOUGAINVILLE REFERENDUM) OF THE NATIONAL CONSTITUTION, ETC.,**

- (1) In this section, “relevant National Constitutional Law” means-
- (a) Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution; and/or
  - (b) The *Organic Law on Peace Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum*.

(2) The requirement for amendment of a relevant National Constitutional Law is as provided by Section 345 (*requirement for amendment of this Part etc.*), of the National Constitution and the provisions of this section relating to procedures in Bougainville in respect of such amendment are to give effect to and are not in reduction of the provision of Section 345 (*requirement for amendment of this Part, etc.*) of the National Constitution.

(3) A Bougainville law, which shall be made within one year of the first meeting of the House of Representatives, shall make provision for all matters relating to the consultation required by Subsections (4) and (5) of this section and Section 216(1)(a) (*National Constitutional Regulations*).

(4) Subject to Subsection (6), where the Autonomous Bougainville Government proposes to seek to present or have presented an amendment to a relevant National Constitutional Law, it shall, before complying with Section 345(2) (*requirement for amendment of this Part, etc.*) of the National Constitution, consult, in accordance with a Bougainville law, with -

- (a) heads of levels of formal government below the level of the Autonomous Bougainville Government; and
- (b) representatives of the traditional chiefs and other traditional leaders at district level; and
- (c) representatives of Churches in Bougainville.

(5) Subject to Subsection (6), where the Autonomous Bougainville Government becomes aware, through consultation or review under Section 345(2) (*requirement for amendment of this Part, etc.*) of the National Constitution, of an amendment proposed by the National Government to a relevant National Constitutional Law, it shall, before finalizing consultation on the matter with the National Government, consult, within a reasonable time, in accordance with a Bougainville law, with -

- (a) heads of levels of formal government below the level of the Autonomous Bougainville Government; and
- (b) representatives of the traditional chiefs and other traditional leaders at district level; and
- (c) representatives of Churches in Bougainville.

(6) The House of Representatives may, by an absolute majority vote, decide that the consultation referred to in Subsections (4) and (5) is not required in respect of a matter considered by it, in its absolute discretion, to be non-controversial.

(7) The question, whether or not a matter referred to in Subsection (6), is non-controversial, is non-justiciable.

(8) Before the second vote in the National Parliament in accordance with Section 14 (*making of alterations to the Constitution and Organic Laws*) of the National Constitution on an amendment by the Autonomous Bougainville Government or by the National Government to a relevant National Constitutional Law, a motion shall be moved in the House of Representatives in favour of the amendment presented to the National Parliament.

(9) In order for the second vote in the National Parliament to proceed (and, if the vote achieves the majority required, for the amendment to become law), the motion in the House of Representatives referred to in Subsection (5) must be passed –

- (a) where the amendment presented to the National Parliament is to Division XIV.7 (*Bougainville Referendum*) by a two-thirds absolute majority vote; and
- (b) where the amendment presented to the National Parliament is to any other Division of Part XIV (*Bougainville Government and Bougainville Referendum*) or to an Organic Law made under Part XIV – by a simple majority vote.

(10) The person presiding over the House of Representatives on the occasion of a vote taken under Subsection (9)(a) or (b) shall, as soon as practicable after the vote has been taken, send to the Speaker of the National Parliament, details of the result of the vote.

## **218. NATIONAL CONSTITUTIONAL REGULATIONS.**

(1) Subject to Subsection (3), where the Bougainville Executive Council becomes aware of any proposal by the National Government for Constitutional Regulations to be made, amended or repealed under Section 349 (*Constitutional Regulations*) of the National Constitution or Section 66 (*Constitutional Regulations*) of the *Organic Law on Peace-Building in Bougainville-Bougainville Autonomous Government and Bougainville Referendum* it shall-

- (a) consult, within a reasonable time, in accordance with a Bougainville law, with-
  - (i) the House of Representatives;
  - (ii) heads of levels of formal government below the level of the Autonomous Bougainville Government; and
  - (iii) representatives of the traditional chiefs and other traditional leaders at district level; and
  - (iv) representatives of Churches in Bougainville; and
- (b) thereafter move a motion in the Bougainville Executive Council that approval of the proposal be given.

(2) Where the motion referred to in Subsection (1)(b) is passed by a simple majority vote approval shall be given to the National Government.

(3) The House of Representatives may, by an absolute majority vote, decide that the consultation referred to in Subsection (1)(a) is not required in respect of a matter, considered by it in its absolute discretion, to be non-controversial.

(4) The question, whether or not a matter referred to in Subsection (3), is non-controversial, is non-justiciable.

***Division 2. - Alterations to this Constitution.***

**219. MAKING OF ALTERATIONS TO THIS CONSTITUTION.**

(1) This Constitution may be altered in accordance with this section or, in respect of certain Schedules, with Section 10 (1)(c) (*Schedules repeating certain provisions of National Constitutional Laws*), but not so as to make any provision of this Constitution non-compliant with the Bougainville Peace Agreement as implemented in Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution.

(2) A proposed law to alter this Constitution must be supported, on at least two occasions after opportunity for debate on the merits, on a division in accordance with Standing Orders of the House of Representatives by the majority of votes as follows:-

- (a) an alteration to Section 192 (*procedure in relation to the Bougainville Referendum*) – a three-quarters absolute majority vote;
- (b) an alteration to this section - a three-quarters absolute majority vote;
- (c) an alteration to any other provision of this Constitution – a two-thirds absolute majority vote.

(3) Where any amendment to this Constitution is proposed, the Bougainville Executive Council shall, in accordance with the Bougainville Peace Agreement as implemented in Section 287 (*amendment of Bougainville Constitution*) of the National Constitution –

- (a) give notification of it to the National Minister responsible for Bougainville Affairs; and
- (b) where so requested by the National Government, consult with the National Government in relation to the proposed amendment.

(4) Before the House of Representatives votes for the first time on a proposed law to amend this Constitution, the House of Representatives shall consult, in accordance with a Bougainville law, with -

- (a) heads of levels of formal government below the level of the Autonomous Bougainville Government; and
- (a) representatives of the traditional chiefs and other traditional leaders at district level; and
- (b) representatives of Churches in Bougainville.

- (5) The opportunities for debate referred to in Subsection (2) must have been -
- (a) during different meetings of the House of Representatives; and
  - (b) separated in time by at least two months,

and the proposed law must be circulated, in accordance with Standing Orders of the House of Representatives, to all members of the House of Representatives before it is formally introduced into the House of Representatives.

(6) In his certificate under Section 65 (*certification as to making of laws*), the Speaker shall, in the case of a law made to alter this Constitution -

- (a) certify that the requirements of Subsections (4) and (5) were complied with; and
- (b) state -
  - (i) the date on which each vote was taken; and
  - (ii) in relation to each vote, the number of seats in the House of Representatives at the time and the respective number of members of the House of Representatives voting for and against the proposal,

and the certificate is, in the absence of proof of the contrary, conclusive evidence of the matters so stated.

(7) Unless the House of Representatives decides otherwise in a particular case, Subsection (2) does not apply where the Speaker, after consultation with the Chief Justice of Bougainville or the most senior Bougainville Judge available, certifies that the proposed law -

- (a) does not affect the substance of the provision to be altered by it; or
- (b) is designed to correct a self-evident error or omission; or
- (c) is merely incidental to or consequential on some other alteration of -
  - (i) this Constitution; or
  - (ii) Part XIV (*Bougainville Government and Bougainville Referendum*) of the National Constitution; or
  - (iii) *The Organic Law on Peace-Building in Bougainville-Autonomous Bougainville Government and Bougainville Referendum*,

and such a proposed law may be made in the same way as Bougainville laws.

(8) The Bougainville High Court may, on the application of any person made within four weeks after the date of a certificate under Subsection (7) or such further time as a Bougainville Judge, on application made within that period, considers reasonable in the particular circumstances, disallow the certificate, but otherwise the certificate is conclusive.



## ***BOUGAINVILLE REFERENDUM COMMISSION CHARTER***

I, Grand Chief Sir Bob Dadae, GCL, GCMG, KSt. J, acting with, and in accordance with, the advice of the Papua New Guinea Electoral Commission, given after consultation and agreement between the Papua New Guinea Electoral Commission and the Bougainville Electoral Commissioner issue this charter under Section 58 of the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*, to take effect according to its terms, to establish the Bougainville Referendum Commission for the purposes of Part IV of that Organic Law.

Date of issue: 30 August 2017

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**Grand Chief Sir Bob Dadae GCL GCMG**  
Governor-General  
Acting under the authority of Section 82(2) of the  
*Constitution of the Independent State of Papua New Guinea*

# **BOUGAINVILLE REFERENDUM COMMISSION CHARTER**

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## **BOUGAINVILLE REFERENDUM COMMISSION CHARTER**

### **PREAMBLE**

- A Part XIV Division 7 of the *Constitution of the Independent State of Papua New Guinea* provides for a Referendum to be held on the future political status of Bougainville.
- B The Referendum is to be conducted in accordance with the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum* (see especially Schedule 1) on a date agreed after consultation between the Government of the Independent State of Papua New Guinea and the Autonomous Bougainville Government, but not later than 15 June 2020.
- C On 24 January 2017—
- (a) the Governments and the Papua New Guinea Electoral Commission and the Bougainville Electoral Commissioner made an agreement under Section 56(1) of the Organic Law on the administrative requirements for conducting the Referendum; and
  - (b) the electoral authorities entered into an arrangement under Section 57(6) of the Organic Law to implement the agreement.
- D The agreement provides for the electoral authorities to implement the agreement through a body established under Section 58 of the Organic Law.
- E The purpose of this charter is to establish that body.
- F Under Section Sch.1.3 of the Organic Law 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 are provided and all steps are taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the functions of the body established by this charter.

## **PART 1 — PRELIMINARY**

### **1 Aim of charter**

This charter establishes the Bougainville Referendum Commission as the agency through which the Referendum referred to in the Preamble is to be conducted, as provided by the agreement and arrangement referred to in the Preamble.

### **2 Commencement**

This charter comes into operation on the date of its issue.

### 3 Interpretation

(1) In this charter, unless the contrary intention appears—

**allowance** means an allowance for travel, accommodation, meals or other matters arising in the course of the performance of the functions of the Commission;

**Autonomous Bougainville Government** means the Autonomous Bougainville Government established by the Bougainville Constitution;

**Board of Commissioners** means the board established under Section 5;

**Bougainville Chief Secretary** means the person holding or acting in the office of Chief Secretary under Section 11 of the *Bougainville Public Services (Management and Administration) Act 2014*;

**Bougainville Constitution** means the *Constitution of the Autonomous Region of Bougainville* adopted by the Bougainville Constituent Assembly at Buin on 12 November 2004;

**Bougainville Electoral Commissioner** means the person holding or acting in the office of the Bougainville Electoral Commissioner established under Section 106(1) of the Bougainville Constitution;

**Bougainville Executive Council** means the Bougainville Executive Council provided for in Part VI Division 2 of the Bougainville Constitution;

**Bougainville Gazette** means the official journal of that name of the Autonomous Bougainville Government provided for by Section 226 of the Bougainville Constitution;

**Bougainville Parliament** means the House of Representatives established by Section 55 of the Bougainville Constitution;

**Bougainville Public Service** means the Bougainville Public Service established under Section 138(1)(a) of the Bougainville Constitution;

**Bougainville Referendum** means the Referendum for which provision is made under Part XIV Division 7 of the National Constitution;

**Chair** means—

(a) for the Board of Commissioners – the Commissioner appointed under Section 5(2)(a) or, if there is a vacancy in the office of that Commissioner, the National Electoral Commissioner and the Bougainville Electoral Commissioner acting jointly as set out in Section 7(5)(a); or

(b) for the Transitional Committee – the National Electoral Commissioner and the Bougainville Electoral Commissioner acting jointly as set out in Section 6(3);

**Chief Referendum Officer** means the person holding or acting in the office of Chief Referendum Officer under Section 14;

**Commission** means the Bougainville Referendum Commission established by Section 4;

**Commissioner** means—

- (a) a member of the Board of Commissioners (including the National Chief Secretary or the Bougainville Chief Secretary acting as a Commissioner under Section 7(5)(b) or (c) and an officer acting as a Commissioner under Section 10(1) or (2)); or
- (b) a member of the Transitional Committee (including an officer acting as a Commissioner under Section 10(1) or (2));

**constitutional office-holder** means—

- (a) a constitutional office-holder within the meaning of Section 221 of the National Constitution; or
- (b) a person who is a Bougainville constitutional office-holder under Section 189 of the Bougainville Constitution;

**governing body** means—

- (a) the Board of Commissioners; or
- (b) the Transitional Committee;

**Joint Supervisory Body** means the Joint Supervisory Body established by Section 332 of the National Constitution;

**last petition date** means the last date for the filing of a petition disputing the result of the Bougainville Referendum;

*Note for definition of last petition date—See Section Sch.1.157(4) of the Organic Law on Peace-Building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum.*

**National Chief Secretary** means the person holding or acting in the office of Chief Secretary to Government established under Section 19 of the *Prime Minister and National Executive Council Act 2002* of the National Parliament;

**National Constitution** means the *Constitution of the Independent State of Papua New Guinea*;

**National Electoral Commission** means the Electoral Commission continued in establishment under Section 5 of the *Organic Law on National and Local-level Government Elections*;

**National Electoral Commissioner** means the person holding or acting in the office of Electoral Commissioner established under Section 5 of the *Organic Law on National and Local-level Government Elections*;

**National Executive Council** means the National Executive Council established by Section 149 of the National Constitution;

**National Gazette** means the official journal of that name of the National Government provided for by Section 252 of the National Constitution;

**National Government** means the Government of the Independent State of Papua New Guinea;

**National Parliament** means the National Parliament established by Section 99 of the National Constitution;

**National Public Service** means the National Public Service established by Section 188(1)(a) of the National Constitution;

**Secretariat of the Commission** means the staff assigned to or employed by the Commission under Section 14 and includes the Chief Referendum Officer;

**Transitional Committee** means the Committee established under Section 6.

- (2) Notes in this charter do not form part of the charter.

## **PART 2 — BOUGAINVILLE REFERENDUM COMMISSION**

### **4 Establishment**

- (1) The Bougainville Referendum Commission is established.
- (2) The Commission—
- (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) may sue and be sued in its corporate name; and
  - (d) has all the powers of a natural person that are capable of being exercised by a body corporate.
- (3) However, the Commission is not entitled to establish a body corporate subsidiary.
- (4) If a document appears to bear the common seal of the Commission, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Commission.

## **PART 3 — GOVERNING BODY**

*Note for Part 3—Until a person is first appointed as the Chair of the Board of Commissioners, the Transitional Committee is the governing body of the Commission. After the Chair is appointed, the Board of Commissioners is the governing body of the Commission until 3 months after the last petition date. After that, the Transitional Committee is again the governing body of the Commission until the Commission is wound up.*

*The Commission acts through its governing body (either the Board of Commissioners or the Transitional Committee) and a decision of the Board of Commissioners or the Transitional Committee is a decision of the Commission.*

### **5 Board of Commissioners**

- (1) A Board of Commissioners is to be established to govern the Commission.

- (2) The Board of Commissioners is to consist of the following members—
- (a) a person appointed by the Joint Supervisory Body by notice in both the National Gazette and the Bougainville Gazette (who will be the Chair of the Board of Commissioners and executive head of the Commission);
  - (b) the National Electoral Commissioner;
  - (c) the Bougainville Electoral Commissioner;
  - (d) 2 persons appointed by the National Executive Council by notice in the National Gazette;
  - (e) 2 persons appointed by the Bougainville Executive Council by notice in the Bougainville Gazette.
- (3) A person is not eligible to be appointed under Subsection (2)(a), (d) or (e) if—
- (a) the person is a member of, or a candidate for election to, the National Parliament or the Bougainville Parliament; or
  - (b) the person is a constitutional office-holder; or
  - (c) the person is an officer of the National Public Service or the Bougainville Public Service; or
  - (d) the person has been sentenced to imprisonment and is, or could on the happening of some contingency become, liable to serve the sentence or the remainder of the sentence.
- (4) At least 1 of the persons appointed under Subsection (2)(d), and 1 of the persons appointed under Subsection (2)(e), must be a woman.

## **6 Transitional Committee**

- (1) A Transitional Committee is to govern the Commission—
- (a) from the commencement of this charter until the date on which a person first becomes the Chair of the Board of Commissioners under Section 5(2)(a); and
  - (b) from 3 months after the last petition date until the winding up of the Commission under Section 25.
- (2) The Transitional Committee consists of the following members—
- (a) the National Electoral Commissioner;
  - (b) the Bougainville Electoral Commissioner;
  - (c) the National Chief Secretary;
  - (d) the Bougainville Chief Secretary.
- (3) The National Electoral Commissioner and the Bougainville Electoral Commissioner are to jointly act as Chair of the Transitional Committee and, while the Transitional Committee governs the Commission, the executive head of the Commission.

## **7 Vacancies in office**

- (1) This section applies while the Board of Commissioners is governing the Commission.
- (2) The office of a Commissioner appointed under Section 5(2)(a), (d) or (e) becomes vacant if the Commissioner—
  - (a) dies; or
  - (b) resigns by written notice to the Chair or, in the case of the Chair, to the Prime Minister of the Independent State of Papua New Guinea and the President of the Autonomous Region of Bougainville; or
  - (c) becomes a member of, or a candidate for election to, the National Parliament or the Bougainville Parliament; or
  - (d) becomes a constitutional office-holder; or
  - (e) becomes an officer of the National Public Service or the Bougainville Public Service; or
  - (f) is sentenced to imprisonment and is, or could on the happening of some contingency become, liable to serve the sentence or the remainder of the sentence; or
  - (g) is removed from office by the Joint Supervisory Body for serious misconduct, serious neglect of duty, or physical or mental incapacity, after having been given a reasonable opportunity to show cause as to why the Commissioner should not be so removed from office.
- (3) A Commissioner appointed under Section 5(2)(a), (d) or (e) cannot be removed from office except in accordance with Subsection (2)(g).
- (4) Notice of a vacancy in the office of a Commissioner under Subsection (2) must be published in the National Gazette and the Bougainville Gazette.
- (5) The following rules apply—
  - (a) for any period for which there is a vacancy in the office of the Commissioner referred to in Section 5(2)(a), the National Electoral Commissioner and the Bougainville Electoral Commissioner are to jointly act as Chair of the Board of Commissioners and executive head of the Commission;
  - (b) for any period for which there is a vacancy in the office of either or both of the Commissioners referred to in Section 5(2)(d), the National Chief Secretary is to act as a Commissioner;
  - (c) for any period for which there is a vacancy in the office of either or both of the Commissioners referred to in Section 5(2)(e), the Bougainville Chief Secretary is to act as a Commissioner.

- (6) For Subsection (5)—
- (a) there is a vacancy in the office of a Commissioner if no person has been appointed to the office in accordance with Section 5 or no appointment has been made in accordance with that section to fill a vacancy in the office; and
  - (b) the vacancy continues only until an appointment is made in accordance with that section.

## **8 Validity of acts or proceedings**

No act or proceeding of the Commission is invalid by reason of—

- (a) a vacancy in the office of a Commissioner; or
- (b) a defect in the appointment of a Commissioner.

## **9 Procedures**

- (1) Subject to this section, the governing body is to determine its own procedures.
- (2) The Chair is to fix the date, time and place for a meeting of the governing body.
- (3) The Chair must arrange a meeting of the governing body if requested to do so by another Commissioner.
- (4) A quorum of the governing body consists of 4 Commissioners and no business may be transacted at a meeting unless a quorum is present.
- (5) A meeting of the governing body is to be presided over by—
  - (a) the Chair; or
  - (b) if the Chair is absent from the meeting – a Commissioner chosen by those present.
- (6) The governing body may hold a meeting by electronic communication, without the Commissioners being present in 1 place, but the Commissioners must be able to speak to, and hear, each other contemporaneously.
- (7) At a meeting of the governing body—
  - (a) a question arising for decision is to be decided by consensus if possible; and
  - (b) if consensus cannot be reached – the question is to be decided by a majority of votes cast by the Commissioners present, with the Commissioner presiding at the meeting having a casting vote as well as a deliberative vote.
- (8) If the National Electoral Commissioner and the Bougainville Electoral Commissioner are jointly presiding at a meeting of the governing body and cannot agree on how to exercise a casting vote, the casting vote may not be exercised.

## **10 Absence of Chief Secretary from meeting**

- (1) If the National Chief Secretary is, or is acting as, a Commissioner, the National Chief Secretary may appoint an officer of the National Public Service (including an officer for the time being performing particular duties or holding or acting in a particular position) to act as a Commissioner and attend a meeting or meetings of the governing body in the absence of the National Chief Secretary from the meeting or meetings.
- (2) If the Bougainville Chief Secretary is, or is acting as, a Commissioner, the Bougainville Chief Secretary may appoint an officer of the Bougainville Public Service (including an officer for the time being performing particular duties or holding or acting in a particular position) to act as a Commissioner and attend a meeting or meetings of the governing body in the absence of the Bougainville Chief Secretary from the meeting or meetings.
- (3) An appointment under this section—
  - (a) must be by instrument in writing; and
  - (b) must specify a period for which it is to remain in force or the meeting or meetings to which it relates; and
  - (c) is revocable at will.

## **11 Disclosure of interests**

- (1) If a Commissioner has a personal interest in a matter being considered, or about to be considered, by the governing body, the Commissioner must disclose to the other Commissioners, as soon as practicable after the relevant facts come to the Commissioner's knowledge—
  - (a) the nature and extent of the interest; and
  - (b) how the interest relates to the matter being considered, or about to be considered.
- (2) A Commissioner will be taken to have a personal interest in a matter if the Commissioner—
  - (a) has a direct or indirect financial interest in the matter; or
  - (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the Commissioner from exercising independent judgment about the matter.
- (3) In addition, if the Commissioner is an officer appointed under Section 10(1) or (2), the Commissioner will be taken to have a personal interest in a matter if the National Chief Secretary or Bougainville Chief Secretary (as the case requires)—
  - (a) has a direct or indirect financial interest in the matter; or

- (b) has a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the National Chief Secretary or Bougainville Chief Secretary (as the case requires) from exercising independent judgment about the matter.
- (4) The Commissioner need not give notice of an interest if the interest is an interest shared with the public generally or a substantial section of the public.
- (5) The disclosure must be recorded in the record of the meeting at which, or before which, the disclosure is made.
- (6) A Commissioner who is required to disclose an interest in a matter—
  - (a) must not take part in any deliberation or decision of the governing body about the matter; and
  - (b) must be absent from the meeting room, or excluded from the electronic communication by which the meeting is being held, when any deliberation or voting on the matter is taking place.
- (7) However, a failure by a Commissioner to disclose an interest in a matter does not, on its own, invalidate any decision of the governing body about the matter.

## **12 Committees**

- (1) Subject to this section, the governing body may establish committees to provide advice to the governing body relevant to the functions of the Commission.
- (2) The membership of a committee is to be determined by the governing body and may include persons who are not Commissioners.
- (3) The governing body must appoint a person as the presiding member of a committee, or make provision for the appointment of a presiding member by the committee.
- (4) The governing body may remove a member from a committee, alter the membership of a committee, or remove a person as the presiding member of a committee, as it considers appropriate.
- (5) A committee may, subject to any directions of the governing body, determine its own procedures.

## **13 Remuneration, allowances and reimbursement of expenses**

- (1) The Joint Supervisory Body is to determine the amount of any remuneration and allowances payable to Commissioners and the basis on which Commissioners are entitled to allowances or to be reimbursed expenses, taking into account—
  - (a) the entitlements of constitutional office-holders; and

- (b) the requirements for Commissioners to participate in meetings of the governing body and the extent to which Commissioners are likely to be required to undertake duties as Commissioners outside of those meetings.
- (2) However, the following persons, while entitled to allowances or to be reimbursed expenses in accordance with Subsection (1), are not entitled to any other form of remuneration for performing duties as a Commissioner—
  - (a) the National Electoral Commissioner;
  - (b) the Bougainville Electoral Commissioner;
  - (c) the National Chief Secretary;
  - (d) the Bougainville Chief Secretary;
  - (e) an officer appointed under Section 10(1) or (2) to act as a Commissioner.
- (3) Subsection (2) does not prevent the person receiving the remuneration ordinarily payable for the office held by the person.
- (4) The Commission is to determine the amount of any allowance payable to a member of a committee of the Commission who is not a Commissioner and the basis on which such a member is entitled to an allowance or reimbursement of expenses.

## **PART 4 — SECRETARIAT OF THE COMMISSION**

### **14 Secretariat**

- (1) The governing body is to be provided administrative support by a Secretariat.
- (2) In accordance with Section Sch.1.3(2) of the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*, officers of the National Electoral Commission, the office of the Bougainville Electoral Commissioner, the National Public Service and the Bougainville Public Service are to be assigned to the Secretariat of the Commission as staff of the Commission.
- (3) An officer assigned to the Secretariat of the Commission remains an officer of the National Electoral Commission, the office of the Bougainville Electoral Commissioner, the National Public Service or the Bougainville Public Service (as the case requires), but while assigned to the Secretariat, lawful directions given to the officer by or on behalf of the Commission prevail over any other directions given to the officer, to the extent of any inconsistency.
- (4) The National Government or Autonomous Bougainville Government remains responsible for the remuneration of an officer assigned to the Secretariat of the Commission, but any reimbursement of expenses or payment of allowances is a matter for the Commission.

- (5) The Commission may employ other staff (who are not officers of the National Electoral Commission, the office of the Bougainville Electoral Commissioner, National Public Service or Bougainville Public Service) in the Secretariat on terms and conditions determined by the Commission.
- (6) The Commission is responsible for all remuneration, allowances and reimbursement of expenses for staff employed by the Commission.

#### **15 Chief Referendum Officer**

- (1) The Commission is to appoint a person assigned to or employed in the Secretariat as the Chief Referendum Officer.
- (2) The Chief Referendum Officer is the chief executive of the Commission.
- (3) All staff assigned to or employed in the Secretariat are responsible to the Chief Referendum Officer.
- (4) The power to appoint under Subsection (1) includes power—
  - (a) to remove or suspend a person so appointed; and
  - (b) to appoint a person assigned to or employed in the Secretariat to act in the office of the Chief Referendum Officer during a vacancy in the office or an absence of the Chief Referendum Officer.

*Note for Subsection (4)—While removed or suspended from office as the Chief Referendum Officer, the person would remain assigned to or employed in the Secretariat, subject to action being taken under Section 17.*

- (5) The Chief Referendum Officer must attend each meeting of the governing body (but is not entitled to cast a vote on any question arising for decision), subject to the governing body or the Chair granting leave of absence.
- (6) The Chief Referendum Officer must ensure that accurate records are kept of the meetings and decisions of the governing body.

#### **16 Relationship between governing body and Secretariat**

An individual Commissioner has no direct authority over a person assigned to or employed in the Secretariat with respect to the way in which the person performs official functions.

*Note for Section 16—However, the Chief Referendum Officer is responsible to the governing body for the performance of the Chief Referendum Officer's functions and the other staff are responsible, through the Chief Referendum Officer, to the governing body for the performance of their functions.*

#### **17 Termination of assignment to or employment in Secretariat**

The Commission may, on the recommendation of the Chief Referendum Officer—

- (a) terminate the assignment of an officer to the Secretariat; or
- (b) terminate the employment of a person employed under Section 14(5) in accordance with the person's terms and conditions of employment.

## PART 5 — FUNCTIONS AND POWERS OF COMMISSION

### 18 Functions and guiding principles

- (1) The Commission has the functions assigned to it under the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum* or any applicable law within the meaning of Section 63 of that Organic Law.
- (2) In the performance of its functions, the Commission is to be guided by the following principles—
  - (a) *Neutrality*: The Commission should make its decisions free from undue influence or partisan control, including from political interest groups, observers, the National Government, the Autonomous Bougainville Government and any other person.
  - (b) *Impartiality*: The Commission should be impartial in all its work and, in particular, in its dealings with voters and interest groups and should treat all persons equally, fairly and justly according to formally established rules and procedures.
  - (c) *Transparency*: The Commission should communicate matters relevant to its operational and financial decisions in a regular, concise and timely manner so as to ensure that persons are fully informed about matters relevant to their interests and to promote effective consultation, with a view to furthering the integrity of the referendum process.
  - (d) *Professionalism*: The Commission should conduct its operations in an accurate, competent, efficient and cost effective manner through competent Commissioners and staff so as to maintain trust and confidence in the referendum process.
  - (e) *Inclusivity*: The Commission should seek to consult interested persons and address concerns and questions as effectively as possible to guarantee inclusive participation.

### 19 Financial management

Under Section 56(2)(b) of the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum* and the agreement referred to in the Preamble, the Commission must manage its own finances in accordance with Part VIII of the *Public Finances (Management) Act 1995* of the National Parliament.

*Note for Section 19—It is intended that a Trust Account will be established under Section 15 of the Public Finances (Management) Act 1995 of the National Parliament for the purposes of the Commission.*

## **20 Independence**

Under Section 59 of the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*, except as expressly provided in that Organic Law, the Commission is not subject to direction by any person, including the National Government and the Autonomous Bougainville Government.

## **21 Prohibition on political activity**

Under Section 60 of the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*—

- (a) the Commission must carry out its duties in an impartial manner without regard to the outcome of the Bougainville Referendum; and
- (b) in particular, the Commission must not engage in promoting any particular outcome of the Bougainville Referendum, or support any person or group promoting a particular outcome of the Bougainville Referendum.

*Note for Section 21—Also see Section Sch.1.8 of the Organic Law, which imposes similar obligations on Referendum personnel.*

*Under Sections Sch.1.9 and Sch.1.10 of the Organic Law, the Commission’s functions include:*

- *the promotion of informed debate on each side of the question or questions to be put at the Bougainville Referendum; and*
- *encouraging wider public interest and involvement in ensuring that the Bougainville Referendum is conducted in a free and fair manner; and*
- *the recognition of interest groups for purposes including polling and scrutiny.*

## **22 Commission offices**

The Commission may establish offices as reasonably required for the performance of its functions, but its principal office is to be in Bougainville.

## **23 Annual and other reports**

- (1) The Commission must, on or before 31 March in each year, provide the Joint Supervisory Body with a written report of its operations during the previous calendar year.
- (2) The Commission must, in accordance with a request of the Joint Supervisory Body, provide a written report at any other time relating to its operations.
- (3) The Speaker of the National Parliament must arrange for each report provided to the Speaker by the Commission to be tabled, within 2 sitting days of receipt of the report, in the National Parliament.
- (4) The Speaker of the Bougainville Parliament must arrange for each report provided to the Speaker by the Commission to be tabled, within 2 sitting days of receipt of the report, in the Bougainville Parliament.

- (5) The sitting days do not need to be in the same session or term of the National Parliament or Bougainville Parliament.

## PART 6 — WINDING UP OF COMMISSION

### 24 Winding up report

- (1) The Commission must, within 3 months after the completion date of the Bougainville Referendum, provide the Joint Supervisory Body, the Speaker of the National Parliament and the Speaker of the Bougainville Parliament with a written report—
- (a) of the operations of the Commission since the end of the period covered by the most recent annual report; and
  - (b) setting out details of the consultation and any agreement between the National Electoral Commission and the Bougainville Electoral Commissioner for the winding up of the Commission, including details of—
    - (i) the assets of the Commission and how it is proposed to dispose of those assets; and
    - (ii) the liabilities of the Commission and how it is proposed to discharge or transfer those liabilities; and
    - (iii) any arrangements relating to staff employed in the Secretariat immediately before the winding up of the Commission.
- (2) The Speaker of the National Parliament must arrange for the report to be tabled, within 2 sitting days of receipt of the report, in the National Parliament.
- (3) The Speaker of the Bougainville Parliament must arrange for the report to be tabled, within 2 sitting days of receipt of the report, in the Bougainville Parliament.
- (4) The sitting days do not need to be in the same session or term of the National Parliament or Bougainville Parliament.
- (5) In this section—
- completion date of the Bougainville Referendum** means—
- (a) the last petition date; or
  - (b) if a petition is filed disputing the result of the Bougainville Referendum – the date on which the proceedings are finally determined, dismissed or withdrawn (provided that is later than the last petition date).

*Note for Section 24—Under Section 6, the governing body of the Commission reverts to being the Transitional Committee 3 months after the last petition date.*

### 25 Winding up

- (1) The Head of State of the Independent State of Papua New Guinea may, by notice in the National Gazette and the Bougainville Gazette, wind up the Commission.

- (2) A notice may only be made under Subsection (1) if—
  - (a) the Head of State acts with, and in accordance with, the advice of the National Electoral Commission; and
  - (b) that advice is given after consultation and agreement between the National Electoral Commission and the Bougainville Electoral Commissioner; and
  - (c) the Joint Supervisory Body has agreed to the making of the notice.
- (3) A notice under Subsection (1) may contain—
  - (a) provisions for the disposal of assets of the Commission; and
  - (b) provisions for the discharge or transfer of the liabilities of the Commission; and
  - (c) arrangements relating to staff employed in the Secretariat immediately before the winding up of the Commission; and
  - (d) any other provisions reasonably required for the winding up of the Commission.
- (4) A notice under Subsection (1) takes effect according to its terms.
- (5) Notice of the winding up of the Commission must also be published in each available newspaper as defined in Section 53 of the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*.
- (6) A notice under Subsection (1) or (5) must describe the effect of Section 26.
- (7) It is the duty of the National Government and the Autonomous Bougainville Government to give effect to a notice under Subsection (1).
- (8) On the winding up of the Commission, the governing body and Secretariat cease to exist.

## **26 Civil proceedings involving Commission after winding up**

- (1) For the purposes of civil proceedings commenced before the winding up of the Commission and to which the Commission was a party immediately before its winding up, on the winding up of the Commission, Papua New Guinea and the Autonomous Bougainville Government are substituted for the Commission as parties to the proceedings.
- (2) For the purposes of civil proceedings not commenced before the winding up of the Commission and that could have, but for the winding up of the Commission, been brought against the Commission, the proceedings may instead be brought against Papua New Guinea and the Autonomous Bougainville Government.

## PART 7 — MISCELLANEOUS

### 27 Protection from liability

- (1) Subject to this section, no civil liability attaches to a Commissioner, member of the Secretariat or member of a committee established by the governing body for an act or omission in the exercise or purported exercise of official functions or powers.
- (2) An action that would, but for Subsection (1), lie against a person lies instead against the Commission.
- (3) This clause does not prejudice rights of action of the Commission in respect of an act or omission of a person not in good faith.

### 28 Confidentiality

A Commissioner, member of the Secretariat or member of a committee established by the governing body must not divulge personal information (including information about how a person voted or intends to vote in the Bougainville Referendum) obtained in the performance of the functions of the Commission except—

- (a) in the course of the performance of those functions; or
- (b) in legal proceedings under the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*; or
- (c) as authorised by law; or
- (d) with the consent of the person to whom the information relates.

### 29 Amendment of charter

- (1) The Head of State of the Independent State of Papua New Guinea may, by notice in the National Gazette and the Bougainville Gazette, amend this charter.
- (2) A notice may only be made under Subsection (1) if—
  - (a) the Head of State acts with, and in accordance with, the advice of the National Electoral Commission; and
  - (b) that advice is given after consultation and agreement between the National Electoral Commission and the Bougainville Electoral Commissioner (as required by Section 58(3) of the *Organic Law on Peace-building in Bougainville – Autonomous Bougainville Government and Bougainville Referendum*); and
  - (c) the Commission has agreed to the making of the notice.

# Draft framework for workplan and allocation of responsibility for Taskforce

## Outline

### A. Impact area: Political challenges

A1 Scenario 1: Vote for greater autonomy

A2 Scenario 2: Vote for Independence

### B. Impact area: Peace, Stability and Security Challenges

Scenarios combined: Vote for greater autonomy or vote for independence

### C. Impact area: Legal and technical Challenges

Scenarios combined: Vote for greater autonomy or vote for independence

## A. Impact area: Political Challenges in the Post Referendum Period

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
<b>Scenario 1: A vote for Greater Autonomy</b>			
A1.1. As the Greater Autonomy option is undefined <b>Bougainvillean's expectations of greater autonomy</b> may differ from what gets implemented.	GoPNG & ABG	Clearer definition of Greater Autonomy before referendum.	Taskforce to discuss.

<b>Challenge</b>	<b>Who is responsible for responding to challenge?</b>	<b>What is required?</b>	<b>What next?</b>
<p>A1.2. There is a <b>lack of clarity on the post-referendum Consultation Process</b> to reach agreement, leading to political uncertainty post referendum.</p>	<p>JSB (GoPNG and ABG)</p>	<p>A political process that commences immediately after the referendum including strong mechanisms for demonstrating progress, and consulting the people, and keeping them informed.</p> <p>Therefore, the consultation process required by the BPA must be pre-planned and must include a <b>multilayered dialogue process</b>.</p>	<p>Design a consultation process (a multi-layered dialogue process) for the post-referendum period that (i) is agreed between the GoPNG and ABG and (ii) includes agreement on the political steps and communication requirements immediately following the referendum.</p> <p>In addition, consult people with experience in PNG political dialogues and others with experience of managing post-referendum periods elsewhere and designing political dialogues.</p>
<p>A1.3 There are <b>deepening political divisions</b> within Bougainville, making it difficult to move a political process forward. Leaders are left vulnerable to political attack in Bougainville.</p>	<p>ABG supported by GoPNG, and engaging the Bougainville House of Representatives, national MPs, factions.</p>	<p>Same as A1.2. above</p> <p>Also assess political threats and develop joint GoPNG and ABG mechanisms for responding to deepening political divisions and to avert (and minimise) problem</p>	<p>Same as A1.2. above</p> <p>Also support and develop further reconciliation processes before the referendum.</p> <p>Plan for visible change in Bougainville after referendum.</p>

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
		of leadership vulnerability	
A1.4 There are <b>difficulties in achieving tangible increases in autonomy</b> in the post-referendum period.	GoPNG and ABG	Taskforce to decide what steps should be taken.	Explore options before the referendum. Develop and implement 'autonomy completion agreement' as recommended in Autonomy Review Recommendation 4.1.
A1.5 <b>Difficulties in getting PNG national parliament support</b> for greater autonomy in Bougainville.	GoPNG and national MPs	More awareness of issues among MPs; more activity on part of national government to build understanding; manage fear that greater autonomy for Bougainville will lead to increased demands for autonomy elsewhere in the country. Involvement of national MPs in consultation process.	More engagement through the Bi-Partisan Committee on Bougainville Affairs; draw a broader group of political representatives into pre-referendum consultations; support Speakers of both Parliaments in developing dialogue between the Parliaments.
A 2.1. Difficulties, including a lack of capacity, in <b>setting up and conducting an effective, multi-</b>	Taskforce	Same as A1.2 above	Same as A1.2 above

<b>Challenge</b>	<b>Who is responsible for responding to challenge?</b>	<b>What is required?</b>	<b>What next?</b>
<p><b>layered post-referendum dialogue</b> and consultation process that leads to a legitimate and accepted outcome.</p>		<p>Both governments agree to strong, pre-planned and inclusive political process. Include immediate post-referendum actions by both governments to reassure people that vote will have meaning.</p>	<p>Initiate the design of a process including:</p> <ul style="list-style-type: none"> <li>- Decisions by both governments on how to react to announcement of result in way that will maintain constructive dialogue between parties and will reassure all PNG citizens.</li> <li>- Consideration of options and roadmap for implementing an independence result</li> <li>- Planning for an effective body to ensure that implementation of outcome is well coordinated.</li> <li>- Planning for an effective and properly coordinated transition.</li> <li>- Using existing structures (particularly the two parliaments and governments) to consider options and mechanisms for securing a process that will have necessary legitimacy.</li> </ul>

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
			<ul style="list-style-type: none"> <li>- Unpacking layers that consultation process will need so that the plan identifies clearly who/what department can lead with different areas.</li> </ul>
<p>A 2.2 The outcome of the referendum and subsequent consultations is <b>not supported in National Parliament</b></p>	<p>A key consideration for the Taskforce</p>	<p>More awareness of issues among MPs; more activity on part of national government to build understanding; manage fear that greater autonomy for Bougainville will lead to increased demands for autonomy elsewhere in the country.</p> <p>Involvement of national MPs in consultation process.</p>	<p>As A1.5 above.</p>

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
<p>A 2.3 <b>Managing political, institutional and financial arrangements during a transition</b> – based on the outcome of the referendum and subsequent consultations being supported in parliament</p>	<p>Relevant agencies including NCOBA, Finance department, development, and the ABG</p>	<p>To be determined but will include developing possible transitional arrangements.</p>	
<p>A 2.4 <b>The political process stalls or is slow leading to leadership and other political challenges in Bougainville</b> immediately after the referendum, and in the months after it (including power struggles with factional leaders).</p>	<p>ABG political consideration; support of JSB and GoPNG</p>	<p>Need to continue to make clear there is one government in Bougainville – ABG.</p>	<p>ABG: Implement concrete unification strategy</p> <p>Taskforce explain that BPA does not come to an end on referendum but that it expects a political process to follow the referendum with no necessary immediate change in ABG status.</p>
<p>A 2.5 <b>A lack of clarity on what Bougainville independence means</b> – including future relationship with PNG and other countries.</p>	<p>Taskforce; and the multi-layered dialogue process</p>	<p>Ensure that post-referendum consultation process has sufficient technical/legal capacity</p>	<p>Elaborate on and discuss the many different forms of independence before the referendum.</p>

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
		<p>to develop and engage with variations of independence and the on-going relationship between Bougainville and PNG.</p> <p>Identify benefits of on-going cordial relationship between Bougainville and PNG and how it can be developed and maintained; Bougainville's ongoing access to economy, educational opportunities, etc.</p>	
<p>A 2.6 <b>Demands for a Universal Declaration of Independence in Bougainville will rise</b> if the political process stalls, and/or PNG parliament does not agree to independence,</p>	<p>ABG and GoPNG</p>	<p>See A1.2 and A2.1 above on multi-layered dialogue/consultation process</p> <p>Develop strong procedures for consultation and reaching agreement</p>	<p>See A1.2 and A2.1 above</p> <p>Develop transitional arrangements</p>

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
		<p>Inform people on dangers of UDI (eg unrecognised state) and ensure consultation process and agreed transition process is considered legitimate.</p> <p>Develop transitional arrangements that will maintain the confidence of the people that the referendum outcome is being implemented.</p>	

<b>Challenge</b>	<b>Who is responsible for responding to challenge?</b>	<b>What is required?</b>	<b>What next?</b>
<p><b>A 2.7 International interests trying to interfere in the political process for their own self-interest</b>, including supporting and opposing independence, e.g</p> <ul style="list-style-type: none"> <li>- Geopolitical interests</li> <li>- Regional Government interests</li> <li>- Business interests</li> </ul>	Taskforce	Clarify challenges/different scenarios and identify appropriate departments and leaders to respond to them.	<p>Taskforce (with NCOBA as lead) engages with DFA so that it is aware of the issues and the options before the referendum and can provide PNG embassies (i) with information on the BPA and the process to convey to the international community and investors before the referendum and (ii) an appropriate response when the result is announced</p> <p>Taskforce ensures that all members of both governments who engage with international community are properly informed about the BPA and the referendum and give a constructive and consistent message.</p>
<p><b>A 2.8 GoPNG demands an immediate / speedy transition to independence for Bougainville</b></p>	ABG	<p>Need to plan for this occurrence in Bougainville.</p> <p>Also should be part of Multi-layered dialogue</p>	

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
		process. A1.2 and A2.1 above.	
A 2.9 Public perception issues in Bougainville in continuing to <b>use the word 'Autonomous' for the ABG</b> – people could see it as a signal of no political steps forward.	ABG and GoPNG	As part of the political process consider changing the name of the ABG e.g. to 'transitional'	
A 2.10 <b>Contagion effect</b> – that other parts of PNG will want greater autonomy or independence.	GoPNG	A consideration for the post-referendum period, and for the multi-layered dialogue process	
A 2.11 <b>The people of PNG (non-Bougainvilleans) react badly</b> to the result and push PNG MPs and government not to ratify outcome of referendum.	GoPNG	Need for a large public awareness campaign across PNG, not just for Bougainvilleans	<b>Identify key messages and those responsible for developing those messages into specific products</b>
A 2.12 <b>Problems in sequencing the referendum and consultations with upcoming elections</b> , including ABG and national elections – leading to politicians taking uncompromising positions.	Taskforce and GoPNG and ABG	Park for further discussion in Taskforce	

**B. Impact area: Peace, Stability and Security Challenges in the Post Referendum Period**

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
<b>Scenarios combined: A vote for Greater Autonomy or a vote for Independence</b>			
B1. <b>Loss of trust in the ABG</b> within Bougainville caused by a lack of visible evidence of change quickly after the referendum. A loss of trust that could lead to violence. Including targeting of ABG leaders.	JSB (ABG and GoPNG)	A political process that commences immediately after the referendum with strong mechanisms for demonstrating progress, and consulting the people, and keeping them informed.  See A1.2	Design a multi-layered political process for the post-referendum period that (i) is agreed between the ABG and GoPNG and (ii) includes agreement on the political steps immediately following the referendum.
B 2. If there is a greater autonomy vote, or delays in political process there could be <b>anger directed at business / institutions in Bougainville</b> that are perceived as	ABG	Mechanism to monitor different business interests influencing the referendum.	ABG to work with the Business Council of Bougainville to set up monitoring mechanisms. And ensure that business interests, (in particular from

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
having contributed to a lack of change			outside of PNG) are not having undue / inappropriate influence on the referendum
<p><b>B 3. Different factions in Bougainville mobilise using violence</b> either in anger at an outcome of the referendum, or the perceived slow speed of the political process after the referendum, including:</p> <ul style="list-style-type: none"> <li>• Faction leaders acting to secure political power</li> <li>• Marginalised / discontented youth reacting violently</li> </ul>	ABG, GoPNG, churches, donor partners	<p>Need for referendum awareness, including on the post-referendum phase.</p> <p>Continued engagement with faction leaders. And the need for internal reconciliation.</p>	<p>Develop and implement broad and far-reaching awareness campaigns before the referendum, with a strong focus on Involving youth</p> <p>ABG to further reach out to factional leaders to bring them into the referendum and post-referendum process.</p> <p>GoPNG and ABG to implement the national reconciliation agreed at the JSB meeting of December 2017</p>
<p><b>B 4. People in other parts of PNG target Bougainvilleans not living in Bougainville</b> in the event of a vote for independence</p>	GoPNG	Nationwide awareness on the referendum.	More nationwide awareness including awareness among Bougainvilleans living outside Bougainville and among other PNG citizens of the BPA and referendum.

**C. Impact area: Legal and technical Challenges in the Post Referendum Period**

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
<b>Scenarios combined: A vote for Greater Autonomy or a vote for Independence</b>			
C1. <b>Lack of capacity from both governments to deal with the legal/technical issues</b> arising from the post-referendum period	Taskforce and GoPNG and ABG.	To have a sound technical team in place that is able to address these critical post-referendum aspects	Both governments will include strong legal teams in the consultation process.
C2. <b>Legal challenges to independence</b> based on PNG constitution	Taskforce and GoPNG and ABG.	Arguments need to be considered, their strength evaluated and ways of responding developed.	Monitor how these matters are unfolding.
C3. Legal challenges based on <b>international norms</b>	Taskforce	Develop an understanding of and present the independence outcome in the framework of international human rights	Taskforce to discuss whether it can do this.
C4. Clarifying and explaining the <b>process for constitutional change</b> to implement either result and to secure the legitimacy of the process	NOCBA, DPAI, Chief Secretaries	Develop an understanding of constitutional changes.	Prepare for engaging a legal team to manage necessary constitutional and other legal changes.

Challenge	Who is responsible for responding to challenge?	What is required?	What next?
			changes needed after the consultation process.
<p><b>C5. Legal challenges of implementing</b> either Greater Autonomy or Independence outcome (laws and constitutional amendments).</p>	Taskforce	BPA is not time bound and continues after the referendum; any changes to the relationship between PNG and Bougainville need to be done by law, possibility including constitutional amendment and ordinary laws.	Promote implementation of recommendations of Autonomy Review and see C3.



**DRAFT ONLY**

**Revised 30<sup>th</sup> November 2018**

## **Bougainville Referendum**

### **KEY MESSAGES AND FREQUENTLY ASKED QUESTIONS**

A guide for awareness materials and activities

Presented to Joint Supervisory Body 14<sup>th</sup> June 2018 and deferred to joint Chief Secretaries for approval.

# **Bougainville Referendum**

## **KEY MESSAGES AND FREQUENTLY ASKED QUESTIONS**

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# INTRODUCTION

These key messages provide jointly agreed information from the two governments to the people of Bougainville and Papua New Guinea. The key messages provide people with neutral, consistent, and up to date factual information on the Bougainville Peace Agreement. They are designed to respond to frequently asked questions from community referendum and BPA awareness activities – in both Bougainville and in PNG provinces. It is intended that this information, once approved by both governments, will form the basis of multi-format awareness materials. These key messages should continue to be revised as both governments agree to new decisions and new information is available to share.

The Joint Supervisory Body (JSB), Arawa, 29 June considered a draft of these messages and resolved that:

*the Joint Technical Team study and evaluate the proposed new awareness messages prepared by the ABG on pre-referendum and post-referendum issues, and authorizes the two Chief Secretaries to process and approve such messages on a progressive basis.*

In response, the ABG, through a whole of government approach<sup>1</sup>, has revisited the document and revised to reflect the most recent JSB resolutions at the Special JSB, Port Moresby 11-12 October. This document is now forwarded to the two Chief Secretaries for their joint approval.

# BACKGROUND

In 2016, the JSB approved the first set of joint BPA/referendum key messages. These were produced into a range of information materials (posters, fact sheets, web content, videos, booklets). Now that new government decisions have been made and people are asking questions beyond the scope of the first key messages, there is an urgent need to update information being provided to people. That is the main purpose of this document.

The questions were primarily collected through the Bougainville Referendum Dialogue project (implemented under the Department of Peace Agreement Implementation (DPAI) by the Peace and Conflict Studies Institute Australia, and community consultations undertaken by DPAI with NCOBA. The PACSIA project has a team of more than 80 facilitators from all 33 constituencies of Bougainville who undertake dialogues in schools, market places, churches and community government offices. The team has captured the following 34 frequently asked questions. Their issues can be divided into:

1. General issues and concerns about Bougainville and its future (14)
2. Referendum process (20)

The responses, including a brief history of the BPA and its intentions, have been drafted in a collaborative effort between the ABG Directorate of Media and Communications, Department of Peace Agreement Implementation and the Office of the Bougainville Electoral Commissioner, with support from the Bougainville Legal Officer. The aim is neutral, consistent, concise, simple and factual information, creating an authoritative feedback loop to address community concerns.

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<sup>1</sup> Office of the Chief Secretary, Department of Peace Agreement Implementation, Department of Community Government, Office of the Bougainville Electoral Commissioner, Department of Community Development and the Directorate of Media and Communications.

# **PART 1 – HISTORY OF THE BOUGAINVILLE PEACE AGREEMENT**

The Bougainville Peace Agreement – or BPA - is a lasting peace strategy built on three pillars: autonomy, weapons disposal and referendum. It was signed in 2001 by the Government of Papua New Guinea and Bougainville leaders. The BPA has no end date.

The BPA was built on compromise and agreement. For example, the National Government did not want the referendum to be binding (where the result is final).

Different Bougainville groups had different views for Bougainville:

1. Early independence with referendum on as soon as possible (3-5 years), with a binding outcome – where the result was final.
2. Autonomy and deferred referendum: Immediate autonomy, with a referendum after enough time to conduct reconciliation and weapons disposal to avoid a return to conflict.
3. Remain part of PNG: but with a high level of autonomy.

Bougainville agreed to the ‘middle-road’ between the two extreme options: Autonomy with a referendum on independence 10-15 years later.

## **1.End of conflict**

The BPA ended 10 years of fighting between different Bougainville factions and with PNG. It showed that different factions in Bougainville and the national government could compromise and come to one agreement.

## **2.Restoration**

Under the BPA, Bougainville has a special relationship with the national government. Autonomy – the Autonomous Bougainville Government - has allowed Bougainville to take charge of its development agenda and resources, to deliver services in a Bougainville way - but with continued support from the national government.

This has resulted in the peaceful transfer of some national powers and functions to the ABG. Bougainville now have laws to protect and manage resources, finance, public service. Bougainville operates under a home-grown Bougainville Constitution.

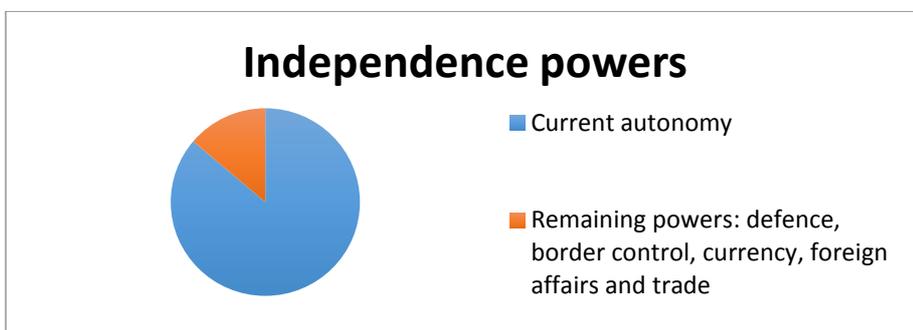
## **3.Preventing conflict relapse**

The third achievement of the BPA was weapons disposal – removing guns from the community to restore a peaceful environment. Guns bring fear. Guns stop development. Today, factions outside the peace process have now signed up to a new Joint ABG-PNG weapons disposal plan.

Autonomy, weapons disposal and referendum – the three pillars of lasting peace.

## PART 2 - GENERAL ISSUES AND CONCERNS ABOUT BOUGAINVILLE AND ITS FUTURE

### AUTONOMY vs INDEPENDENCE



**Autonomy:** Autonomy is a level of independence and responsibility for the provision of service under a national government. There are many different levels of autonomy around the world. Under the Bougainville Peace Agreement, Bougainville has a high level of powers for home grown decision-making to restore and implement government in Bougainville. All provincial government powers and functions were automatically assumed upon inception of ABG in June 2005. Those outlined in BPA article 53 and ABG continues to transfer additional power/function through BPA part 7. Since 2015, the ABG has drawn down 25 additional powers and functions from the national government.

**Independence:** Additional powers and responsibilities provided by independence include defence, border control, currency and foreign relations.

#### 1. What is the difference between Autonomy and Independence?

Autonomy and independence are different levels of self-rule, self-governance or responsibility, with independence assuming absolute sovereignty and full responsibility for provision of government.

Autonomy	Independence
<p>Autonomy is a level of government vested with higher level of decision making powers/functions.</p> <p>Under the BPA, Bougainville has a high level of autonomy or self-rule. It has all powers are available to the National Government except defence, boarder control, currency and foreign affairs.</p> <p>It can collect some taxes and make laws.</p> <p>Bougainville has drawn down 25 powers and functions from the national government, and will may draw down more powers as capacity, resources and money are available to the ABG.</p> <p>A recent study found that the ABG had only achieved 20% of the benefits that</p>	<p>Independence is when Bougainville can assume absolute sovereignty from PNG.</p> <p>Autonomy and independence are different levels of self-rule, self-governance or responsibility with independence the highest.</p> <p>Independence is total or absolute self-rule and responsibility. Independence for Bougainville would give it additional powers of defence, border control, currency and foreign relations which it doesn't currently have under autonomy together with absolute responsibility for funding government and services.</p>

should be derived from autonomy due to continued capacity constraints.	
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**2. What is the difference between referendum and independence?**

*Referendum* is the process of voting, like an election. *Independence* will be a choice or question people can vote for at the referendum – which could be Bougainville’s final political status – an independent Bougainville, breaking away from PNG. Like elections: The referendum will have ballot paper, ballot box, polling stations and observers. However, unlike ABG and national elections which happen every five years, the Bougainville referendum will happen once, so people cannot change their mind in five years’ time.

**3. What is a referendum?**

Referendum is like an election, but instead of voting for a candidate or a person, people will vote on a question put on the ballot paper. One of the questions for the Bougainville referendum will be to ask if people want to be independent, or break away, from PNG. Referendums are the way the international community resolve questions of independence in a legal and peaceful way. The referendum will affect future generations - so it is important that people think carefully about how they vote.

**4. What is a unilateral declaration of independence?**

Unilateral declarations of independence do not have the same legitimacy as a referendum in the eyes of the international community.

**5. What is the Bougainville referendum?**

The Bougainville referendum gives Bougainville a choice for greater autonomy or independence from PNG for its political future. It is a ‘non-binding referendum’. This means the final vote will not automatically be the final decision. The two governments have agreed on a process to decide the final status of Bougainville:

1. *Eligible people of Bougainville will vote in the referendum.*
2. *National Government and the ABG will consult.*
3. *National Parliament will make the final decision.*

**6. If Bougainville votes for greater autonomy does that mean Bougainville has its own defence force, currency and foreign trade?**

Responsibility for defence, currency and foreign trade are powers of an independent nation. However, ‘greater autonomy’ powers need to be defined by the two governments. Under current autonomy powers, Bougainville can send sports teams internationally under the Bougainville flag. Bougainville can have trade commissioners in PNG foreign embassies. Bougainville can also attend international conventions where Bougainville is being discussed. However, Bougainville has not yet exercised these powers.

**IS BOUGAINVILLE READY FOR INDEPENDENCE/ECONOMIC?**

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**7. Is Bougainville ready for independence? (human resources, infrastructure, law enforcement, universities and job creation etc) and where will Bougainville get money from after independence?**

Bougainville is still in a development restoration phase after the conflict. Only 20 per cent of autonomy powers under the BPA have been accessed by Bougainville due to lack money, human resources and capacity. An independent or greater autonomy

Bougainville will need money to fund services to the people. Experts (National Research Institute) suggest it will cost about K900million per year to keep the current level of government and service delivery. Currently the ABG has about K12million revenue.

The ABG is working hard to grow the economy, for example the granting of mining exploration licenses. Another area is fisheries and support for the cocoa industry. Bougainville has signed an agreement with the National Fisheries Agency and will continue negotiations to draw revenue for fishing licences in Bougainville waters.

But the Referendum will go ahead whether or not Bougainville is economically capable to support itself now - otherwise known as fiscal self-reliance. Development will continue after the referendum, whether independence or greater autonomy.

But Bougainville must mobilise its resources. All Bougainvilleans must be ready to meet the cost of our choice, whatever option we choose: independence or greater autonomy. Government and people must listen to each other and work together. Post-referendum transition arrangements are being discussed between the two governments to help determine how the outcome will be implemented whichever option people choose: independence or greater autonomy.

**8. What will the education system look like after independence and where will children go to university? (many)**

Education is one of the many other agendas that the Transition Taskforce will consider in the transitional arrangement planning. This is the reason for which both Governments had agreed on a transition period)

**9. How will PNG and the international community assess Bougainville's achievement of the three pillars?**

The BPA is a joint creation of GoPNG leaders and Bougainville leaders in 2001. Both GoPNG and ABG have responsibilities in implementing the autonomy arrangements. The second review of autonomy arrangements looked at how well both ABG and GoPNG have done in implementing autonomy. The report has been finalised and will be reviewed at the next Joint Supervisory Body meeting, chaired by the PNG Prime Minister and Bougainville President.

*Weapons Disposal* - The first weapons disposal exercise was the UNOMB-led program that paved the way for the first election of the Autonomous Bougainville Government in 2005. The two governments now have agreed to a second joint weapons disposal process: this is based on registration of weapons and awareness on the *National Firearms Act*. Community Government members will undertake a survey across all Wards to ensure Bougainville is weapons free.

*Referendum* – the conduct of the referendum must be considered free and fair according to international standards as assessed by international observers.

Any assessment of poor or low level of weapons disposal or good governance cannot stop the referendum from going ahead by 15 June 2020. However, the presence of weapons and poor governance may affect the credibility of the referendum vote and whether the National Parliament would ratify the outcome.

**10. People don't understand the choice/responsibilities of independence. More awareness is needed.**

The ABG has been conducting awareness through each Member with support from the UN. The ABG is also working through other channels (like this) and with Community Government to get information to the people before, during, and after the referendum. The Bougainville Referendum Commission, the independent agency responsible for conducting the referendum, will also conduct awareness about the referendum options. The BRC Chair Mr Ahern has noted the importance of awareness and the need for the people of Bougainville to fully understand the options that would be put to them, the outcomes that would arise, and the process that would follow once the referendum takes place.

Listen to radio, read newspapers and look out for community awareness gatherings.

#### **Other readiness/economic questions**

[To be discussed by the two governments during the transition period.]

- Do we have the economic and human resources and capacity? (many)
- Concern about service delivery after referendum (many)
- Bougainville is not ready to vote because there are no services for people
- Concern about government salaries after referendum (many)
- Concern about education system (many): salaries and access to universities, Bougainville needs a university

*(These concerns are to be addressed by the transitional taskforce in consultation with both Governments, Bougainvilleans and other stakeholders.)*

## **WEAPONS/FACTIONS**

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### **11. What is being done about Weapons Disposal? Will the referendum go ahead if weapons are still in communities?**

The issue of weapons is both a legal and moral one – both before and after referendum. During the conflict, in 1990 after Papua New Guinea withdrew, guns were used by Bougainvilleans against Bougainvilleans, creating internal conflict and loss of life.

Guns also affect Bougainville's ability to become a peaceful nation. Morally, Bougainville wants to be weapons-free, to remove fear from communities and create an environment that assists confidence and development.

The referendum result will be questioned by the national and international community if people cannot vote freely and fairly because they are afraid of guns and factions. After referendum, if there is no security, it will be difficult to establish a new government.

The Bougainville House of Representatives has agreed that all constituencies must declare themselves *Referendum Ready* by December 2018 to make sure Bougainville is weapons-free and unified under the Bougainville Peace Agreement. The ABG is working with Community Governments who will assess whether their communities are weapons-free and identify where further support is needed to resolve outstanding issues from the conflict.

Reconciliation is needed to remove weapons from Bougainville, beginning at the highest leadership level down to every community.

The two governments approved a joint weapons disposal plan in December 2017. This includes registration of weapons, building of monuments and disposal. It separates

weapons of war, from weapons held by criminals, who can be prosecuted under the *National Firearms Act*. All unregistered weapons are illegal under national laws, and all weapons in Bougainville are illegal under Part E Weapons Disposal, paragraph 10 (a), (b) and (e) of the BPA and under Section 15 (3) (a) and (b) of the Constitution of the Autonomous Region of Bougainville.

The ABG has been working with all factions and veterans to ensure they are part of the peace and weapons disposal process. Former commanders including Panguna Meekamui signed an MOU with the ABG in Tsiroge. They pledged their support to weapons disposal and made a commitment to be weapons free by December 2018. The UN continues to support this process to ensure compliance with the United Nations action on small arms and light weapons.

**12. What will happen to people with weapons?** People with weapons put at risk the outcome of the referendum being seen as credible by national and international communities. As part of preparing Bougainville to be weapons-free, the ABG insists on compliance with the provisions of the BPA, the United Nations Program of Action on Small Arms and Light Weapons, and the *National Firearms Act*, meaning that people who continue to hold weapons after 31<sup>st</sup> December 2018 can be arrested and fined – including 10 years’ jail and K10, 000 fine. The ABG will continue to work with police and former combatants to ensure a weapons-free Bougainville.

**13. Is it safe to become an independent state (while different governments/factions exist in Bougainville)?**

No. The different factions and governments are one of the key issues and challenges for the referendum. If Bougainville does not have respect for rule of law under a single government for Bougainville, sovereignty cannot be established. A sovereign Bougainville state must have only one government recognised under the Constitution. Bougainville must stay united and accept our diversity. Unity and security must be established through reconciliation and unification processes at all levels: families, communities, regions and at leadership between Bougainville and PNG.

The ABG has been working with all factions and veterans to ensure they are part of the peace and weapons disposal process. Former commanders including Commander Moses Pipiro and Panguna Meekamui signed an MOU with the ABG in Panguna, and all the factions have committed themselves for united Bougainville on 17<sup>th</sup> May 2017 in Arawa. They pledged their support to weapons disposal and made a commitment to be weapons free by December 2018. The UN continues to support this process.

Bougainville cannot continue with different factions operating outside the Constitution and legal government processes. Unity under one government will assist Bougainville develop, no matter what the final political status of Bougainville is. The ABG will continue to work with police and former combatants to ensure a weapons-free Bougainville.

**14. Amnesty/Pardon**

The BPA provides for grant of Amnesty and Pardon to those that comply with the peace process. The two governments have reaffirmed grant of pardon/amnesty for those political factions that didn't sign BPA provided they participate in weapons disposal as provided under the BPA.

Other gun owning individuals and groups have also been offered pardon to dispose their weapons during the weapons disposal with its due date on 31<sup>st</sup> December 2018.

## PART 3 – REFERENDUM PROCESS

### ELIGIBILITY

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#### 15. Who can vote?

The two governments have agreed on who can vote in the referendum according to the BPA, the Bougainville Constitution and national electoral laws. At its simplest, every Bougainvillean over the age of 18, residing in PNG and with a link to a clan by birth or adoption, by either parent or by marriage, can register to vote.

To be eligible to be included on the Referendum Voter Roll a citizen must:

- Be a citizen of PNG;
- Be at least 18 years of age by the estimated date of the Referendum;
- Be ordinarily resident in the ward and so resided for the last 6 months (Note: the Bougainville Referendum Commission will declare the location of voting districts);
- Be of full capacity;
- Not be under sentence of death or sentence of imprisonment for a period of more than 9 months;
- Have not in the last 3 years committed an electoral offence.
- Non-resident Bougainvillean are eligible for enrolment under the categories as outlined on the Claim for Enrolment form, and will be enrolled in specific locations outside of Bougainville.

To be Bougainvillean according to the *Bougainville Constitution* (7)1:

- a. you are a member of a Bougainville clan by birth or adoption
- b. or you are married to a member of a clan by birth or adoption
- c. or you are a child of a parent who is a member of a clan by birth or adoption

**Note:** It is mandatory under the Organic Law for ALL eligible electors to be registered on the Referendum Roll.

#### 16. Voting age – some say from as young as 14 up

The two governments reaffirmed that the voting age will be 18 years and over. This is both an international standard, and in accordance with the Bougainville Peace Agreement, National Constitution and electoral laws. People under the age of 18 can still be involved by helping to create a peaceful, secure and informed referendum process.

#### 17. Bougainvilleans outside Bougainville – some say should, some say haven't earned right

The two governments have decided the criteria for Bougainvilleans living outside Bougainville in other provinces to vote using the *Bougainville Constitution Section 7(1)*, and being a *Section 52(1) of the Organic Law on National and Local-level Government Elections* for an electorate in Papua New Guinea outside the Autonomous Region of Bougainville.

To be Bougainvillean according to the *Bougainville Constitution* (7)1:

- a. you are a member of a Bougainville clan by birth or adoption
- b. or you are married to a member of a clan by birth or adoption
- c. or you are a child of a parent who is a member of a clan by birth or adoption

## **18. Non-Bougainvilleans married to Bougainvilleans**

- 1. For non-Bougainvilleans married to Bougainvilleans and living in Bougainville, the BPA says eligibility to vote in the referendum will be the same as for national elections in Bougainville.
- 2. Those criteria include being at least 18 years old, being a citizen of PNG (and no other country), and having resided in the electorate for a period of at least six months.

## **19. What happens to people refusing to vote: particularly factions, hardliners, no-go zones**

All factions, including hardliner groups, have committed to participating fully in the referendum. Various MoUs and declarations have been signed and agreed to by faction leaders and commanders. This includes Tsiroge and May 17 agreements. These give full support to the Autonomous Bougainville Government through the referendum process.

The outcome of the referendum will affect all Bougainvilleans – including those who did not vote. It is important that all people register on the referendum roll and participate in the referendum because this is a very important process.

It is also mandatory under the Organic Law for ALL eligible electors to be on the Referendum Roll.

## **20. Concerns raised that national people will be able to vote**

The two governments will agree on voting eligibility criteria for Bougainvilleans outside Bougainville, and voter registration will ensure that only people who meet those criteria are registered to vote. The referendum will have officials and observers like an election to ensure only those registered on the referendum roll can vote.

## **21. How can we trust vote occurring outside Bougainville?**

It is very important that the referendum process is independent, transparent and the result is trusted and credible. The Bougainville Referendum Commission – an independent agency chaired former Irish Prime Minister Bertie Ahearn – will conduct the referendum. Its job is to make sure the result is trusted both in and outside Bougainville and achieve a credible result. This includes training of polling officials and the presence of international observers and scrutineers.

## **THE QUESTION**

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### **22. What will the question be? Will it be simple, take into account literacy – concern that will be complicated for people?**

The two governments have agreed on the referendum question.

*Preamble: The outcome of the referendum on the future political status of Bougainville, will be discussed by both governments (the GoPNG and ABG), and will be presented to the National Parliament for final decision making in accordance with the Bougainville Peace Agreement and the National Constitution.*

*Question: Do you agree for Bougainville to have:*

- (1) Greater Autonomy; or*
- (2) Independence*

*Explanation of process:*

1. *Eligible people of Bougainville will vote in the referendum.*
2. *National Government and the ABG will consult.*
3. *National Parliament will make the final decision.*

The Bougainville Referendum Commission will be responsible for the design of the ballot paper.

## **VOTER REGISTRATION AND REFERENDUM ROLL**

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### **23. Voter Registration/WILL COMMON ROLL BE USED?**

You can only vote in the referendum if your name is on a specially prepared Referendum Roll based on updating the 2015 ABG electoral roll. The Referendum Roll will be developed by the Bougainville Referendum Commission through a three-step enrolment process. Unlike elections, the referendum roll registration is being conducted house to house to make sure the community has a bigger role in verifying the final roll.

Phase 1 – Verification of 2015 ABG voter roll against Ward Voter registries

Phase 2 – Enrolment. Ward recorders visit every house to ensure names are correct or enrol new eligible electors not on the Working Roll using *Claim for Enrolment* form.

Phase 3 – Objection period. Public display and verification of the *Preliminary Referendum Roll*. The roll will be displayed in each Ward for people to see.

It is important that all Bougainvilleans take part in the registration process to help the Bougainville Referendum Commission create a good referendum roll for each Ward. You must check with your Ward Recorder that your name is on the final list being prepared. It is then important that once you register, you must vote,

#### **Bougainvilleans living in Papua New Guinea provinces**

In PNG, PNG Electoral Officials will assist the BRC to register Bougainvilleans on the Referendum Roll. Enrollment Forms will come from Bougainvilleans living in mainland PNG, back to every Ward for them to verify. You must vote where you are registered.

Because of logistics, Bougainvilleans living outside Papua New Guinea will not be able to vote but can come back to Bougainville to vote in the referendum.

## **REFERENDUM PROCESS**

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### **24. What is the BRC/BRC must be transparent**

The Bougainville Referendum Commission is the independent agency that will conduct the referendum. It has been formally established but is only just becoming operational due to lack of funds. The BRC will conduct all referendum operations, including awareness, voter registration, polling, counting and announcing the result. It will also look at security and campaigning. It must be neutral, credible, independent, and follows international standards.

The Commission has an international Chair, Hon Bertie Ahern, appointed by both governments, two representatives appointed by each government, and the PNG and Bougainville Electoral Commissioners. Bougainville has appointed Patrick Nisira and

Ruby Mirinka as its commissioners. The national government has nominated Thomas Webster and Robert Igara as its commissioners. (However the referendum charter requires that at least one must be a female.)

A BRC Transitional Committee is progressing referendum planning and registration of voters. This is co-chaired by the PNG and Bougainville Electoral Commissioners; the two chief secretaries (or their designated alternates) are also members.

**25. Will the ABG have enough money to conduct the referendum?**

The referendum is a joint responsibility and legal requirement of both national and Bougainville governments. The two governments have agreed on a budget for the BRC of K34million. ABG has provided K500,000 start-up funds and both the Australian (AUD1million) and New Zealand (NZD1.5million) governments have provided funding.

The two governments have also requested for UN and other countries for funding and technical assistance. Prime Minister O’Neill has committed to incorporating K34 million into the 2019 National Budget.

**26. Who will assist illiterate voters?**

Just like an election, there will be polling officials from the Bougainville Referendum Commission who will assist illiterate voters mark their paper/cast their vote. People needing assistance to vote can choose someone to help them, but that person cannot influence their vote.

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**THE RESULT**

**27. What percentage vote will secure independence?**

The legal framework does not mention a specific percentage requirement – only that the outcome of the referendum is non-binding and the final decision is a negotiated process between the two governments that may be subject to ratification by the National Parliament.

**28. What does a ‘failed’ referendum mean?**

A failed referendum means that people did not vote, or the referendum vote was not declared as free and fair by referendum observers. All eligible voters on the referendum roll must also cast their vote. This is one reason why there must be no fear of weapons in Bougainville.

**29. What happens if people vote for independence? What if people vote against independence?**

The referendum is an internationally recognised process to inform the final decision making of Bougainville’s future political status: independence or greater autonomy. This process must be credible, free and fair, provide a clear result and lead to consultation between the two governments with a final decision being made by National Parliament.

Whatever the result, it is important that people accept and respect the outcome – whatever it is. The people will have spoken, and the decision is theirs. All Bougainvilleans must maintain peace and continue our development journey, no matter what the referendum outcome is.

### **30. What will the government do after the vote?**

The Bougainville referendum is a ‘non-binding referendum’. This means the final vote will not automatically be the final decision. The two governments have reaffirmed the process outlined in the BPA and agree on the following process to decide the final political status of Bougainville:

1. *Eligible people of Bougainville will vote in the referendum.*
2. *National Government and the ABG will consult.*
3. *National Parliament will make the final decision.*

The two governments have agreed on a Post Referendum Planning Taskforce, headed by the National Minister Assisting the Prime Minister on Bougainville and the ABG Minister for Peace Agreement Implementation. This will map out what the post-referendum process between the two governments with a particular emphasis on:

- Ensuring peaceful acceptance of the referendum results
- Timely consultation between the governments about the results of the referendum
- Reference to the Parliament for timely ratification only if the two governments agree
- Developing an agreed basis for the ongoing relationship between Bougainville and PNG.

A Joint Post Referendum Summit is planned for late 2018 in Buka. The Taskforce will report to the respective Parliaments by the end of 2018.

### **31. What will the status of Bougainville be if not independent after the referendum?**

The BPA is a living and evolving document which does not end in 2020. Bougainville will continue to operate as an Autonomous Region under the powers of the Bougainville Peace Agreement, Bougainville Constitution, and PNG Constitution until the two governments negotiate the final political status of Bougainville based on the result of the referendum.

### **32. How do we stay secure and not go into another Crisis?**

Security is one of the key issues and challenges for the referendum. If Bougainville is not peaceful and secure with respect for rule of law, neither the national government or international community will accept the referendum result. If there is no security, a new single government for Bougainville cannot be established.

People must respect the result of the referendum – it is the will of the majority of the people. Peace by peaceful means we learn from the past. Bougainville must stay united and accept diversity of opinions. We must resolve through peaceful means any conflicts that arise.

Security must be established through reconciliation and unification processes at all levels: families, communities, regions and at leadership between Bougainville and PNG.

### **33. How many years is the transition period/There should be a long transition period/It should be five, ten years.**

The transition period, the time after the referendum to implement the result, is not set in the BPA. This is being discussed by the Joint Transitional Taskforce, which will provide a process for endorsement by the two governments.

The transition period is important for the following reasons:

- To make necessary amendments as consistent with the outcome of the referendum
- To ensure Bougainville draws down powers and functions from the National Government
- To address and resolve any peace-building and referendum-related grievances and issues to maintain unity and stability

#### **34. What relationship will Bougainville have with PNG provinces under independence?**

The two governments will need to agree on the relationship between Bougainville and the PNG under an agreed independence decision for Bougainville. However, control of migration, borders, customs and trade are powers of an independent state.

The two governments have established a Post Referendum Planning Taskforce which will look at developing agreements for the ongoing relationship between Bougainville and PNG under different political options – which will include independence.

**Other post-referendum questions** (to be considered in future government decision-making)

- Why should PNG grant Bougainville independence:  
Bougainville needs a clear result for leaders to hear the majority wishes of Bougainvilleans. It is then up to the National Government to respect the democratic process
- What happens if PNG doesn't accept an independence vote?  
Bougainville's accepted second option is greater autonomy.
- What is the ABG plan if not independence? This should be communicated.  
Bougainville's accepted second option is greater autonomy. The Transition Taskforce is currently determining how greater autonomy can be defined.
- If Bougainville becomes independent, will the people who voted against independence have to move?  
No. People must have the freedom to exercise a choice without having to move.

### **35. Compensation for conflict period?**

The ABG is currently working on a peacebuilding policy that will continue beyond the referendum period and address outstanding issues.

### **36. Reconciliations need to be completed before referendum**

Reconciliations are an ongoing process in Bougainville. Many reconciliations, both large and small have already taken place, leading the way for others to happen.

### **37. Corruption fear, ABG mismanagement**

The ABG has been active in stamping out corruption and mismanagement. Poor performing heads of departments, ministers and public servants have been removed to improve service delivery and management of government funds.

### **38. Need for a stronger police force**

Changes to the current Bougainville Police Service are only for consideration after referendum. However, the two Governments have agreed to seek Pacific Regional Security Assistance to strengthen policing in Bougainville both now, during and post referendum period. This assistance will involve arms and or arming of police

### **39. Need to improve services**

The GoPNG and ABG has restored service delivery and Bougainvilleans should appreciate the current status in light of the challenges to effective and timely service delivery. The recent second review of autonomy arrangements found that in many areas of good governance, the ABG is performing well, including the delivery of services and conduct of elections. However, the ABG will continue to be hampered by a lack of economic development through a lack of resource development – this is a responsibility of all Bougainvilleans.