

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

.....

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.

.....

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.