

## (3) An emergency law—

## (a) may not alter—

- (i) Section 35 (*right to life*); or
- (ii) Section 36 (*freedom from inhuman treatment*); or
- (iii) Section 45 (*freedom of conscience, thought and religion*); or
- (iv) Section 50 (*right to vote and stand for public office*); or
- (v) Section 55 (*equality of citizens*); or
- (vi) Section 56 (*other rights and privileges of citizens*); and

(b) may provide for internment only in accordance with Division 5 (*internment*); and(c) may alter Section 37 (*protection of the law*) or Section 42 (*liberty of the person*) only to the extent allowed by paragraph (b).

## (4) In addition, an Emergency Regulation may not alter—

- (a) Section 46 (*freedom of expression*); or
- (b) Section 47 (*freedom of assembly and association*); or
- (c) Section 49 (*right to privacy*); or
- (d) Section 51 (*right to freedom of information*),

and may not provide for a sentence of imprisonment for a period exceeding nine months.

(5) In the case of an inconsistency between a valid emergency law and any other law, the law made later prevails.

**234. Release from custody on expiry, etc., of Emergency Regulations.**

Subject to any Act of the Parliament made for the purpose of dealing with the effect of the expiry or revocation of a particular Emergency Regulation, any person held in custody under or for the purposes of an Emergency Regulation shall be released from custody on its expiry or repeal, unless he is also held in custody under some other law.

**235. Custody of members of Parliament under Emergency Regulations or in internment.**

If a member of the Parliament is held in custody under an Emergency Regulation, or is an internee, he shall, at all times when the Parliament is in session or when a committee (of which he is a member) of the Parliament is meeting, be released, on such conditions (if any) as are prescribed by an Act of the Parliament, into the custody of the Parliament in order to allow him to attend to his parliamentary duties, unless he is also held in custody under some other law.

**236. Revocation, etc., of emergency laws, etc.**

## (1) An Emergency Act may be altered—

- (a) by an Act of the Parliament; or
- (b) in an urgent case, where to do so would not be contrary to the positive intention expressed by a resolution of the Parliament dealing with the particular emergency, by an Emergency Regulation.

## (2) An Emergency Regulation may be altered at any time—

- (a) by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or

- (b) by an Emergency Act; or
- (c) by decision of the Parliament.

(3) An emergency order may be disallowed at any time by decision of the Parliament.

**237. Automatic termination of emergency laws, etc.**

(1) Subject to Section 238 (*extension of Emergency Acts*) an emergency law, unless it has expired under Section 231(3) (*Emergency Regulations*) or unless earlier repealed<sup>1</sup> shall be deemed to be repealed immediately after the end of the day on which the period of declared national emergency ends.

(2) Where an Emergency Regulation which has amended or repealed any law in force immediately before the regulation took effect, is deemed to be repealed under Subsection (1), the repeal of that regulation shall revive the previous law from the date of that repeal as if the repealed regulation had not been made.

**238. Extension of Emergency Acts.**

(1) Subject to Subsection (2), to the extent that its extension is necessary to deal with the results or aftermath of the period of declared national emergency and is reasonably justifiable in a democratic society that has a proper regard<sup>2</sup> for the rights and dignity of mankind, the operation of an Emergency Act may be extended from time to time, after the end of the period of declared national emergency, by decision of the Parliament by an absolute majority vote, for a period or periods each not exceeding two months.

(2) After the end of the period of declared national emergency, internment may be continued only in accordance with Section 244 (6) (*laws providing for internment*).

*Division 4.—Parliamentary Supervision and Control.*

**239. Parliamentary control.**

(1) Unless the Parliament is in session at the commencement of a period of declared national emergency, it shall be called to meet as soon as practicable, and in any event not more than 15 days, after the commencement of the period and thereafter during the period at intervals each not exceeding two months.

(2) At each meeting of the Parliament during a period of declared national emergency the Prime Minister shall present to the Parliament a statement setting out—

- (a) the reasons for the declaration of war or of the national emergency, or for the continuance of the period; and
- (b) the reasons for any new Emergency Regulations; and
- (c) a report on the operation of the emergency laws.

(3) Unless earlier revoked, a declaration of a national emergency expires at the end of the period of 21 days after its making, but may be extended from time to time by decision of the Parliament by an absolute majority vote, for a period or periods each not exceeding two months.

**240. Emergency Committees.**

(1) An Act of the Parliament shall provide for and in respect of the appointment of committees of the Parliament (to be known as "Emergency Committees") in respect of a period or periods of declared national emergency.

<sup>1</sup> *Semble*, "or is earlier repealed" was intended.  
<sup>2</sup> *Semble*, "having a proper regard" was intended—compare the footnote to Section 38(1).

(2) No Minister may be a member of a Committee.

(3) A Committee shall be available to meet at all times during the period in respect of which it was appointed.

(4) Subject to the availability of members to meet in accordance with Subsection (3), a Committee should, in principle, be broadly representative of the various parts of the country and of parties and groups in the Parliament.

#### 241. Temporary Emergency Committees.

(1) An Act of the Parliament or the Standing Orders of the Parliament shall make provision for and in respect of the appointment of a Temporary Emergency Committee to hold office if a period of declared national emergency commences at a time when the Parliament is not in session and an Emergency Committee has not been established in accordance with Section 240 (*Emergency Committees*) in respect of the period.

(2) A Temporary Emergency Committee ceases to hold office (except for the purpose of making a report in accordance with Section 242(2) (*functions, etc., of Emergency Committees*) as to events occurring during its term of office)—

(a) at the time of the establishment of an Emergency Committee in accordance with Section 240 (*Emergency Committees*) in respect of the period of declared national emergency; or

(b) at the end of the first meeting of the Parliament after its establishment,

whichever first occurs.

#### 242. Functions, etc., of Emergency Committees.

(1) The Prime Minister shall ensure that—

(a) copies of all emergency laws and, so far as is practicable, of all emergency orders, are forwarded immediately to the Emergency Committee; and

(b) subject to any Emergency Act, the Committee is fully provided with information concerning, and is fully consulted concerning, developments in the situation and in particular concerning proposed emergency laws and the operation of existing emergency laws.

(2) At each meeting of the Parliament during a period of declared national emergency the Emergency Committee shall present to the Parliament a statement as to—

(a) whether or not the period of declared national emergency should continue; and

(b) the justification for and the operation of the emergency laws; and

(c) whether or not any emergency law should be altered,

and such other related matters as it thinks fit.

(3) As soon as practicable after receipt by him of a request to do so from the Emergency Committee, and in any event not more than 15 days afterwards, the Speaker shall call a meeting of the Parliament to consider—

(a) any statements by the Committee under Subsection (2) and by the Prime Minister under Section 239(2) (*Parliamentary control*); and

(b) whether or not the period of declared national emergency should be allowed to continue; and

(c) whether or not an emergency law should be altered,

and such other matters as the Parliament thinks fit.

**243. Priority of emergency business in Parliament.**

During a period of declared national emergency, and while any emergency law is in force, first priority shall, subject to any express provision of this Constitution to the contrary, be given to any question, notice, motion or other Parliamentary process relating to the emergency or to an emergency law.

*Division 5.—Internment.*

**244. Laws providing for internment.**

(1) The internment of persons may be permitted only by an Act of the Parliament.

(2) An Act referred to in Subsection (1)—

(a) must be made by an absolute majority vote; and

(b) takes effect on a date fixed by an absolute majority vote of the Parliament made after the commencement of a period of declared national emergency and, after at least four days' notice of the relevant motion has been given; and

(c) subject to Subsection (6), authorizes internment only during a period of declared national emergency.

(3) Subject to Subsection (4), at least four days' notice of the intention to introduce to the Parliament a proposed law to permit internment must be given, and the proposed law must be circulated, in accordance with the Standing Orders of the Parliament, to all members of the Parliament at least four days before the proposed law is made.

(4) During a time of war, the periods of four days prescribed in Subsection (3) are reduced to 24 hours.

(5) In his certificate given under Section 110 (*certification as to making of laws*) the Speaker must certify that the requirements of Subsection (2)(a) and (b), and of Subsection (3) or (4), as the case may be, have been complied with.

(6) Internment may continue after the end of the period of declared national emergency only to the extent that is reasonably required for the orderly and peaceful repatriation, resettlement or re-establishment of internees.

**245. Internment.**

(1) The following provisions apply to and in relation to an internee :—

(a) an internee and his next-of-kin or other close relative in the country shall, as soon as practicable and in any case not more than seven days after the commencement of his internment, be furnished with a statement in writing in a language that he understands specifying in detail the grounds upon which he is interned; and

(b) subject to Section 244(6) (*laws providing for internment*), an internee (other than an alien enemy) shall be released from detention at the end of the period of two months after his internment unless an independent and impartial tribunal established under paragraph (e) has reviewed his case and found that sufficient cause has been shown for his internment; and

(c) subject to Section 244(6) (*laws providing for internment*) an internee (other than an alien enemy) shall be released from detention at the end of the period of six months after his internment; and

(d) an internee (other than an alien enemy) is entitled to have his case reviewed by an independent and impartial tribunal established under paragraph (e) as

soon as practicable after he has been interned, and in any case not more than one month after the commencement of his internment, and afterwards at intervals not exceeding two months; and

- (e) an Organic Law shall provide for the establishment of the independent and impartial tribunal referred to in this section and that the Chairman of the tribunal shall be a person qualified to be a Judge of the National Court; and
- (f) the Organic Law referred to in paragraph (e) shall provide that as far as practicable where the case of an internee is being reviewed on a second or subsequent occasion, a majority of the members (including the Chairman) of any tribunal referred to in that paragraph which conducts that review shall be different from the members of any such tribunal which previously reviewed the case of that detainee; and
- (g) subject to Subsection (5), where a tribunal established under paragraph (e) finds that a citizen has been interned wrongly or without sufficient reason—
  - (i) the Head of State, acting with, and in accordance with, the advice of the National Executive Council shall order that he be released; and
  - (ii) he is entitled to compensation, in accordance with law, for the internment and any consequences of it; and
- (h) subject to Subsection (5), where a tribunal established in accordance with paragraph (e) finds that there are no longer sufficient grounds for the internment of a citizen, the Minister responsible for national security shall order that he be released immediately; and
- (i) a person released from internment in accordance with paragraphs (c), (g) or (h) shall not again be interned substantially on the same facts unless a change in circumstances relating to the grounds of the original internment gives these<sup>1</sup> facts a new significance; and
- (j) internees shall be kept separated, as far as practicable, from other persons in custody, and shall receive treatment not less favourable than that afforded to persons in custody awaiting trial for offences; and
- (k) the names and places of residence of internees shall be published in the National Gazette and in any newspaper which has a national circulation, within 14 days of the internment, and at monthly intervals afterwards; and
- (l) the Minister responsible for national security shall present to the Parliament at each meeting of the Parliament during the period of declared national emergency, but in any event, at intervals not exceeding six months, reports concerning all internees, their treatment, the review of their cases and action taken in regard to them.

(2) An internee shall be given adequate facilities to prepare and make representations to the review tribunal referred to in Subsection (1)(e) either personally or through a lawyer, and in particular shall be allowed full access to a lawyer (and if necessary to legal aid) and the services of a competent interpreter if required.

(3) An internee shall—

- (a) be permitted to appear in person before the review tribunal; and
- (b) be permitted to be represented by a lawyer and a friend before the review tribunal.

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<sup>1</sup> *Semble*, "those" was intended.

(4) The tribunal shall forward copies of its findings and recommendations to the internee and to his next-of-kin or other close relative in the country when they are furnished to the Minister responsible for national security.

(5) Where in his opinion it is necessary to do so in the interests of national security or public order, the Head of State, acting with, and in accordance with, the advice of the National Executive Council may refuse to make an order in accordance with Subsection (1)(g) or (b)<sup>1</sup> for the release of an internee, but in that event, except in time of war—

(a) he shall promptly present to the Parliament a report stating that he has refused to release the internee and setting out the reasons for his refusal; and

(b) the Parliament may order that the internee be released.

(6) Where an order is made in accordance with Subsection (5)—

(a) the internee shall be released in accordance with the order; and

(b) Subsection (1)(i) applies as though the order were an order under Subsection (1)(g) or (b), as appropriate.

(7) An Organic Law, an Act of the Parliament or an emergency law may make further provision, not inconsistent with this section, in respect of the treatment, security and discipline of internees.

(8) The provisions of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 14 1949, and any other international convention relating to interned persons, shall be complied with in relation to persons protected by them, and in addition such of those provisions that are of general application and can appropriately be applied to interned citizens shall be complied with in relation to such internees.

*Division 6.—Miscellaneous.*

**246. Extension of tenure of Parliament and Governor-General.**

During a period of declared national emergency the Parliament may, by an absolute majority vote, extend its term of office, or the term of office of the Governor-General, or both, for a term not exceeding the length of the period and such time afterwards as is necessary to allow a general election to be arranged and held, or for a Governor-General to be appointed, as the case requires.

**PART XI.—MISCELLANEOUS.**

**247. Legal capacity of the Independent State of Papua New Guinea.**

(1) Papua New Guinea has power to acquire, hold and dispose of property of any kind, and to make contracts, in accordance with an Act of the Parliament.

(2) Papua New Guinea may sue and be sued, in accordance with an Act of the Parliament.

**248. Vesting of rights and liabilities of former Government.**

All property that was, immediately before Independence Day, vested in the body corporate at that time known as "The Government of Papua New Guinea" is, on that day, vested in Papua New Guinea, and all rights and liabilities (actual or contingent) of that body immediately before that day are, on that day, rights and liabilities of Papua New Guinea.

<sup>1</sup>What is now Subsection (1)(g) and (b) was in the draft Constitution considered by the Constituent Assembly a single paragraph, imposing the duty on the Head of State, acting on advice. When the duty was divided between the Head of State and the Minister, the need for a consequential amendment to Subsection (5) was apparently overlooked.

**249. Declarations by certain office-holders.**

Subject to any Organic Law, every person who is subject to Division III.2 (*leadership code*) before entering upon the duties of or exercising any of the powers of his office, shall make—

- (a) unless he has made it on a previous occasion or is exempt from making it under—
  - (i) Section 251(1) (*taking certain oaths, etc., by non-citizens*); or
  - (ii) Section 272 (*oaths, affirmation, etc.*),the Declaration of Loyalty; and
- (b) in the case of—
  - (i) a judicial officer—the Judicial Declaration; or
  - (ii) an office-holder other than a judicial officer—the Declaration of Office.

**250. Making of Declaration of Loyalty, etc.**

(1) Subject to any provision of a Constitutional Law making special provision for the purpose, the Oath of Allegiance, the Declaration of Loyalty, the Judicial Declaration or the Declaration of Office (or any other oath, affirmation or declaration that is required or permitted to be taken or made by or for the purposes of a Constitutional Law) may be taken or made before any person appointed for the purpose by or under an Act of the Parliament, or in the absence of any such Act, before a person appointed for the purpose by the Head of State, acting with, and in accordance with, the advice of the National Executive Council.

(2) Notwithstanding the provisions of Subsection (1), an oath, affirmation or declaration referred to in that subsection is binding and effectual no matter before whom it is taken or made.

**251. Taking certain oaths, etc., by non-citizens.**

- (1) If—
  - (a) it is desirable that a non-citizen be appointed to an office under a statute<sup>1</sup>; and
  - (b) it is a requirement that in order to be qualified for appointment, or to enter upon the duties or exercise the powers of the office, a person must take the Oath of Allegiance or make the Declaration of Loyalty, or take or make some oath, affirmation or declaration; and
  - (c) the National Executive Council is satisfied that, by reason of the law of some other country, to take the Oath of Allegiance or make the Declaration of Loyalty, or to take or make the other oath, affirmation or declaration, in the prescribed manner or form would or might adversely affect the nationality or citizenship status of the person concerned,

the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may, by order, substitute some<sup>2</sup> oath, affirmation or declaration or, if thought necessary, exempt the person from the requirement.

<sup>1</sup> *Semble*, "a Constitutional Law or a statute" was intended.

<sup>2</sup> *Semble*, "other" was omitted.

(2) Notwithstanding Subsection (1), the non-citizen is subject to all laws as if he had made the Declaration of Loyalty, or had taken or made the other oath, affirmation or declaration, as the case may be.

(3) Nothing in Subsection (1) applies to or in respect of the Judicial Declaration.

**252. The National Gazette.**

There shall be an official journal of the National Government, which shall be known as the National Gazette or by such other name as is given by or under an Act of the Parliament.

**253. Slavery, etc.**

Slavery, and the slave trade in all their forms, and all similar institutions and practices, are strictly prohibited.

**254. Filling of offices, etc.**

In principle—

- (a) no constitutional office shall be left unfilled on a substantive basis for longer than is necessary for it to be filled by an appropriate appointee; and
- (b) no person shall hold more than one public office at the same time except where one such office is so much associated with, or related to, another, or where the holding of one such office is so relevant to the holding of another, as to make it desirable that the offices be held jointly; and
- (c) public offices of similar importance or standing, and in particular offices in any statutory board or committee, should be filled by persons from the various areas of the country.

**255. Consultation.**

In principle, where a law provides for consultation between persons or bodies, or persons and bodies, the consultation must be meaningful and allow for a genuine interchange and consideration of views.

**256. Reports by public office-holders, etc.**

Subject to this Constitution, an Act of the Parliament may make provision for and in respect of annual and other reports by a constitutional office-holder or any other public office-holder, or by a constitutional institution or any other statutory body.

**257. Proof of acts of the Constituent Assembly.**

(1) All courts, Judges and persons acting judicially shall take judicial notice of all acts and proceedings of the Constituent Assembly.

(2) An act of, or the proceedings of, the Constituent Assembly may be proved for any purpose by the production of—

- (a) a certificate under the hand, or purporting to be under the hand, of the Speaker of the pre-Independence House of Assembly; or
- (b) a document under the hand, or purporting to be under the hand, of the Clerk or other proper officer of the pre-Independence House of Assembly and purporting to be the minutes or other official record of the proceedings of the Constituent Assembly.



**258. 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 a Constitutional Law or an Act of the Parliament, prescribing all matters that by a Constitutional Law are required or permitted to be prescribed or provided for by Constitutional Regulation.

(2) All Constitutional Regulations shall be tabled in the Parliament as soon as practicable after being made, and may be disallowed by the Parliament at any time.

**259. Independent tribunals.**

Unless otherwise provided for by a Constitutional Law, in any case where a Constitutional Law requires the appointment of an independent tribunal, the members of that tribunal shall be appointed from a list of names approved by the Judicial and Legal Services Commission.

## PART XII.—CONSTITUTIONAL REVIEW.

**260. General Constitutional Commission.**

(1) An Act of the Parliament shall make provision for and in respect of the establishment, at or after the end of the period of three years commencing on Independence Day, of a General Constitutional Commission.

(2) The members of the Commission shall—

- (a) be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation with any appropriate parliamentary committee; and
- (b) be broadly representative of the different areas of the country; and
- (c) give balanced representation of the major parties and groups in Parliament<sup>1</sup>.

(3) Each member of the General Constitutional Commission must be—

- (a) a member of the Parliament; or
- (b) a member of a provincial government or local government body; or
- (c) a member of a State Service; or
- (d) some other citizen with relevant expertise.

(4) The General Constitutional Commission shall inquire into the working of this Constitution and the Organic Laws.

(5) As soon as is reasonably practicable after its appointment, the General Constitutional Commission shall forward a report of its findings to the Speaker for presentation to the Parliament, together with its recommendations (if any) as to amendment of this Constitution, and new or amended Organic Laws or other laws or administrative procedures.

**261. Interim Constitutional Commission.**

(1) An Act of Parliament<sup>2</sup> shall provide that until the Constitutional Commission<sup>3</sup> is established there shall be an Interim Constitutional Commission the membership of which is in accordance with Section 260(2) and (3) (*General Constitutional Commission*).

<sup>1</sup> *Semble*, "the Parliament" was intended—compare the definition "the Parliament" in Section Sch. 1.2(1).

<sup>2</sup> *Semble*, "Act of the Parliament" was intended—compare the definition "Act of the Parliament" in Section Sch. 1.2(1).

<sup>3</sup> *Semble*, "the General Constitutional Commission" was intended.

(2) The Interim Constitutional Commission shall consider proposed alteration<sup>1</sup> of this Constitution or of any Organic Law, and report to Parliament<sup>2</sup> before there is an opportunity for debate of the proposed legislation.

#### 262. Subordinate commissions and committees.

(1) Acts of the Parliament may make provision for and in respect of—

- (a) a Commission on Provincial Government, the primary function of which shall be to investigate the workings of the system of provincial government; and
- (b) other commissions and committees to investigate such other aspects of the working of this Constitution as the Parliament thinks desirable.

(Replaced by *Constitutional Amendment No. 1*.)

(2) The commissions and committees established in accordance with Subsection (1)(b)<sup>3</sup> shall report to the General Constitutional Commission on the subject matters of their respective investigations, with such recommendations (if any) as they think desirable, in time to allow the General Constitutional Commission to report to the Parliament in accordance with Section 260 (*General Constitutional Commission*).

(3) The General Constitutional Commission shall ensure that any reports of commissions or committees established in accordance with Subsection (1)(b)<sup>3</sup> are forwarded to the Speaker for presentation to the Parliament before or at the same time as its report is so forwarded.

#### 263. Further definition, etc.

Acts of the Parliament may make provision for further defining the terms of reference of the General Constitutional Commission and any other commissions or committees established in accordance with Section 262 (*subordinate commissions and committees*).

### PART XIII.—IMMEDIATE AND TRANSITIONAL PROVISIONS.

#### 264. Effect of Part XIII.

The provisions of this Part, and of any Provisional Organic Law or Organic Law made for the purposes of Section 267 (*transitional laws*), have effect notwithstanding anything in the preceding provisions of this Constitution.

#### 265. Dissolution of the Constituent Assembly.

The Constituent Assembly, having performed its duty to frame and adopt, on behalf of the People, a Constitution, and its other duties, is dissolved.

#### 266. Provisional laws.

(1) If before Independence Day the Constituent Assembly has made an instrument expressed to be a Provisional Organic Law, the instrument takes effect, on Independence Day, as if it were an Organic Law made and coming into effect on that day.

(2) If before Independence Day the Constituent Assembly has made an instrument expressed to be a Provisional Act of the Parliament made for the purpose of bringing any provision of this Constitution into effective operation on Independence Day, the instrument takes effect, on Independence Day, as if it were an Act of the Parliament made and coming into effect on that day.

#### 267. Transitional laws.

(1) A Provisional Organic Law or an Organic Law may make whatever provision seems necessary or desirable for a smooth transition from pre-Independence arrangements to

<sup>1</sup> *Semble*, "any proposed alteration" was intended.

<sup>2</sup> *Semble*, "the Parliament" was intended—compare the definition "the Parliament" in Section Sch. 1.2(1).

<sup>3</sup> *Semble*, "Subsection (1)" was intended.

arrangements under this Constitution and, in particular, but without limiting the generality of the foregoing, for securing—

- (a) the immediate filling of offices, and the immediately effective operation of institutions under this Constitution where there were corresponding pre-Independence offices or institutions; and
- (b) the continued effect of acts done or commenced before Independence Day under pre-Independence laws.

(2) A Provisional Organic Law or an Organic Law made for the purposes of Subsection (1) may declare what were the pre-Independence offices and institutions that correspond with offices and institutions under this Constitution.

#### 268. First Governor-General.

If before Independence Day—

- (a) the Constituent Assembly has nominated by a simple majority vote, in an exhaustive secret ballot a person to be the first Governor-General; and
- (b) Her Majesty, Elizabeth II, having consented to become Queen and Head of State of Papua New Guinea has signified her approval to that person becoming the Governor-General,

that person becomes the first Governor-General on Independence Day.

#### 269. First Parliament, electorates, etc.

(1) Notwithstanding anything in this Constitution, but subject to Subsection (6), the open and regional electorates for the pre-Independence House of Assembly established immediately before Independence Day are the first open and provincial (as the case may be) electorates for the Parliament.

(2) Notwithstanding anything in this Constitution but subject to any Organic Law on national electoral matters—

- (a) each member of the pre-Independence House of Assembly in office immediately before Independence Day (including a member who although he is or may be disqualified under Section 37(4)(a) of the *Papua New Guinea Act 1949-1975* of Australia has been confirmed in his membership by resolution of the House of Assembly) is the first member of the Parliament for his electorate and shall continue to hold office unless or until—
  - (i) his seat becomes vacant by virtue of Section 104(2)(a), (b), (c), (d), (e), (g) or (h) (*normal term of office*); or
  - (ii) he becomes a person who has been convicted of and is under sentence of imprisonment, or is subject to be sentenced (other than a person who has been released on recognizance to appear and receive judgment when called upon), for an offence punishable by imprisonment for one year or longer, as in Section 50(1)(a) (*right to vote and stand for public office*); or
  - (iii) he becomes disqualified under Section 103(3)(b) or (d) (*qualifications for and disqualifications from membership*); and
- (b) the pre-Independence Speaker and Chairman of Committees in office immediately before Independence Day are the first Speaker and Deputy Speaker, respectively, of the Parliament; and

- (c) the electoral rolls in effect immediately before Independence Day are the first electoral rolls for the first open and provincial electorates (as the case may be).
- (3) The Boundaries Commission shall recommend to the Parliament the number of open electorates and their boundaries for determination by the Parliament under Section 125(1) (*electorates*) as soon as possible after Independence Day.
- (4) Unless a general election to the Parliament is held earlier under Section 105 (*general elections*) the term of the first Parliament is—
  - (a) the balance of the term of the pre-Independence House of Assembly remaining unexpired immediately after Independence Day; and
  - (b) the period up to the first general election held after Independence Day and the first general elections shall be held, as directed by the Head of State, acting with, and in accordance with, the advice of the Electoral Commission, in the months May and June 1977.
- (5) If the Parliament has not made a determination under Section 125(1) (*electorates*) in time for the first general elections held after Independence Day—
  - (a) the number and boundaries of the open electorates shall remain the same as for the previous general elections; and
  - (b) the number of provincial electorates shall be as determined by an Organic Law; and
  - (c) the boundaries of the provincial electorates shall be as determined by the Head of State, acting with, and in accordance with, the advice of the Boundaries Commission, but so that the boundaries of the provincial electorates—
    - (i) enclose all the territory of open electorates within each province; and
    - (ii) so near as may be, coincide with the boundaries of the provinces as defined in the Organic Law on Provincial Boundaries and the boundaries of the National Capital District as defined in the Organic Law on the Boundaries of the National Capital District.
- (6) If a provincial electorate consists of two or more provinces, an Organic Law shall make adequate provision for—
  - (a) the declaration of each province as a provincial electorate; and
  - (b) each electorate to be represented by a provincial member,
 as soon as practicable after Independence Day.

**270. First Ministry.**

- (1) The pre-Independence Chief Minister in office immediately before Independence Day is the first Prime Minister.
- (2) The other Ministers of the pre-Independence House of Assembly in office immediately before Independence Day are the other first Ministers.

**271. First Judges.**

Notwithstanding anything in this Constitution—

- (a) the pre-Independence Chief Justice in office immediately before Independence Day is the first Chief Justice of Papua New Guinea; and
- (b) the Senior Puisne Judge in office immediately before Independence Day is the First Deputy Chief Justice of Papua New Guinea; and

- (c) each Judge in office immediately before Independence Day is a Judge of the National Court; and
- (d) each acting Judge in office immediately before Independence Day is an Acting Judge of the National Court,

on the same terms and conditions that were applicable to him before Independence Day but in no case shall his term of office exceed three years from the date of his present appointment.

#### **272. Oaths, affirmation, etc.**

(1) Notwithstanding anything in this Constitution, but subject to Section 250 (*making of Declaration of Loyalty, etc.*) and Section 251 (*taking certain oaths, etc., by non-citizens*)—

- (a) the first Governor-General shall take the Oath of Allegiance and make the Declaration of Loyalty and the Declaration of Office; and
- (b) the first Prime Minister and other Ministers, and the first Speaker and Deputy Speaker, shall make the Declaration of Loyalty and the Declaration of Office; and
- (c) the first Chief Justice and other Judges shall make the Judicial Declaration,

in public on Independence Day, at such place, and in such manner and form, as are directed by the Prime Minister.

(2) If it is not practicable for a person referred to in Subsection (1)(a), (b) or (c) to comply with the requirements of Subsection (1), he shall take and make the necessary oath or declarations, or both, as the case requires, at such time and place, and in such manner and form, as are directed by the Head of State, acting with, and in accordance with, the advice of the Prime Minister.

(3) Any provision of this Constitution preventing a person referred to in Subsection (1)(a), (b) or (c) from entering upon the duties of his office until he has taken the Oath of Allegiance or made the Declaration of Loyalty, the Declaration of Office or the Judicial Declaration (as the case requires) is suspended pending compliance with the preceding provisions of this section.

#### **273. Treaties applying before Independence.**

The provisions of Section 117 (*treaties, etc.*) do not prevent the Head of State, acting with, and in accordance with, the advice of the National Executive Council, from making a declaration that an international commitment, that, immediately before Independence Day, applied to the territory at that time known as Papua New Guinea or a component part of that territory may, by agreement, be treated as if it were binding on Papua New Guinea for a period not exceeding five years after that day.

#### **274. Composition of certain constitutional institutions.**

Except where expressly provided otherwise in a Constitutional Law, until 16 September 1985, where a constitutional institution other than the Supreme Court or the National Court is composed of more than one person, the majority of those persons must be citizens, but failure to comply with this section does not invalidate any act of the institution.

#### **275. Chairmanship of tribunal to review internments.**

Until 16 September 1985, in addition to persons who are qualified to be appointed as Judges of the National Court, a person who holds office as a magistrate of the highest grade

or classification is eligible for appointment as Chairman of a tribunal appointed in accordance with Section 245(1)(e) (*internment*).

SCHEDULES.

SCHEDULE 1.

RULES FOR SHORTENING AND INTERPRETATION OF THE CONSTITUTIONAL LAWS.

PART 1.—INTRODUCTORY.

Sch.1.1. Application of Schedule 1.

- (1) The rules contained in this Schedule apply, unless the contrary intention appears, in the interpretation of the Constitution and of the Organic Laws.
- (2) Unless adopted by law for the purposes, they do not apply to any other law.

PART 2.—GENERAL.

Sch.1.2. Meaning of certain expressions.

- (1) In this Constitution or an Organic Law—

“absolute majority vote”, in relation to proceedings in the Parliament, means—

- (a) if qualified by reference to a certain fraction or percentage, affirmative votes equal to not less than that fraction or percentage of the total number of seats in the Parliament; or
- (b) if not so qualified, affirmative votes equal to more than one half of the total number of those seats;

“act” includes omission or failure to act;

“Act of the Parliament” means a law (other than a Constitutional Law) made by the Parliament, and includes a subordinate legislative enactment made under any such law;

“alter”, in relation to any provision of this Constitution or any other law, includes repeal (with or without re-enactment or the making of other provision), amend, modify, suspend (or remove a suspension) or add to the words or effect of the provision;

“committee”, in relation to the Parliament, includes a subcommittee of a committee of the Parliament;

“Constitutional Law” means this Constitution, a law altering this Constitution or an Organic Law;

“the country” means the area of Papua New Guinea;

“custom” means the customs and usages of indigenous inhabitants of the country existing in relation to the matter in question at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial;

“the day fixed for the return of the writs for a general election” means—

- (a) in the case of a general election where there is no extension of the time for the return of any writ or the time for the return of all writs is extended—the day by which the writs are to be returned; and
- (b) in any other case—the day by which the majority of the writs are to be returned.

“the Declaration of Office” means a declaration in the form in Schedule 3;

“the Deputy Leader of the Opposition” means the member of the Parliament (if any) recognized by the Parliament as being the second principal speaker on behalf of those

- members of the Parliament who are not generally committed to support the Government in the Parliament;
- "deliberate judgement", in relation to an act, has the meaning and effect attributed to it by Section 62 (*decisions in "deliberate judgement"*);
- "Emergency Regulation" means a law that is made in accordance with Section 231 (*Emergency Regulations*);
- "fiscal year", in relation to any activity of the National Government, means the period of 12 months commencing on 1 July or on such other date as is fixed by an Act of the Parliament for the purpose;
- "of full capacity", in relation to a person means that he is not of unsound mind within the meaning of any law relating to the custody or protection of the persons or property of persons of unsound mind;
- "governmental body" means—
- (a) the National Government; or
  - (b) a provincial government; or
  - (c) an arm, department, agency or instrumentality of the National Government or a provincial government; or
  - (d) a body set up by statute or administrative act for governmental or official purposes;  
(*Amended by Constitutional Amendment No. 1.*)
- "Judge" means a Judge of the Supreme Court or a Judge of the National Court;
- "Judge of the National Court" means the Chief Justice, the Deputy Chief Justice or a Judge, and includes an acting Judge;
- "Judge of the Supreme Court" means a Judge of the National Court, other than an acting Judge;
- "the Judicial Declaration" means a declaration in the form in Schedule 4;
- "judicial officer" means a Judge or Magistrate<sup>1</sup> of a court within the National Judicial System (other than a magistrate or member of a village court) in his capacity as such;
- "law" includes the underlying law;
- "lawyer" means a person who has been admitted to practice as a lawyer under an Act of the Parliament;
- "the Leader of the Opposition" means the member of the Parliament (if any) recognized by the Parliament as being the principal speaker on behalf of those members of the Parliament who are not generally committed to support the Government in the Parliament;
- "local government body" includes a local government council and a local government authority established under the pre-Independence law known as the *Local Government Act 1963* or any other law;
- "medical practitioner" means a person who has been admitted to practice as a medical practitioner under an Act of the Parliament;
- "the Minister" in relation to any Constitutional Law, provision, matter or thing, means the Minister for the time being administering that Constitutional Law or provision, or the Minister for the time being administering the Constitutional Law or provision that governs that matter or thing, as the case may be;
- "misconduct in office" means misconduct in office as described in Section 27 (*responsibilities of office*) or as prescribed by an Organic Law made for the purposes of Section 28 (*further provisions*);
- "the National Gazette" includes any Special National Gazette or National Gazette Extraordinary, and any supplement to a National Gazette;
- "Papua New Guinea" means the Independent State of Papua New Guinea;
- "personal staff", in relation to the Governor-General, a Minister, the Leader of the Opposition or the Deputy Leader of the Opposition, means the staff supplied to him by or under an Act of the Parliament at the public expense, not being members of the National Public Service in their capacities as such;

<sup>1</sup>Seemingly, "a member" was intended—compare Subdivision VI.5.F.

- "pre-Independence law" has the same meaning as in Section Sch.2.6 (*adoption of pre-Independence laws*);
- "the pre-Independence Supreme Court" means the pre-Independence court known as the Supreme Court of Papua New Guinea, the Supreme Court of the Territory of Papua and New Guinea or the Supreme Court of the Territory of Papua-New Guinea;
- "provincial government body" (*Repealed by Constitutional Amendment No. 1.*)
- "provincial law" means a law made or adopted by a provincial legislature, and includes a subordinate legislative enactment made under any such law; (*Added by Constitutional Amendment No. 1.*)
- "public accounts of Papua New Guinea" includes all accounts, books and records of, or in the custody, possession or control of, the National Executive or of a public officer, relating to public property or public moneys of Papua New Guinea;
- "public moneys of Papua New Guinea" includes moneys held in trust by the National Executive or a public officer in his capacity as such, whether or not they are so held for particular persons;
- "principles of natural justice" means the principles referred to in Division III.4 (*principles of natural justice*), and where those principles have been altered in accordance with Section 60 (*development of principles*), or by an Act of the Parliament, includes those principles as so altered;
- "public office-holder" means—
- (a) a member of any of the State Services or of a provincial service; or
  - (b) any other constitutional office-holder; or
  - (c) the holder of any office or position established by statute for administrative or governmental purposes; or
  - (d) the holder of any other office or position declared by a statute to be a public office; (*Amended by Constitutional Amendment No. 1.*)
- "the public trustee" means the officer (by whatever title known) charged with the duty of administering deceased intestate estates;
- "seat", in relation to the Parliament, includes—
- (a) the position of an elected member, whether or not the position is for the time being filled; and
  - (b) where there is for the time being a nominated member appointed in accordance with Section 102 (*nominated members*)—the position of that nominated member;
- "statute" means an Act of the Parliament, an Emergency Regulation or a provincial law, and includes a subordinate legislative enactment made under any such law; (*Amended by Constitutional Amendment No. 1.*)
- "subordinate legislative enactment" means a regulation or any other instrument (whether of a legislative nature or not) made under a statute;
- "taxation" includes rates, charges and fees and imposts of any kind;
- "time of war" means a period during which a declaration under Section 227 (*declaration of war*) is in force;
- "the underlying law" means—
- (a) the underlying law provided for by an Act of the Parliament under Section 20(1) (*underlying law and pre-Independence statutes*); and
  - (b) until such time as there is an Act of the Parliament, the underlying law prescribed in Schedule 2 (*adoption, etc., of certain laws*);
- "village court" means a court referred to in Section 172(2) (*establishment of other courts*).

(2) Unless the contrary intention appears, where an expression is defined for any purpose in this Schedule, or otherwise in a Constitutional Law, then for that purpose all grammatical variations and cognate and related expressions are to be understood in the same sense.

(3) Unless the contrary intention appears, a reference in a Constitutional Law to an institution, office or other thing shall be read as a reference to the appropriate institution, office or thing established or provided for<sup>1</sup> this Constitution, or referred to in the Preamble to this Constitution.

<sup>1</sup> *Semble*, "by" was omitted.



**Sch.1.3. Form of the Constitutional Laws.**

(1) The Preamble to this Constitution (being the provisions that end immediately before the heading to Part I. forms part of this Constitution, but expresses general principles and therefore must be read subject to any other provision of this Constitution, though it may be used as an aid to interpretation in cases of doubt.

(2) The heading<sup>1</sup> or head-notes to the various sections of a Constitutional Law do not form part of the Law, but other headings and notes do form part of the Law.

(3) Each provision of a Constitutional Law takes effect as a Constitutional Law.

(4) Where a reference in a provision of a Constitutional Law to another provision of that Law, or to a provision of another Constitutional Law, is followed by words in brackets describing, or purporting to describe, the effect of the provision so referred to, the description or purported description does not, unless the contrary is expressed, affect the meaning or effect of the provision so referred to.

**Sch.1.4. Constitutional Laws speak from time to time.**

A Constitutional Law speaks from time to time.

**Sch.1.5. Fair meaning to be given to language used.**

(1) Each Constitutional Law is intended to be read as a whole.

(2) All provisions of, and all words, expressions and propositions in, a Constitutional Law shall be given their fair and liberal meaning.

**Sch.1.6. Statements of general principle.**

Where a provision of a Constitutional Law is expressed to state a proposition "in principle", then—

(a) an act (including a legislative, executive or judicial act) that is inconsistent with the proposition is not, by reason of that inconsistency alone, invalid or ineffectual; but

(b) if the act is reasonably capable of being understood or given effect to in such a way as not to be inconsistent with the proposition it shall be so given effect to.

**Sch.1.7. "Non-justiciable".**

Where a Constitutional Law declares a question to be non-justiciable, the question may not be heard or determined by any court or tribunal, but nothing in this section limits the jurisdiction of the Ombudsman Commission or of any other tribunal established for the purposes of Division III.2 (*leadership code*).

**Sch.1.8. Gender and number.**

In a Constitutional Law—

(a) words importing the masculine gender include females; and

(b) words in the singular include the plural and words in the plural include the singular.

**Sch.1.9. Provision where no time prescribed.**

Where no time is prescribed or allowed within which an act is required or permitted by a Constitutional Law to be done, the act shall or may be done, as the case may be, with all convenient speed and as often as the occasion arises.

**Sch.1.10. Exercise and performance of powers and duties.**

(1) Where a Constitutional Law confers a power or imposes a duty, the power may be exercised, or the duty shall be performed, as the case may be, from time to time as occasion requires.

(2) Where a Constitutional Law confers a power or imposes a duty on the holder of an office as such, the power may be exercised, or the duty shall be performed, as the case may be, by the holder (whether substantive or other) for the time being of the office.

(3) Where a Constitutional Law confers a power to make any instrument or decision (other than a decision of a court), the power includes power exercisable in the same manner and subject to the same conditions (if any) to alter the instrument or decision.

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<sup>1</sup> *Semble*, "headings" was intended.

(4) Subject to Subsection (5), where a Constitutional Law confers a power to make an appointment, the power includes power to remove or suspend a person so appointed, and to appoint another person temporarily in the place of a person so removed or suspended or, where the appointee is for any reason unable or unavailable to perform his duties, to appoint another person temporarily in his place.

(5) The power provided for by Subsection (4) is exercisable only subject to any conditions to which the exercise of the original power or appointment was subject.

**Sch.1.11. Determination of appropriate authority<sup>1</sup>.**

Where a Constitutional Law refers to "the appropriate Permanent Parliamentary Committee", the Parliament shall determine which Permanent Parliamentary Committee is the appropriate committee for the purpose and where the Parliament fails to do so the Speaker may so determine.

**Sch.1.12. Power of majority of more than two persons, and quorums.**

(1) Where a Constitutional Law requires or permits an act or thing to be done by more than two persons, a majority of them may do it.

(2) Subsection (1) does not affect any requirement of a quorum, and, subject to Subsection (3), where no quorum is prescribed for a body the quorum is the full membership of the body.

(3) A power conferred by a Constitutional Law, otherwise than on the body in question, to determine the procedures of a body includes power to determine a quorum.

(4) The exception contained in Subsection (3) does not apply to the National Executive Council.

**Sch.1.13. Attainment of age.**

For any purpose of a Constitutional Law, a person attains a certain age at the first moment of the relevant anniversary of his birth.

**Sch.1.14. References to series.**

(1) Where in a Constitutional Law a reference is made to a series by reference to two numbers, one at the beginning and one at the end of the series, each of those numbers forms part of the series.

(2) The reference in Subsection (1) to numbers include, where the elements of a series are identified by letters or in some other manner, references to letters or that other means of identification.

**Sch.1.15. Residence.**

(1) Where in a Constitutional Law there is a requirement for any purpose of permanent residence or of continuous residence in a place (including the area of Papua New Guinea), an Organic Law may provide that—

(a) periods of temporary absence from that place shall be counted as periods of residence in that place; or

(b) periods of temporary absence from that place shall not be counted as periods of residence in that place but otherwise do not affect the continuity of residence.

(2) In Subsection (1), "temporary absence" means, subject to Subsection (3), absence for temporary purposes with the intention of returning.

(3) An Organic Law may further provide for the definition of classes of absence that constitute or do not constitute temporary absence for the purposes of any provision of a Constitutional Law.

**Sch.1.16. Effect of time limits.**

(1) Where in a Constitutional Law a time limit is imposed for the doing of an act (whether the provision is mandatory, directory or permissive, and whether it is positive or negative), and in a particular case it is not practicable to comply with that limitation, the period shall be deemed to be extended by whatever period is necessary to make compliance practicable.

(2) The operation of Subsection (1) is not excluded by a provision that unqualifiedly specifies a time limit or a maximum time limit.

<sup>1</sup> *Semble*, "appropriate Permanent Parliamentary Committee" was intended.

**Sch.1.17. Repeal, etc.**

- (1) The repeal of a Constitutional Law or a part of a Constitutional Law does not—
- (a) revive anything (including a statute or any part of the underlying law) that was not in force or existing immediately before the repeal took effect; or
  - (b) affect the previous operation of the repealed provisions or anything duly done or suffered under them; or
  - (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed provisions; or
  - (d) affect any penalty, forfeiture or punishment incurred in respect of an offence committed against the repealed provisions; or
  - (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and the penalty, forfeiture or punishment may be imposed, as if the repealed provisions had continued in force.

- (2) In particular, the repeal of a Constitutional Law or a part of a Constitutional Law does not—
- (a) affect any liability under Division III.2 (*leadership code*); or
  - (b) prevent the Ombudsman Commission or any other tribunal established for the purpose of that Division from investigating any act,

to which the repealed provisions were relevant.

(3) Where a Constitutional Law or a part of a Constitutional Law is repealed and re-enacted (with or without modification), references in any other law to any of the repealed provisions shall, unless the contrary intention appears, be read as a reference to the amended or replacing provision.

- (4) In this section, "repeal" includes revocation, suspension and expiry.

**Sch.1.18. Disallowance, etc.**

(1) Where a Constitutional Law provides that a law may be disallowed, the disallowance takes effect in the same way as a repeal of a provision of a Constitutional Law takes effect except that, if the disallowed law altered any other law, the disallowance revives the other law as in force before the alteration.

(2) For the purpose of Subsection (1), a refusal or failure by the Parliament to confirm, approve or extend a law that requires such confirmation, approval or extension has the same effect as a disallowance.

**Sch.1.19. Independence.**

Where a Constitutional Law provides that a person or institution is not subject to control or direction, or otherwise refers to the independence of a person or institution, that provision does not affect—

- (a) control or direction by a court; or
- (b) the regulation, by or under a Constitutional Law or an Act of the Parliament, of the exercise or performance of the powers, functions, duties or responsibilities of the person or institution; or
- (c) the exercise of jurisdiction under Division III.2 (*leadership code*), Subdivision VIII.1.B (*the Auditor-General*), or Subdivision VIII.1.C (*the Public Accounts Committee*),

and does not constitute an appropriation of, or authority to expend, funds.

**Sch.1.20. Regulation of acts, etc.**

A provision of a Constitutional Law that provides for the regulation of an act or thing does not extend to prohibition, whether in law or in effect.

PART 3.—SPECIAL PROVISIONS RELATING TO THE OFFICE OF HEAD OF STATE.

Sch.1.21. "the Head of State"; "the Governor-General"<sup>1</sup>.

For the avoidance of doubt, it is hereby declared that—

(a) in this Constitution—

- (i) a reference to "the Head of State" is a reference to the Queen and Head of State of Papua New Guinea for the time being and includes a reference to the person or persons exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland in the event of the youth or incapacity of the person in that sovereignty; and
- (ii) a reference to "the Governor-General" does not include a reference to the Queen or the person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland; and
- (iii) a reference to "the Head of State" is a reference to the Queen or a person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland or, where such a person does not act personally, to the Governor-General as the representative of the Queen or that person; and

(b) the question, whether in performing a function or carrying out a duty as Head of State the Governor-General is acting in accordance with the will or opinion of the person exercising sovereignty over the United Kingdom of Great Britain and Northern Ireland, is non-justiciable and is not subject to the jurisdiction of the Ombudsman Commission or any other person or authority.

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SCHEDULE 2.

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Sec. 18.

ADOPTION, ETC., OF CERTAIN LAWS.

PART 1.—CUSTOM.

Sch.2.1. Recognition, etc., of custom.

- (1) Subject to Subsections (2) and (3), custom is adopted, and shall be applied and enforced, as part of the underlying law.
- (2) Subsection (1) does not apply in respect of any custom that is, and to the extent that it is, inconsistent with a Constitutional Law or a statute, or repugnant to the general principles of humanity.
- (3) An Act of the Parliament may—
  - (a) provide for the proof and pleading of custom for any purpose; and
  - (b) regulate the manner in which, or the purposes for which, custom may be recognized, applied or enforced; and
  - (c) provide for the resolution of conflicts of custom.

PART 2.—RECEPTION OF A COMMON LAW, ETC.

Sch.2.2. Adoption of a common law.

- (1) Subject to this Part, the principles and rules that formed, immediately before Independence Day, the principles and rules of common law and equity in England are adopted, and shall be applied and enforced, as part of the underlying law, except if, and to the extent that—
  - (a) they are inconsistent with a Constitutional Law or a statute; or
  - (b) they are inapplicable or inappropriate to the circumstances of the country from time to time; or

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<sup>1</sup> See, also, Section 83, which to some extent duplicates this provision.

(c) in their application to any particular matter they are inconsistent with custom as adopted by Part 1.

(2) Subject to Subsection (1)(a), (b) and (c), the principles and rules adopted under Subsection (1) include principles and rules relating to the Royal Prerogative, except insofar as they provide for—

(a) a power to declare martial law; or

(b) a power to grant letters of denization or similar privileges; or

(c) a power to do any other act, provision for the doing of which is made by a Constitutional Law or an Act of the Parliament.

(3) The principles and rules of common law and equity are adopted as provided by Subsections (1) and (2) notwithstanding any revision of them by any statute of England that does not apply in the country by virtue of Section Sch.2.6 (*adoption of pre-Independence laws*).

(4) In relation to any particular question before a court, the operation of Subsection (1)(b) shall be determined by reference, among other things, to the circumstances of the case, including the time and place of any relevant transaction, act or event.

#### PART 3.—DEVELOPMENT OF AN UNDERLYING LAW FOR PAPUA NEW GUINEA.

##### Sch.2.3. Development, etc., of the underlying law.

(1) If in any particular matter before a court there appears to be no rule of law that is applicable and appropriate to the circumstances of the country, it is the duty of the National Judicial System, and in particular of the Supreme Court and the National Court, to formulate an appropriate rule as part of the underlying law having regard—

(a) in particular, to the National Goals and Directive Principles and the Basic Social Obligations; and

(b) to Division III.3 (*basic rights*); and

(c) to analogies to be drawn from relevant statutes and custom; and

(d) to the legislation of, and to relevant decisions of the courts of, any country that in the opinion of the court has a legal system similar to that of Papua New Guinea; and

(e) to relevant decisions of courts exercising jurisdiction in or in respect of all or any part of the country at any time,

and to the circumstances of the country from time to time.

(2) If in any court other than the Supreme Court a question arises that would involve the performance of the duty imposed by Subsection (1), then, unless the question is trivial, vexatious or irrelevant—

(a) in the case of the National Court—the court may; and

(b) in the case of any other court (not being a village court)—the court shall,

refer the matter for decision to the Supreme Court, and take whatever other action (including the adjournment of proceedings) is appropriate.

##### Sch.2.4. Judicial development of the underlying law.

In all cases, it is the duty of the National Judicial System, and especially of the Supreme Court and the National Court, to ensure that, with due regard to the need for consistency, the underlying law develops as a coherent system in a manner that is appropriate to the circumstances of the country from time to time, except insofar as it would not be proper to do so by judicial act.

##### Sch.2.5. Reports on the development of the underlying law.

In their reports under Section 187(1) (*reports by Judges*), and in any report under Section 187(2) (*reports by Judges*) if in their opinion it is desirable to do so, the Judges shall comment on the state, suitability and development of the underlying law, with any recommendations as to improvement that they think it proper to make.

PART 4.—ADOPTION OF CERTAIN STATUTES.

Sch.2.6. Adoption of pre-Independence laws.

(1) In Subsection (2), "pre-Independence law" means—

- (a) a law (including a law that had not yet come into operation) that was repealed by the *Laws Repeal Act 1975* made by the pre-Independence House of Assembly for Papua New Guinea, and includes—
  - (i) a law that was, and to the extent that it was, continued in force under or by virtue of any such law; and
  - (ii) a purported law that might have been (but had not been declared by a court to be) invalid by reason of a failure to comply with any other law in respect of the manner of its assent, other than such a law that was repealed or superseded, or had expired or was spent, before the commencement of the *Laws Repeal Act 1975*; and
- (b) the laws of Australia specified in Part 1 of Schedule 5 as in force in the country immediately before Independence Day; and
- (c) the laws of England specified in Part 2 of Schedule 5 as in force in the country immediately before Independence Day; and
- (d) subordinate legislative enactments under any such laws that were in force in the country immediately before the repeal, or immediately before Independence Day, as the case may be.

(2) Subject to any Constitutional Law, all pre-Independence laws are, by virtue of this section, adopted as Acts of the Parliament, or subordinate legislative enactments under such Acts, as the case may be, and apply to the extent to which they applied, or purported to apply, immediately before the repeal referred to in Subsection (1)(a), or immediately before Independence Day, as the case may be.

(3) For the avoidance of doubt it is hereby declared that where a pre-Independence law to which Subsection (2) applies has not been brought into operation, and does not itself express a date on which it is to come into operation, it may be brought into operation—

- (a) in the case of an Act—on a date to be fixed by the Head of State by notice published in the National Gazette; and
- (b) in the case of a subordinate legislative enactment—by publication in the National Gazette.

Sch.2.7. Adaptation of adopted law.

(1) A law adopted by Section Sch.2.6 (*adoption of pre-Independence laws*) takes effect subject to such changes as to names, titles, offices, persons and institutions, and to such other formal and non-substantive changes, as are necessary to adapt it to the circumstances of the country and to the Constitutional Laws.

(2) A Constitutional Regulation may prescribe changes to be made for the purposes of Subsection (1) and any such regulation is conclusive as to the changes so prescribed, but no omission to prescribe a change affects the generality of that subsection.

(3) A question as to a change to be made for the purposes of Subsection (1) is not a question relating to the interpretation or application of any provision of a Constitutional Law within the meaning of Section 18 (*original interpretative jurisdiction of the Supreme Court*), but this subsection does not affect the operation of Section 19 (*special references to the Supreme Court*).

PART 5.—JUDICIAL PRECEDENT.

Sch.2.8. Effect of Part 5.

(1) Nothing in this Part affects or is intended to affect, except to the extent specifically set out in this Part—

- (a) the legal doctrine of judicial precedent (also known as *stare decisis*); or
- (b) the principles of judicial comity; or
- (c) the rules of private international law (also known as *conflict of laws*); or

(d) the legal doctrine known as *res judicata*, or the further development and adoption of those doctrines, principles and rules in accordance with Part 3 of this Schedule (*development of an underlying law for Papua New Guinea*).

(2) Except as provided by or under an Act of the Parliament, this Part does not apply to or in respect of village courts.

#### Sch.2.9. Subordination of courts.

(1) All decisions of law by the Supreme Court are binding on all other courts, but not on itself.

(2) Subject to Section Sch.2.10 (*conflict of precedents*), all decisions of law by the National Court are binding on all other courts (other than the Supreme Court), but not on itself (except insofar as a decision of the National Court constituted by more Judges than one is of greater authority than a decision of the Court constituted by a lesser number).

(3) Subject to this Part, all decisions of law by a court other than the Supreme Court or the National Court are binding on all lower courts.

(4) In Subsection (3), "lower court", in relation to a matter before a court, means a court to which proceedings by way of appeal or review (whether by leave or as of right) lie from the first-mentioned court in relation to the matter.

#### Sch.2.10. Conflict of precedents.

(1) Where it appears to a court other than the Supreme Court or the National Court that—

(a) there are more decisions of law than one that are otherwise binding on it by virtue of the preceding provisions of this Part and that, in relation to the matter before it, the decisions are conflicting; or

(b) a decision of law that is otherwise binding on it by virtue of the preceding provisions of this Part and that is otherwise applicable to the matter before it—

(i) is not, or is no longer, appropriate to the circumstances of the country or of the matter; or

(ii) is inconsistent with any custom that is part of the underlying law and is applicable in relation to the matter; or

(iii) is seriously inconsistent with the trend of the adaptation and development of the law in other respects,

then unless the question is trivial, vexatious or irrelevant the court may, and shall if so requested by a party to the matter, state a case to the court that made the decision or decisions or the equivalent court, or if there be no such court to the National Court, and take whatever other action (including the adjournment of proceedings) is appropriate.

(2) Where a case is stated in accordance with Subsection (1), the court to which it is stated may require or permit the Minister responsible for the National Justice Administration to be represented by counsel to assist the court.

#### Sch.2.11. Prospective over-ruling.

(1) Subject to any decision of law that is binding upon it, in over-ruling a decision of law or in making a decision of law that is contrary to previous practice, doctrine or accepted custom, a court may, for a special reason, apply its decision of law only to situations occurring after the new decision.

(2) In the circumstances described by Subsection (1), a court may apply to a situation a decision of law that was over-ruled after the occurrence of the situation, or a practice, doctrine or custom that was current or accepted at the time of the occurrence of any relevant transaction, act or event.

(3) In a case to which Subsection (1) or (2) applies, a court may make its decision subject to such conditions and restrictions as to it seem just.

#### Sch.2.12. Outside decisions.

(1) For the purposes of this section, except in a matter before the Supreme Court or the National Court—

(a) a decision of law by a Full Court of the pre-Independence Supreme Court, sitting in accordance with the pre-Independence law relating to sittings of the Supreme Court, or a decision of law on appeal from a decision of that court, has the same binding force as a decision of law of the Supreme Court; and

(b) a decision of law by a pre-Independence Supreme Court sitting otherwise than as a Full Court, or a decision of law on appeal from a decision of that court, has the same binding force as a decision of law of the National Court,

subject to any decision of law of the Supreme Court or the National Court, as the case may be, to the contrary, but otherwise no decision of law of a court or tribunal that was not established within the National Judicial System is binding on a court within it.

(2) Subsection (1) does not prevent recourse to the decisions of law or the opinions of courts or tribunals outside the National Judicial System (including courts or tribunals of jurisdictions other than Papua New Guinea) for their persuasive value.

PART 6.—THE LAW REFORM COMMISSION.

Sch.2.13. Establishment of the Commission.

(1) An Act of the Parliament shall make provision for and in respect of a Law Reform Commission.

(2) Only citizens may be members of the Commission.

Sch.2.14. Special functions of the Commission.

In addition to its other functions and responsibilities under any law, it is a special responsibility of the Law Reform Commission to investigate and report to the Parliament and to the National Executive on the development, and on the adaptation to the circumstances of the country, of the underlying law, and on the appropriateness of the rules and principles of the underlying law to the circumstances of the country from time to time.

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SCHEDULE 3.

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Sec. Sch.1.2(1).

DECLARATION OF OFFICE.

I, \_\_\_\_\_, do promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of \_\_\_\_\_

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SCHEDULE 4.

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Sec. Sch.1.2(1).

JUDICIAL DECLARATION.

I, \_\_\_\_\_, do promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of \_\_\_\_\_, that I will in all things uphold the Constitution and the laws of the Independent State of Papua New Guinea, and<sup>1</sup> I will do right to all manner of people in accordance therewith, without fear or favour, affection or ill-will.

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<sup>1</sup> *Semble*, "that" was omitted.



## SCHEDULE 5.

Sec. Sch.2.6,

ADOPTED LAWS OF OTHER COUNTRIES<sup>1</sup>.

## PART 1.—AUSTRALIA.

*Continental Shelf (Living Natural Resources) Act* 1968—Sections 9 and 14 only.*Explosives Act* 1901-1973<sup>2</sup>.*Judiciary Act* 1903-1969—Section 84 only.*Marine Insurance Act* 1909-1966.*Navigation Act* 1912-1973.*Patents Act* 1903-1973—Section 123 only<sup>3</sup>.*Petroleum (Submerged Lands) Act* 1967-1968—Section 11 only.*Nationality and Citizenship Act* 1948-1967—Section 5(3) only<sup>4</sup>.*Seamen's Compensation Act* 1911-1972—Section 4 only (in relation to a ship registered in the country under the *Merchant Shipping Act* 1894, as amended, of England).*Seamen's War Pensions and Allowances Act* 1940-1974.*Submarine Cables and Pipelines Protection Act* 1963-1973.PART 2.—ENGLAND<sup>5</sup>.*Merchant Shipping Act* 1894.*Merchant Shipping Act* 1897.*Merchant Shipping (Liability of Ship owners and Others) Act* 1900.*Merchant Shipping Act* 1906.

<sup>1</sup> Many of these references are incorrect. On the assumption that the adopted Australian Acts were intended to be adopted as in force immediately before Independence Day (see Section Sch.2.6), and subject to footnotes 2-5 below, it seems that Schedule 5 should read as follows:—

## ADOPTED LAWS OF OTHER COUNTRIES.

## PART 1.—AUSTRALIA.

Note: A reference in this Part to an Act of Australia is to be read as a reference to that Act as in force immediately before Independence Day.

*Continental Shelf (Living Natural Resources) Act* 1968—Sections 9 and 14 only.*Explosives Act* 1961.*Judiciary Act* 1903—Section 84 only.*Marine Insurance Act* 1909.*Nationality and Citizenship Act* 1948—Section 5(3) only.*Navigation Act* 1912.*Patents Act* 1952—Section 123 only.*Petroleum (Submerged Lands) Act* 1967—Section 11 only.*Seamen's Compensation Act* 1911—Section 4 only (in relation to a ship registered in the country under the *Merchant Shipping Act*, 1894, as amended, of England).*Seamen's War Pensions and Allowances Act* 1940.*Submarine Cables and Pipelines Protection Act* 1963.

## PART 2.—ENGLAND.

*Merchant Shipping Act*, 1894.*Merchant Shipping Act*, 1897.*Merchant Shipping (Liability of Shipowners and Others) Act*, 1900.*Merchant Shipping Act*, 1906.*Merchant Shipping Act*, 1911.*Maritime Conventions Act*, 1911.*Merchant Shipping Act*, 1921.*Fees (Increase) Act*, 1923.

<sup>2</sup> *Sebble*, "1901" was an error for "1961".

<sup>3</sup> There was a *Patents Act* 1903. However, it was repealed and replaced by the *Patents Act* 1952, which was in fact amended (as shown in Schedule 5) in 1973. However, both the 1903 Act and the 1952 Act contained a Section 123 which dealt with the same subject-matter, although in different ways.

<sup>4</sup> The original "Nationality and Citizenship Act" was re-titled "Citizenship Act" in 1969 and "Australian Citizenship Act" in 1973.

<sup>5</sup> Since the *Imperial Merchant Shipping Acts* included, in 1975, a number of amending Acts that were not listed in Part 2 of Schedule 5, it seems that, in spite of Section Sch.2.6(1)(c), the Constitution was selective in the degree to which it adopted them "as in force immediately before Independence Day".

*Constitution*

Ch. No. 1

*Merchant Shipping Act 1911.*  
*Maritime Conventions Act 1911.*  
*Merchant Shipping Act 1921.*  
*Fees (Increase) Act 1923.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Constitution.*

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APPENDIX.

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CONSTITUTIONAL AMENDMENTS.

- Amendment No. 1—Provincial Government.
- Amendment No. 2—Provincial Government Elections.
- Amendment No. 3—Provincial Government (Consequential amendments).
- Amendment No. 4—Leadership Code.
- Amendment No. 5—Citizenship.
- Amendment No. 6—Benefits and Pensions.
- Amendment No. 7—Suspension and Re-establishment of Provincial Governments.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

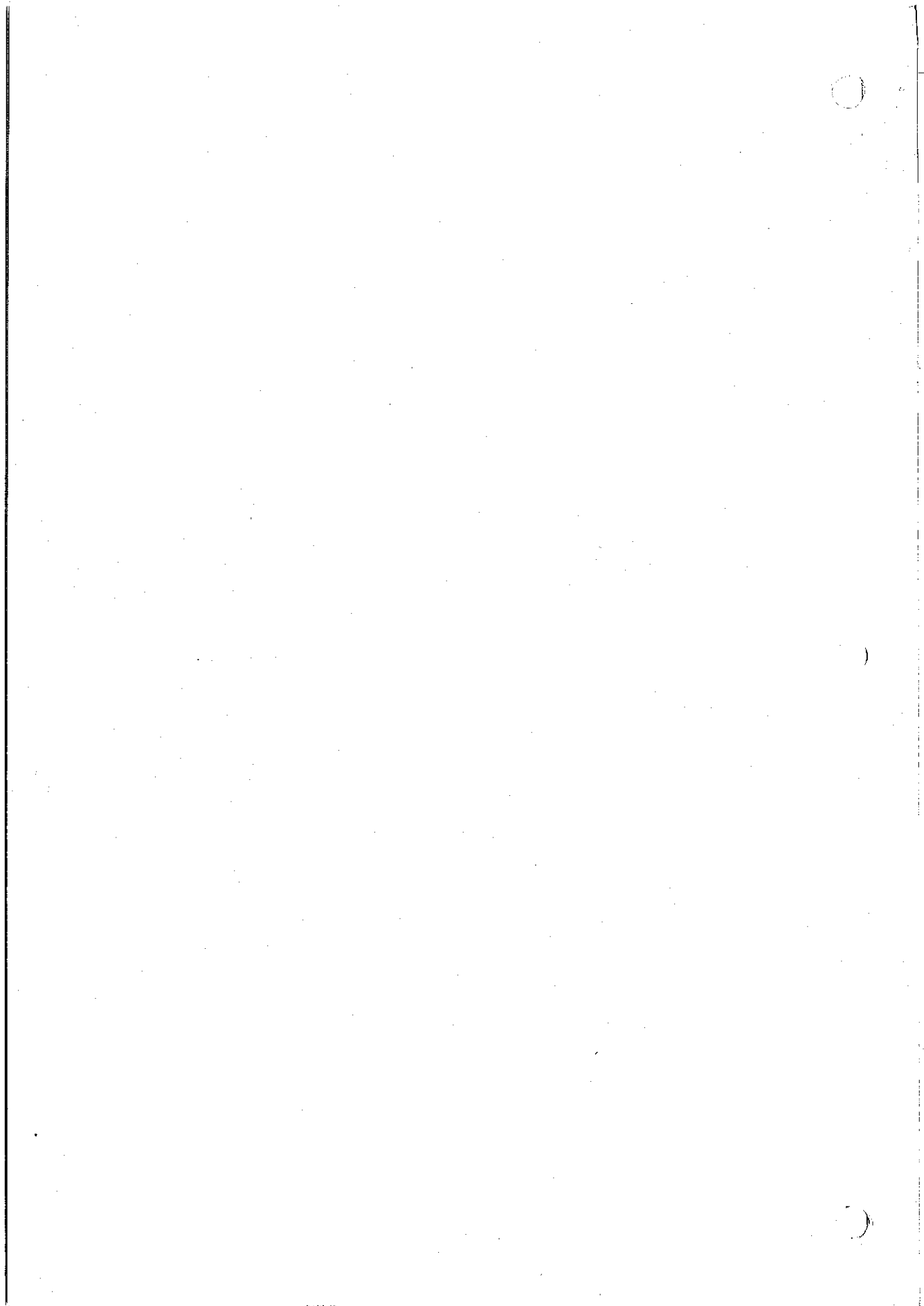
**Constitutional Laws and Documents.**

2.—ORGANIC LAWS<sup>1</sup>.

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<sup>1</sup>The *Organic Law on the First Meetings of the National Parliament*, which expired on 31 December 1975 and related to the calling of meetings to commence on 16 September and 29 September 1975, has not been included here.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the Advisory Committee on the Power of Mercy.*

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ARRANGEMENT OF SECTIONS.

1. Advisory Committee on the Power of Mercy.
2. Powers, procedures, etc.





INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

***Organic Law on the Advisory Committee on the Power of Mercy.***

Being a Provisional Organic Law to implement Section 152 (*Advisory Committee on the Power of Mercy*)<sup>1</sup> by making provision for the Advisory Committee on the Power of Mercy,

MADE by the Constituent Assembly to come into operation on Independence Day<sup>2</sup>.

**1. Advisory Committee on the Power of Mercy.**

(1) An Advisory Committee on the Power of Mercy is hereby established.

(2) The Committee shall consist of—

(a) a lawyer; and

(b) a medical practitioner with experience in psychiatry; and

(c) a member of the National Parliament; and

(d) a Minister of religion; and

(e) a person with experience in community work,

appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council by notice published in the National Gazette.

(3) At least one of the members of the Committee shall be a woman.

(4) The Head of State, acting with, and in accordance with, the advice of the National Executive Council shall appoint one of the members to be the Chairman.

**2. Powers, procedures, etc.**

(1) For the purpose of Division III.4 (*principles of natural justice*) of the Constitution, the Advisory Committee is a quasi-judicial body.

(2) The Advisory Committee shall be given full and free access to all records relating to the offence which, and the offender whom, it is considering.

(3) All questions before a meeting of the Committee shall be decided in accordance with the majority of votes, but nothing in this Law prevents a minority of<sup>3</sup> dissenting report being made.

(4) The Advisory Committee shall cause minutes of its meetings to be kept.

(5) Subject to this Law, the procedures of the Advisory Committee are as determined by it.

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<sup>1</sup> *Semble*, "of the Constitution" was omitted.

<sup>2</sup> "Adopted" on 31 July 1975, before the adoption of the Constitution, and "made" on 15 August 1975.

<sup>3</sup> *Semble*, "or" was intended.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the boundaries of the National Capital District.*

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ARRANGEMENT OF SECTIONS.

Boundaries of the National Capital District.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the boundaries of the National Capital District.*

Being a Provisional Organic Law to implement Section 4(3) (*National Capital District*) of the Constitution by defining the boundaries of the National Capital District,

MADE by the Constituent Assembly to come into operation on Independence Day<sup>1</sup>.

**Boundaries of the National Capital District.**

The boundaries of the National Capital District are as follows :—

Commencing at a point being the easternmost corner of Portion 1129 in the Milinch of Granville Fourmil of Moresby being a point on the high water mark of Moresby Harbour and bounded thence on the southeast by the southeastern boundaries of Portions 1129 and 1130 in the said Milinch southwesterly to the southernmost corner of the said Portion 1130 thence on the northwest by the northwestern boundary of the said Portion 1130 and part of the northwestern boundary of the said portion 1129 northeasterly to its intersection with the southwestern side of the Napa Napa to Port Moresby road formation thence generally on the southwest west and north by the generally southwestern western and northern sides of the said Napa Napa to Port Moresby road formation generally northwesterly northerly and easterly to a point due south of the summit of Huhundamo Hill thence on the west by a line due north to the said summit of Huhundamo Hill thence on the northwest by a straight line northeasterly to the summit of Tovobada Hill thence again on the northwest by a straight line northeasterly to the summit of Mount Saamu thence again on the northwest by a straight line northeasterly to the northernmost corner of Portion 994 in the said Milinch and a straight line in continuation thereof northeasterly to the left bank of the Laloki River thence generally on the northeast by the said left bank of the Laloki River about 10 miles upstream generally southeasterly to a point due north of the northwestern corner of Portion 907 in the said Milinch thence generally on the east by the northerly prolongation of the western boundary and the western boundary of the said Portion 907 part of the southeastern boundary of the said Portion 907 and a line in continuation thereof to the eastern side of the formation of the old Rigo Road the eastern boundary of the formation of the said old Rigo Road and part of the eastern boundary of the formation of the Port Moresby to Rigo Road generally southerly to a point due east of Ludumava Hill thence on the south by a straight line due west to a point 200 metres seaward from the seashore of Bogoro Inlet at high water thence again generally on the southwest by a line parallel to and 200 metres seaward from the said seashore at high water and the seashore of Bootless Inlet Joyce Bay Walter Bay Port Moresby Harbour and Fairfax Harbour at high water generally northwesterly to its intersection with the northeasterly prolongation of the southeastern boundary of Portion 1129 aforesaid thence again on the southeast by a straight line southwesterly to the point of commencement.

SECONDLY—Comprising the whole of Daunagena Island and the area contained within a line parallel to and 200 metres seaward from the seashore of the said Daunagena Island at high water.

THIRDLY—Comprising the whole of Manubada (Local) Island and the area contained within a line parallel to and 200 metres seaward from the seashore of the said Manubada Island at high water.

<sup>1</sup> "Adopted" on 31 July 1975, before the adoption of the Constitution, and "made" on 15 August 1975.

FOURTHLY—Comprising the whole of Motukea Island and the area contained within a line parallel to and 200 metres seaward from the seashore of the said Motukea Island at high water.

FIFTHLY—Comprising the whole of Gemo Island and the area contained within a line parallel to and 200 metres seaward from the seashore of the said Gemo Island at high water.

SIXTHLY—Comprising the whole of Lolorua Islands and the area contained within a line parallel to and 200 metres seaward from the seashore of the said Lolorua Islands at high water.

SEVENTHLY—Comprising the whole of Daugo (Fishermans) Island and the area contained within a line parallel to and 200 metres seaward from the seashore of the said Daugo Island at high water.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the calling of Meetings of the Parliament.*

---

ARRANGEMENT OF SECTIONS.

1. Calling of first meeting after a general election.
2. Calling of other meetings.
3. Calling meetings earlier.





INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the calling of Meetings of the Parliament.*

Being a Provisional Organic Law to implement Section 124 (*calling, etc.*) of the Constitution, MADE by the Constituent Assembly to come into operation on Independence Day.<sup>1</sup>

**1. Calling of first meeting after a general election.**

(1) The Head of State shall, after consultation with the outgoing Prime Minister and Speaker, by notice published in the National Gazette after the date fixed for the return of the writs for the general election, fix the time and date on which the Parliament shall meet for the first time after a general election.

(2) The date fixed under Subsection (1) shall be not more than 21 days after the date fixed for the return of the writs for the general election.

(3) The Head of State shall—

- (a) as soon as practicable after fixing a time and date under Subsection (1); and
- (b) not less than 14 days before that date; and
- (c) where a state of emergency has been declared, not less than seven days before that date,

cause a notice specifying that time and date to be forwarded by telegram or pre-paid post to each member of the Parliament.

**2. Calling of other meetings.**

(1) In relation to any meeting of the Parliament, other than the first meeting after a general election, the time and date for the meeting—

(a) shall—

- (i) be fixed by the Parliament on motion without notice by a Minister; or
- (ii) where the Parliament has failed to fix a time and date, be fixed by the Head of State, acting with and in accordance with, the advice of the National Executive Council; and
- (iii) where a state of emergency has been declared or the Head of State, acting with, and in accordance with, the advice of the National Executive Council, is of the opinion that exceptional circumstances justify the urgent calling of a meeting of the Parliament, be fixed by the Head of State, acting with and in accordance with the advice of the National Executive Council; or
- (iv) where the Speaker has received a request from the Emergency Committee under Section 242(3) (*functions, etc., of Emergency Committees*) of the Constitution, be fixed by the Speaker after consultation with the Emergency Committee; and

(b) shall be notified in the National Gazette.

(2) The Speaker shall, not less than 14 days before the date fixed under Subsection (1)(a) (i) or (ii) or not less than seven days before the date fixed under Subsection (1)(a) (iii)

<sup>1</sup> "Adopted" on 15 August 1975, after the adoption of the Constitution.

or (iv) for a meeting of the Parliament, cause a notice to be forwarded by telegram and pre-paid post to each member of the Parliament.

**3. Calling meetings earlier.**

(1) Notwithstanding that the time and date of a meeting of the Parliament have been previously fixed, the time and date for an earlier meeting may be fixed in the circumstances in which not less than seven days notice of the meeting is required under Sections 1 and 2.

(2) Action may not be taken under Subsection (1) less than 14 days before the date already fixed for the meeting.

(3) The meeting of the Parliament, the time and date of which are fixed under Subsection (1), shall be in substitution for the meeting, the time and date of which had been previously fixed.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on Certain Constitutional Office-holders.*

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ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Definitions—  
“the appointing authority”  
“constitutional office-holder” and “constitutional office”
2. Application of other law to constitutional office-holders.

PART II.—THE PUBLIC PROSECUTOR AND THE PUBLIC SOLICITOR.

3. Qualifications for appointment.
4. Conditions of employment.

PART III.—THE CHIEF MAGISTRATE.

5. Qualifications for appointment.
6. Conditions of employment.

PART IV.—THE CLERK OF THE NATIONAL PARLIAMENT.

7. Appointment.
8. Qualifications for appointment.
9. Conditions of employment.

PART V.—THE AUDITOR-GENERAL.

10. Qualifications for appointment and disqualifications from office.
11. Conditions of employment.

PART VI.—GENERAL.

12. Declaration of Office.
13. Term of office.
14. Disqualifications from office.
15. Conditions of employment general to all constitutional office-holders.
16. Resignation.
17. Retirement.
18. Acting constitutional office-holder.
19. Annual reports.

PART VII.—TRANSITIONAL.

20. First Public Prosecutor.
21. First Public Solicitor.
22. First Clerk of the National Parliament.
23. First Auditor-General.
24. Term of office of first constitutional office-holders.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on Certain Constitutional Office-holders.*

Being a Provisional Organic Law—

- (a) to implement Section 223(1) (*general provision for constitutional office-holders*) of the Constitution by making provision, where provision is not made by the Constitution, for and in respect of the qualifications, appointment and terms and conditions of employment of constitutional office-holders; and
- (b) under Section 267 (*transitional laws*) of the Constitution to provide, in relation to constitutional offices for the immediate filling of those offices,

MADE by the Constituent Assembly to come into operation on Independence Day<sup>1</sup>.

PART I.—PRELIMINARY.

1. Definitions.

In this Law, unless the contrary intention appears—

“the appointing authority” means—

- (a) in the case of the Public Prosecutor, the Public Solicitor and the Chief Magistrate—the Judicial and Legal Services Commission; and
- (b) in the case of the Clerk of the National Parliament—the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Speaker and the appropriate Permanent Parliamentary Committee; and
- (c) in the case of the Auditor-General—the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Public Accounts Committee;

“constitutional office-holder” means—

- (a) the Public Prosecutor; and
- (b) the Public Solicitor; and
- (c) the Chief Magistrate; and
- (d) the Clerk of the National Parliament; and
- (e) the Auditor-General,

and “constitutional office” has a corresponding meaning.

2. Application of other law to constitutional office-holders.

For the avoidance of doubt it is hereby declared that the provisions of the Organic Law on the Rights and Independence of Constitutional Office-holders applies to the constitutional office-holders to whom this Law applies.

<sup>1</sup> “Adopted” on 12 August 1975, before the adoption of the Constitution, and reconsidered and “re-adopted” on 15 August 1975, after the adoption of the Constitution.

PART II.—THE PUBLIC PROSECUTOR AND THE PUBLIC SOLICITOR.

**3. Qualifications for appointment.**

Subject to Section 14, a person is qualified for appointment as the Public Prosecutor or as the Public Solicitor—

- (a) if he is a lawyer who has practised as a lawyer—
  - (i) in Papua New Guinea; or
  - (ii) in a country with a legal system that, in the opinion of the Judicial and Legal Services Commission, is substantially similar to the legal system of Papua New Guinea; or
  - (iii) in Papua New Guinea and in a country referred to in subparagraph (ii), for a period of not less than three years after obtaining full admission to practise as a lawyer; and
- (b) where he is a person to whom subparagraph (ii) refers and he has not been admitted to practise as a lawyer in Papua New Guinea, if he is qualified to be so admitted.

**4. Conditions of employment.**

The salary and other conditions of employment of the Public Prosecutor and the Public Solicitor are as determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Judicial and Legal Services Commission.

PART III.—THE CHIEF MAGISTRATE.

**5. Qualifications for appointment.**

A person who—

- (a) is qualified for appointment as a Judge of the National Court; or
- (b) is a graduate in law of a University in Papua New Guinea and has not less than five years experience in the country as a full-time Magistrate,

is qualified for appointment as the Chief Magistrate.

**6. Conditions of employment.**

The salary and other conditions of employment of the Chief Magistrate are as determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Judicial and Legal Services Commission.

PART IV.—THE CLERK OF THE NATIONAL PARLIAMENT.

**7. Appointment.**

The Clerk of the National Parliament shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council after receiving reports from the Speaker and the appropriate Permanent Parliamentary Committee.

**8. Qualifications for appointment.**

(1) Subject to Section 14, a person is qualified for appointment as the Clerk of the National Parliament if he is qualified for appointment as an officer of the National Public Service.

(2) A non-citizen is not qualified for appointment as the Clerk of the National Parliament.

**9. Conditions of employment.**

The salary and other conditions of employment of the Clerk of the National Parliament are as determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Speaker and the Public Services Commission.

**PART V.—THE AUDITOR-GENERAL.**

**10. Qualifications for appointment and disqualifications from office.**

(1) Subject to Section 14, a person is qualified for appointment as the Auditor-General if he possesses such professional accountancy qualifications as, in the opinion of the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving a report from the Public Services Commission, are appropriate.

(2) The Auditor-General shall not directly or indirectly accept or receive any benefit from, or participate in, any enterprise, institution, fund or any other body—

- (a) that holds a concession from the National Government; or
- (b) that is assisted in any way by the National Government; or
- (c) in the management of which the National Government has a share; or
- (d) that is subject to—
  - (i) the control of the National Government; or
  - (ii) inspection and audit by the Auditor-General.

(3) Nothing in Subsection (2) prevents the Auditor-General from obtaining normal bank loans from a bank which is wholly or partly owned by the National Government or in which the National Government has an interest.

(4) In this section, "the National Government" includes an instrumentality or authority of the National Government.

**11. Conditions of employment.**

The salary and other conditions of employment of the Auditor-General are as determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving a report from the Public Services Commission.

**PART VI.—GENERAL.**

**12. Declaration of Office.**

Before entering upon the duties of his office, a constitutional office-holder shall make the Declaration of Office before the Chief Justice or a person appointed by the Chief Justice.



**13. Term of office.**

A constitutional office-holder shall be appointed—

- (a) in the case of any citizen of Papua New Guinea appointed to office for the first time within 10 years after Independence Day—for a term of three years; and
- (b) in the case of any other citizen—for a term of six years; and
- (c) in the case of a non-citizen—for a term of three years,

and is eligible for re-appointment.

**14. Disqualifications from office.**

A person is not qualified to be, or to remain, a constitutional office-holder if he is—

- (a) a member of the Parliament; or
- (b) a member of a Provincial legislature; or
- (c) a member of a Local Government Council or Authority; or
- (d) an office-holder in a registered political party; or
- (e) an undischarged bankrupt or insolvent; or
- (f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (g) under sentence of death of<sup>1</sup> imprisonment.

**15. Conditions of employment general to all constitutional office-holders.**

(1) A constitutional office-holder shall not—

- (a) actively engage in politics; or
- (b) subject to Subsection (2), engage either directly or indirectly in the management or control of a corporation or other body of persons carrying on business for profit; or
- (c) subject to Subsection (3), acquire by way of gift or otherwise, or use or hold in any other manner any interest in, any property of Papua New Guinea or solicit, accept or receive any other benefit in addition to his terms and conditions of employment.

(2) Nothing in Subsection (1)(b) prevents a constitutional office-holder from holding office in a professional body in relation to which his qualifications are relevant.

(3) Subject to any Organic Law made for the purposes of Division III.2 (*leadership code*), a constitutional office-holder who is a citizen may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

**16. Resignation.**

(1) A constitutional office-holder may resign by giving three months' notice in writing of his intention to do so to the appointing authority.

(2) The period of three months specified in Subsection (1) shall be deemed to commence on the twenty-second day after the receipt by the appointing authority of the notice except where the appointing authority, by notice in writing to the constitutional office-holder, fixes an earlier date for its commencement.

<sup>1</sup> *Semble*, "or" was intended.

(3) A constitutional office-holder may withdraw his resignation at any time before the notice commences.

**17. Retirement.**

(1) Subject to Subsection (2), a person who has attained the age of 55 years shall not be appointed or re-appointed to a constitutional office, and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 55 years.

(2) The appointing authority may, in its deliberate judgement, in a particular case, extend the retiring age specified in Subsection (1) to, but not beyond, 60 years.

**18. Acting constitutional office-holder.**

A person who is qualified under this Law for appointment as constitutional office-holder may be appointed to be an acting constitutional office-holder—

(a) to fill temporarily a vacancy; or

(b) in the case of the absence from duty for any reason of a constitutional office-holder.

**19. Annual reports.**

(1) A constitutional office-holder shall, at least once during each period of 12 months and at such times as are fixed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, give to the Head of State, for presentation to the National Parliament, a report on the work of his constitutional office, with such recommendations as to improvement as he thinks proper.

(2) Nothing in Subsection (1) prevents a constitutional office-holder from making, on his own initiative or at the request of the National Parliament or of the National Executive Council, other reports of the work of his constitutional office.

**PART VII.—TRANSITIONAL.**

**20. First Public Prosecutor.**

The person in office immediately before Independence Day as the Chief Crown Prosecutor or acting Chief Crown Prosecutor is the first Public Prosecutor or acting Public Prosecutor, as the case may be, on the same terms and conditions that were applicable to him immediately before that day.

**21. First Public Solicitor.**

The person in office immediately before Independence Day as the Public Solicitor or acting Public Solicitor is the first Public Solicitor or acting Public Solicitor, as the case may be, on the same terms and conditions that were applicable to him immediately before that day.

**22. First Clerk of the National Parliament.**

The person in office immediately before Independence Day as the Clerk of the pre-Independence House of Assembly or acting Clerk of that House of Assembly is the first Clerk of the National Parliament or acting Clerk of the National Parliament, as the case may be, on the same terms and conditions that were applicable to him immediately before that day.

**23. First Auditor-General.**

The person in office immediately before Independence Day as the Auditor-General or acting Auditor-General is the first Auditor-General or acting Auditor-General, as the case may be, for the balance of his term of office remaining unexpired immediately before that day, and on the same terms and conditions that were applicable to him immediately before that day.

**24. Term of office of first constitutional office-holders.**

(1) The persons appointed as the first constitutional office-holders shall remain in office—

- (a) in the case of the first Public Prosecutor—until the third anniversary of Independence Day or until the date on which a Public Prosecutor is appointed under Section 176 (*establishment of offices*) of the Constitution, whichever is the earlier; and
- (b) in the case of the first Public Solicitor—until the third anniversary of Independence Day or until the date on which a Public Solicitor is appointed under Section 176 (*establishment of offices*) of the Constitution, whichever is the earlier; and
- (c) in the case of the first Clerk of the National Parliament until the third anniversary of Independence Day or until the date on which a Clerk of the National Parliament is appointed under Section 7; whichever is the earlier.

(2) Nothing in this section or Section 23 prevents a first constitutional office-holder from being re-appointed as a constitutional office-holder.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the Guarantee of the Rights and Independence of  
Constitutional Office-holders.*

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Definitions—  
“constitutional office-holder”  
“the appointing authority”  
“the tribunal”.

PART II.—RETENTION OF PUBLIC SERVICE RIGHTS.

2. Retention of Public Service rights.

PART III.—REMOVAL FROM OFFICE.

3. Part not to apply to certain office-holders.
4. Constitutional Office-holders Rights Tribunal.
5. Referral of matters to the tribunal.
6. Tribunal not bound by legal formalities, etc.
7. Grounds of removal.
8. Removal from office.
9. Suspension.

PART IV.—TERMINATION OF EMPLOYMENT.

10. Rights on termination of employment.

PART V.—MISCELLANEOUS.

11. Special provisions for first constitutional office-holders.
12. Former constitutional office-holders on re-employment subject to Public Service legislation.
13. Protection of officers under control of constitutional office-holders.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

***Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders.***

Being a Provisional Organic Law to implement Section 223(2) (*general provision for constitutional office-holders*) of the Constitution by providing guarantees as to the rights and independence of constitutional office-holders,

MADE by the Constituent Assembly to come into operation on Independence Day<sup>1</sup>.

PART I.—PRELIMINARY.

1. Definitions.

In this Law—

- “constitutional office-holder” has the same meaning as in Section 221 (*definitions*) of the Constitution;
- “the appointing authority” in relation to a constitutional office-holder, means the person or body specified in the Constitution or in the relevant Organic Law, as the case may be, to be the authority responsible for the appointment of the constitutional office-holder;
- “the tribunal” means the Constitutional Office-holders Rights Tribunal established by Section 4.

PART II.—RETENTION OF PUBLIC SERVICE RIGHTS.

2. Retention of Public Service Rights.

If a constitutional office-holder was, immediately before his appointment, an officer of the pre-Independence Public Service or the National Public Service, his service as a constitutional office-holder shall be counted as service in the National Public Service for the purposes of determining his rights (if any) in respect of—

- (a) absence on leave on the ground of illness; and
- (b) furlough or pay in lieu of furlough (including pay to dependants or personal representatives on the death of the office-holder).

PART III.—REMOVAL FROM OFFICE.

3. Part not to apply to certain office-holders.

This Part does not apply to—

- (a) the Chief Justice of the National Court<sup>2</sup>; and
- (b) a Judge of the National Court; and
- (c) the Public Solicitor; and
- (d) the Public Prosecutor; and

<sup>1</sup> “Adopted” on 12 August 1975, before the adoption of the Constitution, and “made” on 15 August 1975.

<sup>2</sup> This reference is incorrect. The draft Constitution was amended by the National Constituent Assembly to refer to “the Chief Justice of Papua New Guinea” (*see* Constitution, Section 169(1)).

(e) the Chief Magistrate,

being persons to whom Subdivision VI.5.H (*removal from office of senior judicial and legal office-holders*) of the Constitution applies.

**4. Constitutional Office-holders Rights Tribunal.**

(1) There is hereby established a Constitutional Office-holders Rights Tribunal.

(2) The Tribunal shall consist of a Chairman and two other members, each of whom must be a Judge of the National Court.

**5. Referral of matters to the tribunal.**

(1) If the appointing authority is satisfied that the question of the removal from office of a constitutional office-holder should be investigated, it shall, by notice in writing to the Chief Justice, request that he appoint three Judges to be the Chairman and members of the tribunal to hear and determine the matter.

(2) Nothing in Subsection (1) prevents the Chief Justice from appointing himself as the Chairman or a member of the tribunal.

**6. Tribunal not bound by legal formalities, etc.**

The tribunal shall make due enquiry into any matter referred to it without regard to legal formalities or the rules of evidence, and shall inform itself in such manner as it thinks proper, subject to compliance with the principles of natural justice.

**7. Grounds of removal.**

A constitutional office-holder may be removed from office only—

(a) for inability (whether arising from physical or mental infirmity or otherwise) to perform the functions and duties of his office; or

(b) for misbehaviour; or

(c) in accordance with Division III.2 (*leadership code*) of the Constitution, for misconduct in office; or

(d) for a breach or contravention of a condition of employment laid down in the Organic Law relating to the Office-holder.

**8. Removal from office.**

(1) The appointing authority shall, at the same time as it takes action under Section 5, refer the matter of the removal of the constitutional office-holder from office, together with a statement of the reasons for its opinion, to the tribunal for investigation and report back to it.

(2) If the tribunal reports that the constitutional office-holder should be removed from office, the appointing authority shall, by notice in writing to the office-holder, remove him from office.

(3) The appointing authority shall send a copy of the notice, together with a copy of the report of the tribunal to the Speaker for presentation to the Parliament.

**9. Suspension.**

(1) Where a question has been referred to a tribunal under this Law, the appointing authority—

(a) may suspend the constitutional office-holder from office pending the report of the tribunal; and

- (b) may remove the suspension at any time; and
- (c) shall remove the suspension where the tribunal does not recommend removal from office.

(2) Unless otherwise determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, the suspension shall be on full pay.

(3) Where at the time of the suspension a suspended constitutional office-holder was dealing with any quasi-judicial proceedings, he may continue and complete those proceedings, unless the appointing authority otherwise orders.

PART IV.—TERMINATION OF EMPLOYMENT.

10. Rights on termination of employment.

(1) This section does not apply to—

- (a) a constitutional office-holder who has been removed from office under this Law or any other Organic Law or the Constitution; or
- (b) a constitutional office-holder who is a non-citizen; or
- (c) a first appointee to the constitutional office who was immediately prior to his appointment an officer of the pre-Independence Public Service.

(2) Where an Act of the Parliament does not provide for an adequate and suitable pension or other retirement benefit for a constitutional office-holder, the Public Services Commission shall, where the term of office of the constitutional office-holder has expired and he has not been re-appointed to the same or an equivalent position, offer to him—

- (a) where he was, immediately before his appointment to the constitutional office, an officer of the National Public Service, re-employment in an office in the National Public Service at least equivalent in status and type of work to the office he occupied prior to his appointment and, notwithstanding the salary payable to any other person occupying that office, a salary equivalent to that which he was receiving as a constitutional office-holder immediately before the expiration of his term of office; or
- (b) where he was, immediately before his appointment a person, other than a person referred to in paragraph (a)—
  - (i) employment in an office in the National Public Service, being an office the occupant of which is entitled to contribute to a superannuation or other pension scheme, at least equivalent—
    - (A) in salary to the salary paid to him as a constitutional office-holder; and
    - (B) in status and type of work to the position he occupied prior to his appointment as a constitutional office-holder; and
  - (ii) an annual retirement pension equivalent to 70 per centum of the salary payable from time to time to the occupant of the constitutional office that he occupied immediately before the expiration of his term of office.

(3) Where in this section an equivalent of any matter has to be determined, that equivalent shall be determined by the Public Services Commission who, for the purposes of carrying out its functions under this section, is not subject to control or direction by any person or body.



(4) Where the Public Services Commission, in relation to a person referred to in Subsection (2)(a), determines that no equivalent office or position is available for the re-employment of that person, it shall grant to that person an annual pension equivalent to 70 per centum of the salary payable from time to time to the occupant of the constitutional office that he occupied immediately before the expiration of his term of office.

(5) A person referred to in Subsection (2)(b) shall, within a reasonable time after receiving the offer referred to in that subsection, accept one or other of the alternatives offered to him and where he fails to do so, the Public Services Commission shall grant to him the pension referred to in Subsection (2)(b)(ii).

PART V.—MISCELLANEOUS.

**11. Special provisions for first constitutional office-holders.**

(1) Where an Act of the Parliament does not provide for an adequate and suitable pension or other retirement benefit for a first appointee to a constitutional office who was, immediately prior to his appointment an officer of the pre-Independence Public Service, the Public Services Commission shall, where the term of office of that constitutional office-holder has expired and he has not been re-appointed to the same or an equivalent position, offer to him re-employment in an office in the National Public Service at least equivalent in salary, status and type of work to the office he occupied in the pre-Independence Public Service prior to his appointment.

(2) Where in this section an equivalent of any matter has to be determined, that equivalent shall be determined by the Public Services Commission who, for the purposes of carrying out its functions under this section, is not subject to control or direction by any person or body.

**12. Former constitutional office-holders on re-employment subject to Public Service legislation.**

Subject to Section 10(2)(b)(i)<sup>1</sup>, all laws for the time being applying to officers in the National Public Service apply to and in relation to all former constitutional office-holders who have been employed or re-employed in the National Public Service.

**13. Protection of officers under control of constitutional office-holders.**

An officer whilst acting on the instructions and on behalf of a constitutional office-holder in the performance of that office-holder's constitutional functions is not subject to direction or control in the exercise of those functions by any person other than that constitutional office-holder.

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<sup>1</sup> *Sic.*

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on immediate and transitional constitutional provisions.*

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ARRANGEMENT OF SECTIONS.

PART I.—INTRODUCTORY.

1. Interpretation.

PART II.—CONTINUATION OF ALL ACTS, MATTERS AND THINGS.

*Division 1.—General Principles.*

2. Continuing effect of pre-Independence laws.
3. Declarations, affirmations, etc.

*Division 2.—Special Provisions.*

4. Effect of Part III.
5. Former instrumentalities, etc.
6. Former officers, etc.
7. First Secretary to the National Executive Council.
8. First Magistrates.
9. First subordinate courts.
10. Pending legal proceedings.
11. Saving of judgements, etc.
12. Former provincial government bodies.
13. Former Local Government bodies.
14. Power of Mercy.

PART III.—INTERPRETATION OF PRE-INDEPENDENCE LAWS.

15. Application.
16. References in pre-Independence laws.

SCHEDULE—References in Pre-Independence Laws.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

***Organic Law on immediate and transitional constitutional provisions.***

Being a Provisional Organic Law to provide, in accordance with Section 277<sup>1</sup> (*transitional laws*) of the Constitution, for immediate and transitional matters related to the Constitution,

MADE by the Constituent Assembly to come into operation on Independence Day<sup>2</sup>.

PART I.—INTRODUCTORY.

1. Interpretation.

In this Law, a reference to—

- (a) a pre-Independence law shall be read as a reference to a law adopted by Section Sch.2.6 (*adoption of pre-Independence laws*) of the Constitution as in force immediately before the relevant time in relation to that law; and
- (b) a pre-Independence office, institution, instrumentality or body established by or under a pre-Independence law shall be read as a reference to that office, institution, instrumentality or body as in existence immediately before the relevant time in relation to the law by or under which it was established; and
- (c) the relevant time in relation to a pre-Independence law shall be read as a reference<sup>3</sup>—
  - (i) in the case of a law repealed by the *Laws Repeal Act 1975*<sup>4</sup>—the time at which that Act came into operation<sup>5</sup>; and
  - (ii) in the case of the *Papua New Guinea Act 1949-1974*<sup>6</sup> of Australia—the time at which the *Papua New Guinea Independence Act 1975* of Australia came into operation; and
  - (iii) in the case of any other law of Australia or any law of England—Independence Day.

PART II.—CONTINUATION OF ALL ACTS, MATTERS AND THINGS.

*Division 1.—General Principles.*

2. Continuing effect of pre-Independence laws.

(1) All acts, matters and things done or suffered and all institutions and bodies established by, under or for the purposes of a pre-Independence law before Independence Day have the same effect and the same consequences as they had immediately before Independence Day.

<sup>1</sup> This reference is incorrect. It seems that the correct reference is to Section 267, and "277" was the numbering in the draft Constitution debated and amended by the National Constituent Assembly.

<sup>2</sup> "Adopted" on 20 August 1975, after the adoption of the Constitution.

<sup>3</sup> *Semble*, "to" was omitted.

<sup>4</sup> Act No. 93 of 1975, made by the pre-Independence House of Assembly and not adopted by the Constitution (*see* Constitution, Section Sch.2.6).

<sup>5</sup> This Act came into force "immediately before the expiry of 15 September 1975".

<sup>6</sup> After this Provisional Organic Law was made, the *Papua New Guinea Act 1975* of Australia came into operation.

(2) The effect of Subsection (1) extends to—

- (a) all rights, privileges, obligations, liabilities, penalties, forfeitures and punishments acquired accrued or incurred before Independence Day; and
- (b) all investigations, legal proceedings and remedies in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation or legal proceedings may be instituted or continued and any such remedy, right, privilege, obligation or liability may be enforced, and any such penalty, forfeiture or punishment may be imposed, in the same way, and subject to the same conditions, limitations and restrictions that applied, immediately before Independence Day.

### 3. Declarations, affirmations, etc.

(1) Subject to Subsections (2) and (3), where—

- (a) a person who occupied a pre-Independence office or position is by a Constitutional Law or this Law appointed or deemed to have been appointed on Independence Day to the corresponding office or position under a Constitutional Law; and
- (b) but for this subsection, he would be required to make a Declaration of Loyalty, Judicial Declaration or Declaration of Office before taking up his duties,

it is not necessary for him to make that Declaration.

(2) Subsection (1) does not apply to the making by the Judges of the Judicial Declaration.

(3) Subject to Subsection (4)<sup>1</sup>, the National Executive Council may at any time require a person, or members of a class of persons, to whom Subsection (1) applies to make the Declaration of Loyalty, Judicial Declaration or Declaration of Office before a person appointed by the National Executive Council for the purpose, and if a person so required fails to do so he may be suspended from office and dealt with for misconduct in office under the Constitution or any relevant law.

### *Division 2.—Special Provisions.*

#### 4. Effect of Part III<sup>2</sup>.

Nothing in this Division derogates the generality of Section 3 but its provisions are designed to remove doubts and to clarify and expand the application of that section in a limited number of cases.

#### 5. Former instrumentalities, etc.

Except where the contrary intention appears, nothing in the Constitution affects the status or identity of any institution, instrumentality or body established under a pre-Independence law before the relevant time.

#### 6. Former officers, etc.

A person who, immediately before the relevant time in relation to the pre-Independence law under which he was appointed, was—

- (a) the holder of an office under a pre-Independence law; or

<sup>1</sup> There was no Subsection (4).

<sup>2</sup> *Semble*, Division II.2 was intended.

- (b) a member, officer or employee of an institution, instrumentality or body established by or under a pre-Independence law; or
- (c) an officer or employee of the pre-Independence Public Service; or
- (d) a member of the pre-Independence Police Force; or
- (e) a member of the pre-Independence Defence Force; or
- (f) a member, associate or auxiliary member of the pre-Independence Teaching Service; or
- (g) a member of the pre-Independence Correctional Service,

holds, on Independence Day, the equivalent office or position under the Constitution, the laws made under and for the purposes of the Constitution or the laws adopted by the Constitution, as the case may be, for the balance of his term of office remaining unexpired immediately before the relevant time, and on the same terms and conditions that were applicable to him immediately before that time.

#### 7. First Secretary to the National Executive Council.

(1) Notwithstanding anything in any other law, the pre-Independence Secretary to the Cabinet in office immediately before Independence Day is the first Secretary to the National Executive Council for the period ending on the date—

- (a) on which<sup>1</sup> a Secretary to the National Executive Council is formally appointed; or
- (b) he resigns; or
- (c) is dismissed from office by the Head of State, acting with, and in accordance with, the advice of the National Executive Council for inefficiency, gross inability or misconduct in office,

whichever first occurs, in<sup>2</sup> the same terms and conditions as were applicable to him immediately before Independence Day.

(2) Nothing in this section prevents the first Secretary from being appointed as the Secretary to the National Executive Council.

#### 8. First Magistrates.

(1) All Magistrates of District Courts (other than Stipendiary and Resident Magistrates), Local Courts (other than full-time Magistrates), Children's Courts, Local Land Courts, District Land Courts and village courts in office immediately before the relevant time in relation to the pre-Independence law under which they were appointed become on Independence Day, Magistrates of District Courts, Local Courts, Children's Courts, Local Land Courts, District Land Courts and Village Courts, respectively on the same terms and conditions that were applicable to them immediately before the relevant time.

(2) All Stipendiary Magistrates, Resident Magistrates and Local Court Magistrates full-time in office immediately before the relevant time in relation to the pre-Independence law under which they were appointed become on Independence Day—

- (a) the first members of the Magisterial Service; and

<sup>1</sup> Presumably the words "on which" were intended to follow immediately after "ending on the date" in the introductory words to Subsection (1).

<sup>2</sup> *Semble*, "on".

- (b) Senior District Magistrates—Magistrates Grade IV, District Magistrates—Magistrates Grade III, and Local Court Magistrates—Magistrates Grade I, respectively,

on the same terms and conditions that were applicable to them immediately before the relevant time.

#### 9. First subordinate courts.

All District Courts, Local Courts, Children's Courts, Local Land Courts, District Land Courts and village courts established and in existence before the relevant time in relation to the pre-Independence law under which they were established are, on Independence Day, re-established as District Courts, Local Courts, Children's Courts, Local Land Courts, District Land Courts or Village Courts, as the case may be, of Papua New Guinea.

#### 10. Pending legal proceedings.

Subject to the *Supreme Court Act 1975*<sup>1</sup> and the *National Court Act 1975*<sup>1</sup>, any action, suit, cause, matter or proceeding which was pending in any pre-Independence court or tribunal immediately before the relevant time in relation to the law by or under which the court or tribunal was established is, by force of this section, transferred to, and shall be continued before, the corresponding court or tribunal of Papua New Guinea as if it had originated in that court or tribunal.

#### 11. Saving of judgements, etc.

Every order made, or judgement, decree, sentence or direction given or act done by a pre-Independence District Court, Local Court, Children's Court, Local Land Court, District Land Court or Village Court or by a Magistrate of such a court shall be deemed to have been made, given or done by the District Court, Local Court, Children's Court, Local Land Court, District Land Court or Village Court or a Magistrate of such a Court, as the case requires, re-established by Section 9.

#### 12. Former provincial government bodies.

All provincial government bodies established under the pre-Independence law entitled the *Provincial Government (Preparatory Arrangements) Act 1974*<sup>2</sup> and in existence immediately before the relevant time are, on Independence Day, re-established as provincial government bodies, without otherwise affecting their respective memberships, constitutions, powers, functions, status or identities.

#### 13. Former Local Government bodies.

All pre-Independence Local Government Councils and Local Government Authorities established under or continued in operation by the pre-Independence law known as the *Local Government Act 1963*<sup>3</sup> and in existence immediately before the relevant time are, on Independence Day re-established as Local Government Councils or Local Government Authorities, as the case may be, of Papua New Guinea, without otherwise affecting their respective memberships, constitutions, powers, functions, status or identities.

<sup>1</sup> Printed in this Revised Edition as the *Supreme Court Act* and the *National Court Act* respectively.

<sup>2</sup> Printed in this Revised Edition as the *Provincial Government (Preparatory Arrangements) Act*.

<sup>3</sup> Printed in this Revised Edition as the *Local Government Act*.

**14. Power of Mercy.**

The powers conferred by Section 151 (*grant of pardon*<sup>1</sup>) of the Constitution extends to the granting of a pardon, remission, commutation or respite<sup>2</sup> in respect of an offence against, or a sentence imposed under, any pre-Independence law in force in Papua New Guinea immediately before the relevant time.

PART III.—INTERPRETATION OF PRE-INDEPENDENCE LAWS.

**15. Application<sup>3</sup>.**

(1) Notwithstanding anything contained in this Law, this Part shall not come into operation if, on or before Independence Day the pre-Independence law known as the *Ordinances Interpretation Act 1949* is repealed by another pre-Independence law relating to the interpretation of legislation.

(2) Subject to Subsection (1), this Law expires if the pre-Independence law known as the *Ordinances Interpretation Act 1949* is repealed by an Act of the Parliament relating to the interpretation of legislation.

**16. References in pre-Independence laws.**

A reference, direct or indirect, in a pre-Independence law to an institution, office or thing set out in Column 1 of the Schedule shall be read as a reference to the institution, office or thing set out in Column 2 of the Schedule in relation to it.

SCHEDULE.

Sec., 2<sup>4</sup>.

REFERENCES IN PRE-INDEPENDENCE LAWS.

Column 1. <i>Pre-Independence Reference.</i>	Column 2. <i>Corresponding Independence References.</i>
Executive Council	National Executive Council
Auditor-General	Auditor-General of Papua New Guinea
Chief Minister	Prime Minister
Clerk of the House of Assembly	Clerk of the National Parliament
Crown Law Officer	(a) In relation to the prosecution function— the Public Prosecutor. (b) In any other case—the principal legal adviser to the National Executive.
Defence Force of Australia	Defence Force
District (other than in relation to the National Capital District)	Province
Full Court of the Supreme Court	Supreme Court
<i>Government Gazette</i>	National Gazette

<sup>1</sup> "Grant of pardon, etc." in the Constitution as adopted.

<sup>2</sup> *Semble*, "respite" was intended—compare Constitution, Section 151(1)(c).

<sup>3</sup> The *Ordinances Interpretation Act 1949* was repealed by the *Interpretation (Interim Provisions) Act 1975*, the relevant provisions of which came into operation on 16 September 1975, and therefore Part III. of this Act did not come into operation.

<sup>4</sup> *Semble*, Section 16.



## REFERENCES IN PRE-INDEPENDENCE LAWS.

Column 1. <i>Pre-Independence Reference</i>	Column 2. <i>Corresponding Independence References.</i>
High Commissioner	(a) In relation to fixing a date or dates for the commencement of pre-Independence laws—the Head of State. (b) In any other case—the Minister.
High Commissioner in Council	Head of State, acting with, and in accordance with, the advice of the National Executive Council
Holder of a ministerial office	Minister
House of Assembly	The National Parliament
Judge	Judge of the Supreme Court or of the National Court (as the case requires)
Ministerial Office	Office of Minister
Minister of the House of Assembly	Minister
Oath of Allegiance	Declaration of Loyalty
Public Account	Consolidated Fund
Public Service Board	Public Services Commission
Royal Papua New Guinea Constabulary	Police Force
Rules of Court, in relation to Supreme Court (otherwise than to a Full Court)	Rules of Court of the National Court
Senior puisne judge	Deputy Chief Justice
Standing Committee of the House of Assembly	Permanent Parliamentary Committee
Standing Committee on Public Accounts	Public Accounts Committee
Standing Orders of the House of Assembly	Standing Orders of the National Parliament
Supreme Court	National Court.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the Internment Tribunal.*

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ARRANGEMENT OF SECTIONS.

1. Interpretation—
  - "Chairman"
  - "internee"
  - "Internment Act".
  - "national emergency"
  - "President of the Tribunal"
  - "Tribunal".
2. Internment Tribunal.
3. Conditions of service of member.
4. Term of office.
5. Declaration of office.
6. Disqualification from office.
7. Resignation.
8. Sitting of the Tribunal.
9. Chairman.
10. Functions of the Tribunal.
11. Procedures of the Tribunal.
12. Powers of the Tribunal.
13. Constitution of Tribunal where case of an internee is being reviewed on a second or subsequent occasion.
14. Member related, etc., to internee not to review case of that internee.
15. Contempt of the Tribunal.
16. Giving false evidence.
17. Privilege.
18. Preservation of secrecy.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the Internment Tribunal.*

Being an Organic Law to implement Section 245(1)(e) (*internment*) of the Constitution by providing for the establishment of an independent and impartial Tribunal to review the cases of internees (other than enemy aliens), and for related purposes.

**1. Interpretation.**

In this Organic Law, unless the contrary intention appears—

“Chairman” means the Chairman of a sitting of the Tribunal;

“internee” means a person interned under an Internment Act;

“Internment Act” means an Act of the Parliament passed in accordance with Section 244 (*laws providing for internment*) of the Constitution;

“national emergency” means a national emergency declared under Section 228 (*declaration of national emergency*) of the Constitution;

“President of the Tribunal” means the President of the Tribunal appointed under Section 2(4);

“Tribunal” means an Internment Tribunal established under Section 2.

**2. Internment Tribunal.**

(1) Where—

(a) a national emergency has been declared; and

(b) the Parliament has passed an Internment Act,

there shall be established, as soon as practicable, for the purposes of reviewing the cases of internees under that Internment Act, an Internment Tribunal.

(2) The Tribunal shall consist of 12 members appointed by the Head of State, acting on advice, by notice in the National Gazette from a list of names approved by the Judicial and Legal Services Commission.

(3) At least three of the members shall be—

(a) qualified to be a Judge of the National Court; or

(b) a person who holds office as a magistrate of the highest grade or classification.

(4) The Head of State, acting on advice, shall appoint one of the members qualified under Subsection (3) to be President of the Tribunal.

**3. Conditions of service of member.**

The terms and conditions of employment of the members of the Tribunal are as determined from time to time by the Head of State, acting with, and in accordance with, the advice of the Public Services Commission.

**4. Term of office.**

A member of the Tribunal shall be appointed for the duration of the Tribunal.

**5. Declaration of office.**

Before entering upon the duties of his office, a member of the Tribunal shall make the Declaration of Office before the Chief Justice or a Judge of the National Court appointed by the Chief Justice.

**6. Disqualifications from office.**

A person is not qualified to be, or to remain a member of the Tribunal if he is—

- (a) interned under an Internment Act; or
- (b) of unsound mind within the meaning of any law relating to the protection of the person or property of persons of unsound mind; or
- (c) under sentence of death or imprisonment.

**7. Resignation.**

A member of the Tribunal may resign by giving written notice of his intention to do so to the appointing authority.

**8. Sitting of the Tribunal.**

(1) A sitting of the Tribunal may be held by three members of the Tribunal, at least one of whom shall be qualified to be a Chairman of the Tribunal in accordance with Section 9(1).

(2) Simultaneous sittings of the Tribunal may be held in different places.

**9. Chairman.**

(1) A person who—

- (a) is qualified to be a Judge of the National Court; and
- (b) until 16 September 1985, holds office as a magistrate of the highest grade or classification,

is qualified to be a Chairman of the Tribunal.

(2) Subject to Subsection (3), the member of a sitting of the Tribunal qualified to be a Chairman shall be the Chairman.

(3) Where, at a sitting of the Tribunal, more than one member of the Tribunal is qualified to be a Chairman, the members present shall elect the Chairman from the members so qualified.

**10. Functions of the Tribunal.**

The functions of the Tribunal are as specified in Section 245 (*internment*) of the Constitution.

**11. Procedures of the Tribunal.**

(1) The Tribunal shall sit at such times and places as are fixed by the President of the Tribunal.

(2) The Chairman shall preside at all sittings of the Tribunal.

(3) All matters before a sitting of the Tribunal shall be decided in accordance with a majority of votes.

(4) The Tribunal shall cause reports of its findings to be recorded and kept.

(5) A sitting of the Tribunal may, if the Tribunal so decides, be conducted in private.

(6) The Tribunal may hear or obtain information from any person who the Tribunal considers can assist and may make whatever inquiries it thinks fit.

(7) Subject to this Organic Law the procedures of the Tribunal are as determined by it.

**12. Powers of the Tribunal.**

(1) For the purposes of the exercise of and performance of its functions the Tribunal may—

- (a) summon witnesses, by instrument under the hand of a member of the Tribunal; and
- (b) take evidence on oath or affirmation and administer oaths and affirmations for the purpose; and
- (c) by instrument under the hand of a member of the Tribunal, require a person to produce a document, book or paper in his possession or control.

(2) Subject to Subsection (3), a person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him)—

- (a) to attend before the Tribunal at the time and place appointed in the summons or requirement; or
- (b) to be sworn or make an affirmation; or
- (c) to answer any question put to him by a member of the Tribunal; or
- (d) to produce the document, book or paper,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) It is a defence to a charge of an offence against Subsection (2) for failing without reasonable excuse to answer a question, or to produce a book or paper, if the defendant proves that the question, document, book or paper was not relevant to the matter in connexion with which the question was asked or the production of the document, book or paper was required, as the case may be.

**13. Constitution of Tribunal where case of an internee is being reviewed on a second or subsequent occasion.**

Where the case of an internee is being reviewed on a second or subsequent occasion, a majority of the members (including the Chairman) of the sitting of the Tribunal which conducts that review shall, as far as practicable, be different from the members of the sitting of the Tribunal which previously reviewed the case of that internee.

**14. Member related, etc., to internee not to review case of that internee.**

Where a member of a tribunal—

- (a) is related by kinship to; or
- (b) has any business connexion with; or
- (c) considers that there are any factors which might preclude his being impartial in relation to,

an internee whose case is to be reviewed by that Tribunal, that member shall not sit on that case.

**15. Contempt of the Tribunal.**

A person who wilfully insults a member of the Tribunal, or wilfully interrupts the proceedings of the Tribunal, or is in any manner guilty of wilful contempt of the Tribunal, is guilty of an offence.

Penalty: K500.00 or imprisonment for three months.

**16. Giving false evidence.**

A person appearing as a witness before the Tribunal, who wilfully gives false evidence, is guilty of perjury and is liable to prosecution and punishment accordingly.

**17. Privilege.**

(1) A member of the Tribunal is not liable for any act or omission done or made bona fide and without negligence under or for the purposes of this organic Law.

(2) A member of the Tribunal shall not be called to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to his knowledge in the exercise of his functions as a member.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the course of an inquiry by or proceedings before the Tribunal under this Organic Law are privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

**18. Preservation of secrecy.**

(1) The Tribunal may direct that any evidence given before it, or any document, book or writing produced to it, be not published.

(2) A person who publishes or discloses to any person—

(a) any evidence given before the Tribunal in private; or

(b) any evidence which the Tribunal has directed not to be published; or

(c) any of the contents of any document, book or writing which the Tribunal has directed not to be published,

without the consent of the Tribunal, is guilty of an offence.

Penalty: K1 000.00 or imprisonment for 12 months or both.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on the Judicial and Legal Services Commission.*

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Definitions—  
    "the Chairman"  
    "the Commission".

PART II.—CONSTITUTION, ETC., OF THE COMMISSION.

*Division 1.—Provisions Relating to Certain Members only.*

2. Application of this Division.
3. Term of office.
4. Conditions of employment.
5. Disqualifications from office.

*Division 2.—General.*

6. Acting Chairman and acting members.
7. Declaration of Office.

PART III.—FUNCTIONS, ETC., OF THE COMMISSION.

8. Functions of the Commission.
9. Procedures of the Commission.
10. Delegation.
11. Annual report by Commission.

PART IV.—STAFF OF THE COMMISSION.

12. Staff.

PART V.—MISCELLANEOUS.

13. Privilege.
14. Regulations.





INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

***Organic Law on the Judicial and Legal Services Commission.***

Being a Provisional Organic Law to implement Section 183(5) (*establishment of the Commission*) of the Constitution by making further provision in respect of the Judicial and Legal Services Commission,

MADE by the Constituent Assembly to come into operation on Independence Day<sup>1</sup>.

PART I.—PRELIMINARY.

1. Definitions.

In this Law, unless the contrary intention appears—

“the Chairman” means the Chairman of the Commission;

“the Commission” means the Judicial and Legal Services Commission established by Section 183 (*establishment of the Commission*) of the Constitution.

PART II.—CONSTITUTION, ETC., OF THE COMMISSION.

*Division 1.—Provisions Relating to Certain Members only.*

2. Application of this Division.

This Division applies only to the members of the Commission referred to Section 183(2) (a) and (e) (*establishment of the Commission*) of the Constitution (other than the Minister responsible for the National Justice Administration).

3. Term of office.

(1) The member of the Commission (if any) nominated by the Minister responsible for the National Legal Administration<sup>2</sup>—

(a) subject to paragraphs (b), (c) and (d) remains in office during the pleasure of the Minister; and

(b) vacates his office if the Minister who nominated him ceases to be a Minister; and

(c) may resign his office by notice in writing to the Minister; and

(d) may be dismissed from office in accordance with Division III.2 (*leadership code*) of the Constitution, for misconduct in office.

(2) The member of the Commission appointed by the Parliament—

(a) subject to paragraphs (b) and (c) remains in office during the pleasure of the Parliament; and

(b) vacates his office if he ceases to be a member of the Parliament except that if the vacation of office is due to a general election he remains a member of the

<sup>1</sup> “Adopted” on 15 September 1975, after the adoption of the Constitution.

<sup>2</sup> *Semble*, “National Justice Administration” was intended—see Constitution, Section 154, where that expression was substituted for “National Legal Administration” by the Constituent Assembly.

Commission until the first sitting day of the Parliament after the general election; and

(c) may resign his office by notice in writing to the Speaker.

**4. Conditions of employment.**

The salary and other conditions of employment of the members of the Commission shall be as determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Parliamentary Salaries Tribunal and the Public Services Commission.

**5. Disqualifications from office.**

A person is not qualified to be, or to remain, a member of the Commission if he is—

- (a) an undischarged bankrupt or insolvent; or
- (b) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (c) under sentence of death or imprisonment.

*Division 2.—General.*

**6. Acting Chairman and acting members.**

A person who is qualified for appointment may be appointed to be an acting Chairman or an acting member of the Commission—

- (a) to fill temporarily a vacancy; or
- (b) in the case of the absence from duty for any reason of the Chairman or a member of the Commission.

**7. Declaration of Office.**

Before entering upon the duties of his office, a member of the Commission shall make the Declaration of Office before the Governor-General or a person appointed by the Governor-General for that purpose.

**PART III.—FUNCTIONS, ETC., OF THE COMMISSION.**

**8. Functions of the Commission.**

The functions of the Commission, in addition to the functions specified in the Constitution and in any other Organic Law are—

- (a) to conduct a continuing review of the jurisdiction, practice and procedure of all courts, other than the Supreme Court and the National Court, and, from time to time, to make recommendations to the Law Reform Commission as to legislative changes that to it appear necessary in relation to such jurisdiction, practice and procedure; and
- (b) to ensure the adequate staffing of the courts referred to in paragraph (a); and
- (c) to ensure that adequate and proper statistics relating to the exercise of the jurisdiction of all courts are compiled and kept.

**9. Procedures of the Commission.**

(1) The Commission shall meet at such times and places as are fixed by the Chairman but in any event not less frequently than once every three months.

- (2) The Chairman shall preside at all meetings of the Commission.
- (3) The quorum for a meeting of the Commission is three.
- (4) All matters before a meeting of the Commission shall be decided in accordance with a majority of votes.
- (5) In the event of an equality of votes on a matter, the Chairman has a casting, as well as a deliberative, vote.
- (6) The Commission shall cause minutes of its meetings to be kept.
- (7) Subject to this Law, the procedures of the Commission are as determined by it.

**10. Delegation.**

(1) The Commission may, by instrument in writing under the hand of the Chairman, delegate to any person all or any of its powers and functions (other than this power or function) so that the delegated powers and functions may be exercised and performed by the delegate in relation to the matters or class of matters specified in the instrument of delegation.

(2) Every delegation under Subsection (1) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Commission.

**11. Annual report by Commission.**

(1) The Commission shall, at least once during each period of 12 months, at such times as are fixed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council give to the Head of State, for presentation to the Parliament, a report on the work of the Commission with such recommendations as it thinks proper.

(2) Nothing in Subsection (1) prevents the Commission from making, on its own initiative, or at the request of the Parliament or of the National Executive, other reports on the work of the Commission.

**PART IV.—STAFF OF THE COMMISSION.**

**12. Staff.**

(1) Subject to Subsection (2), any staff of the Commission required for the purposes of this Law shall be officers or employees of the National Public Service.

(2) Nothing in Subsection (1) prevents any person from being employed, on contract or otherwise, under any other law to perform functions in relation to the Commission.

**PART V.—MISCELLANEOUS.**

**13. Privilege.**

A member of the Commission or member of the staff of the Commission is not liable for any act or omission done or made *bona fide* and without negligence under or for the purposes of this Law.

**14. Regulations<sup>1</sup>.**

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 for carrying out or giving effect to this Law, and generally for achieving the purposes of this Law, and in particular for prescribing penalties not exceeding K500.00 and default penalties not exceeding K10.00 for offences against or contraventions of any regulations so made.

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<sup>1</sup> See, however, Constitution, Section 258, which provides for the making of "Constitutional Regulations" for the purposes of Organic Laws.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on National Elections.*

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Effect of this Law.
2. Interpretation—
  - "candidate"
  - "elector"
  - "electoral officer"
  - "electorate"
  - "member"
  - "officer"
  - "polling booth"
  - "polling period"
  - "population"
  - "Province"
  - "Roll"
  - "the Boundaries Commission"
  - "the Committee"
  - "the Electoral Commission"
  - "the Electoral Commissioner"
  - "the Parliament"
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  - "this Law".
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13. Resignation.
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58. Notification of rejection of claim.
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81. Duty of Returning Officer on receipt of writ.

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216. Court to report cases of illegal practice.
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Ch. No. 1

*Constitutional Laws and Documents*

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FORM 1.—Writ for a General Election of Members of the National Parliament.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 1.

*Organic Law on National Elections.*

Being a Provisional Organic Law to implement Section 125 (*electorates*) and Section 126 (*elections*) of the Constitution by providing for—

- (a) a Boundaries Commission; and
- (b) the defining of the Boundaries of National Electorates; and
- (c) an Electoral Commission; and
- (d) the holding of National Elections.

and to provide for related matters,

MADE by the Constituent Assembly to come into operation, subject to Section 244, on Independence Day<sup>1</sup>.

PART I.—PRELIMINARY.

1. Effect of this Law.

(1) Section 2, Parts IV, V, VII, VIII, IX, X (other than Sections 72, 73, 79 and 80) and XI (other than Sections 82, 83, 95 and 96) Section 99, Parts XIII (other than Sections 126, 130, 136, 138, 139 and 140) XIV (other than Sections 148, 152, 153, 169 and 171), XV and XVIII and Sections 246 and 247 are intended to take effect, as provided for by Section 10(3)(a)<sup>2</sup> (*Organic Laws*) of the Constitution as an Act of the Parliament.

(2) The balance of this Law takes effect as an Organic Law.

2. Interpretation.

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

“candidate”, in Parts II and XVII, includes a person who within three months before the first day of the polling period announces himself as a candidate for election as a member of the Parliament;

“elector” means a person whose name appears on a Roll as an elector;

“electoral officer” includes the Electoral Commissioner, a Returning Officer, presiding officer, substitute presiding officer, assistant presiding officer, poll clerk, interpreter and doorkeeper;

“electorate” includes—

- (a) a provincial electorate; and
- (b) an open electorate;

“member” means a member of the Parliament;

“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 Corrective Institutions Service, an officer or employee of a provincial service

<sup>1</sup> “Adopted” on 15 August 1975, after the adoption of the Constitution.

<sup>2</sup> This reference is incorrect. It seems that the correct reference is to Section 12(3)(a), and “10(3)(a)” was the numbering in the draft Constitution debated and amended by the National Constituent Assembly.

or an officer or employee of a Local Government Authority or Council or an officer or employee of a governmental body;

"polling booth" means the polling place or part of the polling place determined by the presiding officer to be a polling booth under Section 118(2);

"polling period", in relation to an election, means the period for polling the first and last days of which are specified in the writ for that election and includes any extension of that period granted under Section 178;

"population" means—

(a) in the case where a National Census of Population has, in the opinion of the Government Statistician, been completed and—

(i) from which in his opinion he is able to provide satisfactory estimates of population; and

(ii) in relation to which a redistribution has not previously been carried out,

the population as at the date of that National Census of Population as estimated by the Government Statistician; and

(b) in any other case—the population as estimated by the Government Statistician as at such date prior to the date of the redistribution as in the opinion of the Government Statistician is the most recent date at which he can give a satisfactory estimate;

"Province" includes the National Capital District;

"Roll" means an Electoral Roll under this Law;

"the Boundaries Commission" means the Boundaries Commission established by Section 25;

"the Committee" means the Electoral Commission Appointments Committee established by Section 5;

"the Electoral Commission" means the Electoral Commission established by Section 4;

"the Electoral Commissioner" means the Electoral Commissioner appointed under Section 4;

"the Parliament" means the National Parliament;

"the Returning Officer", in relation to an electorate, means the Returning Officer for that electorate;

"this Law" includes any regulations<sup>1</sup> made under this Law.

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

(3) An opinion given by the Government Statistician as to the population is non-justiciable.

### 3. Reference of certain questions to National Court.

Any question as to whether a person has been validly elected as a member of the Parliament or whether the seat of a member has become vacant shall be determined by the National Court.

<sup>1</sup> See Section 243 and the footnote to that section.

PART II.—ADMINISTRATION.

**4. Electoral Commission.**

(1) There shall be an Electoral Commission which shall consist of the Electoral Commissioner.

(2) The Electoral Commissioner shall be appointed by the Head of State, acting with, and in accordance with, the advice of the Committee, by notice published in the National Gazette.

**5. Electoral Commission Appointments Committee.**

There is hereby established an Electoral Commission Appointments Committee consisting of—

- (a) the Prime Minister or a Minister nominated by him, who shall be Chairman; and
- (b) the Chairman and Deputy Chairman of the appropriate Permanent Parliamentary Committee; and
- (c) the Chairman of the Public Services Commission.

**6. Meetings of the Electoral Commission Appointments Committee.**

(1) The Committee shall meet at such times and places as, in the opinion of the Chairman, are necessary for the efficient conduct of its affairs.

(2) Questions arising at a meeting of the Committee shall be decided by a majority of the votes of the members.

(3) The Chairman has a deliberative vote and, in the event of an equality of votes on a question, also a casting vote.

(4) The procedures of the Committee are as determined by the Committee.

**7. Casual vacancy, etc.**

(1) At any time when—

- (a) the office of Electoral Commissioner is not filled on a permanent basis; or
- (b) the Electoral Commissioner is away from the country or for any reason is not able to carry out his duties,

the Head of State, acting with, and in accordance with, the advice of—

- (c) the Committee, may appoint a person to act in the office of Electoral Commissioner for a period not exceeding six months<sup>1</sup>.

(2) An acting Electoral Commissioner has and may exercise and perform all the powers, duties and functions of the Electoral Commissioner.

(3) This Law applies to an acting Electoral Commissioner in the same way as it applies to the Electoral Commissioner.

**8. Term of office.**

Subject to Section 247, the Electoral Commissioner shall be appointed—

- (a) in the case of an appointment for a first term of office made within 10 years after Independence Day—for a term of three years; and

<sup>1</sup> An additional paragraph (immediately before the paragraph now numbered (c)—and which was consequentially renumbered from (d)) was omitted from the draft Organic Law by the National Constituent Assembly.



(b) in any other case—for a term of six years,  
and is eligible for re-appointment.

#### 9. Conditions of employment.

The salary and other conditions of employment of the Electoral Commissioner shall be as determined by the Head of State, acting with, and in accordance with, the advice of the Public Services Commission.

#### 10. Declaration of Office.

Before entering upon the duties of his office, the Electoral Commissioner shall make the Declaration of Office before the Chief Justice or a Judge of the National Court appointed by the Chief Justice.

#### 11. Disqualifications from office.

A person is not qualified to be, or to remain, the Electoral Commissioner if he is—

- (a) a member of the Parliament; or
- (b) a member of a provincial legislature; or
- (c) a member of a Local Government Council or Authority; or
- (d) an office holder in a registered political party; or
- (e) an undischarged bankrupt or insolvent; or
- (f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (g) under sentence of death or imprisonment.

#### 12. Special conditions of employment.

(1) The Electoral Commissioner shall not—

- (a) actively engage in politics; or
- (b) except on leave granted by the Head of State, or because of illness, absent himself from duty for more than 14 consecutive days or more than 28 days in any period of 12 months; or
- (c) subject to Subsection (3), acquire by way of a gift or otherwise, or use or hold in any other manner any interest in, any property of Papua New Guinea<sup>1</sup> or solicit, accept or receive any other benefit in addition to his terms and conditions of employment.

(2) Nothing in Subsection (1)(b) prevents the Electoral Commissioner from holding office in a professional body in relation to which his qualifications are relevant<sup>2</sup>.

(3) Subject to any Organic Law made for the purposes of Division III.2 (*leadership code*) of the Constitution, the Electoral Commissioner may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

#### 13. Resignation.

(1) The Electoral Commissioner may resign by giving three months' notice in writing of his intention to do so to the Head of State.

<sup>1</sup> *Sic.*

<sup>2</sup> This subsection apparently relates to Clause 12(1)(b) of the draft Organic Law, which was omitted by the National Constituent Assembly without a consequential amendment being made.

(2) The period of three months referred to in Subsection (1) shall be deemed to commence on the twenty-second day after the receipt of the notice by the Head of State except where the Head of State, acting with, and in accordance with, the advice of the Committee, by notice in writing to the Electoral Commissioner, fixes an earlier date for the commencement.

(3) The Electoral Commissioner may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

**14. Retirement.**

(1) Subject to Subsection (1)<sup>1</sup>, a person who has attained the age of 55 years shall not be appointed or re-appointed as the Electoral Commissioner and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 55 years.

(2) The Head of State, acting with, and in accordance with, the advice of the Committee, may, for special reasons in a particular case, appoint or re-appoint a person who is over 55 years of age to be the Electoral Commissioner but in no case shall the Electoral Commissioner continue to act as the Electoral Commissioner after he has attained the age of 60 years.

**15. Prime function of the Electoral Commission.**

It is the prime function of the Electoral Commission to organize and conduct all elections for the Parliament.

**16. Public Services Commission to make available staff.**

The Public Services Commission shall, when so requested by the Electoral Commission, make available to the Electoral Commission and to each Returning Officer such staff as may be necessary for the discharge of the functions conferred on the Electoral Commission.

**17. Delegation.**

(1) The Electoral Commission may, by instrument in writing, delegate, to an officer all or any of its powers and functions under this Law (except this power of delegation and any prescribed power and function), so that the delegated powers or functions may be had, exercised and performed by the delegate in relation to such electorate or electorates, or to such matters or class of matters, or to the whole of the country or such part of the country, as is specified in the instrument of delegation.

(2) Every delegation under Subsection (1) is revocable, in writing, at will.

(3) No delegation under this section prevents the exercise or performance of a power or function by the Electoral Commission.

**18. Returning Officers.**

The Electoral Commission shall, by notice in the National Gazette, appoint a Returning Officer for each electorate, who shall be charged with the duty of giving effect to this Law within or for his electorate, subject to any directions of the Electoral Commission.

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<sup>1</sup> This reference is incorrect. It obviously should be to Subsection (2).

**19. Assistant Returning Officer.**

(1) Subject to this section, the Electoral Commission may, by notice published in the National Gazette, appoint a person to be an Assistant Returning Officer for a portion of an electorate.

(2) A person appointed to be an Assistant Returning Officer for a portion of an electorate may, subject to this Law and to the Regulations<sup>1</sup> and to the control of the Returning Officer, perform the functions and exercise the powers of the Returning Officer, in, or in relation to, that portion of the electorate.

(3) An Assistant Returning Officer shall not be appointed for a portion of an electorate for which less than 100 electors are enrolled.

(4) Where the services of an Assistant Returning Officer are required for the purposes of one election only, the appointment may be made by the Returning Officer by instrument in writing, and in that case the appointment terminates upon the completion of the election.

**20. Appointment in cases of emergency.**

(1) Subject to Subsection (2), in the event of a vacancy occurring in an office of Returning Officer or Assistant Returning Officer, or in the absence from duty of any such officer, the Electoral Commission may, by notice in writing, appoint a person to perform the duties of the office during the period of the vacancy or absence.

(2) The Electoral Commission shall publish each notice under Subsection (1) in the National Gazette.

(3) In the event of a vacancy occurring in an office of Assistant Returning Officer appointed under Section 19(4), or in the absence from duty of any such officer, the Returning Officer may, by instrument in writing, appoint a person to perform the duties of the office during the period of the vacancy or absence.

(4) An appointment under Subsection (1) is temporary only, and does not confer on the appointee any right or claim to be permanently appointed to the position.

**21. Date from which appointments are to take effect.**

A person appointed to be a Returning Officer or an Assistant Returning Officer under Section 20 shall be deemed to have been appointed as from the date specified in his appointment, or, if no such date is specified, as from the date of his appointment.

**22. Candidates not to be electoral officers.**

No candidate shall be appointed an electoral officer, and if an electoral officer becomes a candidate he thereby vacates his office.

**23. Keeping of forms.**

All Returning Officers shall keep forms of claim for enrolment and transfer and such other forms as are prescribed, and shall without fee supply them to the public and assist the public in their proper use.

**PART III.—ELECTORATES.****24. Election of members to the Parliament.**

(1) Subject to this Law, for the purposes of elections to the Parliament there shall be such electorates in the country as are provided by this Law.

<sup>1</sup> See Section 243, and the footnote to that section.

(2) One member shall be elected for each electorate by electors entitled to vote in respect of that electorate.

**25. Boundaries Commission.**

(1) For the purposes of a redistribution of Papua New Guinea into electorates, there is hereby established a Boundaries Commission consisting of—

- (a) the Electoral Commissioner who shall be Chairman; and
- (b) the Surveyor-General; and
- (c) the Government Statistician; and
- (d) two persons, other than officers, appointed by resolution of the Parliament.

(2) The Head of State, acting with, and in accordance with, the advice of the National Executive Council, shall, by notice published in the National Gazette, appoint a deputy for each of the members referred to in Subsection (1)(a), (b) and (c).

(3) The Parliament shall, by resolution, appoint a deputy for each of the members referred to in Subsection (1)(d).

(4) In the event of the absence of a member of the Boundaries Commission from a meeting of the Commission or his inability for any reason to act in relation to a matter, his deputy has and may exercise and perform all his powers and functions for the purposes of that meeting or in relation to that matter.

**26. Term of office and conditions of employment.**

(1) A member of the Boundaries Commission referred to in Section 25(1)(d) shall be appointed—

- (a) in the case of any citizen of Papua New Guinea appointed to office for the first time within 10 years after Independence Day—for a term of three years; and
- (b) in the case of any other citizen—for a term of six years; and
- (c) in the case of a non-citizen—for a term of three years,

and is eligible for re-appointment.

(2) The term of office of a deputy referred to in Section 25(3) expires at the same time as the member for whom he was appointed the deputy.

(3) The salary and other conditions of employment of the members and deputy members of the Boundaries Commission referred to in Section 25(1)(d), (2) and (3) shall be as determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving a report from the Public Services Commission.

**27. Disqualifications from office.**

A person is not qualified to be, or to remain, a member or deputy member of the Boundaries Commission if he is—

- (a) a member of the Parliament; or
- (b) a member of a Provincial legislature; or
- (c) a member of a Local Government Council or Authority; or
- (d) an office-holder in a registered political party; or
- (e) an undischarged bankrupt or insolvent; or

(f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or

(g) under sentence of death or imprisonment.

#### 28. Special conditions of employment.

(1) A member and deputy member of the Boundaries Commission shall not—

(a) actively engage in politics; or

(b) except on leave granted by the Head of State, or because of illness, absent himself from duty; or

(c) subject to Subsection (3), acquire by way of gift or otherwise, or use or hold in any other manner any interest in any property of Papua New Guinea<sup>1</sup> or solicit, accept or receive any other benefit in addition to his terms and conditions of employment.

(2) Nothing in Subsection (1)(b) prevents a member of the Boundaries Commission from holding office in a professional body in relation to which his qualifications are relevant<sup>2</sup>.

(3) Subject to any Organic Law made for the purposes of Division III.2 (*leadership code*) of the Constitution, a member of the Boundaries Commission who is a citizen may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

#### 29. Resignation.

(1) A member or deputy member of the Boundaries Commission, other than a member referred to in Section 25(1)(a), (b) or (c) may resign by giving three months' notice in writing of his intention to do so to the Head of State.

(2) The period of three months specified in Subsection (1) shall be deemed to commence on the twenty-second day after the receipt by the Head of State of the notice except where the Head of State, acting with, and in accordance with, the advice of the Committee, by notice in writing to the member, fixes an earlier date for the commencement.

(3) A member or deputy member of the Boundaries Commission may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

#### 30. Retirement.

(1) Subject to Subsection (2), a person who has attained the age of 55 years shall not be appointed or re-appointed as a member or deputy member of the Boundaries Commission and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 55 years.

(2) The Head of State, acting with, and in accordance with, the advice of the Committee, may, for special reason in a particular case, appoint or re-appoint a person who is over 55 years of age to be a member or deputy member of the Boundaries Commission but in no case can any member of the Boundaries Commission continue to act as a member after he attained<sup>3</sup> the age of 60 years.

<sup>1</sup> *Sic.*

<sup>2</sup> It is not clear what this subsection is intended to relate to. Possibly it refers to a paragraph that was in an earlier draft of Subsection (1): compare Section 12(2).

<sup>3</sup> *Semble*, "attains" was intended.

**31. Acting appointments to the Commission.**

(1) At any time when a position of a member of the Boundaries Commission or of a deputy of a member of the Boundaries Commission is not filled on a permanent basis, or when a permanent member of the Boundaries Commission or a permanent deputy of a member of the Boundaries Commission is away from the country or for any reason is not able to carry out his duties, the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may appoint a person to be an acting member of the Boundaries Commission or an acting deputy of a member of the Boundaries Commission, as the case requires, on such terms and conditions as the Head of State, acting with, and in accordance with, the advice of the Public Services Commission determines.

(2) Subsection (1) does not apply to the position of a member of the Boundaries Commission or a deputy of a member of the Boundaries Commission who has been appointed in accordance with Section 24(1)(d)<sup>1</sup>.

(3) In a case referred to in Subsection (2) the Head of State, acting with, and in accordance with, the advice of the appropriate Permanent Parliamentary Committee may appoint a person to be an acting member of the Boundaries Commission or an acting deputy of a member of the Boundaries Commission on such terms and conditions as the Head of State, acting with, and in accordance with, the advice of the Public Services Commission determines.

(4) The appointment of an acting member of the Boundaries Commission or of an acting deputy of a member of the Boundaries Commission continues until a permanent member or deputy member is appointed or the permanent member or deputy member returns to the country or becomes able again to carry out his duties, as the case may be.

(5) An acting member of the Boundaries Commission and an acting deputy of a member of the Boundaries Commission has and may exercise and perform all the powers, duties and functions of the position on the Boundaries Commission to which he was appointed.

(6) This Law applies to an acting member of the Boundaries Commission and to an acting deputy of a member of the Boundaries Commission in the same way as it applies to a permanent member or deputy who held the position to which he was appointed.

**32. Proceedings at meetings.**

(1) At a meeting of the Boundaries Commission, the Chairman shall preside if he is present.

(2) In the absence of the Chairman from a meeting of the Boundaries Commission, the member<sup>2</sup> of the Commission present shall appoint one of their number to preside at the meeting.

(3) At a meeting of the Boundaries Commission, three members of the Commission form a quorum.

(4) Questions arising before the Boundaries Commission shall be decided by a majority of votes of the members present and voting.

(5) The person presiding at a meeting of the Boundaries Commission has a deliberative vote, and, in the event of an equality of votes on a question, also a casting vote.

<sup>1</sup> *Semble*, Section 25(1)(d) was intended.

<sup>2</sup> *Semble*, "members" was intended.

**33. Provincial electorates.**

(1) There shall be one provincial electorate for each Province.

(2) The boundaries of each provincial electorate are the boundaries of the Province for which it is the provincial electorate.

(3) A change in the boundaries of any Province shall, for the purposes of this Law, take effect only after the next following redistribution of electorates.

**34. Open electorates.**

(1) The number of open electorates shall be as determined by the Parliament, after considering a report of the Boundaries Commission, but in no case shall the number of open electorates be less than 81 or more than 91.

(2) There shall be at least one open electorate in each Province.

**35. Size of open electorates.**

(1) For the purposes of a proposed redistribution of the country into open electorates, the Boundaries Commission shall determine a population quota by the following formula :—

$$Q = \frac{P}{N}$$

where—

Q is the population quota for the electorate; and

P is the total population of the country; and

N is the provisional number of open electorates as determined by the Boundaries Commission within the limits specified in Section 34.

(2) Subject to Subsection (3), in drawing the boundaries of open electorates, the Boundaries Commission shall not draw them in such a way that—

(a) the population of any electorate is more than 20 per centum more than or less than 20 per centum less than the population quota prescribed by Subsection (1) except in circumstances which in the opinion of the Boundaries Commission would otherwise lead to an unreasonable result; or

(b) the boundaries of an open electorate cut across the boundary of a provincial electorate.

(3) Where the Boundaries Commission has<sup>1</sup>—

(a) at a meeting determined the provisional number of electorates and proceeded to determine the population quota calculated for that number of electorates in accordance with Subsection (1); and

(b) at a later meeting determines that there be more or less electorates than the provisional number determined at the earlier meeting,

the Boundaries Commission shall not redetermine the population quota.

(4) In determining the degree of variation of size between electorates (within the 20 per centum plus or minus allowable) the Boundaries Commission shall give due consideration to—

(a) density of population; and

<sup>1</sup> The word "has" should presumably appear before "at a meeting" in Paragraph (a).

- (b) physical features and communications; and
- (c) existing electoral boundaries; and
- (d) local government council and provincial and other administrative areas; and
- (e) the community and diversity of interests where it considers it relevant to do so.

**36. Notice of proposed redistribution.**

Before making its report, the Boundaries Commission shall cause a map with a description of the boundaries of the proposed electorates to be exhibited at such National, Provincial and Local Government offices as will give the people of the country a reasonable opportunity of seeing it and invite public attention to the map by advertisement in the National Gazette and by such other means as to it seems proper.

**37. Objections and suggestions.**

Objections or suggestions in writing may be lodged with the Chairman of the Boundaries Commission not later than two months after the first advertisement in the National Gazette, and the Boundaries Commission shall consider all objections and suggestions so lodged before making its report.

**38. Report of Boundaries Commission.**

(1) The Boundaries Commission shall, as soon as practicable after the expiration of the period of two months referred to in Section 37, forward to the Minister a report of its proposals for the re-distribution of the country into electorates, together with a map signed by not less than three members of the Boundaries Commission showing the boundaries of each proposed electorate.

(2) The report shall state, as nearly as can be ascertained, the population in each proposed electorate.

**39. Report to be laid before the Parliament.**

The report and map forwarded under Section 38 shall be presented by the Minister to the Parliament within seven sitting days after its receipt by him.

**40. Determination of new electorates.**

(1) A resolution of the Parliament accepting the recommendations of the Boundaries Commission for a proposed redistribution constitutes a determination of the number of open electorates and their boundaries, and those electorates until altered together with the provincial electorates, shall, subject to Subsection (3), be the electorates for the purposes of the election of members to the Parliament.

(2) The Minister shall cause the number of open electorates and their boundaries determined in accordance with Subsection (1) to be published in the National Gazette.

(3) Until the dissolution or expiration of the Parliament next following a determination under Subsection (1), the redistribution shall not affect the election of a new member to fill a vacancy happening in the Parliament, but for the purposes of any such election the electorates as previously existing, and the Rolls in respect of those electorates, shall continue to have full force and effect, notwithstanding that new Rolls for the new electorates may have been prepared.

(4) If the Parliament passes a resolution rejecting a proposed redistribution, or negatives a motion for the acceptance of a proposed redistribution, the Boundaries Commission shall within three months of the resolution rejecting or negating an



acceptance for a proposed redistribution make new recommendations for the redistribution of the country into electorates or confirm its previous recommendations and forward a copy of its new recommendations or its confirmation, as the case may be, to the Minister together with, in the case of any new recommendations, a map signed by not less than three members of the Commission showing the boundaries of each proposed electorate.

(5) Where the Boundaries Commission makes new recommendations under Subsection (4), it is not necessary for it to cause the action required by Section 36 to be taken.

(6) The new recommendations referred to in Subsection (4) shall state, as nearly as can be ascertained, the population in each proposed electorate.

(7) The new recommendations and map or the confirmation forwarded under Subsection (4) shall be presented to the Parliament by the Minister within seven sitting days after its receipt by him.

(8) If the Parliament passes a resolution rejecting the new or confirmed recommendations for a redistribution or negatives a motion for the acceptance of the new or confirmed recommendations, the matter lapses and the electorates for the purposes of the next succeeding general election shall be the electorates determined after the redistribution conducted immediately prior to that redistribution.

#### 41. Change of electors from one roll to another.

(1) When boundaries of an electorate are altered, such changes as are thereby rendered necessary for the transfer of the names of the electors from one Roll to another shall be made by removing the names of those electors from the Roll from which they are changed, and by inserting the names so removed in the Roll to which they are changed.

(2) The transfer of names of electors from one Roll to another Roll under this section shall be notified by the Electoral Commission in the National Gazette and in a newspaper circulating in the part of the country concerned.

(3) If the Electoral Commission considers that a notification in accordance with Subsection (2) is not effective as notice to a particular elector whose enrolment has been transferred, it may cause notice of the transfer to be sent by post or otherwise to the elector, or may take such other action as it considers desirable to ensure adequate publicity.

### PART IV.—POLLING PLACES.

#### 42. Polling places.

(1) The Electoral Commission may, by notice published in the National Gazette—

(a) appoint a chief polling place for each electorate; and

(b) appoint such other polling places for each electorate as it thinks necessary and practicable; and

(c) abolish a polling place.

(2) No polling place shall be abolished after the issue of the writ and before the time appointed for its return.

PART V.—ELECTORAL ROLLS.

**43. Rolls.**

There shall be a Roll for each electorate.

**44. Form of Rolls.**

(1) A Roll shall be in such form as is determined by the Electoral Commission, and shall set out the name, address and occupation (or other prescribed particulars) and sex of each elector, and shall contain such further particulars as are prescribed or as the Electoral Commission directs.

(2) A direction under Subsection (1) may relate to the whole or a part of the country.

**45. New Rolls.**

(1) All persons who are entitled to be enrolled on a Roll shall, subject to this Law, be so enrolled.

(2) New Rolls for any electorates shall be prepared whenever the Electoral Commission, by notice published in the National Gazette, directs.

(3) Subject to Subsection (4), a notice under Subsection (2) may specify the manner in which the Rolls shall be prepared, and 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 to comply with the provisions of this Law relating to compulsory enrolment.

(4) Notwithstanding anything in Subsection (3), where an elector is enrolled in respect of an address in an electorate for which he is entitled to be enrolled, he shall not be required to sign and send in any further claim for enrolment in connexion with the preparation of a new Roll under this section.

(5) The Electoral Commission shall, as soon as it is practicable to do so after the preparation of new Rolls, by notice published in the National Gazette, notify that the new Rolls have been prepared.

**46. Additions, etc., to new Rolls.**

Upon the receipt by the Returning Officer of a new Roll for an electorate, the Returning Officer shall—

(a) make additions, alterations and corrections in it; and

(b) remove names from it,

in accordance with information received by him between the date of the notice directing the preparation of new Rolls and the date of the notification that the Rolls have been prepared, where the additions, alterations or corrections have not already been made in, or the removals have not been made from, the Roll.

**47. Objections and notices to have effect in relation to new Rolls.**

Where objections have been lodged or notices of objection have been issued 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.

**48. Printing of Rolls.**

(1) Rolls shall be printed whenever the Electoral Commission so directs.

(2) Supplemental Rolls, setting out additions since the latest print of the Rolls, may, as necessary, be prepared and printed immediately after the issue of the writs for an election, and at such other times as the Electoral Commission directs.

**49. Inspection.**

(1) Copies of the latest print of the electorate Roll and of all supplemental prints 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 electorate Roll and of all supplemental prints shall be obtainable at the office of the Returning Officer on payment of the prescribed fee.

**50. Officers and others to furnish information.**

All officers and all occupiers of habitations and all persons who are, or appear to be, entitled to enrolment shall upon application furnish to the Electoral Commission or to a Returning Officer, or to an electoral officer acting under the directions of the Electoral Commission or the Returning Officer, all information that it or he requires in connexion with the preparation, maintenance or revision of the Rolls.

**PART VI.—QUALIFICATIONS AND DISQUALIFICATIONS FOR ENROLMENT AND FOR VOTING.**

**51. Persons entitled to enrolment.**

(1) All persons who have a right to vote under Section 47<sup>1</sup> (*right to vote and stand for public office*) of the Constitution—

(a) who comply with the requirements of Part VII for enrolment for an electorate; or

(b) whose application for enrolment under Section 98 is accepted,

are entitled to enrolment.

(2) All persons whose names are on the Roll for an electorate are, subject to this Law and to the provisions of any other law in force, entitled to vote at elections of a member for the electorate, but no person is entitled to vote more than once at an election, or at more than one election held at the same time.

(3) Subsection (2) does not prevent a person voting for a provincial electorate and an open electorate where the elections are being held at the same time.

**PART VII.—ENROLMENT.**

**52. Officers.**

(1) The Electoral Commission may appoint persons to assist in the compilation and revision of the Rolls.

(2) A person appointed under Subsection (1) has such functions and duties as are prescribed or as the Electoral Commission directs.

<sup>1</sup> This reference is incorrect. It seems that the correct reference is to Section 50, and "47" was the numbering in the draft Constitution debated and amended by the National Constituent Assembly.

**53. 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.

**54. Claims for enrolment.**

(1) Subject to this section and Section 51 a person who—

(a) has resided in the area of an electorate for a period of not less than six months immediately preceding the date of his claim for enrolment; or

(b) is nominated for an electorate for which he is not enrolled and was either born in the electorate or lived in the electorate for five years at any time,

is entitled to have his name placed on the Roll for that electorate.

(2) Where the name of a person is placed on a Roll in accordance with Subsection (1)(a), he shall be enrolled in respect of the address of his last residence in the electorate.

(3) Where the name of a person is placed on a Roll in accordance with Subsection (1)(b), he shall be enrolled in respect of his last-known place of residence in the electorate.

(4) The Electoral Commission may, in relation to a person or class of persons, direct that a claim for enrolment be in the prescribed form and, if in the prescribed form, shall be signed by the claimant and attested by a prescribed person who shall sign his name as witness in his own handwriting.

**55. Witness to application must satisfy himself of truth of statement.**

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: K400.00<sup>1</sup>.

**56. Compulsory enrolment and transfer.**

(1) A person who is entitled to have his name placed on the Roll for an electorate, 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 electorate.

(2) A person who is entitled to have his name placed on the Roll for an electorate, 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) A person who is enrolled for the electorate in which he is residing and who changes his place of residence from one address in the electorate to another address in that electorate, and who has failed to notify, in the prescribed form, the new address to the Returning Officer for that electorate at the first reasonably practicable opportunity, is guilty of an offence.

<sup>1</sup> In respect of the Constitutional Laws, there is no provision similar to Sections 14 and 15 of the *Interpretation Act*, declaring such penalties to be maxima only.

(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 Electoral Commission.

**57. Registration of claim.**

(1) Upon receipt of a claim for enrolment or transfer of enrolment, notification of change of address within an electorate, 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, and if the claim, notification or application is in order and he 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 59—

- (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 elector's name has been transferred.

(2) An interim acknowledgement of the receipt, after the issue of the writ for an election and before the close of the polling at the election, 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 Electoral Commission.

(3) The Returning Officer keeping the Roll from which an elector's name has been transferred shall, upon receipt of notice of the transfer in the prescribed form, remove the elector's name from the Roll kept by him.

**58. Notification of rejection of claim.**

The Returning Officer, on receipt of a claim, shall, subject to Section 59, 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 Law.

**59. Time for altering Rolls.**

Notwithstanding anything in this Law—

- (a) claims for enrolment or transfer of enrolment which are received after 4 p.m. on the day of the issue of the writ for an election shall not be registered until after the end of the polling period for the election; 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 4 p.m. on the day of the issue of the writ for an election and before the end of the polling period for the election.

**60. Penalty on officer 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: K100.00<sup>1</sup>.

**61. Alteration of Rolls.**

(1) In addition to other powers of alteration conferred by this Law, 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 an elector; and
- (c) altering, on the application of an elector, the original name, address or occupation of the elector on the same Roll; and
- (d) removing the name of a deceased elector; and
- (e) striking out the superfluous entry where the name of the same elector 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 elector has ceased to be qualified for enrolment on the Roll and has secured enrolment on another Roll.

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

(3) No alteration under this section shall, without the authority of the Returning Officer, be made at any time after 4 p.m. on the day of the issue of the writ for an election and before the end of the polling period for the election.

**62. Special provisions for certain nominations.**

Notwithstanding anything in this Law, where a person who is entitled to do so has nominated for an electorate other than the electorate for which he is enrolled—

- (a) the Returning Officer for the electorate for which he nominates shall place his name on the Roll for that electorate and notify the Returning Officer for the electorate for which he is enrolled who shall remove his name from the Roll for that electorate; and

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<sup>1</sup> See footnote to Section 55.

- (b) if the nomination is withdrawn, the Returning Officer for the electorate for which he was nominated shall remove his name from the Roll for that electorate and notify the Returning Officer for the other electorate who shall (unless he has in the meantime nominated for some other electorate) restore his name to the Roll for that other electorate; and
- (c) if he fails to be elected, the Returning Officer for the electorate for which he was nominated shall remove his name from the Roll for that electorate and notify the Returning Officer for the other electorate who shall restore his name to the Roll for that other electorate; and
- (d) if he is elected and later ceases to be the member for the electorate, the Returning Officer for the electorate for which he was the member shall remove his name from the Roll for that electorate and notify the Returning Officer for the other electorate who shall restore his name to the Roll for that other electorate unless he has ceased to be eligible for enrolment in that electorate and has been enrolled in another electorate.

### 63. Incorrect enrolment.

Where a person whose name has been placed on the Roll for an electorate is not entitled to enrol for that electorate and that person secured enrolment under a claim in which he made a false statement, the Returning Officer may, at any time between the date of the issue of the writ for an election for that electorate and before the end of the polling period for that election, remove the name of that person from that Roll.

### 64. 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.

### 65. 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 an electoral officer, to be forfeited to Papua New Guinea if the objection is held by the Returning Officer to be frivolous.

### 66. Objection.

An objection under Section 65 shall be in the prescribed form, and shall be signed by an elector enrolled on the same Roll as the person objected to, or by the Returning Officer or a prescribed officer.

### 67. 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.

**68. 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) may be in the prescribed form, and may be served by being posted or delivered to the last-known place of abode of the person objected to.

(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 electorate for which he is enrolled shall be deemed not to be good unless it alleges that the person objected to has not resided in the electorate for the period necessary to qualify him for enrolment for that electorate.

**69. Answer to objection.**

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

**70. 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 68(1) 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 remove the name of the person from that Roll and shall 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 4 p.m. on the day of issue of the writ for an election and before the end of the polling period for the election.

**PART IX.—APPEALS.**

**71. Appeal to District Court.**

(1) A person—

(a) who has made a claim for enrolment or transfer of enrolment in accordance with this Law, 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 District 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 District 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 resist 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.

#### PART X.—WRITS FOR ELECTIONS.

##### 72. Writs for general elections.

The Head of State, acting with, and in accordance with, the advice of the Electoral Commission, shall issue his writ for a general election of members in accordance with the provisions of Section 106<sup>1</sup> (*general elections*) of the Constitution.

##### 73. Writs for vacancies.

In the case of an election under Section 106 (*by-elections*) of the Constitution, the Head of State, acting with, and in accordance with, the advice of the Electoral Commission, shall, as soon as practicable after the vacancy occurs, issue his writ for the election of a new member.

##### 74. Form of writs.

(1) The writs for elections shall be in Form 1 or Form 2, as the case requires, in Schedule 1, and shall fix the date for—

- (a) nominations; and
- (b) the first and last days of the period during which polling shall take place; and
- (c) the return of the writ.

(2) The Electoral Commission shall, as soon as practicable after the issue of a writ—

- (a) advertize its issue and particulars in at least one newspaper circulated in the electorate to which the writ relates; and
- (b) forward a copy to each provincial government and Local Government Authority and Council in the electorate; and
- (c) take such further steps as it considers desirable to ensure adequate publicity.

##### 75. Time of issue of writs.

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

##### 76. Address of writs.

(1) Writs for election of members shall be addressed to the respective Returning Officers for the electorates for which the elections are to be held, and may be issued through the Electoral Commission.

<sup>1</sup> This reference is incorrect. It seems that the correct reference is to Section 105, and "106" was the numbering in the draft Constitution debated and amended by the National Constituent Assembly.

(2) The Electoral Commission may advise any Returning Officer by telegram of the issue of the writ for an election and the particulars of the writ, and for the purposes of Section 75<sup>1</sup> the Returning Officer may act on the advice as if the writ had been received by him.

**77. Date of nomination.**

The date fixed for the nomination of the candidates shall be not less than 28 days nor more than 42 days after the date of the writ.

**78. Date of polling.**

The date fixed for the commencement of the polling period shall be a Saturday and shall be not less than 10 weeks nor more than 12 weeks after the date of the writ.

**79. Date of return of writ.**

The date fixed for the return of the writ shall not be more than 21 days after the end of the polling period.

**80. General election to be held on same day.**

In the case of a general election, the same day shall be fixed for the commencement of the polling period in each electorate, and all writs shall be made returnable on the same day.

**81. Duty of Returning Officer on receipt of writ.**

On the receipt of a writ, the officer to whom it is directed shall endorse on it the date of its receipt.

PART XI.—THE NOMINATIONS.

**82. Candidates must be nominated.**

No person is qualified to be elected as a member unless he has been duly nominated.

**83. Qualifications for nomination.**

No person is qualified for nomination for an electorate while he is nominated for another electorate and that last-mentioned nomination has not been withdrawn.

**84. Mode of nomination.**

A nomination shall be in the prescribed form and shall—

- (a) name the candidate, his place of residence and occupation; and
- (b) set out the qualifications by virtue of which he is qualified for nomination; and
- (c) be witnessed by a person to whom the candidate is personally known.

**85. To whom nominations made.**

(1) Nominations of members may be made to the Returning Officer for the electorate for which the election is to be held, to an Assistant Returning Officer for that electorate, or to a person thereunto authorized by the Electoral Commission.

(2) Nominations may be made at any time after the issue of the writ and—

- (a) in the case of a nomination made to the Returning Officer—before the hour of nomination; and

<sup>1</sup> *Seemle*, the reference should be to Section 81: compare Section 59 of the pre-Independence *Electoral Act* 1963 however even this seems to be an error.

(b) in the case of a nomination made—

(i) to an Assistant Returning Officer or other person referred to in Subsection (1); or

(ii) in respect of a person who is not enrolled for the electorate, before the commencement of the period of seven days immediately preceding the hour of nomination.

(3) Where a nomination is made to an Assistant Returning Officer or other person referred to in Subsection (1), he shall immediately notify the Returning Officer by telegram, in the prescribed form, of the details of the nomination and deposit and forward the nomination to the Returning Officer.

**86. Requisites for nomination.**

No nomination is valid unless—

(a) the person nominated consents to act if elected, and declares that he is qualified under the laws of Papua New Guinea to be elected as a member; and

(b) the nomination paper, or the telegraphic notification referred to in Section 85(3), as the case may be, is received by the Returning Officer after the issue of the writ and before the hour of nomination; and

(c) at the time of the delivery of the nomination paper the person nominated or some person on his behalf deposits with the Returning Officer or other person to whom the nomination is made the sum of K100.00 in money or in a banker's cheque.

**87. Form of consent to act.**

The consent and the declaration of qualifications referred to in Section 86(a) shall be sufficient if the candidate signs the form of consent and declaration in the nomination paper, but the Returning Officer receiving the nomination, or the telegraphic advice of the nomination, as the case may be, may accept any other form of consent and declaration, whether accompanying the nomination paper or not, that he considers satisfactory, and that acceptance is final.

**88. Formal defects.**

No nomination shall be rejected by reason of a formal defect or error if the Returning Officer receiving the nomination, or the telegraphic advice of it, as the case may be, is satisfied that the provisions of this Law have been substantially complied with.

**89. Deposit to be forfeited in certain cases.**

The deposit made by or on behalf of a candidate at an election shall be retained pending the election, and after the election shall be returned to the candidate, or to some person authorized by him in writing to receive it, if he is elected or if the total number of votes polled in his favour is more than 10 per centum of the total number of votes polled by the successful candidate in the election, and otherwise it is forfeited to Papua New Guinea.

**90. Place of nomination.**

The office of<sup>1</sup> Returning Officer for the electorate is the place of nomination in that electorate.

<sup>1</sup> *Seemle*, "the" was omitted.

**91. Hour of nomination.**

The hour of nomination is 12.00 noon<sup>1</sup> on the day of nomination.

**92. Declaration of nominations.**

The Returning Officer for the electorate for which an election is being held shall, at the hour of nomination, attend at the place of nomination for the electorate, and shall there publicly produce all nomination papers and telegraphic advices of nominations received by him, and declare the names, addresses and occupations of all candidates nominated.

**93. Withdrawal of nomination.**

(1) A candidate may withdraw his nomination by lodging with the Returning Officer for the electorate, or with an Assistant Returning Officer for the electorate or a person authorized for that purpose by the Electoral Commission, a notice of withdrawal in the prescribed form, and thereupon the nomination shall be cancelled and the deposit lodged shall be returned.

(2) A withdrawal of nomination may be made—

(a) in the case of a notice of withdrawal lodged with the Returning Officer—at any time before the hour of nomination; or

(b) in the case of a notice of withdrawal lodged with an Assistant Returning Officer or other person referred to in Subsection (1)—more than 24 hours before the hour of nomination.

(3) Where a notice of withdrawal of nomination is lodged with an Assistant Returning Officer or other person referred to in Subsection (1), he shall immediately notify the Returning Officer by telegram, in the prescribed form, of the withdrawal and forward the notice to the Returning Officer.

**94. Return of deposit in case of candidate's death.**

In the case of the death of a candidate before the end of the polling period, the deposit lodged by him shall be returned to his legal personal representative.

**95. Proceedings on nomination day.**

(1) If one candidate only is nominated for an electorate, the Returning Officer shall declare that candidate duly elected.

(2) If in an election more candidates than one are nominated, the proceedings shall, subject to the provisions of this Law relating to voting before the commencement of the polling period, stand adjourned to the commencement of the polling period.

**96. Failure of election.**

(1) Subject to this Law, whenever an election fails a new writ shall be issued for a supplementary election by the Head of State, acting with, and in accordance with, the advice of the Electoral Commission, as soon as practicable after the failure occurs.

(2) An election shall be deemed to have failed if—

(a) no candidate is nominated or returned as elected; or

(b) after the declaration of the nominations and before the end of the polling period a candidate dies.

<sup>1</sup> *Sembla*, "12 noon" was intended.

(3) Where an election has failed, the supplementary election shall be held upon the Roll which was prepared for the purpose of the election which failed.

## PART XII.—VOTING BY POST.

**97. Application by electors for a postal vote certificate and postal ballot-paper.**

(1) An elector who—

(a) will not, throughout the polling period—

(i) be within the electorate for which he is enrolled; or

(ii) be within 16 km by the nearest practicable route of a polling booth open in the electorate for which he is enrolled; 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 the electorate for which he is enrolled; 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, in the case of a woman, will by reason of approaching maternity or of the necessity for caring for her infant be precluded from attending at a polling booth to vote; or

(d) 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,

may make application for a postal vote certificate and postal ballot-paper.

(2) An application under this section, setting out the grounds upon which the elector claims to vote by post, may be made in writing, in person or by letter or telegram after the tenth day after the issue of the writ for the election to the Returning Officer for the electorate for which the applicant is enrolled.

(3) An application under this section shall not be deemed to have been duly made if it reaches the officer to whom it is made after the commencement of the polling period for the election in the electorate for which the applicant is enrolled.

(4) An elector shall not make, and a person shall not induce an elector to make, a false statement in an application for a postal vote certificate and postal ballot-paper.

Penalty: K200.00 or imprisonment for one month<sup>1</sup>.

**98. Application by 18-year-old person for postal vote certificate and postal ballot-paper.**

(1) A person who—

(a) attains the age of 18 years after the issue of the writ; or

(b) will attain the age of 18 years after the issue of the writ and before the end of the polling period,

may make application for a postal vote certificate and postal ballot-paper.

(2) An application under this section shall be made in the prescribed form, after the tenth day after the issue of the writ for the election, to the Returning Officer for the electorate in which the applicant last resided for six months.

<sup>1</sup> See footnote to Section 55.

(3) An application under this section shall be deemed not to have been duly made if it reaches the Returning Officer to whom it is made later than one week before the first day of the polling period for the election in the electorate for which the applicant is applying under this section.

(4) Where an application for a postal vote certificate or postal ballot-paper under this section is accepted, the Returning Officer shall place the applicant's name on the electorate Roll.

(5) An applicant for a postal vote certificate and postal ballot-paper shall not make a false statement in an application under this section.

Penalty: K200.00 or imprisonment for one month<sup>1</sup>.

**99. Penalty for improperly inducing elector to apply for postal vote.**

A person shall not improperly persuade or induce, or associate himself with a person in improperly persuading or inducing, an elector to make application for a postal vote certificate and postal ballot-paper.

Penalty: K200.00 or imprisonment for one month<sup>1</sup>.

**100. Issue of certificate and ballot-papers.**

(1) Subject to Subsection (2), the Returning Officer who receives an application under this Part, if he is satisfied that it is properly made, shall deliver or post to the applicant a postal vote certificate printed on an envelope addressed to the Returning Officer for the electorate for which the applicant declares that he is enrolled, a postal ballot-paper and the prescribed directions to the elector and the authorized witness.

(2) Before delivering or posting a postal vote certificate and postal ballot-paper under Subsection (1), the Returning Officer shall insert in the certificate the name, address, occupation and sex of the elector and, if necessary, shall insert the name of the electorate and the names of the candidates and complete the instructions on the ballot-paper.

(3) 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 electorate for which the elector is enrolled, a Returning Officer shall not post to the elector a postal vote certificate or postal ballot-paper.

(4) The postal vote certificate and postal ballot-paper shall be in the prescribed form.

**101. Inspection of applications.**

(1) All applications for postal vote certificates and postal ballot-papers received by a Returning Officer shall be kept by him.

(2) All applications for postal vote certificates and postal ballot-papers shall be open to public inspection 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.

**102. Numbering of applications and certificates.**

(1) The Returning Officer shall number all applications for postal vote certificates and postal ballot-papers received by him in consecutive order, and shall number each postal vote certificate 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 vote.

<sup>1</sup> See footnote to Section 55.

**103. Returning officer to notify issue of postal vote certificate and postal ballot-paper.**

(1) The Returning Officer for an electorate 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 electors 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) An elector 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.

**104. Authorized witnesses.**

(1) Subject to Subsection (2), the following persons are authorized witnesses within the meaning of this Law :—

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

(2) A person who is a candidate at an election is not an authorized witness at that election or at any other election held at the same time.

**105. Directions for postal voting.**

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

- (a) the elector shall exhibit his postal ballot-paper (unmarked) and his postal vote certificate to an authorized witness; and
- (b) the elector shall indicate the grounds on which he wishes to vote by post by striking out those grounds in the postal vote certificate which do not apply to his particular case; and
- (c) the form of declaration printed on the envelope bearing the postal vote certificate shall, after being filled in, be signed by the elector 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 elector 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 and fasten the envelope; and
- (f) the elector shall promptly post or deliver the envelope or cause it to be posted or delivered, to the Returning Officer for the electorate in which he is entitled to vote; and

- (g) in the case of an elector suffering from a disability referred to in Section 140 the authorized witness shall mark the elector'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 electorate in which he is entitled to vote; and
- (b) the authorized witness shall not suffer or permit any person (other than the elector) to see or become acquainted with the elector's vote, or to assist the elector to vote, or to interfere in any way with the elector in relation to his vote.

**106. Duty of authorized witness.**

(1) An authorized witness shall—

- (a) comply with the provisions of Section 105 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 elector voting by post before him, and by every person present when the elector votes; and
- (c) refrain from disclosing any knowledge of the vote of an elector voting by post before him.

Penalty: K400.00 or imprisonment for three months<sup>1</sup>.

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

Penalty: K800.00 or imprisonment for six months<sup>1</sup>.

**107. Penalty for unlawfully marking postal ballot-paper.**

No person other than—

- (a) the elector to whom the postal ballot-paper has been issued; or
- (b) an authorized witness, acting under Section 105, assisting an elector in accordance with that section,

shall mark a vote upon a postal ballot-paper.

Penalty: K800.00 or imprisonment for six months<sup>1</sup>.

**108. Unlawfully opening postal ballot-paper.**

No person other than the Returning Officer for the electorate 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 105 and which has been fastened by the elector or by an authorized witness in accordance with the provisions of that section.

Penalty: K200.00<sup>1</sup>.

**109. Penalty for 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

<sup>1</sup> See footnote to Section 55.



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: K200.00 or imprisonment for one month<sup>1</sup>.

**110. Penalty for inducing elector to hand over postal ballot-paper.**

A person shall not persuade or induce an elector to hand over to him a postal ballot-paper upon which a vote has been recorded.

Penalty: K200.00 or imprisonment for one month<sup>1</sup>.

**111. Duty of persons present when an elector votes by post.**

A person present when an elector 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 elector in relation to his vote; and
- (c) refrain from assisting the elector or in any manner interfering with him in relation to his vote; and
- (d) refrain from looking at the elector's vote or from doing anything whereby he may become acquainted with the elector's vote.

Penalty: K400.00 or imprisonment for three months<sup>1</sup>.

**112. 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 157, all envelopes containing or bearing a postal vote certificate and purporting to contain a postal ballot-paper issued in respect of his electorate 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 XIII.—THE POLLING.**

*Division 1.—Polling Schedule.*

**113. Polling schedule.**

(1) Subject to any directions given by the Electoral Commission, the Returning Officer shall, as soon as practicable after the close of nominations, prepare a polling schedule showing the anticipated dates and times, within the polling period for the electorate, during which the polling booths will open at the polling places in the electorate, in such manner as he considers will give all electors in the electorate a reasonable and sufficient opportunity to vote at the election.

(2) Nothing in Subsection (1) or in this Law 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.

<sup>1</sup> See footnote to Section 55.

**114. Publication of polling schedule.**

(1) The polling schedule shall be published in the National gazette and in a newspaper circulating in the electorate, and the Returning Officer shall take such other action as he considers necessary or desirable, or as is directed by the Electoral Commission, to ensure adequate publicity for the polling schedule.

(2) A copy of the polling schedule shall be forwarded to each provincial government and Local Government Authority and Council in the electorate and shall be exhibited at such other places in the electorate as the Returning Officer appoints.

(3) A copy of the polling schedule for an electorate shall be forwarded to each candidate in the electorate.

**115. 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 Law or not.

(2) Subject to any directions given by the Electoral Commission, the Returning Officer may, where it becomes impracticable to adhere to a polling schedule, vary the schedule, in which case the provisions of Section 114 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 electors likely to vote at it.

**116. Appeal.**

(1) An elector may, not less than 14 days before the commencement of the polling period for an electorate, appeal to the Electoral Commission for an order varying a polling schedule on the ground that it does not give to all electors in the electorate or in a part of the electorate a reasonable opportunity for voting in the election.

(2) Notwithstanding an appeal under Subsection (1), but subject to Section 115, a polling schedule remains valid and in force until varied by order of the Electoral Commission under Subsection (1).

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

**117. Election not open to challenge.**

An election shall not be challenged on the ground of failure to observe a polling schedule or to comply with the provisions of Section 115<sup>1</sup>, or of a variation or a departure from a polling schedule.

<sup>1</sup> *Semble*, the reference should be to Section 114: compare Section 100 of the pre-Independence *Electoral Act 1963*.

## Division 2.—General Provisions.

**118. Returning Officer to make arrangements.**

(1) If, on the day of nomination, the proceedings stand adjourned to the commencement of the polling, the Returning Officer shall immediately 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 electoral officers, the presiding officer may appoint a person to act as assistant presiding officer, poll clerk or doorkeeper, and the person so appointed or acting shall be deemed to have<sup>1</sup> duly 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.

**119. Substitute.**

A presiding officer may appoint a person not under 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.

**120. No licensed premises to be used.**

No part of any premises licensed, or the subject of a permit, under the pre-Independence law known as the *Liquor (Licensing) Act 1963*<sup>2</sup> shall be used for the purpose of a polling booth.

**121. 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 pencil for the use of voters.

**122. 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,

<sup>1</sup> *Semble*, "been" should have been inserted between "have" and "duly".

<sup>2</sup> Printed in this Revised Edition as the *Liquor (Licensing) Act*.

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.

**123. Certified list of voters.**

The certified list of voters to be used by a presiding officer at a polling place shall be the list of the electors on the Roll enrolled for the electorate for which the polling place is prescribed certified by the Returning Officer, and shall before the hour of commencing the poll in the polling area be delivered to the presiding officer for his guidance during the polling.

**124. Form of ballot-papers.**

Ballot-papers to be used in an election shall be in the prescribed form.

**125. Ballot-papers.**

In printing the ballot-papers to be used in an election—

- (a) the names of all candidates duly nominated shall be printed in an order determined as following<sup>1</sup>:—
- (i) the Returning Officer shall, at the place of nomination, immediately after the close of nominations and before all persons present, make out in respect of each candidate a slip bearing the name of the candidate as shown on his nomination, or the telegraphic advice on his nomination, enclose the respective slips in separate blank envelopes of exact similarity and deposit the several envelopes in a locked ballot-box; and
  - (ii) the Returning Officer shall then thoroughly shake and rotate the ballot-box and shall permit any other person present, if he so desires, to do the same; and
  - (iii) the ballot-box shall then be opened and an officer shall take out and open the envelopes from the ballot-box one by one; and
  - (iv) the candidate whose name appears on the slip enclosed in the envelope first taken from the ballot-box shall be placed first on the ballot-papers, the candidate whose name appears on the slip enclosed in the envelope next taken from the ballot-box shall be placed next on the ballot-papers, and so<sup>2</sup> until the placing of all the candidates has been determined; and
- (b) where similarity in the names of two or more candidates is likely to cause confusion, the names of those candidates may be set out with such description or addition as will distinguish them from one another; and
- (c) except as otherwise prescribed, a square shall be printed opposite the name of each candidate.

**126. Ballot-papers to be initialled.**

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

<sup>1</sup> *Semle*, "as follows" was intended.

<sup>2</sup> *Semle*, the word "on" should follow "so".

(2) The initials of the presiding officer shall be placed on the back of the ballot-paper in such a position so<sup>1</sup> as to be easily seen when the ballot-paper is folded so as to conceal the names of the candidates.

#### 127. Scrutineers at the polling.

(1) Scrutineers may be appointed by candidates to represent them at polling places during the polling, but so that not more than one scrutineer, other than relieving scrutineers, shall be allowed to each candidate at each polling booth or subdivision of a polling booth on any one day.

(2) Appointments of scrutineers shall be made by notice in writing or by telegram addressed to the Returning Officer or presiding officer, and the notice or telegram shall be signed by the candidate and shall give the name and address of the scrutineer.

#### 128. Provisions relating to scrutineer.

(1) A scrutineer shall not—

- (a) interfere with or attempt to influence an elector 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: K10.00<sup>2</sup>.

(2) 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 candidate shall be present in the polling booth or a subdivision of the polling booth at any one time.

(3) 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.

(4) A scrutineer may not be used to assist any voter to vote under Section 140 or 144.

#### 129. Persons present at polling.

A candidate shall not in any way take part in the conduct of the polling, and no person, other than the presiding officer, assistant presiding officers, officers, poll clerks, interpreters, doorkeepers and scrutineers, and the electors voting and about to vote, 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.

#### 130. The polling.

(1) Subject to Subsections (2) and (3), 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 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

<sup>1</sup> *Semble*, the word "so" should be omitted.

<sup>2</sup> See footnote to Section 55.

polling place, and shall not close until all electors 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, with the least possible delay, forward the ballot-box for the purposes of scrutiny, and it shall on no account be opened except in accordance with this Law.

(2) 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 electorate, may close at a time later than 6 p.m.; and
- (b) the presiding officer considers that all electors 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.

(3) Nothing in Subsection (2) shall be deemed to authorize the commencement of the scrutiny before the end of the polling period in every electorate.

### 131. Elections at which electors are entitled to vote.

(1) Subject to Division 3, an elector shall only be admitted to vote for the election of a member for the electorate for which he is enrolled.

(2) A person—

- (a) whose name is on a Roll for an electorate; and
- (b) who has, at some time after his name was entered on the Roll and before the issue of the writ for that electorate, qualified for enrolment in another electorate,

is not qualified to vote in the first-mentioned electorate.

(3) For the purposes of this section, the Rolls in force at the time of the election are, subject to Subsection (2), evidence of the right of each person so enrolled to vote at an election, unless he shows that<sup>1</sup> by his answer to a question prescribed by Section 134 that he is not entitled to vote.

### 132. Where electors may vote.

(1) An elector is entitled to vote at any prescribed polling place for the electorate for which he is enrolled while that polling place is open.

(2) Nothing in this section authorizes an elector to vote more than once at an election.

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<sup>1</sup> *Semle*, "that" should have been omitted.

## 133. Persons claiming to vote to give name and other particulars.

A person claiming to vote at a polling booth shall state his full name or names, and, if so desired by the presiding officer, for the purpose of identifying the name under which the vote is claimed, any other particulars necessary to be stated in the Roll or to enable him to be identified in the Roll.

## 134. Questions to be put to voter.

(1) Subject to this Law, 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 election (or these elections, *as the case requires*)?"; and

(ii) "Did you reside within this electorate for a period of more than six months before your claim for enrolment?"; and

(iii) "Are you at least 18 years of age?"; and

(iv) "Are you a citizen of Papua New Guinea?"; and

(v) "Are you qualified 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 name*) on the certified list of voters for this electorate?"

(2) If a person claiming to vote to whom any of the questions specified in Subsection (1) are put—

(a) refuses to answer fully a question so put to him; or

(b) does not answer the question prescribed in Subsection (1)(a) (i) absolutely in the negative, if so put to him; or

(c) does not answer the question prescribed in Subsection (1)(a) (ii) absolutely in the affirmative when put to him; or

(d) does not answer a question specified in Subsection (1)(a) (iii), (iv), (v) or (b) absolutely in the affirmative when put to him,

his claim to vote shall be rejected unless he is a candidate for election for that electorate.

(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.

## 135. Errors not to forfeit vote.

No omission in the Roll for an electorate or in the certified list of voters of part of any name or entry of a wrong name, address or occupation, and no mistake in the spelling of a name warrants the rejection at the polling of a claim to vote, and no elector shall be disqualified from voting under the name appearing on the Roll because of a change of name, if, in the opinion of the presiding officer, the voter is sufficiently identified.

**136. Right of elector 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 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 3 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 prescribed questions, his right to vote shall be deemed to have been challenged.

**137. List of voters to be marked on issue of ballot-paper.**

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 if his name is on that list.

**138. Vote to be marked in private.**

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

- (a) retire alone to some 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, and exhibit it so folded to the presiding officer, and then openly, and without unfolding it, deposit it in the ballot-box; and
- (c) quit the booth.

**139. Method of marking ballot-paper.**

Subject to this Law, an elector shall record his vote on his ballot-paper by placing an "X" in the square opposite the name of the candidate for whom he wishes to vote in such a way as to clearly indicate his preference for that candidate only.

**140. Assistance to certain voters.**

(1) If a voter satisfies the presiding officer that his sight is impaired or that he is so physically incapacitated that he is unable to vote without assistance, the presiding officer shall permit a person 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) If a voter referred to in Subsection (1) fails to appoint a person under that subsection, or if a voter satisfies the presiding officer that he is so illiterate that he is unable to vote without assistance, the presiding officer, in the presence of—

- (a) if the voter so desires, a person appointed by the voter for the purpose; or
- (b) in the absence of any such appointment, the poll clerk,

shall mark, fold and deposit his ballot-paper for him.



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

Penalty: K400.00 or imprisonment for three months<sup>1</sup>.

*Division 3.—Special Provisions in Certain Cases.*

**141. Vote of person whose name is not on certified list, etc.**

(1) Notwithstanding anything in this Law, where a person who is entitled to be enrolled on the Roll for an electorate claims to vote at an election at a polling place prescribed for that electorate and his name has been incorrectly omitted from or struck from the certified list of voters for that polling place, or where a person who is enrolled on the Roll for an electorate claims to vote at an election at a polling place prescribed for that electorate and his name cannot be found by the presiding officer on the certified list of voters, he may, subject to this Law, be permitted to vote if—

(a) in the case of a person whose name has been omitted from the certified list—

(i) his non-enrolment is due to an error or omission in the compilation of the Roll; and

(ii) he is not enrolled for another electorate,

and in addition—

(iii) he did not know, and had no reasonable opportunity of knowing, that he was not enrolled, or had no reasonable opportunity of making a claim for enrolment or transfer of enrolment, as the case requires; or

(iv) he made a claim for enrolment or transfer of enrolment, as the case requires, in respect of the electorate, and the claim was received by the Returning Officer before 4 p.m. on the day of the issue of the writ for the election and he did not, after making a claim for enrolment or transfer of enrolment and before the issue of the writ, become qualified for transfer of enrolment to another electorate; or

(b) in the case of a person whose name has been struck from the certified list—

(i) his name was not, to the best of his knowledge, removed from the Roll for the electorate owing to objection, or transfer or duplication of enrolment, or disqualification; and

(ii) he had, from the time of his enrolment for the electorate to the date of the issue of the writ for the election, continuously retained his right to enrolment for that electorate; or

(c) in the case of a person whose name is on the Roll for an electorate for which he claims to vote but cannot be found by the presiding officer, he claims that his name appears or should appear on the Roll,

and makes a declaration in the prescribed form before the presiding officer at the polling place.

(2) Where a voter claims to vote under the provisions of this section, his ballot-paper shall be marked and folded in the manner prescribed and returned so folded to the presiding officer who shall deal with it as prescribed.

<sup>1</sup> See footnote to Section 55.