

No. 1 of 2006.

*Claims By and Against the Autonomous Bougainville Government Act
2006.*

Certified on: 29th March 2006.

AUTONOMOUS REGION OF BOUGAINVILLE.

No. 1 of 2006.

Claims By and Against the Autonomous Bougainville Government Act 2006.

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SCHEDULE.

AUTONOMOUS REGION OF BOUGAINVILLE.

No. 1 of 2006

AN ACT

entitled

Claims By and Against the Autonomous Bougainville Government Act 2006.

Being an Act to provide for claims by and against the Autonomous Bougainville Government, and for related purposes,

MADE by the House of Representatives.

1. INTERPRETATION.

In this Act, unless the contrary intention appears –

“Principal Legal Adviser” means the Principal Legal Adviser to the Bougainville Executive Council referred to in Section 113(1)(a)(*The Law Officers of Bougainville*) of the *Bougainville Constitution*, or where no appointment of Principal Legal Adviser has been made, the Principal Legal Officer of the Bougainville Administration;

“suit” includes any action or original proceedings between parties in any action or original proceedings in any court of competent jurisdiction.

2. SUITS AGAINST THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.

(1) A person making a claim against the Autonomous Bougainville Government in contract or in tort may bring a suit against the Autonomous Bougainville Government in respect of the claim in any court in which a suit may be brought as between other persons.

(2) The provisions of this Act apply to applications -

(a) for the enforcement against the Autonomous Bougainville Government of a right or freedom under Section 183 (*enforcement of guaranteed rights and freedoms*); and

(b) for damages for infringement by the Autonomous Bougainville Government of a right or freedom under Section 184 (*damages for breach of rights*),

of the *Bougainville Constitution*.

3. CLAIMS AGAINST THE AUTONOMOUS BOUGAINVILLE GOVERNMENT NOT ENFORCEABLE IN CERTAIN CIRCUMSTANCES.

(1) In this section:-

“Authority to Pre-commit Expenditure” means an Authority to Pre-commit Expenditure under Section 47B of the *Public Finances (Management) Act 1995* of the National Parliament;

“Integrated Local Purchase Order and Claim (ILPOC)” means Finance Form 4A – Integrated Local Purchase Order and Claim issued in accordance with the Finance Instructions under the *Public Finances (Management) Act 1995* of the National Parliament.

(2) A claim for the price arising from the sale of property or stores or for the supply of goods or services to the Autonomous Bougainville Government shall not be enforceable, through the courts or otherwise, unless the seller of the property or stores or the supplier of the goods and services produces -

(a) a properly authorized Integrated Local Purchase Order and Claim (ILPOC); or

(b) an Authority to Pre-commit Expenditure,

relating to the property or stores or goods or services, the subject of the claim, to the full amount of the claim.

4. SUIT AGAINST THE PRESIDENT.

A person making a claim against the President shall, in the proceedings, make such claim against the Principal Legal Adviser, who shall be the nominal defendant on behalf of the President.

5. SUITS BY THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.

Suits on behalf of the Autonomous Bougainville Government, including relator proceedings, may be brought in the name of the Autonomous Bougainville Government -

(a) by the Principal Legal Adviser; and

(b) in respect of an action in the District Court or in a Bougainville Court (other than the Bougainville High Court) by -

(i) the Principal Legal Adviser; or

(ii) a person appointed for the purpose by the Minister.

6. NOTICE OF CLAIMS AGAINST THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.

(1) No action to enforce any claim lies against the Autonomous Bougainville Government unless notice in writing of intention to make a claim is given in accordance with this section to the Principal Legal Adviser.

(2) A notice under this section shall be given -

(a) within a period of six months after the occurrence out of which the claim arose; or

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- (b) where the claim is for breach of a contract, within a period of six months after the claimant became aware of the alleged breach; or
 - (c) within such further period as -
 - (i) the Principal Legal Adviser; or
 - (ii) the court before which the action is instituted, on sufficient cause being shown, allows.
- (3) A notice under Subsection (1) shall be given by -
- (a) personal service on the Principal Legal Adviser; or
 - (b) leaving the document at the office of the Principal Legal Adviser with the person apparently occupying the position of personal secretary to that officer between the hours of 7.45 a.m and 12 noon, or 1p.m. and 4.06p.m or such other hours as may from time to time be declared by or under the *Public Services (Management) Act 1995* of the National Parliament to be the normal Public Service hours of duty, on any day which is not a Saturday, Sunday or a public holiday declared by or under the *Public Holidays Act* of the National Parliament, or by or under a Bougainville law.

7. NO FEES PAYABLE BY AUTONOMOUS BOUGAINVILLE GOVERNMENT.

No fees shall be payable by the Autonomous Bougainville Government for any filing, issuing, sealing or otherwise dealing with any document.

8. SERVICE OF PROCESS WHERE AUTONOMOUS BOUGAINVILLE GOVERNMENT IS PARTY.

(1) Where the Autonomous Bougainville Government is a party to a suit, all process in the suit required to be served on it shall be served on the Principal Legal Adviser.

- (2) Service under this section shall be effected by -
- (a) personal service on the Principal Legal Adviser; or
 - (b) leaving the document at the office of the Principal Legal Adviser with the person apparently occupying the position of personal secretary to that officer between the hours of 7.45a.m. and 12 noon, or 1.00 a.m. and 4.06 a.m, or such other hours as may from time to time be declared by or under the *Public Services (Management) Act 1995* of the National Parliament to be the normal public service hours of duty, on any day which is not a Saturday, Sunday or a public holiday declared by or under the *Public Holidays Act* of the National Parliament., or by or under a Bougainville law.

9. LEAVE FOR JUDICIAL REVIEW.

Notwithstanding anything in any other Bougainville law, a court hearing an application for judicial review in a matter in which the Autonomous Bougainville

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Government is a defendant shall not grant leave unless the Autonomous Bougainville Government has been afforded an opportunity to be heard.

10. FILING OF DEFENCE BY THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.

Notwithstanding anything in any other Bougainville law, in any proceedings for a claim against the Autonomous Bougainville Government, the time within which the Autonomous Bougainville Government shall be required to file a defence or appear in response to a summons or complaint (as the case may be) shall be -

- (a) in a claim commenced by writ in the Bougainville High Court or the National Court -
 - (i) where the statement of claim is endorsed on the writ - before the expiry of 60 days after date of expiry of the time limited for it to give notice of intention to defend; or
 - (ii) where the statement of claim is not endorsed on the writ - before the expiry of 60 days from the date of service of the statement of claim; or
- (b) where a cross-claim is made against the Autonomous Bougainville Government before the expiry of 30 days from the date of service of the cross-claim; or
- (c) in an application under-
 - (i) Section 57 (*enforcement of guaranteed rights and freedoms*) of the *National Constitution*; or
 - (ii) Section 183 (*enforcement of guaranteed rights and freedoms*) of the *Bougainville Constitution*, before the expiry of 90 days from the date of service of the application; or
- (d) in a claim made in the District Court or other Bougainville Courts - before the expiry of 90 days from the date of service of the summons,

or such further time as the court before which the action is instituted, upon sufficient cause being shown, allows.

11. SECURITY FOR COSTS.

Notwithstanding anything in the Rules of Court of the Bougainville High Court, where the Autonomous Bougainville Government is a party to a suit -

- (a) in which another party is -
 - (i) resident outside Bougainville; or
 - (ii) a company in receivership or liquidation; or
- (b) involving a matter under the *Migration Act* (Chapter 16) of the National Parliament,

or in any other case where it appears likely that costs awarded against another party in favour of the Autonomous Bougainville Government may not be recovered, the court may, on application, order that the other party pay security for costs into court.

12. RIGHTS OF PARTIES.

In a suit to which the Autonomous Bougainville Government is a party -

- (a) the rights of parties, as nearly as possible, are the same; and
- (b) judgement may be given and costs awarded,

as in a suit between other persons.

13. JUDGEMENT AGAINST THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.

(1) No exemplary damages may be awarded against the Autonomous Bougainville Government unless it appears to the court that, regardless of the nature of the claim, there has been a breach of Constitutional rights so severe or continuous as to warrant an award of exemplary damages.

(2) Notwithstanding anything in the Rules of the Bougainville High Court, a court giving judgement against the Autonomous Bougainville Government may not include any order as to time or payment of the judgement.

(3) Where in a claim against the Autonomous Bougainville Government, the Autonomous Bougainville Government is in default with the meaning of -

- (a) the National Court Rules, (where the judgement was given by the National Court); or
- (b) the Rules of Court of the Bougainville High Court, (where the judgement was given by the Bougainville High Court),

then notwithstanding that a plaintiff's claim for relief is for a liquidated demand, judgement shall not be entered against the Autonomous Bougainville Government for the sum claimed unless the sum claimed relates to a debt only, and in all other cases judgement shall be entered for damages to be assessed, and, where appropriate, for costs.

14. NO EXECUTION AGAINST THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.

(1) In any suit, execution or attachment, or process in the nature of execution or attachment, may not be issued against the property or revenue of the Autonomous Bougainville Government.

(2) Where a judgement is given against the Autonomous Bougainville Government, the registrar, clerk or other proper officer of the court by which the judgement is given, shall issue a certificate in Form 1 to the party in whose favour the judgement is given.

15. SATISFACTION OF JUDGEMENT AGAINST THE AUTONOMOUS BOUGAINVILLE GOVERNMENT.

(1) The certificate referred to in Section 14(2) shall be served on the Principal Legal Adviser by -

- (a) personal service; or
- (b) leaving the document at the office of the Principal Legal

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Adviser with the person apparently occupying the position of personal secretary to that officer between the hours of 7.45a.m. and 12 noon, or 1.00 a.m. and 4.06 a.m, or such other hours as may from time to time be declared by or under the *Public Services (Management) Act 1995* of the National Parliament to be the normal public service hours of duty, on any day which is not a Saturday, Sunday or a public holiday declared by or under the *Public Holidays Act* of the National Parliament, or by or under a Bougainville law.

(2) The Principal Legal Adviser shall, within 60 days from the date of service upon him of a certificate under Section 14(2), endorse the certificate in Form 1.

(3) Upon receipt of the certificate of a judgement against the Autonomous Bougainville Government bearing the endorsement of the Principal Legal Adviser that judgement may be satisfied, the Divisional Head responsible for finance matters shall, within a reasonable time, satisfy the judgement out of moneys legally payable.

(4) Any payment in satisfaction of judgement may, in the absolute discretion of the Divisional Head responsible for finance matters, be made by instalments, provided that the judgement is satisfied in a reasonable time.

- (5) No action -
(a) for or in the nature of mandamus; or
(b) for contempt of court,

or otherwise, lies against the Principal Legal Adviser or the Divisional Head responsible for finance matters in respect of the satisfaction of a judgement referred to in this Act, other than for failure to observe the requirements of Subsection (2), (3) or (4), as the case may be, or unless other exceptional circumstances can be shown to the satisfaction of the court.

16. EXECUTION BY AUTONOMOUS BOUGAINVILLE GOVERNMENT.

Where, in any suit, a judgement is given in favour of the Autonomous Bougainville Government against any person, the Autonomous Bougainville Government may enforce the judgement against him by such execution, attachment or other process as could be had in a suit between other persons.

17. RECOVERY OF CERTAIN FINES.

(1) Where a fine is imposed on a person otherwise than by a judgement or conviction of a court or magistrate and the fine is not immediately paid, the Judge or a magistrate of the court by which, or the magistrate by whom, the fine is imposed, shall -

- (a) certify under his hand, in Form 2 -
(i) that the fine has not been paid; and
(ii) the name and place of abode or business of the person on whom the fine is imposed; and
(iii) the cause and amount of the fine; and

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(b) deliver the certificate or send it by post to the Principal Legal Adviser.

(2) On receipt of a certificate under Subsection (1), the Principal Legal Adviser shall cause a final judgement to be signed in the Bougainville High Court or in the National Court for the amount of the fine and K5.00 per costs.

(3) A judgement under Subsection (2) may be -

(a) in Form 3; and

(b) enforced in the same manner as any other judgement of the Bougainville High Court or the National Court.

18. DEBTS DUE BY RECOGNIZANCE.

(1) Where a person has entered into a recognizance to the Autonomous Bougainville Government and the recognizance is forfeited, the Judge or magistrate before which, or the magistrate before whom, it is forfeited may cause the recognizance to be estreated, and the Judge or magistrate shall -

(a) certify under his hand, in Form 4, that the forfeiture has taken place; and

(b) cause the recognizance and the certificate to be delivered or sent by post to the Principal Legal Adviser.

(2) On receipt of the recognizance and certificate under Subsection (1), the Principal Legal Adviser shall cause a final judgement to be signed in the Bougainville High Court of the amount of the recognizance and K5.00 for costs.

(3) A judgement under Subsection (2) -

(a) may be in Form 5; and

(b) may be enforced in the same manner as any other judgement of the Bougainville High Court.

19. JUDGEMENTS ON FINES, ETC., MAY BE VACATED BY COURT OR JUDGE.

(1) Where a final judgement is signed under Section 16 or 17, whether execution has been issued on the judgement or not, the Bougainville High Court or the National Court or a Judge may order satisfaction to be entered on the judgement.

(2) An order under this section shall not be made -

(a) except on a rule *nisi* or summons calling on the Principal Legal Adviser to show cause; and

(b) unless it is proved by affidavit, to the satisfaction of the Bougainville High Court or National Court or Judge, that -

(i) the judgement has been satisfied; or

(ii) according to equity and good conscience and the real merits of the case the person against whom the judgement has

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been signed ought not to be required to satisfy the judgement.

20. FORM PROCESS.

A document (other than an indictment) made or issued to initiate or further any legal proceedings by or against the Autonomous Bougainville Government may be made or issued by or against the Autonomous Bougainville Government under the description "the Autonomous Bougainville Government" or "Bougainville" or "the Autonomous Region of Bougainville".

SCHEDULE.

AUTONOMOUS BOUGAINVILLE GOVERNMENT.

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Sec. 14(2)

FORM 1.

CERTIFICATE OF JUDGEMENT.

A.B. v. The Autonomous Bougainville Government.

I certify that A.B., of _____, on _____ 20, did obtain a judgement of the (name of court) in his favour, and that by such judgement I certify that-

(a) the judgement may be satisfied.

OR

(b) the Autonomous Bougainville Government proposes to take further action in this matter and satisfaction of judgement cannot take place.

Dated _____ day of _____ 20

Registrar (or Clerk)
(Name of Court)

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Sec. 17(1)

FORM 2.

CERTIFICATE OF FINE.

I certify that at the _____, held at _____ on _____ 20,

C.D. of _____ (place of abode or business and occupancy) was fined the sum of
K _____ for (cause of fine)

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Dated _____ day of _____ 20

Judge (or Magistrate)

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Sec. 17(3)

FORM 3.

FINAL JUDGEMENT.

In the Bougainville High Court/National Court

On the application of A.B. the Principal Legal Adviser to the Autonomous Bougainville Government.

WHEREAS at the _____ held at _____ on _____ 20,
Before C.D., a fine of K _____ was imposed on E.F. for *(state cause of fine)* as
appears by the certificate of C.D. now filed in this Court.

It is adjudged that the Autonomous Bougainville Government recover against E.F.
the sum of K and K5.00 for costs, making K _____

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Sec 18(1)

FORM 4.

JUDGEMENT OF FORFEITED RECOGNIZANCE.

I certify that at the _____, held at _____ on _____ 20, the
Recognizance annexed were forfeited and were there and then caused to be estreated.

Date _____ 20.

Judge {or as case may be}

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Sec. 18(3)

FORM 5.

JUDGEMENT OF FORFEITED RECOGNIZANCE

In the Bougainville High Court

On the application of A.B. the Principal Legal Adviser to the Autonomous Bougainville Government.

WHEREAS at the _____ held at _____ on _____ 20, before CD. the recognizance of E.F. which he acknowledged to owe the Autonomous Bougainville Government the sum of K _____ was forfeited and estreated as appears by the recognizance and the certificate of C.D. now filed in this Court.

I hereby certify that the foregoing is a fair copy of the *Claims By and Against the Autonomous Bougainville Government Act 2006* which has been made by the House of Representatives.

Acting Clerk of the House of Representatives.

I, **NICHOLAS PENIAI**, Speaker of the House of Representatives, hereby certify that the *Claims By and Against the Autonomous Bougainville Government Act 2006* was made by the House of Representatives on 29th March 2006.

Speaker of the House of Representatives.