

No. 7 of 2006

Bougainville Restoration and Development Authority Act 2006

Certified on: 27th June 2006

AUTONOMOUS REGION OF BOUGAINVILLE

No. 7 of 2006

Bougainville Restoration and Development Authority Act 2006.

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AUTONOMOUS REGION OF BOUGAINVILLE.

No. 7 of 2006

AN ACT

entitled

Bougainville Restoration and Development Authority Act 2006.

Being an Act to establish the Bougainville Restoration and Development Authority to coordinate and supervise restoration and development in Bougainville following the Bougainville conflict, to make provision for the functions and powers of the Authority, and for related purposes.

MADE by the House of Representatives.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *National Constitution*, namely –

- (a) the right to privacy conferred by Section 49 of the *National Constitution*;
- and
- (b) the right to freedom of information conferred by Section 51 of the *National Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public safety, public order and public welfare.

2. INTERPRETATION.

(1) In this Act, unless the contrary intention appears –

“Authority” means the Bougainville Restoration and Development Authority established by Section 4;

“Chairman” means the Chairman of the Authority appointed under Section 5;

“Deputy Chairman” means the Deputy Chairman of the Authority elected under Section 5(3);

“member” means a member of the Authority;

“person responsible” means a person appointed by a public body under Section 18(1), and in relation to a public body, means the person responsible in and for that public body;

“public body” means any –

- (a) Department; or
- (b) Bougainville Government Service; or
- (c) Subject to subsection (2), authority or instrumentality or other body (corporate or unincorporated) established by or under the *Bougainville Constitution* or a Bougainville law;

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“records” includes deeds, writings and documents and other records of information, whether compiled, recorded or stored by microfilm or electronic process or otherwise;

“this Act” includes the Regulations.

(2) Where any question arises as to whether an authority or instrumentality or other body is a public body, the Minister may, by notice in the Bougainville Gazette, declare it to be a public body for the purposes of this Act.

3. APPLICATION.

This Act binds the Autonomous Bougainville Government.

PART II. – ESTABLISHMENT AND MEMBERSHIP, ETC., OF THE AUTHORITY.

4. ESTABLISHMENT, ETC., OF THE AUTHORITY.

(1) The Bougainville Restoration and Development Authority is hereby established.

(2) The Authority –

- (a) is a body corporate with perpetual succession; and
- (b) shall have a common seal; and
- (c) may acquire, hold and dispose of property; and
- (d) may sue and be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

5. MEMBERSHIP OF THE AUTHORITY.

(1) The Authority shall consist of the following members: -

- (a) a prominent Bougainvillean, who shall be Chairman;
- (b) two officers of the Bougainville Public Service or, until the Bougainville Public Service has been established, two officers of the Bougainville Administration located in Bougainville;
- (c) two members of the Bougainville Executive Council, nominated by the Bougainville Executive Council;
- (d) two members nominated by the National Executive Council to represent the National Government in accordance with the Bougainville Peace Agreement;
- (e) one other Bougainvillean.

(2) The members of the Authority –

- (a) shall be appointed by the Bougainville Executive Council by notice in the Bougainville Gazette; and

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- (b) in the case of members other than members referred to in Subsection (1)(d), hold office during the pleasure of the Bougainville Executive Council; and
- (c) in the case of members referred to in Subsection (1)(d), hold office during the pleasure of the National Executive Council; and
- (d) shall be entitled, in the case of members who are not officers of the Bougainville Public Service or of the National Public Service, to such fees and allowances as are fixed by the Bougainville Executive Council.

(3) The members of the Authority shall elect one of their number to be the Deputy Chairman.

6. APPLICATION OF LEADERSHIP CODES, ETC.,

(1) Subject to Subsection (2), pursuant to Section 26(3)(*application of Division 2*) of the *National Constitution*, the office of a member of the Authority is declared to be public office to and in relation to which Division 111.2(*Leadership Code*) of the *National Constitution* applies.

(2) Where the office of Bougainville Ombudsman has been established, the provisions of Subsection (1) shall not apply to the office of a member of the Authority referred to in Section 5(1)(a), (b), (c), and, pursuant to Section 169(4)(*application of Leadership Code*) of the *Bougainville Constitution* the office of a member of the Authority referred to in Section 5(1)(a), (b), (c) or (e) is declared to be a public office to and in relation to which Part XIII (*Leadership Code*) of the *Bougainville Constitution* applies.

7. LEAVE OF ABSENCE.

The Minister may grant leave of absence to a member of the Authority.

8. DECLARATION OF LOYALTY, ETC.,

A member shall, before entering the duties of his office, make or subscribe before a person authorized by law –

- (a) unless he has made it on a previous occasion or is a member referred to in Subsection (1)(d), the Declaration of Loyalty to Bougainville; and
- (b) where the Leadership Code under the *National Constitution* is to apply –
 - (i) the Declaration of Loyalty; and
 - (ii) the Declaration of Office; and
- (c) where the Leadership Code under the *Bougainville Constitution* is to apply, the Declaration of Office in the form specified in the Schedule, which may be made before a Judge of the Bougainville High Court or a Judge of the National Court or a Magistrate.

9. RESIGNATION.

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A member may resign his office by writing signed by him and delivered to the Minister.

10. VACANCY NOT TO AFFECT POWERS AND FUNCTIONS.

The exercise of a power or the performance of a function of the Authority under this Act is not invalidated by reason only of a vacancy in the membership of the Authority.

11. DISCLOSURE OF INTEREST.

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Authority, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Authority.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Authority and, unless the Minister or the Authority determines otherwise, the member shall not -

- (a) be present during any deliberation of the Authority with respect to that matter; or
- (b) take part in any decision of the Authority with respect to that matter.

12. MEETINGS OF THE AUTHORITY.

(1) The Authority shall hold such meetings as are necessary for the efficient performance of its functions and at such times and places as it determines, or as the Chairman, or in his absence the Deputy Chairman, directs, but in any event, shall meet not less frequently than once in each month.

(2) The Chairman -

- (a) may, at any time, convene a meeting of the Authority; and
- (b) shall, on receipt of a written request signed by not less than two other members of the Authority, convene a meeting of the Authority.

(3) Subject to Subsection (4), the Chairman shall preside at all meetings of the Authority.

(4) Where the Chairman is not present at a meeting of the Authority, the Deputy Chairman shall preside.

(5) At a meeting of the Authority -

- (a) the Chairman or Deputy Chairman and five members (at least one of whom shall be a member referred to in Section 5(1)(d)) are a quorum; and
- (b) matters arising shall be decided by a majority of votes of the members present and voting; and

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- (c) the person presiding has a deliberative vote and, in the event of an equality of votes on any matter, also a casting vote.

(6) The contemporaneous linking together by telephone or other means of communication of a member or number of members of the Authority, whether or not one or more of the members is outside Papua New Guinea, is deemed to constitute a meeting of the Authority where –

- (a) notice of the meeting has been given to every person entitled to receive notice of a meeting of the Authority; and
- (b) the number and composition of members taking part in the meeting is not less than the quorum fixed by Subsection (5)(a) and each of the members taking part –
 - (i) is linked up by telephone or other means of communication for the purposes of the meeting; and
 - (ii) acknowledges, at the commencement of the meeting, to all other members taking part, his presence for the purpose of the meeting; and
 - (iii) is able through the meeting to hear the other members taking part; and
 - (iv) on any vote, individually expresses his vote to the meeting; and
- (c) the following conditions apply:-
 - (i) that a member shall not leave a meeting by disconnecting his telephone or other means of communication unless the member has previously obtained the express consent of the chairman of the meeting;
 - (ii) that a member shall be conclusively presumed to have been present and to have formed part of a quorum at all times during the meeting by telephone or other means of communication, unless the member has previously obtained the consent of the chairman of the meeting to leave the meeting.

(7) The Authority shall cause minutes of its meetings to be recorded and kept.

(8) Subject to this Act, the procedures of the Authority are as determined by the Authority.

13. REPORTS.

(1) The Authority shall, before 31st March in each year, furnish to the Minister a report on the progress and performance of the Authority in relation to its functions in respect of the year ending 31st December preceding, and the Minister shall table such report at the first sitting of the House of Representatives after the date of his receipt of it.

(2) The Authority shall also furnish to the Minister such other reports as the Minister may require at such intervals as the Minister may determine.

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(3) A copy of any report furnished by the Authority to the Minister under this section shall be furnished by the Authority to the National Minister responsible for finance and treasury matters.

14. SECRETARIAT AND STAFF.

(1) The Bougainville Administration shall provide secretarial services to the Authority.

(2) The Bougainville Executive Council shall, by notice in the Bougainville Gazette, appoint suitably qualified persons to act as staff to the Authority.

(3) A person appointed under Subsection (2) who is not an officer of the National Public Service or of the Bougainville Public Service, shall be paid such fees and allowances as are determined by the Minister after consultation with the Salaries and Conditions Monitoring Committee.

(4) A person appointed under Subsection (2) who is an officer of the National Public Service or of the Bougainville Public Service -

(a) shall be deemed to have been seconded to the support staff of the Authority; and

(b) shall, during his period of deemed secondment, be paid his salary and other entitlements by the Department by which, immediately prior to his secondment, he was employed.

(5) The service on the staff of the Authority of an officer to whom Subsection (4) applies shall be counted as service in the National Public Service or in the Bougainville Public Service, as the case may be, for the purpose of determining his rights (if any) in respect of -

(a) leave of absence on the grounds of illness; or

(b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

PART III. – FUNCTIONS AND POWERS, ETC., OF THE AUTHORITY.

15. FUNCTIONS OF THE AUTHORITY.

The functions of the Authority generally are to oversee and co-ordinate all restoration and development of all physical infrastructure and physical works in Bougainville and, without prejudice to the generality of the foregoing, are –

(a) the co-ordination of the planning and implementation of the restoration and development of all physical infrastructure and physical works in Bougainville, the priority having been established by the Bougainville Executive Council (either by way of an approved project list or through evaluation criteria); and

(b) the assessment of the physical scope of projects including necessary benefit/cost and environmental assessments, and if necessary the undertaking of preliminary design and the evaluation

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- of options and the obtaining of all necessary approvals and contracts; and
- (c) the identification of and liaison with potential funders of proposals to meet funding criteria; and
- (d) the preparation, or arrangement of the preparation, of all tender documents, and the calling and evaluation of all tenders in accordance with internationally accepted standards; and
- (e) the supervision of construction and the undertaking of all necessary project management, including financial control, certification and final approvals before handing over the completed project to the Autonomous Bougainville Government.

16. POWERS OF THE AUTHORITY.

(1) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act and may require a public body to provide to it such particulars, as the Authority may determine, relating to that public body or to its functions which affect any of the functions of the Authority.

- (2) Where, in the opinion of the Authority –
- (a) any information, books or records in the possession of or under the control of a public body is or are relevant to the exercise or performance of the powers or functions of the authority under this Act or to the achievement of the purposes of this Act; and
 - (b) it is desirable that the information be given to the Authority or that the books or records be made available for inspection by the Authority,

the Authority may issue to the person responsible in the public body a written notice to that effect under the hand of the Chairman specifying the relevant information, books and records and specifying the place and time at which any information, books and records are to be furnished or produced.

(3) Where a notice under Subsection (2) has been furnished to the person to whom it is issued, the person shall furnish or produce for inspection at the place and time specified in the notice such information, books and records as are specified in the notice and copies of and extracts from any information, books and records so furnished may be made and retained by the Authority.

(4) The provisions of Subsection (3) shall not affect the operation of any law by or under which any information, book or record is to be kept confidential.

PART IV. – OBLIGATIONS OF PUBLIC BODIES, ETC.,

17. GENERAL OBLIGATIONS.

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All public authorities and all governing bodies (by whatever name known) in Bougainville, executives, Departmental and Divisional Heads, officers and employees of public bodies shall assist and co-operate with the Authority in the performance of the functions and powers of the Authority under this Act.

18. PUBLIC BODY TO APPOINT PERSON TO BE RESPONSIBLE FOR LIAISON WITH THE AUTHORITY, ETC.,

(1) For the purposes of ensuring and facilitating co-operation with the Authority, a public body shall appoint a person employed by it to be available for the purposes of liaison under this Act.

(2) A person appointed under Subsection (1) shall be a level of not less than Assistant Secretary in the National Public Service or Bougainville Public Service, or equivalent level.

- (3) A person appointed under Subsection (1) is responsible for –
- (a) liaison between the public body by which he is employed and the Authority; and
 - (b) ensuring that all directions and correspondence from the Authority are brought, as quickly as possible, to the appropriate person within that public body.

(4) The management of a public body shall ensure that every assistance is given to the person responsible to enable him to carry out his duties under this Act.

19. FAILURE TO CO-OPERATE WITH THE AUTHORITY TO AMOUNT TO MISCONDUCT.

(1) Where a public body fails to co-operate with the Authority in the performance by the Authority of its powers and functions under this Act –

- (a) in the case of a public body other than a Department – every person involved in the failure to co-operate is considered to have been guilty of misconduct or misbehaviour and where misconduct or misbehaviour is grounds for dismissal or removal from office, is liable to dismissal or removal from office; and
- (b) in the case of a Department – the Departmental Head and every officer concerned is guilty of negligence in the discharge of his duties under Subsection 50(e) of the *Public Services (Management) Act* 1995.

(2) For the purposes of Subsection (1), a public body or a person employed by a public body fails to co-operate with the Authority if it or he fails, within a reasonable time -

- (a) to comply with a notice issued by the Authority under Section 16(2); or
- (b) to comply with a direction by the Authority; or
- (c) to answer correspondence from the Authority; or

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- (d) otherwise, to assist the Authority in the performance of its functions to the extent that such assistance is within the functions and powers of that public body or person.

PART V. – FINANCE.

20. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1995.

Part VIII of the *Public Finances (Management) Act* 1995 applies to and in relation to the Authority.

PART VI. – MISCELLANEOUS.

21. PROTECTION FROM PERSONAL LIABILITY.

The Chairman, Deputy Chairman or a member of the Authority is not personally liable for any act or default of himself or the Authority done or omitted to be done in good faith in the course of the operations of the Authority or for the purposes of this Act.

22. CONFIDENTIALITY.

(1) The Authority shall take all reasonable steps to protect, from unauthorized use or disclosure, information given to it in confidence in connection with the performance of its functions or the exercise of its powers.

(2) For the purposes of Subsection (1), the disclosure of information as required and permitted by any law or court of competent jurisdiction shall be considered authorized use and disclosure of the information.

(3) For the purposes of Subsection (1), the disclosure of information by a person for the purposes of performing that person's functions as a -

- (a) person providing secretarial services to the Authority under Section 14; or
- (b) member of the support staff of the Authority; or
- (c) member of the Authority,

shall be considered authorized use and disclosure of the information.

23. REGULATIONS.

The Bougainville Executive Council may make Regulations, not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act, and in particular for prescribing fees and for penalties of fines not exceeding K1,000.00 for offences against the Regulations.

SCHEDULE

Sec 8 (c)

Sec. 8 (c)

DECLARATION OF OFFICE

I,, do promise and declare that I will well and truly serve the Autonomous Region of Bougainville and its People in the Office of member of the Bougainville Restoration and Development Authority.

MADE thisday of

Before me

.....

I hereby certify that the foregoing is a fair copy of the *Bougainville Restoration and Development Authority 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 *Bougainville Restoration and Development Authority Act 2006* was made by the House of Representatives on 13 June 2006 by an absolute majority vote in accordance with the *Bougainville Constitution*.

Speaker of the House of Representatives.

