

**No. 2 of 2011.**

***HIV/AIDS (Prevention and Management) Act 2011.***

**Certified on: 20<sup>th</sup> September 2011.**

**AUTONOMOUS REGION OF BOUGAINVILLE.**

**No. 2 of 2011.**

**AN ACT**

**entitled**

***HIV/AIDS (Prevention and Management) Act 2011.***

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**AUTONOMOUS REGION OF BOUGAINVILLE.**

**No. 2 of 2011.**

**AN ACT**

*entitled*

***HIV/AIDS (Prevention and Management) Act 2011.***

Being an Act to provide for-

- (a) the prevention of the spread of HIV/AIDS; and
  - (b) the management of the lives of and protection from discriminatory practices of people living with HIV/AIDS and of people who are affected by or believed to have HIV/AIDS; and
  - (c) the protection and promotion of public health and public welfare in the management and prevention of HIV/AIDS; and
  - (d) the establishment of a Bougainville AIDS Council,
- and for related purposes.

**MADE by the House of Representatives.**

***PART 1. – PRELIMINARY.***

**1. COMMENCEMENT.**

This Act shall come into operation on a date approved by the Minister and published in the Bougainville Gazette.

**2. INTERPRETATION.**

- (1) In this Act, unless the context otherwise requires –
  - “AIDS” means the Acquired Immune Deficiency Syndrome;
  - “approved HIV test kit” means an HIV test kit approved for use in Bougainville in accordance with Section 66;
  - “Chairperson” means the Chairperson of the Council appointed under Section 9;
  - “condom” includes a female condom;
  - “Council” means the Bougainville AIDS Council established by Section 5;
  - “counselling” includes the provision of pre-test information and post-test support and the provision of care;
  - “Database Manager” means the person or authority for the time being responsible for the collection, collation and dissemination of statistical information regarding the prevalence of HIV/AIDS in Bougainville;
  - “detainee” has the meaning given to it under the *Correctional Service Act 1995*;

“Director” means the Director of the Bougainville AIDS Council appointed under Section 22;

“discrimination” includes harassment;

“education institution” means a school, college, university or other institution that provides education or training, other than an institution that –

- (a) is conducted for private purposes; or
- (b) is not open to the public; or
- (c) is not intended to give qualifications for public recognition;

“health care worker” means a person registered or enrolled in any of the categories or classes of professions for which registration or enrolment is required under the *Medical Registration Act 1980*;

“health facility” includes a mental health facility and a dental health facility;

“HIV” means the Human Immunodeficiency Virus;

“HIV test” means a test to determine the presence of HIV or HIV antibodies;

“HIV test kit” means articles and reagents used for carrying out an HIV test;

“HIV/AIDS awareness material” includes –

- (a) written, drawn, constructed, fabricated, photographic, film, video, theatrical, or audio material, however presented, performed, published or displayed, which raises awareness of HIV/AIDS, its management and prevention; and
- (b) instructions for use of condoms and condom lubricant, and other means of prevention of HIV transmission;

“infected” in relation to HIV, includes carrying HIV antibodies;

“Infection Control Guidelines” means any policy guidelines approved from time to time by the Minister responsible for health matters for the prevention of infection in health facilities;

“medical practitioner” means a person registered as such under the *Medical Registration Act 1980*;

“Minister” means the Minister responsible for health;

“person in custody” means a person of a kind referred to in Sections 64 or 65 of the *Correctional Service Act 1995*;

“person infected or affected by HIV/AIDS” means a person who –

- (a) is, or is presumed to be, infected by HIV or has, or is presumed to have, AIDS; or
- (b) has had, is having, is seeking to have or has refused to have an HIV test; or
- (c) is related to or is associated with a person who is, or is presumed to be, infected by HIV or has, or is presumed to have, AIDS; or
- (d) is, or is presumed to be, a member of or associated with a group, activity or occupation, or living in an environment, which is commonly associated with, or presumed to be associated with, infection by, transmission of, HIV;

“Secretariat” means the Bougainville AIDS Council Secretariat established under Section 21;

“sexual intercourse” includes any act involving penile penetration of any part of the body of another;

“stigmatise” means to vilify, or to incite hatred, ridicule or contempt against a person or group on the grounds of an attribute of the person or of members of the group, by –

- (a) the publication, distribution or dissemination to the public of any matter; or
- (b) the making of any communication to the public, including any action or gesture, that is threatening, abusive, insulting, degrading, demeaning, defamatory, disrespectful, embarrassing, critical, provocative or offensive;

“unlawful, unlawful act or acting unlawfully” means acts for which remedies and penalties are provided by Part 5.

- (2) The Minister may, on the advice of the Bougainville Executive Council, by notice in the Bougainville Gazette, declare any material to be, or not to be, HIV/AIDS awareness material where he or she is of the opinion that doubt would exist whether or not the material is HIV/AIDS awareness material.

### **3. APPLICATION OF OTHER ACTS.**

- (1) HIV infections and AIDS are not –
  - (a) infectious or venereal diseases for the purposes of the *Public Health Act* 1973; or
  - (b) quarantinable diseases for the purposes of the *Quarantine Act* 1953.
- (2) HIV/AIDS awareness materials are not –
  - (a) obscene or indecent matter for the purposes of Section 228 of the *Criminal Code Act* 1974; or
  - (b) indecent articles or other matter for the purposes of Sections 25 and 25A of the *Summary Offences Act* 1977; or
  - (c) objectionable publications or declared publications subject to classification under Part V of the *Classification of Publication (Censorship) Act* 1989; or
  - (d) prohibited imports for the purposes of the *Customs Act* 1951; or
  - (e) prohibited statements or advertisements under –
    - (i) Section 140 of the *Public Health Act* 1973; or
    - (ii) Section 31 of the *Medicines and Cosmetics Act* 1999.
- (3) Condoms and condom lubricants are not –
  - (a) obscene or indecent objects or things for the purposes of Section 228 of the *Criminal Code Act* 1974; or
  - (b) indecent articles for the purposes of Sections 25 and 25A of the *Summary Offences Act* 1977.
- (4) Where a provision of any other Act is inconsistent with a provision of this Act in relation to matters for which provision is made in this section, this Act prevails to the extent of that inconsistency.

### **4. ACT BINDS THE REGION.**

This Act binds the Autonomous Region of Bougainville.



## **PART 2. – ADMINISTRATION.**

### **Division 1.**

#### **Bougainville AIDS Council.**

#### **5. ESTABLISHMENT OF THE COUNCIL.**

- (1) The Bougainville AIDS Council is established.
- (2) The Council –
  - (a) is a corporation with perpetual succession; and
  - (b) must have a seal; and
  - (c) may acquire, hold, deal with and dispose of property; and
  - (d) may sue and be sued in its corporate name.
- (3) All courts, judges and persons acting judicially –
  - (a) must take judicial notice of the seal of the Council affixed to a document; and
  - (b) must presume that it was duly affixed.

#### **6. OBJECTS OF THE COUNCIL.**

The objects of the Council are –

- (a) to take multi-sectoral approaches with a view to prevent, control and to eliminate transmission of HIV in Bougainville; and
  - (b) to lead and support measures to minimize the personal, social and economic impact of HIV infection and the disease of AIDS; and
  - (c) to ensure that human rights, personal privacy, dignity and integrity are maintained in the face of the HIV/AIDS epidemic in Bougainville,
- in accordance with the Bougainville Constitution, the National Strategy on Aids and the Global Strategy Framework on AIDS 2001.

#### **7. FUNCTIONS OF THE COUNCIL.**

- (1) The functions of the Council are –
  - (a) to be responsible for formulating, implementing, reviewing and revising Bougainville policy, in accordance with its objects, for the prevention, control and management of HIV/AIDS; and
  - (b) to develop a strategic framework for planning and coordinating all HIV and AIDS programs and activities within Bougainville; and
  - (c) to foster, co-ordinate and monitor HIV/AIDS prevention, control and management strategies and programs amongst all stake holders in Bougainville and nationally; and
  - (d) to mobilise, disburse and monitor resources and services and ensure equitable distribution of resources and services, where applicable, for purposes consistent with its objects, and to account for such of those monies as are allocated to non-government organisations; and

- (e) to administer and expend money appropriated by the House of Representatives, or raised or received by the Council, for the purposes of furthering the objectives of this Act; and
  - (f) to comment on any proposals to be submitted to the Autonomous Bougainville Government on the allocation and sharing of public funds, aid monies and other resources in relation to HIV/AIDS between regions and local level governments, the public and private sectors and other persons and bodies; and
  - (g) to consult and co-operate with the appropriate Departments, Divisions, statutory authorities and other persons and organisations in Bougainville and elsewhere on matters related to its activities; and
  - (h) to initiate, encourage, facilitate and monitor the preparation and dissemination of information and educational material related to HIV/AIDS, and ensure that any such material is in accordance with its objects; and
  - (i) to liaise with and advise Departments, Divisions, statutory authorities, health workers and other health and allied services regarding testing, treatment, case management, drug trials, the setting of standards, and other medical issues in relation to HIV/AIDS; and
  - (j) to initiate, encourage, facilitate and monitor counselling, care and legal services in relation to HIV/AIDS; and
  - (k) to initiate, encourage, facilitate and monitor research, whether medical, epidemiological, psychological, sociological, legal and otherwise, on or in relation to HIV/AIDS in Bougainville, and to ensure that any such research is carried out in accordance with its objects; and
  - (l) to advise and make recommendations to the Minister on the operation of this Act and any other law as it relates to HIV/AIDS, and on changes and amendments it considers necessary or advisable to be made to any law in order to promote and further its objects; and
  - (m) to provide advice to the Autonomous Bougainville Government and local level governments and to other bodies and individuals on the operation of the law in relation to HIV/AIDS; and
  - (n) such other functions as are given to it under this Act or any other law.
- (2) The Council may perform any of its functions in co-operation with a local level government, or with anybody established by a local level government to perform functions for or in relation to HIV/AIDS, or with any other person, association or organization.

## **8. POWERS OF THE COUNCIL.**

The Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions, and in particular, may –

- (a) enter into contracts, including contracts regarding the expenditure of aid monies; and
- (b) acquire, hold and dispose of real or personal property; and
- (c) occupy, use and control any land or building owned or held under lease by

- the Autonomous Bougainville Government and made available for the purposes of the Council; and
- (d) accept gifts, bequests or devises made to the Council (whether on trust or otherwise) and act as trustee of money or other property vested in the Council on trust; and
- (e) subject to the approval of the Minister, borrow money on terms and conditions approved by the Minister; and
- (f) establish or participate in the establishment of a body, whether incorporated or not, whether situated in Bougainville or elsewhere, for the purpose of exercising any of the Council's functions or powers; and
- (g) require furnishing of information by Departments, other Government agencies and other relevant bodies whom the Council believes hold information with respect to persons with HIV/AIDS status; and
- (h) exercise other powers conferred on it by this Act or any other law.

## ***Division 2.***

### ***Membership, etc., of the Bougainville AIDS Council.***

## **9. COMPOSITION OF THE COUNCIL.**

- (1) The Council shall consist of the following members –
  - (a) the Departmental Head of the Department responsible for health matters or, where such an authority does not exist, the head of the Division responsible for health matters, or his or her nominee, *ex officio*; and
  - (b) the Head of the Buka General Hospital or his or her nominee, *ex officio*; and
  - (c) the Departmental Head of the Department responsible for local government affairs, or if there is no such Departmental head the head of the Division responsible for local level government affairs, by whatever title designated or his or her nominee, *ex officio*; and
  - (d) the Departmental Head of the Department responsible for education matters, or if there is no such Departmental head the head of the Division responsible for education matters by whatever title designated, or his or her nominee, *ex officio*; and
  - (e) one member to represent business and employers; and
  - (f) one member to represent church organisations; and
  - (g) one member to represent voluntary organisations; and
  - (h) one member to represent the interests of women; and
  - (i) one member to represent persons living with HIV/AIDS; and
  - (j) the Director, *ex officio*.
- (2) The persons referred to in Subsection (1) (e), (f), (g), (h), and (i)–
  - (a) must be appointed by the Minister after consultation with the Head of the Bougainville Public Service or where that Office has not been established, the Chief Administrator on terms of the appointments; and
  - (b) must be appointed for a term not exceeding three years; and
  - (c) are eligible for re-appointment.

- (3) The members must appoint one of their numbers to be the Chairperson and another to be the Deputy Chairperson of the Council.

#### **10. VACATION OF OFFICE.**

- (1) A member, other than an *ex officio* member, may resign his or her office by providing 4 weeks notice in writing signed by the member and delivered to the Minister.
- (2) If a member, other than an *ex officio* member, who –
  - (a) becomes permanently incapable of performing his or her duties; or
  - (b) is absent, except with the written consent of the Minister, from three consecutive meetings of the Council; or
  - (c) fails to comply with Section 13; or
  - (d) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his or her remuneration for their benefit; or
  - (e) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to imprisonment or death,the Minister must terminate his or her appointment.
- (3) The Minister may, at any time, by written notice, advise a member, other than an *ex officio* member, that the Minister intends to terminate his or her appointment on the grounds of inefficiency, incapacity or misbehaviour.
- (4) Within 14 days of the receipt of a notice under Subsection (3), the member may reply in writing to the Minister, who must consider the reply, and, where appropriate, terminate the appointment.
- (5) Where the member referred to in Subsection (3) does not reply in accordance with Subsection (4), the Minister may terminate his or her appointment.

#### **11. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

The exercise of a power or the performance of a function of the Council is not invalidated by reason of a vacancy in the membership of the Council.

#### **12. MEETINGS OF THE COUNCIL.**

- (1) The Council must meet as often as the business of the Council requires, and at such times and places as the Chairperson directs, but in any event not less frequently than once in every quarter.
- (2) At a meeting of the Council –
  - (a) 6 members constitute a quorum; and
  - (b) the Chairperson, or in his or her absence the Deputy Chairperson, must preside, and if both the Chairperson and the Deputy Chairperson are absent,

the members present must appoint, from among their own number, a Chairperson for that meeting; and

- (c) matters arising must be decided by a majority of the votes of the members present and voting; and
- (d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(3) The Council must cause minutes of its meetings to be recorded and kept.

(4) Subject to this Act, the procedures of the Council are as determined by the Council.

### **13. DISCLOSURE OF INTEREST BY MEMBERS.**

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

(2) A disclosure under Subsection (1) must be recorded in the minutes of the Council, and the member –

- (a) must not take part, after the disclosure, in any deliberation or decision of the Council in relation to the matter; and
- (b) must not be taken into account for the purpose of constituting a quorum of the Council for any such deliberation or decision.

### **14. DELEGATION.**

The Council may, by instrument, delegate to any person all or any of its powers and functions under this Act, except this power of delegation.

### **15. REPORTS.**

(1) The Council must, by 31 March in each year, furnish to the Minister a report on the progress and the performance of the Council in relation to its functions for the previous year ending on 31 December.

(2) As soon as practicable after receiving the report under Subsection (1), the Minister must forward the report to the Speaker for presentation to the House of Representatives.

### **16. INQUIRIES AND SUSPENSION.**

(1) If the Minister is of the view –

- (a) that the Council has misappropriated any of its funds referred to under Section 29; or
  - (b) that the Council has done or performed any act, matter or thing without authority or in breach of this Act; or
  - (c) that the Council has failed to function properly and effectively for a significant period of time to achieve the purposes of this Act,
- the Minister may, appoint a person or persons to inquire into such matter.

- (2) If on an enquiry under Subsection (1), the Minister is satisfied that the Council has misappropriated any funds, done or performed any act, matter or thing without lawful authority, or is not functioning properly and effectively, he or she may direct the Council, in writing, to take remedial action or actions within a time he or she may specify.
- (3) If the Council fails to comply with the terms of the directive under Subsection (2), the Minister may, after consulting the Bougainville Executive Council –
  - (a) suspend the exercise of any of the powers of the Council conferred on it by this or any other Act for such period as he or she may determine; or
  - (b) dissolve the Council and direct the appointment of new members of the Council,and during the period of suspension or dissolution confer on a public servant the exercise of any powers suspended or the powers of the Council dissolved.

### ***Division 3.***

#### ***Committees of the Council.***

#### **17. POWER TO ESTABLISH COMMITTEES, ETC.**

- (1) The Council may, from time to time, establish such committees as it considers necessary in relation to its functions, in accordance with this Division.
- (4) Subject to this Division, the Council must appoint members, who may or may not be members of the Council, of a committee and must specify the committee's functions and powers.
- (3) Where a committee is established, notification of the establishment of the committee must be published in the Bougainville Gazette.
- (4) A member of a committee who is not a member of the Council may receive fees and allowances at rates prescribed by regulations.

#### **18. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

The exercise of a power or the performance of a function of a committee is not invalidated by reason only of a vacancy in the membership of the committee.

#### **19. MEETINGS OF COMMITTEES.**

A committee must meet –

- (a) as often as the business of the committee requires; and
- (b) at such times and places as the Chairperson of the committee directs.

#### **20. PROCEDURES OF COMMITTEES.**

The procedures of a committee are as specified by the Council or otherwise as determined by the committee.



***Division 4.***

***The Service of the Council, etc.***

**21. ESTABLISHMENT OF THE BOUGAINVILLE AIDS COUNCIL SECRETARIAT.**

- (1) There is established a Bougainville AIDS Council Secretariat consisting of the following staff –
  - (a) a Director appointed under Section 22; and
  - (b) such other staff as are appointed under Section 23.
- (2) The function of the Secretariat is to provide services to the Council and to carry out such other functions as are directed by the Council.

**22. DIRECTOR.**

- (1) There must be a Director of the Council, who is –
  - (a) the chief executive officer of the Council; and
  - (b) the head of the service of the Council; and
  - (c) responsible to the Council for the efficient carrying out of the functions of the Council,and who in relation to policy, must act in accordance with the policy and lawful directions of the Council.
- (2) The Director –
  - (a) must be appointed, suspended or dismissed in the manner provided for in this section or in the regulations; and
  - (b) holds office for such period, not exceeding three years, as is determined by the Minister after consultations with the Council; and
  - (c) is eligible for re-appointment.
- (3) The Bougainville Executive Council must, by regulations -
  - (a) provide for the manner for advertising a vacancy in the office of the director; and
  - (b) provide for a merit- based appointment process to be followed for the recruitment of a Director when there is a vacancy in the office; and
  - (c) make provision for the discipline of the Director.

**23. STAFF OF THE COUNCIL.**

The Director, after consultation with the Minister and the Chairman, may appoint to be employees of the Council such other persons as the Council considers necessary for the efficient exercise of its powers and the performance of its functions.

**24. TERMS AND CONDITIONS OF EMPLOYMENT.**

- (1) The Director must –
  - (a) be an employee of the Council; and
  - (b) employed under a contract of employment; and
  - (c) the contract must be executed between the Council and the Director.

- (2) Every employee of the Council must be employed –
  - (a) under a contract of employment; and
  - (b) executed by the Director, on behalf of the Council, and each employee.
- (3) The Council must, after consultations with the Head of the Bougainville Public Service or if that post has not been established, the Chief Administrator, determine the terms and conditions of employment of the Director and other employees of the Council.
- (4) The services of an officer of the Bougainville Public Service as the Director or as an employee of the Council must be counted as service in the Bougainville Public Service.

**25. CONSULTANTS.**

The Council may, from time to time –

- (a) after consultation with the Director; and
  - (b) within the limits of funds lawfully available for the purpose; and
  - (c) on such terms and conditions as are fixed by the Council,
- employ such consultants as, in the opinion of the Council, are necessary for the purposes of the Council.

***Division 5.***

***Finance.***

**26. PERFORMANCE AND MANAGEMENT PLANS.**

- (1) The Director must, at such intervals as are required by the Minister, submit to the Minister, a performance and management plan for the Council.
- (2) A performance and management plan must be in such form, and must contain such information, as is prescribed by regulations.
- (3) The Minister may carry out a performance review when he or she considers it necessary.

**27. PARTICULARS OF PROPOSED EXPENDITURE.**

The Council must, not later than three months before the end of each fiscal year, submit to the Minister –

- (a) estimates of its receipts and expenditure for the next financial year; and
  - (b) its proposed works programme, if any, for that financial year,
- in such form as the Minister approves.

**28. BANK ACCOUNTS.**

- (1) The Council may open and maintain an account or accounts with an approved bank or approved banks, and must at all times maintain at least one such account.



- (2) The Council must pay all its moneys into an account referred to in Subsection (1).

**29. FUNDS OF THE COUNCIL.**

- (1) The funds of the Council consist of –
- (a) all monies appropriated by the House of Representatives for the purpose of carrying out or giving effect to this Act; and
  - (b) all monies received by the Council by way of grants and subscriptions; and
  - (c) all monies received by the Council for services provided by the Council; and
  - (d) all other monies received by the Council in accordance with the Act and in the exercise and performance of its powers, functions and duties.
- (2) The monies of the Council must be expended only –
- (a) in payment or discharge of expenses, obligations and liabilities incurred or undertaken by the Council in the performance of its functions and the exercise of its powers; and
  - (b) in payment of remunerations and allowances payable under this Act.

**30. LOANS BY THE REGION.**

- (1) The Council may accept an offer by the Minister to loan moneys for the purposes of the Council on such terms as are agreed between the Council and the Minister.
- (2) The Council must repay in accordance with the terms on which a loan under Subsection (1) is made, such portion of the loan as is repayable.

**31. PRIVATE TREATY LOANS.**

- (1) The Council may, with the written consent of the Minister, borrow money for its purposes, from a person on such terms as are agreed between the Council and the person.
- (2) The Council must repay a loan made under Subsection (1) in accordance with the terms on which it was made.

**32. BORROWING BY OVERDRAFT.**

The Council may, with the consent of the Minister, borrow for its purposes, by overdraft, within such limits as the Minister may approve in writing.

**33. INVESTMENT.**

- (1) Moneys of the Council that are not immediately required may be invested –
- (a) in any securities of, or guaranteed by, the Autonomous Region of Bougainville; or
  - (b) in any manner in which a trustee may, under any law, invest trust moneys; or
  - (c) on deposit with an approved bank; or
  - (d) in any other manner approved in writing by the Minister.

- (2) Any investment under Subsection (1), whether a sale or a purchase, must not exceed a maximum level of 3% of its total assets.
- (3) Regulations may be made to provide for investment guidelines and planning and reporting requirements.

**34. CONTRACTS FOR WORKS AND SERVICES.**

- (1) Subject to Subsection (2), tenders must be publicly invited and contracts taken by the Council for all works, supplies and services the estimated cost of which exceeds such sum as is prescribed by regulations.
- (2) Subsection (1) does not apply to any works, supplies and services—
  - (a) that are to be executed, furnished or performed by the Autonomous Region of Bougainville, or an arm, agent or instrumentality of the Autonomous Region of Bougainville approved in writing by the Minister; or
  - (b) in respect of which the Council certifies that the inviting of tenders is impracticable or inexpedient.

**35. POLICY DIRECTIONS ON TENDERING.**

The Minister may, from time to time, issue directions in writing on policy to be followed in relation to the giving of preference to Regional tenderers and local manufacturers.

**36. APPROVAL REQUIRED FOR CERTAIN CONTRACTS.**

The Council must not, except with the prior written approval of the Minister, enter into a contract involving the payment or receipt of an amount, or of property to a value exceeding K100,000.00

**37. ACCOUNTS, RECORDS, ETC.**

The Council must-

- (a) cause to be kept proper accounts and records of its transactions and affairs; and
- (b) do all things necessary; and
- (c) ensure that all payments out of its moneys are correctly made and properly authorized; and
- (d) that adequate control is maintained over its assets, or assets in its custody, and over the incurring of liabilities by it.

**38. REPORTS AND FINANCIAL STATEMENTS.**

- (1) The Council must prepare and furnish to the Minister –
  - (a) before 30 June in each year, a performance and management report of its operations for the previous year ending 31 December, together with financial statements to enable the Minister to present such report and statements to Parliament at its first meeting after receipt of the report; and
  - (b) the following reports in relation to investments made by it –
    - (i) a quarterly report on all investment decisions; and

- (ii) by 28 February in each year, a detailed report on investment performance and returns for the previous year ending 31 December; and
  - (iii) a five year investment plan (updated each year) setting out investment policies, strategies and administrative systems to be pursued and providing forecasts of investment flows and returns.
- (2) Financial statements under Subsection (1) must be in a form approved by the Minister in consultation with the Auditor-General.
- (3) Before furnishing financial statements to the Minister, the Council must submit them to the Bougainville Auditor General or, if that office has not been created, the Auditor-General who must report to the Minister in accordance with Part II of the Audit Act 1989.
- (4) The Minister must cause the report and financial statements, together with the report of the Bougainville Auditor-General or the Auditor General to be laid before Parliament at the first meeting of the Parliament after their receipt by the Minister.
- (5) When the report or a financial statement of the Council is reproduced for publication or for other purposes, the report of the Bougainville Auditor-General or the Auditor General on it must be included in the reproduction.
- (6) The first report and financial statements of the Council under this section must be furnished as soon as practicable after 31 December next following the commencement of this Act.
- (7) Where the Council fails to furnish to the Minister reports and financial statements in accordance with Subsection (1), the Minister, in consultation with the Bougainville Auditor General or the Auditor General may –
  - (a) withhold half of any of the grants appropriated to the Council for any fiscal year next following the fiscal year to which the reports and financial statements relate; and
  - (b) refer the Director to the Public Accounts Committee for failure to comply with Subsection (1).

### **39. POWERS OF INSPECTION OF THE MINISTER, ETC.**

- (1) The Minister may, where he or she has reason to believe that the Council has or may have failed to implement the management plan as submitted under Section 26 (1) authorize the Departmental Head of the Department or head of the Division responsible for financial management to carry out an investigation into, or inspection of, the records of the Council.
- (2) Where an investigation or inspection is carried out under this section the Minister and the Departmental Head of the Department or the head of the Division responsible for financial management have power to obtain full and free access, at

all reasonable times, to all accounts and records of the Council that relate, directly or indirectly to—

- (a) the collection, receipt, expenditure and issue of moneys of the Council; and
- (b) the receipt, custody, disposal, issue or use of stores or other property of the Council.

### ***PART 3. – DISCRIMINATION AND OTHER UNLAWFUL ACTS.***

#### **40. INTERPRETATION.**

In this Part, “public facilities” includes –

- (a) public premises; and
- (b) travel and transport services and facilities; and
- (c) health facilities; and
- (d) facilities by way of banking, insurance or superannuation, or for grants, loans, credit or finance; and
- (e) facilities for entertainment, recreation or refreshment; and
- (f) sporting facilities and activities; and
- (g) services relating to telecommunications; and
- (h) the services of any profession or trade; and
- (i) any service of the National Government, the Autonomous Bougainville Government or a local-level government.

#### **41. UNLAWFUL DISCRIMINATION.**

- (1) Subject to Subsections (2) and (3) and Section 43, it is unlawful to discriminate against a person to the detriment of that person on the grounds that the person is infected or affected by HIV/AIDS.
- (2) Subsection (1) does not prevent the taking of any action which is for the special benefit, assistance, welfare, protection or advancement of any person or group of a kind referred to in that subsection.
- (3) Notwithstanding Subsection (1), it is not unlawful to discriminate against a person on the ground of infection by HIV or having AIDS if the discrimination is no more detrimental than discrimination on the ground of having another life-threatening medical condition.
- (4) For the purposes of Subsection (1), where –
  - (a) an act of discrimination is done for two or more reasons; and
  - (b) one of the reasons is a ground set out in Subsection (1), whether or not it is the dominant or a substantial reason for doing the act,the act is presumed to have been done for that reason.

#### **42. SITUATION OF DISCRIMINATION.**

In particular, and without limiting the generality of Section 41, an act of unlawful discrimination may take place –

- (a) in relation to employment and contract work, in –
  - (i) the arrangements an employer or contracting principal makes for the purpose of determining who should be offered employment or contract work; or
  - (ii) the terms on which an employer or principal offers employment or contract work; or
  - (iii) the refusal or deliberate omission by an employer or principal to offer employment or contract work; or
  - (iv) the way an employer affords access to opportunities for promotion, transfer or training, or to any other benefits, services or facilities, or in the refusal or deliberate omission to afford access to them; or
  - (v) dismissal from employment or termination of contract work; or
  - (vi) the subjecting of a person to any other detriment in relation to employment or contract work; and
- (b) in relation to partnerships, in –
  - (i) determining who should be invited to become a partner; or
  - (ii) the terms and conditions on which the partnership is offered; or
  - (iii) the denial or limitation of access to any benefit arising from being a partner in the partnership; or
  - (iv) expulsion from the partnership; or
  - (v) the subjecting of the partner to any other detriment in relation to membership of the partnership; and
- (c) in relation to industrial and professional organizations, clubs, sporting associations and other associations, in –
  - (i) the terms of admission to membership or qualification; or
  - (ii) the refusal or deliberate omission to accept applications for membership or qualification; or
  - (iii) the way access is afforded to any benefit, service or facility, or the refusal or deliberate omission to afford access to them; or
  - (iv) deprivation of membership or qualification or variation of the terms of membership or qualification; or
  - (v) the subjecting of a person to any other detriment in relation to admission or membership; and
- (d) in relation to education and training, in –
  - (i) refusal or failure of an education institution to accept an application for admission as a student; or
  - (ii) the terms or conditions on which an education institution is prepared to admit a student; or
  - (iii) denial or limitation of access to any benefit, service or facility provided by an education institution; or
  - (iv) segregation within or expulsion from an education institution; or
  - (v) the subjecting of a person to any other detriment in relation to education or training; and
- (e) in relation to detainees and persons in custody, in –
  - (i) the application of detention, restriction or segregation procedures or conditions; or

- (ii) the provision of and access to health facilities and care; or
- (iii) the subjecting of a detainee to any other detriment in relation to detention or custody; and
- (f) in relation to the provision of accommodation, including rental, hotel and guesthouse accommodation, in –
  - (i) the refusal or deliberate omission to accept applications for or to provide accommodation; or
  - (ii) the terms or conditions on which or the manner in which the accommodation is provided; or
  - (iii) eviction from the accommodation; or
  - (iv) the subjecting of a person to any other detriment in relation to the provision of accommodation; or
- (g) in relation to surveillance or research related to HIV/AIDS, whether or not that is the primary purpose of the surveillance or research, in –
  - (i) the selection of subjects for surveillance or research; or
  - (ii) the access to benefits of the research or surveillance; or
  - (iii) the maintenance of confidentiality of personal information acquired for, during or from the surveillance or research; and
- (h) subject to Section 43, in relation to the provision of or access to goods, services or public facilities, in –
  - (i) the refusal to provide goods, services or public facilities; or
  - (ii) the terms or conditions on which or the manner in which the goods, services or public facilities are provided; or
  - (iii) the withdrawal or curtailment of goods, services or public facilities; or
  - (iv) the subjecting of a person to any other detriment in relation to provision of or access to goods, services or public facilities.

#### **43. INSURANCE AND OTHER RISK ASSESSMENT.**

Nothing in Section 42(h) renders unlawful any discrimination in relation to any class of insurance or superannuation business, membership of a superannuation or provident fund or scheme, or similar matter involving the assessment of risk, where the discrimination –

- (a) is effected by reference to actuarial or statistical data on which it was reasonable to rely; and
- (b) is reasonable having regard to the content of the data and any other relevant factors,

or, where no actuarial or statistical data is available and cannot reasonably be obtained.

#### **43. UNLAWFUL SCREENING.**

(1) Subject to Section 49 (4), it is unlawful to require or coerce –

- (a) a person seeking or applying for –
  - (i) employment or contract work; or
  - (ii) acceptance in a partnership; or
  - (iii) membership of an industrial or professional organization, club sporting association or other association; or
  - (iv) admission to an education institution; or



- (v) accommodation including rental, hotel and guesthouse accommodation; or
  - (vi) the provision of or access to goods, services or public facilities; or
  - (vii) adoption or marriage; or
  - (viii) entry into, residence in or citizenship of the country; or
  - (b) a person who is –
    - (i) a contract worker or employee, or
    - (ii) a partner, or
    - (iii) a member of an industrial or professional organization, club, sporting association or other association; or
    - (iv) a student in an education institution, or
    - (v) in accommodation; or
    - (vi) being provided with goods, services or facilities; or
  - (c) a detainee or person in custody,
- to undergo an HIV test, produce proof that he or she is not infected with HIV or answer any questions the answer to which may tend to show that he or she is a person of a kind referred to in Section 41 (1), except in accordance with this Act.

- (2) A consent written or otherwise, by a person of a kind referred to in Subsection (1) to the provision of a medical service or to the performance of a general medical review does not constitute consent to an HIV test.

#### **45. UNLAWFUL STIGMATISATION.**

- (1) Subject to Subsection (2), it is unlawful to stigmatise a person on the ground that the person is infected or affected by HIV/AIDS.
- (2) Subsection (1) does not apply to –
  - (a) a fair report of an act of stigmatisation referred to in Subsection (1); or
  - (b) the communication, dissemination, distribution or publication of any matter that is subject to a defence of absolute privilege in proceedings under the *Defamation Act 1962*; or
  - (c) a public act, done reasonably, in good faith and not actuated by ill-will to the person stigmatised, for academic, artistic, scientific, research or religious discussion or instruction purposes or for other purposes in the public interest, including discussion or debate about and expositions of any act or matter.

#### **46. ACCESS TO MEANS OF PROTECTION.**

- (1) It is unlawful to deny a person access, without reasonable excuse, to a means of protection from infection of himself or another by HIV.
- (2) The burden of proof of a reasonable excuse in Subsection (1) is on the person alleged to be denying the access.
- (3) In particular, and without limiting the generality of Subsection (1), “means of protection” includes –
  - (a) HIV/AIDS awareness materials; and

- (b) condoms, condom lubricant and any other means of prevention of HIV transmission; and
- (c) exclusive personal use of skin penetrative instruments, including razors, needles and syringes; and
- (d) means of disinfecting skin penetrative instruments.

#### ***PART 4. – TESTING, COUNSELLING, REPORTING AND CONFIDENTIALITY.***

##### ***Division 1.***

##### ***Preliminary.***

#### **47. INTERPRETATION.**

- (1) In this Part –
  - “authorised person” means a person authorised in writing by the Director, Medical Services of Bougainville to request HIV test in Bougainville;
  - “confirmed or confirmatory”, in relation to an HIV test, means that the result of the test has been confirmed by the Central Public Health Laboratory or another laboratory approved for the purpose in writing by the Departmental Head of the department responsible for health matters;
  - “Director, Medical Services” means a person appointed as such under Section 21(a) of the *Public Hospitals Act 1994*;
  - “request”, in relation to an HIV test, means a request by a person to a laboratory to perform an HIV test;
  - “voluntary informed consent”, in relation to an HIV test, means consent specifically related to the performance of an HIV test, freely given, without threat, coercion, duress, fraudulent means or undue influence, after provision of pre-test information and with the reasonable expectation of post-test support;
  - “window period” means the period of time between first infection by HIV and the detection of HIV test.
- (2) Pre-test information, in relation to an HIV test, includes information about –
  - (a) the nature of HIV and of AIDS; and
  - (b) the nature and purpose of an HIV test; and
  - (c) the testing process and the probable time-frame for obtaining test results; and
  - (d) the legal and social consequences, including the possibility of notifying sexual partners, of –
    - (i) having an HIV test; and
    - (ii) being infected with HIV; and
  - (e) the ways to prevent transmission of HIV.
- (3) Post-test support, in relation to an HIV test, includes –
  - (a) where the HIV test result is negative –information about –
    - (i) the nature of HIV and of AIDS; and
    - (ii) the effects of the window period and the desirability of repeating the test after a specified time; and
    - (iii) the ways to prevent infection by HIV; and



- (b) where the HIV test result is positive –information about –
  - (i) the nature of HIV and of AIDS; and
  - (ii) the legal and social issues associated with HIV and AIDS; and
  - (iii) the ways to prevent transmission of HIV; and
  - (iv) the treatment available, if any, to mitigate the effects of infection; and
  - (v) the care available, together with any necessary referral to an appropriate care service; and
  - (vi) the desirability of informing the tested person's sexual partner or partners, and the action that may be taken under Section 55 in the event of failure or refusal by the tested person to inform the sexual partner or partner; and
  - (vii) any other matter relevant to the personal circumstances of the tested person.

## ***Division 2.***

### ***Testing and Reporting.***

#### **48. APPLICATION OF DIVISION 2.**

The Division applies to all HIV tests except an HIV test performed –

- (a) on blood, tissue or organs donated by or taken from the body of a person, whether living or dead, for purposes of transfusion or transplant to another person; or
- (b) by a person on himself using an HIV test kit approved for the purpose in accordance with section 66.

#### **49. TESTING.**

- (1) It is unlawful for any person –
  - (a) not being a medical practitioner or authorized person –to request an HIV test; or
  - (b) to perform an HIV test except on the request of a medical practitioner or authorized person.
- (2) Subject to Subsection (4) and Section 58(4), it is unlawful to request an HIV test except –
  - (a) with the voluntary informed consent of the person to be tested; or
  - (b) where the person to be tested is aged 12 years or less and is, in the opinion of the person providing the pre-test information, not capable of understanding the meaning and consequences of an HIV test- with the voluntary informed consent of a parent or guardian of the person; or
  - (c) subject to Subsection (3), where the person to be tested has a disability which, in the opinion of the person providing the pre-test information, renders the person incapable of giving consent- with the voluntary informed consent, in order ,of –
    - (i) a guardian of the person; or
    - (ii) a partner of the person; or
    - (iii) a parent of the person; or

- (iv) a child aged 18 years or more of the person; or
  - (d) where a person is required to undergo an HIV test in accordance with Section 58, or the blood, tissue or an organ of a person is required to be tested, under this Act or any other law.
- (3) The voluntary informed consent required under Subsection (2)(c) must be obtained in the following manner –
- (a) the consent of the person in the categories referred to in subsection (2)(c)(i), (ii), (iii) and (iv) must be sought in the order of those paragraphs;
  - (b) if that person refuses consent –no further request for consent must be sought;
  - (c) where there is no person in a category or the person cannot, after reasonable inquiry, be found –a request may be made to the person in the next category.
- (4) Notwithstanding Subsection (2) or Section 44, a medical practitioner responsible for the care and treatment of a person may request an HIV test in respect of that person without the consent required by Subsection (1) where –
- (a) the person is unconscious or otherwise unable to give consent; and
  - (b) the medical practitioner believes that the test is clinically necessary or desirable –
    - (i) in the interests of that person; and
    - (ii) for the purposes of treatment of that person.

## **50. TEST RESULTS.**

- (1) A person who request, performs or is otherwise involved in the performance of an HIV test must take all measures within his or her control to ensure that –
- (a) the testing process is carried out promptly and efficiently; and
  - (b) the result of the test is communicated, in accordance with this Part, to the person who gave the consent to the test.
- (2) Failure to comply with Subsection (1) is unlawful.
- (3) It is unlawful for a person who has requested or performed an HIV test to divulge information about the result of that test except –
- (a) to the person who has been tested; or
  - (b) where another person gave the voluntary informed consent to the test in accordance with Section 49 (2)(b) or (c) –to that person; or
  - (c) with the consent of the person who gave the voluntary informed consent –to a person who is directly involved in providing care to, or treatment or counselling of, the person tested, where the information is required in connection with providing the care, treatment or counselling; or
  - (d) by order of a court; or
  - (e) in accordance with Section 51.
- (4) It is unlawful to inform a person of the result, either negative or positive, of an HIV test without also offering post-test support.

**51. REPORTING OF TEST RESULTS.**

- (1) A person who performs a confirmatory test which produces a positive result shall, as soon as practicable, send –
  - (a) to the Database Manager – a report in a form approved by the Database Manager; and
  - (b) to the person requesting the test – the result of the test, and to no other person.
- (2) A requesting person who receives a notification under Subsection (1)(b) shall, as far as is practicable, provide the Database Manager with such information as the Database Manager requires in respect of the person to whom the test relates.

**52. CONDUCT OF HIV TESTS.**

- (1) The Bougainville Executive Council by regulations may make further provision for –
  - (a) the conduct of HIV test; and
  - (b) the informing of the results of HIV test; and
  - (c) the reporting of test results; and
  - (d) any other matter necessary or convenient to be prescribed in relation to HIV test.
- (2) Where no regulations have been made under Subsection (1), the Council may from time to time issue Guidelines in respect of the matters set out in that section.
- (3) It is unlawful to –
  - (a) request or conduct an HIV test; or
  - (b) provide or fail to provide information on the result of a test; or
  - (c) report, or fail to report, the result of a test,except in accordance with this Division and any regulations made under Subsection (1) and any Guidelines issued under Subsection (2).

***Division 3.***

***Confidentiality and Disclosure.***

**53. CONFIDENTIALITY OF INFORMATION.**

- (1) Subject to Subsection (2), Section 54 (3) and Section 55, a person who –
  - (a) while providing, or being associated in the course of his duties whether paid or unpaid with the provision of, an HIV testing, treatment, care, counselling, or associated health care service; or
  - (b) while acting or assisting in the administration of this Act; or
  - (c) while present in any room or place where a matter is being investigated, inquired into or heard under this Act; or
  - (d) while acting in his professional capacity as a clergyman of a church or other religious leader of any religious denominations; or
  - (e) while conducting surveillance or research, acquires information that another person, whether dead or alive –

(i) is, or is presumed to be, infected by HIV or has, or is presumed to have, AIDS; or  
(ii) has been, is being, is seeking or has refused to be tested for HIV; or  
(iii) is related to or associated with a person who is, or is presumed to be, infected by HIV or has, or is presumed to have, AIDS,  
must take all reasonable steps to prevent disclosure of the information to any other person.

- (2) The information referred to in Subsection (1) may be disclosed –
- (a) with the consent of the person to whom it relates, in accordance with the terms of that consent; or
  - (b) where the person to whom the information relates is aged 12 years or less and consent to testing of that person has been given by a parent or guardian under Section 49(2)(b)–with the consent of that parent or guardian; or
  - (c) by order of a court or person acting judicially or otherwise empowered to examine witnesses, where the information is directly relevant to proceedings in the court or before the person; or
  - (d) where the information is statistical only or cannot otherwise reasonably be expected to lead to the identification of the person to whom it relates; or
  - (e) to the extent authorized by this Act or any other law.

#### **54. PRIVACY OF PROCEEDINGS.**

- (1) Where, in any proceedings before a court or tribunal, it appears that information of a kind referred to in Section 53(1) is proposed to be given, the court or tribunal –
- (a) must, if requested by the person or persons to whom the information relates; or
  - (b) may, where it considers that because of the social, psychological or economic consequences to the person to whom the information relates, the information should not be publicly disclosed, make all or any of the following orders: –
    - (i) that all or any persons be excluded from the room or place in which the proceedings or any part of the proceedings are being conducted;
    - (ii) that only persons specified by it may be present during the whole or any part of the proceedings;
    - (iii) that the publication of a report of the whole or any part of the proceedings be prohibited.
- (2) Subject to Subsection (3), it is unlawful to print or publish, except on the written authority of the Director –
- (a) a report of any proceedings or matter heard in camera or in private under Subsection (1) or Part 5; or
  - (b) a report contrary to Subsection (1)(e).
- (3) Subsection (2) does not apply to the printing or publishing of –
- (a) any pleading, transcript of evidence or other document for use in connection with any judicial proceedings, or to the communication of the contents of any

such pleading, transcript or document to a person concerned in the proceedings; or

- (b) a notice or report under the directions of a court or Judge; or
- (c) any matter in a separate volume or part of a bona fide series of law reports that does not form part of any other publication and consists solely of reports of proceedings in court; or
- (d) a report of any conclusions, recommendations and suggestions of the Ombudsman Commission; or
- (e) any matter in a publication of a technical character bona fide intended for circulation among members of the legal or medical profession.

#### **55. PARTNER NOTIFICATION.**

- (1) Notwithstanding Section 53, a person providing a treatment, care or counselling service to a person infected with HIV may notify a sexual partner of the person that the person is infected with HIV where –
  - (a) the notifying person is requested by the infected person to do so; or
  - (b) in the opinion of the notifying person –
    - (i) counselling of the infected person has failed to achieve appropriate behavioural change; and
    - (ii) the infected person has refused to notify, or consent to the notification of, the sexual partner; and
    - (iii) there is a real risk of transmission of HIV by the infected person to the sexual partner; or
  - (c) the infected person is –
    - (i) dead, unconscious or otherwise unable to give consent; and
    - (ii) unlikely to regain consciousness or the ability to give consent; and
    - (iii) in the opinion of the notifying person, there is or was a real risk of transmission of HIV by the infected person to the sexual partner.
- (2) A notification under Subsection (1) must be made in such a manner as to conceal, so far as is possible, the identity of the infected person from the sexual partner.
- (3) Where a person has been notified under Subsection (1), the notifying person shall offer appropriate counselling.

#### **56. UNLAWFUL DISCLOSURE.**

It is unlawful to disclose information of a kind referred to in Section 53(1) contrary to this Division.

#### ***PART 5. – PERSONS CREATING A RISK TO OTHERS.***

#### **57. MOTHER TO CHILD TRANSMISSION.**

Nothing in this Part applies to the transmission of HIV by a woman to her child, either before, during or after the birth of the child.

## **58. INTENTIONAL TRANSMISSION.**

- (1) The intentional transmission or attempted transmission of HIV to another person is –
  - (a) an assault or attempted assault, as the case may be, occasioning bodily harm within the meaning of Section 340 of the Criminal Code Act 1974; and
  - (b) where death has occurred –an act of unlawful killing within the meaning of Section 298 of the *Criminal Code Act 1974*.
- (2) Section 297 of the *Criminal Code Act 1974* must not apply in a prosecution under Subsection (1)(b).
- (3) It is a defence to a charge of an offence relating to the intentional or attempted transmission of HIV to another person that –
  - (a) the other person was aware of the risk of infection by HIV and voluntarily accepted that risk; or
  - (b) the other person was already infected with HIV; or
  - (c) where the transmission or attempted transmission is alleged to have occurred by sexual intercourse –
    - (i) a condom or other effective means of prevention of HIV transmission was used during penetration; or
    - (ii) the accused person was not aware of being infected with HIV.
- (4) A court may, in any proceedings under this section, order either or both of the following:–
  - (a) that an HIV test be performed on the accused;
  - (b) that the court be informed of any information regarding the HIV status of the accused.
- (5) In making an order under Subsection (4), the court may make any ancillary order it considers necessary or desirable, and in particular, orders relating to –
  - (a) the provision of counselling to the accused; and
  - (b) the release or suppression of the results of any test performed or of any information obtained.

## **59. REASONABLE CARE.**

A person who is, and is aware of being, infected with HIV must –

- (a) take all reasonable measures and precautions to prevent the transmission of HIV to another person, including the use of condom or other effective means of protection from infection during sexual intercourse; and
- (b) inform any intended sexual partner or any person with whom a skin penetrative instrument is to be shared, in advance of the sexual intercourse or sharing of the skin penetrative instrument, that he or she is infected with HIV,

and the taking of those measures and precautions and the giving of that information must constitute the taking of reasonable care within the meaning of Section 286 of the *Criminal Code Act 1974*.



**60. RECKLESS BEHAVIOUR CAUSING RISK OF INFECTION.**

- (1) Where the Director believes, on reasonable grounds, that a person –
  - (a) is and is aware of being infected with HIV; and
  - (b) has behaved in such a way as to expose others to a significant risk of infection; and
  - (c) is likely to continue that behaviour in future; and
  - (d) has been counselled without success in achieving appropriate behaviour change; and
  - (e) presents a real danger of infection to others, the Director may issue a written notice to the person.
- (2) A notice under Subsection (1) must state –
  - (a) the grounds upon which the Director believes that a notice should be issued; and
  - (b) the reasons why the person should not continue the behaviour referred to in paragraph (a); and
  - (c) a direction that the person should not continue the behaviour, or should commence to behave in a specific manner; and
  - (d) any other matters or directions that the Director considers are necessary or convenient to ensure an appropriate change of behaviour; and
  - (e) that any breach of a direction in the notice is an unlawful act, and may be dealt with according to this Act.
- (3) A notice under Subsection (1) may be delivered to the person to whom it is directed by –
  - (a) delivering a sealed copy of the notice to the person personally or, if the person cannot be found, by leaving it at the person's last known place of residence with some other person apparently residing at that place and apparently not less than 16 years of age; or
  - (b) delivering a sealed copy of the notice to another person who is known to be providing treatment, care or counselling to the person to whom the notice is directed.

**PART 6. – DEALING WITH UNLAWFUL ACTS.**

**61. INTERPRETATION**

In this Part –

“action” means a complaint, application or other process by which a proceeding or investigation is commenced under this Part;

“Court” means the National Court, the Bougainville National Court or a District Court.

**62. UNLAWFUL ACTS**

- (1) An unlawful act under this Act –
  - (a) is a discriminatory practice within the meaning of –
    - (i) Section 219(1)(c) of the *Constitution*; and

- (ii) the *Organic Law on the Ombudsman Commission*; and
  - (b) is professional misconduct under the *Medical Registration Act* 1980 and the *Lawyers Act* 1986; and
  - (c) is a disciplinary offence under the *Public Services (Management) Act* 1995, the *Police Act* 1998, the *Correctional Service Act* 1995 and the *Defence Act* 1974; and
  - (d) may be the subject of an action under Section 63; and
  - (e) is an offence to which the penalty is –
    - (i) in the case of a corporation –a fine not exceeding K10,000.00; and
    - (ii) in the case of a natural person –a fine not exceeding K5,000.00 or imprisonment for a term not exceeding three years, or both.
- (2) Action in respect of an unlawful act may be taken in accordance with any paragraph under Subsection (1)-
- (a) by any person who has an interest in the unlawful act complained of, or
  - (b) in the case of a person who is, in the opinion of the court, unable fully and freely to exercise his or her right under this section, by a person acting on that persons behalf, whether or not by his or her authority.
- (3) Action in respect of an unlawful act may be taken in accordance with any paragraph of Subsection (1) notwithstanding either or both of the following: –
- (a) that the person the object of the unlawful act has died, whether the death occurred before or after the occurrence of the act;
  - (b) subject to section 63 –that action has been or is being taken in accordance with any other paragraph of Subsection (1).

### 63. RELIEF.

- (1) An action for relief from an unlawful act may be taken in a Court of competent jurisdiction.
- (2) The *Claims By and Against the Autonomous Bougainville Government Act* 2006 apply to an application made under Subsection (1) against the Region.
- (3) Relief under Subsection (1) may include any order or declaration the Court considers necessary or appropriate in the circumstances of the case, including but not limited to, the following:–
  - (a) a declaration that the act complained of is unlawful;
  - (b) an order that the act is not to be repeated or continued;
  - (c) a declaration that an act similar to the act complained of is not to be performed in future;
  - (d) an order for apology or retraction;
  - (e) an order for damages by way of compensation for any loss, damage or injury to feelings suffered by reason of the act complained of;
  - (f) an order for payment of punitive or exemplary damages;
  - (g) an order for provision or restoration of access, admission, readmission or reinstatement to the place, facility, situation, workplace or institution from



which the person the object of the act complained of has been excluded, ejected or dismissed;

- (h) an order for employment, re-employment, promotion or restoration of benefits;
  - (i) an order for provision of or restoration of access to a means of protection from infection by HIV;
  - (j) an order for the performance of any reasonable act or course of conduct to redress any loss or damage suffered by reason of the unlawful act;
  - (k) an order declaring void in whole or in part, either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Act;
  - (l) a declaration that the termination of a contract or agreement should be varied to redress any loss or damage suffered by reason of the termination;
  - (m) a declaration that it would be inappropriate for any further action to be taken in the matter.
- (4) Relief under this section is not limited to cases of actual or imminent unlawful acts but may, if the Court thinks it proper to do so, be given in cases in which –
- (a) there is a reasonable probability that the act will be performed; or
  - (b) something that a person reasonably desire to do is inhibited by the likelihood that, or a reasonable fear that, the act will be performed.
- (5) A matter under this section may be heard and decided in camera.

#### **64. DISCONTINUATION OF ACTIONS.**

- (1) Notwithstanding Section 62(2), a Court or other body called upon to act in respect of an unlawful act may decide not to act, or to continue to act, where it considers that –
- (a) the subject matter of the action relates to an act which is not unlawful; or
  - (b) some other more appropriate action or remedy in relation to the subject matter of the action is reasonably available to the applicant; or
  - (c) the subject matter of the action could be more effectively or conveniently dealt with in some other manner; or
  - (d) in a case where some other remedy has been sought in relation to the subject matter of the action, or it has already been dealt with in the same or some other manner – the subject matter of the action has been adequately dealt with; or
  - (e) the action is trivial, frivolous, vexatious or not made in good faith.
- (2) A decision under Subsection (1) by a Court or other body not to act, or continue to act, does not prevent the taking of any other or further action permitted by this or any other law.

## **PART 7. – MISCELLANEOUS.**

### **65. HIV/AIDS RESEARCH.**

- (1) The Council may, from time to time, issue Guidelines for the conduct of research relating to HIV/AIDS.
- (2) A person must not conduct research relating to HIV/AIDS, whether or not that is the primary purpose of the research, without the prior approval of the Council.
- (3) It is unlawful to conduct research except in accordance with –
  - (a) this Act; and
  - (b) any Guidelines issued under Subsection (1); and
  - (c) approval under Subsection (2).

### **66. APPROVAL OF HIV TEST KITS.**

- (1) The Minister may, upon the recommendation of the Council, by notice in the Bougainville Gazette, approve a type or class of HIV test kit for use in the Region.
- (2) An approval under Subsection (1) may include conditions as to use.
- (3) A person who manufactures, imports, sells, distributes, supplies, uses or authorises the use of or otherwise deals with an HIV test kit –
  - (a) that is not an approved HIV test kit; or
  - (b) contrary to any condition of approval for its use, is guilty of an offence.

***Penalty: A fine not exceeding K10,000.00.***

- (4) Any HIV test kit in respect of which a person is convicted of an offence under Subsection (3) is forfeited to the State and must be disposed of as the Director directs.

### **67. PROTECTION FROM LIABILITY.**

- (1) The Chairperson, a member of the Council, the Director or an officer of the Secretariat is not personally liable for any matter or thing done by him or her in good faith and without negligence in the exercise of his or her powers or the performance of his or her duties under this Act.
- (2) Subject to Subsection (3), a person is not liable to any civil or criminal liability, and does not act unlawfully, in respect of –
  - (a) any exercise or supposed exercise of the powers conferred by; or
  - (b) any omission or failure to act under, this Act, where the exercise of the powers or the omission or failure to act was done in good faith and without negligence.
- (3) Notwithstanding Subsection (2), the protection afforded by that subsection does not extend to a person where it can be shown on a balance of probabilities that the

person failed without reasonable excuse to act in accordance with the Infection Control Guidelines.

- (4) A certificate, notice or other communication, oral or written, given in good faith and without negligence by a person for the purposes of this Act must not be made the ground of any legal proceedings, civil or criminal, against the person.
- (5) In particular, any communication made in good faith and without negligence in the exercise or supposed exercise of the powers conferred by Section 55 is absolutely privileged.
- (6) Where –
  - (a) an action has been commenced under Part 5; or
  - (b) a submission has been made, a document or information has been provided or evidence has been given in relation to the action,in good faith and without negligence, a person is not liable to any civil or criminal liability and does not act unlawfully on the grounds only that the action was commenced, the document or information was provided or the evidence was given.

#### **68. EVIDENCE OF CERTAIN COMMUNICATIONS.**

- (1) Any communication relating to the sexual behaviour of a person made by another person undergoing an HIV test, a surgical or dental procedure or counselling under this Act is not admissible in any proceedings under –
  - (a) Sections 210 and 212 of the *Criminal Code Act 1974*; or
  - (b) Sections 55 and 56 of the *Summary Offences Act 1977*.
- (2) Any communication made by a woman who is and is aware that she is infected with HIV relating to the procurement of her miscarriage is not admissible in any proceedings under Section 225 of the *Criminal Code Act 1974*.

#### **69. REGULATIONS.**

The Bougainville Executive Council, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular prescribing matters for and in relation to –

- (a) standards, procedures and guidelines for the performance or conduct of any matter under this Act; and
- (b) the registration or other means of authorisation of persons involved in care or counselling work; and
- (c) the recognition and means of authorisation of persons working without pay in connection with the management and prevention of HIV/AIDS; and
- (d) providing for penalties of fines not exceeding K5,000.00 or imprisonment for terms not exceeding 12 months, or both, for offences against the regulations.

I, **ROBERT TAPI**, Clerk of the House of Representatives, hereby certify that the foregoing is a fair copy of the ***HIV/AIDS (Prevention and Management) Act 2011*** which was made by the House of Representatives.

DATED this 20<sup>th</sup> day of September 2011.

  
.....  
**ROBERT TAPI,**  
Clerk of the House of Representatives.

I, **ANDREW MIRIKI**, Speaker of the House of Representatives, hereby certify that the ***HIV/AIDS (Prevention and Management) Act 2011*** was made by the House of Representatives on 14<sup>th</sup> September 2011 by an absolute majority of votes in accordance with the ***Bougainville Constitution***.

DATED this 20<sup>th</sup> day of September 2011.

  
.....  
**ANDREW MIRIKI,**  
Speaker of the House of Representatives.  
