

No. 4 of 2011.

Bougainville Senior Appointments Committee (Appointments and Disciplinary Procedures of Bougainville Constitutional Office Holders) Act 2011.

Certified on: 20th September 2011.

AUTONOMOUS REGION OF BOUGAINVILLE.

No. 4 of 2011.

AN ACT

entitled

Bougainville Senior Appointments Committee (Appointments and Disciplinary Procedures of Bougainville Constitutional Office Holders) Act 2011.

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AUTONOMOUS REGION OF BOUGAINVILLE.

No. 4 of 2011.

AN ACT

entitled

Bougainville Senior Appointments Committee (Appointments and Disciplinary Procedures of Bougainville Constitutional Office Holders) Act 2011.

Being an Act to provide for the appointment and disciplinary procedures of the Bougainville Constitutional Office-holders provided under Section 189 (1) of the ***Bougainville Constitution*** and for related purposes.

MADE by the House of Representatives.

PART 1. - PRELIMINARY.

1. COMMENCEMENT.

This Act shall come into operation on the date of its publication in the ***Bougainville Gazette***.

2. INTERPRETATION.

In this Act, unless the context otherwise requires –

“Bougainville Constitutional Office- holder” means a Bougainville Constitutional Office -holder provided for under Section 189 (1) of the ***Bougainville Constitution***;

“Bougainville Senior Appointments Committee” means the Bougainville Senior Appointments Committee established by Section 102 (1) of the ***Bougainville Constitution***;

“Committee” means the Bougainville Senior Appointments Committee;

“Constitution” means the ***Bougainville Constitution***.

3. APPLICATION.

This Act does not apply to the Bougainville Chief Justice, a Bougainville Judge or Acting Judge, the Bougainville Public Prosecutor, the Bougainville Public Solicitor and the Head of the Bougainville Courts.

PART 2. – APPOINTMENTS.

4. DISQUALIFICATION FROM OFFICE.

A person is not qualified to be, or to remain, a Bougainville Constitutional Office-holder if he or she is:

- (a) President, or a candidate for election as President; or
- (b) a member of, or a candidate for election to:
 - (i) the House of Representatives; or
 - (ii) a level of formal government in Bougainville; or
 - (iii) the National Parliament; or
 - (iv) a Provincial Government; or
 - (v) a Local- level Government or Authority; or
- (c) an office-holder in a political party registered under a Bougainville law or under a National law; or
- (d) declared bankrupt by a court of competent jurisdiction and remains bankrupt; or
- (e) of unsound mind within the meaning of any law relating to the protection of the person or property of persons of unsound mind; or
- (f) under sentence of death or imprisonment.

5. APPOINTMENTS OF CONSTITUTIONAL OFFICE HOLDERS.

- (1) An appointment or promotion to a Bougainville Constitutional Office, regardless of the title or designation, must be made by the Committee.
- (2) The Committee must, prior to appointing or promoting a person to a Bougainville Constitutional Office, follow the procedures set out below –
 - (a) advertise the position in a newspaper with a wide circulation in Bougainville and Papua New Guinea; and
 - (b) ensure the advertisement allows an applicant a minimum of two weeks in which to make an application; and
 - (c) provide an address as to where to send the application; and
 - (d) convene a panel of three independent persons to interview and require the panel to recommend a short list of the most competent and suitable applicants; and
 - (e) make the appointment from the short list.

6. EVIDENCE OF APPOINTMENTS.

- (1) Any appointment of a person to a Bougainville Constitutional office must be made, confirmed or approved in writing by an instrument or minute signed by the Secretary of the Committee acting with the authority and on behalf of the Committee.

- (2) A notice of an appointment made under Section 5 must be published in the Bougainville Gazette.

7. TERMS.

- (1) Subject to the provisions of any other enactment, the terms of office of a Bougainville Constitutional Office- holder:
- (a) is the term specified in the Bougainville Constitution; or
 - (b) is the term specified in the law providing for that Constitutional Office; or
 - (c) where no such term is specified, a term of 5 years.
- (2) Subject to the provisions of the Constitution or any other enactment, a Constitutional Office-holder –
- (a) must be appointed under a contract of employment for a term of 5 years; and
 - (b) the terms and conditions of employment will be determined in consultation with the Chief Administrator or the Head of the Bougainville Public Service.

8. PRINCIPAL RESPONSIBILITIES.

- (1) Subject to the Constitution and any other enactment, a Bougainville Constitutional Office-holder is to be responsible to the appropriate minister for:
- (a) carrying out the principal functions of that Constitutional Office under any other enactment, including the Bougainville Constitution; and
 - (b) carrying out the functions and duties of his or her office including the implementation of Government policies; and
 - (c) giving effect to lawful directions of the minister; and
 - (d) providing regular briefing to the minister about :
 - (i) the management of the Constitutional Office and the performance of the Constitutional Office's functions, including the service delivery functions; or
 - (ii) any other matter relevant to the management or functions of the Constitutional Office that is requested by the minister;
 - (e) ensuring that the Constitutional Office performs its functions efficiently and effectively; and
 - (f) the efficient, effective and economic management of the activities of the Constitutional Office; and
 - (g) complying with and observing the rule of law in public affairs;
 - (h) where provision is not provided for in other enactment, provide an annual report to the President by the end of March each year on the work of his

or her Constitutional Office with recommendations as to improvements as he or she thinks proper.

- (2) For the purpose of this Section, “minister”:
 - (a) includes the Speaker of the House of Representatives in relation to the Office of the Clerk of the House of Representatives; and
 - (b) Includes the President of the Autonomous Region of Bougainville.

9. ACTING APPOINTMENTS

- (1) The Committee may :
 - (a) when a Bougainville Constitutional Office is vacant; or
 - (b) when the holder of a Bougainville Constitutional Office is absent from Bougainville for an extended period or for any reason is not able to carry out his or her duties,appoint a person to act in that Office for a period not exceeding six months.
- (2) A person appointed under Subsection (1) has and may:
 - (a) exercise the powers; and
 - (b) perform the duties and functions,of that Bougainville Constitutional Office-holder as is specified under the Constitution or under other enactments.

10. RESIGNATION

- (1) A Bougainville Constitutional Office-holder may resign by giving three months’ notice in writing of his or her intention to resign to the Committee.
- (2) A Bougainville Constitutional Office-holder may withdraw his or her resignation at any time before its commencement.

PART 3. – DISCIPLINE.

11. GROUNDS FOR REMOVAL.

- (1) The Committee may remove a Bougainville Constitutional Office-holder only –
 - (a) for inability (whether arising from physical or mental infirmity or otherwise) to perform the functions and duties of his or her Office; or
 - (b) for misbehavior on his or her part; or
 - (c) in accordance with Part XIII (Leadership Code) of the Bougainville Constitution for misconduct in Office; or
 - (d) for a breach or contravention of a condition of employment specified in the Constitution, another law or contract of employment.

- (2) A Bougainville Constitutional Office-holder cannot be removed unless the procedure for removal set out in Section 12 is followed.

12. PROCEDURE FOR REMOVAL.

- (1) The Committee must not remove a Bougainville Constitutional Office-holder unless the Committee has received a complaint in writing from the President, a minister, the Bougainville Ombudsman or the Bougainville Auditor General :
- (a) alleging that there is a ground or are grounds for his or her removal under Section 11; and
 - (b) setting out the evidence in support of the allegations.
- (2) Where the Committee is satisfied that the question of the removal from office of a Bougainville Constitutional Office-holder should be investigated, it shall:
- (a) by written notice to the Chief Justice of Bougainville, request the appointment of a tribunal consisting of a Bougainville Judge (who maybe himself) and a member of another Bougainville Court to hear and determine the matter; and
 - (b) refer to the tribunal the matter of the removal from office of the Bougainville Constitutional Office-holder together with a written statement of the reasons for its opinion, for the tribunal to investigate and report back to it whether the Bougainville Constitutional Office-holder should be removed from office.
- (3) The tribunal shall make due inquiry into the matter referred to it without being restricted by legal formalities or the rules of evidence and shall inform itself in such manner as it thinks proper, subject to compliance with principles of natural justice.
- (4) Where the tribunal reports that the Bougainville Constitutional Office-holder should be removed from office, the Committee must:
- (a) by notice in writing to the Bougainville Constitutional Office-holder concerned remove him or her from office; and
 - (b) send a copy of the notice under paragraph (a) to the Speaker for presentation to the House of Representatives.
- (5) Where a question has been referred to a tribunal under this Section, the Committee:
- (a) may suspend the Bougainville Constitutional Office-holder from office pending the report of the tribunal; and
 - (b) may remove the suspension at any time; and

- (c) remove the suspension where the tribunal does not recommend dismissal from office,
and the suspension shall be on full pay.

13. RIGHT OF APPEAL.

- (1) A Constitutional Office-holder who is dissatisfied with a decision of the Committee may appeal to the National Court.
- (2) An appeal must be made within 21 days after the person is given written notice by the Committee of its decision.
- (3) The National Court may affirm, vary or quash the decision of the Committee.

PART 4. – CODE OF CONDUCT.

14. PRIVATE EMPLOYMENT AND ELECTIONS.

- (1) No Constitutional Office-holder, shall –
 - (a) accept or continue to hold or discharge the duties of any other paid office outside the Constitutional Office; or
 - (b) engage (whether as principal or agent), or be employed in any other paid occupation outside the Constitutional Office.
- (2) A Constitutional Office-holder who intends to become a candidate for election to the House of Representatives, the National Parliament, a provincial assembly, or a local level government or authority must resign from the Constitutional Office before accepting nomination as a candidate for election to that office.

15. FEES FOR OFFICIAL SERVICES.

- (1) Unless otherwise provided, in the performance of any service on behalf of the Government no fee, reward, or remuneration of any kind whatsoever, beyond the remuneration and approved allowances, of a person employed in a Constitutional Office may be received by that person or other person for that person's own use or benefit.
- (2) Where a Constitutional Office-holder is required to perform any service for which a charge would lawfully be payable, then that charge must be levied and the amount paid into the Public Fund, or into the account of the Constitutional Office concerned.

16. CONSTITUTIONAL OFFICE HOLDER'S OBLIGATIONS.

- (1) Subject to the Constitution or any other enactment, every Constitutional office holder, must in the course of his or her employment in a Constitutional Office: –
- (a) comply with generally accepted behaviour in the conduct of his or her employment; and
 - (b) comply with any reasonable direction given by a minister or the Committee; and
 - (c) behave honestly and with integrity; and
 - (d) act with care and diligence; and
 - (e) observe and comply with all applicable laws; and
 - (f) maintain confidentiality about dealings that the Constitutional office holder has with any minister or members of staff of a ministry; and
 - (g) disclose and take reasonable steps to avoid any conflict of interest (real or apparent) in connection with his or her employment; and
 - (i) use resources and public money in a lawful and proper manner; and
 - (k) not provide false or misleading information in response to a request for information; and
 - (l) not make improper use of information or his or her duty, status, power or authority in order to gain or seek to gain a benefit or advantage for himself or herself or for any other person, and
 - (m) comply with any other requirements imposed by this or any other Act or regulation.

PART 5. – MEETINGS OF THE COMMITTEE.

17. MEETINGS OF THE COMMITTEE.

- (1) The Chairperson of the Committee is the President.
- (2) If the Chairperson is absent (whether by reason of a vacancy in the chairperson's office, disability, death or otherwise) then the members present will select from amongst themselves a chairperson who will have all the powers and functions of the Chairperson for as long as that absence continues.
- (3) Meetings of the Committee will be convened by the Secretary, after consultation with the Chairperson, who will cause a written record of each meeting to be kept.
- (4) The procedure at meetings will be as determined by the Committee.
- (5) A quorum of the Committee is a simple majority of the members.

- (6) Each member present will have a vote and decisions will be carried by a simple majority of the votes cast and in the event of an equality of votes the Chairperson will have a casting vote.

18. SECRETARY.

- (1) The Chief Administrator or the Head of the Bougainville Public Service will appoint a person to be the Secretary to the Committee on such terms and conditions as that authority will determine.
- (2) The Secretary is responsible for providing assistance and administrative support to the Committee.

PART 6. – TRANSITIONAL.

19. APPLICATION OF THIS PART.

This Part applies –

- (a) until the Bougainville Courts are established; and
- (b) the Bougainville Chief Justice is appointed in accordance with the Constitution.

20. GROUNDS FOR REMOVAL.

- (1) The Committee may remove a Bougainville Constitutional Office-holder from office :
- (a) because his or her performance is unsatisfactory ; or
- (b) because of misconduct; or
- (c) because of physical or mental incapacity; or
- (d) if he or she becomes bankrupt; or
- (e) if he or she is convicted of a criminal offence.
- (2) For the purposes of Subsection (1), a Bougainville Constitutional Office-holder's performance is unsatisfactory if :
- (a) he or she has not undertaken all or any of his or her principal responsibilities as set out in Section 8 for a significant period of time; or
- (b) there has been a serious breach of his or her performance agreement.
- (3) A Bougainville Constitutional Office-holder cannot be removed unless the procedures for removal set out in Section 21 is followed.

21. PROCEDURE FOR REMOVAL.

- (1) The Committee must not remove a Bougainville Constitutional Office holder unless the Committee has received a complaint in writing from the President, a minister, the Bougainville Ombudsman or the Bougainville Auditor General :
 - (a) alleging that there is a ground or are grounds for his or her removal under Section 20; and
 - (b) setting out the evidence in support of the allegations.

- (2) The Committee must :
 - (a) appoint one or more persons to investigate the complaint; and
 - (b) send the Bougainville Constitutional Office-holder a copy of the complaint; and
 - (c) give the Bougainville Constitutional Office-holder 21 days within which to respond in writing to the allegations.

- (3) The Committee may :-
 - (a) dismiss the complaint if the Committee is satisfied that it is frivolous or vexatious;
 - (b) request additional information from the complainant if the complaint does not contain sufficient information.

- (4) The Committee must decide whether or not to remove the Bougainville Constitutional Office-holder:
 - (a) within 50 days after receiving the complaint; or
 - (b) if additional information has been requested under paragraph (3) (b) – within 50 days after receiving that additional information.

- (5) The person or persons appointed to investigate the complaint must provide a report on the investigation to the Committee. The Committee must take into account the report and any responses made under paragraph (2) (c) in deciding whether to remove a Bougainville Constitutional Office-holder.

- (6) The Committee must give the Bougainville Constitutional Office-holder and the complainant written notice of the Committee's decision and the reasons for the decision.

- (7) A decision by the Committee to remove a Bougainville Constitutional Office - holder takes effect on the day on which the decision is made.

22. RIGHT OF APPEAL.

- (1) A Constitutional Office-holder who is dissatisfied with a decision of the Committee may appeal to the National Court.
- (2) An appeal must be made within 21 days after the person is given written notice by the Committee of its decision.
- (3) The National Court may affirm, vary or quash the decision of the Committee.
- (4) For the purposes of this Section, "National Court" means the National Court of Papua New Guinea.

PART 7. – MISCELLANEOUS.

23. MEDICAL EXAMINATIONS.

The Committee may require an applicant for appointment to a Bougainville Constitutional Office to submit to a medical examination by a registered medical practitioner at the applicant's own expense.

24. REGULATIONS.

The Bougainville Executive Council may, from time to time, make regulations to give effect to all or any of the purposes of this Act.

25. NOTICES.

Where any notice has to be given under this Act to a Bougainville Constitutional Office holder, it may be given:

- (a) by delivering it to the Bougainville Constitutional Office-holder; or
- (b) by sending it to the Bougainville Constitutional Office- holder in a letter addressed and posted to him or her at his or her usual place of employment or at his or her last known place of abode.

26. OFFENCE TO ATTEMPT TO INFLUENCE COMMITTEE.

- (1) Except as provided in Subsection (3), no person must in any way attempt to influence the Committee, or any member of the Committee in the exercise of its or his or her functions, powers and duties.
- (2) A person who acts in contravention of the provisions of this Section commits an offence and is liable on conviction to a fine not exceeding K1500.00 or a term of imprisonment not exceeding 1 year or both.

- (3) Nothing in this Section must be construed to prohibit any person:-
- (a) from giving or making representations in respect of any case or appeal at the request or invitation of the Committee; or
 - (b) from giving or making representations in respect of any case or appeal as a defendant or appellant; or
 - (c) from testifying as a witness; or
 - (d) from giving or making representations as a representative of the Bougainville Constitutional Office-holder appearing, before the Committee or the tribunal.

27. REPEAL OF ACT NO. 3 OF 2008.

The *Bougainville Senior Appointments (Process And Acting Appointments) Act 2008* is repealed.

I, **ROBERT TAPI**, Clerk of the House of Representatives, hereby certify that the foregoing is a fair copy of the *Bougainville Senior Appointments Committee (Appointments and Disciplinary Procedures of Bougainville Constitutional Office Holders) Act 2011* which has been made by the House of Representatives.

DATED this 20th 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 *Bougainville Senior Appointments Committee (Appointments and Disciplinary Procedures of Bougainville Constitutional Office Holders) Act 2011* was made by the House of Representatives on 14th September 2011 by an absolute majority of votes in accordance with the *Bougainville Constitution*.

DATED this 20th day of September 2011.


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