

BOUGAINVILLE SENIOR APPOINTMENTS ACT 2014

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AUTONOMOUS REGION OF BOUGAINVILLE

(No 6 of 2014)

BOUGAINVILLE SENIOR APPOINTMENTS ACT 2014

Being an Act to—

- (a) provide for matters incidental to the establishment of the Bougainville Senior Appointments Committee by the *Bougainville Constitution*;
- (b) set out procedures for the appointment, suspension and removal of Bougainville Constitutional Office-holders and other senior office-holders.

MADE by the House of Representatives, to be taken to have commenced on 1 July 2014

PART 1 — PRELIMINARY MATTERS

1 Short title and commencement

- (1) This is the *Bougainville Senior Appointments Act 2014*.
- (2) This Act is taken to have commenced on 1 July 2014.

2 Guiding principles

A person performing a function under this Act must be guided by the Bougainville Objectives and Directive Principles set out in Part III of the *Bougainville Constitution*.

PART 2 — INTERPRETATION

3 Definitions

In this Act, unless the contrary intention appears—

'affiliate of the Committee' means—

- (a) a Member; and
- (b) a tribunal appointed under Section 190(3) of the *Bougainville Constitution*, including a member of a tribunal; and
- (c) a board of inquiry appointed under Section 33, including a member of a board of inquiry; and
- (d) an interview panel appointed under Item 1.4 of Schedule 1, including a member of a panel; and
- (e) the Secretary;

'Chair' means the Chair of the Committee under Section 10;

'Churches' Representative' means the Member representing the Churches in Bougainville under Section 102(1)(c) of the *Bougainville Constitution*, appointed under Section 7;

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

'emoluments' means the salary, allowances and benefits (financial or otherwise) payable to or receivable by the holder of an office;

'interdict' means to temporarily remove an office-holder from office;

'Member' means a member of the Committee;

'qualified person' means a person qualified for appointment as a representative Member under Section 5;

'representative Members' means the Churches' Representative and the Women's Representative;

'Secretary' means the Secretary to the Committee appointed under Section 11;

'senior office' means an office in a Bougainville governmental body, the holder of which is, under the *Bougainville Constitution* or a Bougainville law, appointed by the Committee;

'senior office-holder' means the holder of a senior office, but does not include a Bougainville Constitutional Office-holder;

'vacancy' includes a prospective vacancy;

'Women's Representative' means the Member representing the women of Bougainville under Section 102(1)(d) of the *Bougainville Constitution*, appointed under Section 6.

4 Notes

Notes in this Act are provided to assist understanding and do not form part of the Act.

PART 3 — BOUGAINVILLE SENIOR APPOINTMENTS COMMITTEE

Division 1 — Representative Members

5 Qualified person

A person is qualified for appointment as a representative Member if the person is a Bougainvillean, unless the person is—

- (a) the 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
- (c) a Bougainville Constitutional Office-holder; or

- (d) a senior office-holder; or
- (e) aged under 25 years; or
- (f) of unsound mind within the meaning of any law relating to the protection of the person or property of persons of unsound mind; or
- (g) under sentence of death or imprisonment.

6 Women's Representative

- (1) The Women's Representative is appointed under this section.
- (2) Whenever a vacancy exists on the Committee for the Women's Representative, the Secretary must write to the Bougainville Federation of Women, inviting the Federation to nominate a qualified person to represent the women of Bougainville on the Committee.
- (3) On receipt of a nomination to fill the vacancy, the President must, unless the person is not a qualified person, appoint the person to the Committee by notice published in the Bougainville Gazette.
- (4) If the Bougainville Federation of Women does not, within 21 days after having been invited to make a nomination, nominate a qualified person, the President, acting with, and in accordance with, the advice of the Bougainville Executive Council, may, by notice published in the Bougainville Gazette, appoint a qualified person to fill the vacancy.
- (5) A person appointed under Subsection (4) is taken to have been appointed under Subsection (3) on the nomination of the Bougainville Federation of Women.
- (6) If the Bougainville Federation of Women is defunct or has been reconstituted or renamed, the Bougainville Executive Council may, by notice published in the Bougainville Gazette, designate an organisation to perform the function of the Bougainville Federation of Women for the purposes of Subsection (2).
- (7) An organisation designated under Subsection (6) must be an organisation that represents the interests of women throughout Bougainville.

7 Churches' Representative

- (1) The Churches' Representative is appointed under this section.
- (2) Whenever a vacancy exists on the Committee for the Churches' Representative, the Secretary must write to the Bougainville Council of Churches, inviting the Council to nominate a qualified person to represent the Churches of Bougainville on the Committee.
- (3) On receipt of a nomination to fill the vacancy, the President must, unless the person is not a qualified person, appoint the person to the Committee by notice published in the Bougainville Gazette.

- (4) If the Bougainville Council of Churches does not, within 21 days after having been invited to make a nomination, nominate a qualified person, the President, acting with, and in accordance with, the advice of the Bougainville Executive Council, may, by notice published in the Bougainville Gazette, appoint a qualified person to fill the vacancy.
- (5) A person appointed under Subsection (4) is taken to have been appointed under Subsection (3) on the nomination of the Bougainville Council of Churches.
- (6) If the Bougainville Council of Churches is defunct or has been reconstituted or renamed, the Bougainville Executive Council may, by notice published in the Bougainville Gazette, designate an organisation to perform the function of the Bougainville Council of Churches for the purposes of Subsection (2).
- (7) An organisation designated under Subsection (6) must be an organisation that represents the interests of faith-based organisations throughout Bougainville.

8 Term of office

- (1) A representative Member holds office for 4 years from the date of appointment, or until—
 - (a) the Member dies; or
 - (b) the Member resigns by written notice to the Chair; or
 - (c) the Member ceases to be a qualified person; or
 - (d) the Member's appointment is cancelled by the Chair under Subsection (2).
- (2) If a representative Member is absent from 3 consecutive meetings of the Committee without the permission of the Chair, the Chair may, by notice published in the Bougainville Gazette, cancel the Member's appointment.
- (3) A representative Member is eligible for reappointment.

Division 2 — Law Society equivalent

9 Bougainville equivalent to the Papua New Guinea Law Society

- (1) The Bougainville Executive Council, may, by notice published in the Bougainville Gazette, designate an organisation as being a Bougainville equivalent to the Papua New Guinea Law Society for the purposes of Section 102(1)(e) of the *Bougainville Constitution*.
- (2) An organisation designated under Subsection (1) must be an organisation that represents the interests of practising lawyers throughout Bougainville.

Division 3 — Administration

10 Chair

The President is the Chair of the Committee.

11 Secretary

- (1) The Chief Secretary must appoint a suitably qualified officer in the Bougainville Public Service to be the Secretary to the Committee.
- (2) A notice, decision, direction or request of the Committee may be communicated in writing under the hand of the Secretary.

12 Procedure

Subject to this Act, the Commission is to determine its own procedures.

13 Committee meetings

- (1) The Chair is to fix the date, time and place for a meeting of the Committee.
- (2) The Secretary must give reasonable notice of a meeting of the Committee to—
 - (a) Members; and
 - (b) the Head of the Bougainville Public Service.
- (3) A meeting of the Committee is to be presided over by—
 - (a) the Chair; or
 - (b) in the absence of the Chair, the Speaker.
- (4) The Committee may hold meetings by electronic communication, without the Members being present in one place, but Members must be able to speak to, and hear, each other contemporaneously.
- (5) At a meeting of the Committee—
 - (a) all matters should be decided by consensus, if possible; and
 - (b) if consensus on a matter cannot be reached, the matter may be decided by a majority of votes cast by Members present, with the Member presiding having a casting vote.
- (6) The Head of the Bougainville Public Service is entitled to attend meetings of the Committee as an observer.
- (7) The Secretary must keep full and accurate minutes of the Committee's proceedings and decisions.

14 Quorum

- (1) At a meeting of the Committee, a quorum consists of—
 - (a) where the Committee is comprised of 7 Members – 4 Members, of whom—
 - (i) 1 must be the Chair or the Speaker; and
 - (ii) 1 must be a National Government nominee applicable to the matter under consideration; or
 - (b) otherwise – 3 Members, of whom 1 must be the Chair or the Speaker.
- (2) In this section—

‘National Government nominee’ means a Member appointed under—

 - (a) Section 102(1)(f) of the *Bougainville Constitution*; or
 - (b) Section 149(2) of the *Bougainville Constitution*; or
 - (c) Section 152(2) of the *Bougainville Constitution*.

Note for Section 14

Under the Bougainville Constitution, the Committee is comprised of 7 Members when considering the appointment, suspension or removal of—

- (a) *a Bougainville Constitutional Office-holder (Section 102(1)(f)); and*
- (b) *the Chief of Bougainville Police (Section 149(2)); and*
- (c) *the Chief of the Bougainville Correctional Service (Section 152(2)).*

15 Disclosure of interest

- (1) If a Member has a direct or indirect interest in a matter being considered or about to be considered by the Committee, the Member must disclose the nature of the interest at a meeting of the Committee as soon as practicable after the relevant facts come to the Member’s knowledge.
- (2) The Member need not give notice of an interest if the interest is an interest shared with the public generally or a section of the public.
- (3) A disclosure under Subsection (1) must be recorded in the minutes of the meeting at which it is made.
- (4) The Member, while having the interest—
 - (a) must not take part in any deliberation or decision of the Committee about the matter; and
 - (b) must be disregarded for the purpose of constituting the quorum of the Committee for the deliberation or decision.
- (5) However, a failure by a Member to disclose an interest in a matter that the Member must disclose under this section does not, on its own, invalidate any decision of the Committee about the matter.

16 Remuneration

Members may be paid a sitting fee and allowances for attending meetings of the Committee, as determined by the Bougainville Executive Council and published by notice in the Bougainville Gazette.

Division 4 — Powers of the Committee and affiliates, and legal matters

17 Powers of the Committee and affiliates

- (1) The Committee or an affiliate of the Committee may do all things necessary to be done for the exercise of a power or the performance of a function under the *Bougainville Constitution* and Bougainville law.
- (2) In the exercise of a power or the performance of a function, the Committee or an affiliate of the Committee—
 - (a) may require any person or Bougainville governmental body to provide any information that may be necessary for the proper exercise of the power or performance of the function;
 - (b) is not bound by the strict rules of evidence;
 - (c) must comply with the principles of natural justice.

Note for Subsection (2)

'Bougainville governmental body' is defined in Section 4(1) of the Interpretation Act 2005.

18 Legal proceedings against the Committee

Proceedings against the Committee are to be taken as proceedings against the Autonomous Bougainville Government, and are subject to the *Claims By and Against the Autonomous Bougainville Government Act 2006*.

19 Protection from liability

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as an affiliate of the Committee.
- (2) In addition, an affiliate of the Committee is not civilly or criminally liable for an act done or omitted to be done by the Committee in the exercise of a power or performance of a function under the *Bougainville Constitution* or a Bougainville law.
- (3) Subsections (1) and (2) do not affect any liability the Autonomous Bougainville Government would, apart from those subsections, have for the act or omission.
- (4) In this section—

'exercise', of a power, includes the purported exercise of the power; and

'performance', of a function, includes the purported performance of the function.

PART 4 — CERTAIN BOUGAINVILLE CONSTITUTIONAL OFFICE-HOLDERS

20 Application of this Part

This Part applies to the following Bougainville Constitutional Office-holders—

- (a) the Bougainville Ombudsman;
- (b) the Bougainville Electoral Commissioner;
- (c) a member of the Bougainville Public Services Commission;
- (d) the Bougainville Auditor-General;
- (e) the holder of an office declared by a Bougainville law to be a Bougainville Constitutional office for the purposes of Part XVI of the *Bougainville Constitution*.

21 Appointment

An appointment of a Bougainville Constitutional Office-holder to whom this Part applies (other than a temporary appointment) may only be made as a consequence of a selection process conducted in accordance with Schedule 1.

22 Constitutional provisions

- (1) A Bougainville Constitutional Office-holder to whom this Part applies is appointed for the term provided for in Section 189(2) of the *Bougainville Constitution*.

Note for Subsection (1)

Under Section 189(2) of the Bougainville Constitution, a Bougainville Constitutional Office-holder is appointed for a term of 5 years, or until the office-holder reaches 65 years of age, whichever comes first, unless the Committee extends the office-holder's retiring age under Section 189(3)(a).

- (2) The procedure for interdiction or removal from office of a Bougainville Constitutional Office-holder to whom this Part applies is as set out in Section 190 of the *Bougainville Constitution*.

23 Reappointment

- (1) Unless notice is given under Subsection (2), a Bougainville Constitutional Office-holder to whom this Part applies is, on the expiration of the office-holder's term, taken to have been reappointed by the Committee for a further term under the same conditions of employment.

Note for Subsection (1)

The retiring age provisions under Section 189(3) of the Bougainville Constitution also apply to the reappointment of a Bougainville Constitutional Office-holder.

- (2) If the Bougainville Executive Council resolves that, on the expiration of the term of a Bougainville Constitutional Office-holder, the office will become vacant, the Council must, no later than 3 months before the end of the office-holder's term, give written notice of its resolution to—
- (a) the Committee; and
 - (b) the office-holder.

Note for Subsection (2)

Under Section 189(2) of the Bougainville Constitution, a Bougainville Constitutional Office-holder is eligible for reappointment.

24 Temporary appointment

- (1) The Bougainville Executive Council may appoint a person to act in the office of a Bougainville Constitutional Office-holder to whom this Part applies during—
- (a) the illness, suspension or other absence of the substantive holder of the office; or
 - (b) a vacancy in the office.

- (2) An appointment under Subsection (1) may be for a period of no more than 6 months.

- (3) A person appointed under Subsection (1) must be qualified for appointment to the office in which the person has been appointed to act.

Note for Subsection (3)

Provisions regarding qualifications for, and disqualification from, office of a Bougainville Constitutional Office-holder include Section 189(3) of the Bougainville Constitution (retiring age) and Schedule 5 to the Constitution. For some offices additional requirements are set out in the constitutional provision establishing the office.

- (4) A person appointed under Subsection (1) has, for the duration of the appointment, all the functions of the substantive holder of the office and is taken to be the substantive holder of the office.

- (5) Notice of a temporary appointment must be published in the Bougainville Gazette.

- (6) The appointment of an acting Bougainville Constitutional Office-holder, and any act done by an acting Bougainville Constitutional Office-holder, may not be questioned in any proceedings on the ground that the justification for the appointment had not arisen or had ceased.

Note for Section 24

Under Section 189(7) of the Bougainville Constitution, a Bougainville law may make provision for the appointment of a person to act temporarily in the office of a Bougainville Constitutional Office-holder. Item 5.11 of Schedule 5 to the Constitution also deals with the appointment of an acting Bougainville Constitutional Office-holder.

PART 5 — SENIOR OFFICE-HOLDERS

Division 1 — Disqualification from office

25 Disqualification

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

- (a) the 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 an Act of the National Parliament; 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.

Division 2 — Appointment

26 Appointment

An appointment of a senior office-holder (other than a temporary appointment) may only be made as a consequence of a selection process conducted in accordance with Schedule 1.

27 Term of office

A senior office-holder holds office for 5 years from the date of appointment, or until the office-holder—

- (a) dies; or
- (b) resigns under Section 40; or
- (c) reaches the age of 65 years, or such other retiring age as may be provided for in a Bougainville law establishing the office;
- (d) ceases to be qualified to be a senior office-holder; or
- (e) is removed from office under Section 31.

28 Conditions of employment

- (1) Subject to any Bougainville law to the contrary, the conditions of employment for and emoluments of a senior office-holder are as set out in the written offer of appointment.
- (2) In addition, a senior office-holder must not—
 - (a) actively engage in politics; or
 - (b) subject to Subsection (3), engage either directly or indirectly in the management or control of a corporation or other body of persons carrying on business for profit; or
 - (c) subject to Subsection (4), acquire, by gift or otherwise, or use or hold in any other manner any interest in, any property, or solicit, accept or receive any other benefit in addition to the office-holder's terms and conditions of employment.
- (3) Subsection (2)(b) does not prevent a senior office-holder from holding office in a professional body in relation to which the senior office-holder's qualifications are relevant.
- (4) Subject to Part XIII of the *Bougainville Constitution* (Leadership Code), a senior office-holder may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any Bougainvillean.

29 Reappointment

- (1) Unless notice is given under Subsection (2), a senior office-holder is, on the expiration of the office-holder's term, taken to have been reappointed by the Committee for a further term under the same conditions of employment.
- (2) If the Bougainville Executive Council resolves that, on the expiration of the term of a senior office-holder, the office will become vacant, the Council must, no later than 3 months before the end of the office-holder's term, give written notice of its resolution to
 - (a) the Committee; and
 - (b) the office-holder.
- (3) A senior office-holder is eligible for reappointment.

30 Temporary appointment

- (1) A person may be appointed to act in the office of a senior office-holder during—
 - (a) the illness, suspension or other absence of the substantive holder of the office; or
 - (b) a vacancy in the office.

- (2) Subject to Subsection (3), an appointment under Subsection (1) may be made by—
 - (a) the Bougainville Executive Council; or
 - (b) the Head of the Bougainville Public Service.
- (3) An appointment under Subsection (1) may be for a period of no more than—
 - (a) if the appointment is made by the Bougainville Executive Council – 6 months; or
 - (b) if the appointment is made by the Head of the Bougainville Public Service – 1 month.
- (4) A person appointed under Subsection (1) must be qualified for appointment to the office in which the person has been appointed to act.
- (5) A person appointed under Subsection (1) has, for the duration of the appointment, all the functions of the substantive holder of the office and is taken to be the substantive holder of the office.
- (6) Notice of an appointment under Subsection (1) must be published in the Bougainville Gazette.
- (7) The appointment of an acting senior office-holder, and any act done by an acting senior office-holder, may not be questioned in any proceedings on the ground that the justification for the appointment had not arisen or had ceased.

Division 3 — Investigation

31 Petition

- (1) The Committee may take action under this Division only after having received a petition under this section requesting that an investigation be held into—
 - (a) the question of a senior office-holder's inability (whether arising from physical or mental infirmity or otherwise) to perform the functions and duties of office; or
 - (b) an allegation against a senior office-holder of—
 - (i) misbehaviour; or
 - (ii) a breach of the senior office-holder's conditions of employment.
- (2) A petition to the Committee—
 - (a) may only be made by—
 - (i) the President; or
 - (ii) a Minister; or
 - (iii) the Bougainville Executive Council; or
 - (iv) the Head of the Bougainville Public Service; and

- (b) must—
 - (i) be in writing; and
 - (ii) include a statement of the reasons for the petitioner's opinion as to the need for an investigation.

32 Review of petition

- (1) The Committee may decline to deal with the matters raised in a petition received under Section 31 if it considers—
 - (a) the matters to be trivial or without substance; or
 - (b) that suitable alternative measures exist to better deal with the matters; or
 - (c) having regard to the length of time that has elapsed since the matters happened, it is not practicable for the Committee to deal with the matters.
- (2) If the Committee does not decline to deal with the matters raised in a petition under Subsection (1), it must give to the senior office-holder who is the subject of the petition—
 - (a) a copy of the petition; and
 - (b) a notice inviting the office-holder to show cause why the Committee should not convene a board of inquiry to investigate the matters raised.
- (3) A notice under Subsection (2) must specify a reasonable period of time within which the office-holder must respond.
- (4) If, after receiving a response to a notice issued under Subsection (2), the Committee considers that the office-holder has satisfactorily addressed the matters raised in the petition, it may decline to deal further with the matters.
- (5) If the Committee declines to deal with the matters raised in a petition, it must give written notice of its decision to—
 - (a) the petitioner; and
 - (b) if the Committee is acting under Subsection (4) – the senior office-holder.

33 Convening board of inquiry

- (1) If, after receiving a petition under Section 31 and, having considered any response from the office-holder to a notice issued under Section 32(2), it is satisfied that there should be an investigation into the matters raised in the petition, the Committee must convene a board of inquiry.
- (2) A board of inquiry comprises at least 1 person, but not more than 3 persons, appointed by the Committee.
- (3) If a matter under investigation is the question of an office-holder's inability to perform the functions and duties of office, at least 1 person appointed to the board of inquiry must be a medical practitioner.

- (4) The Committee must refer the matters requiring investigation to the board of inquiry, together with a copy of—
- (a) the petition; and
 - (b) any response received from the senior office-holder under Section 32.

34 Notification of investigation

- (1) The Committee must give a senior office-holder who is the subject of an investigation written notice of the investigation.
- (2) The notice must state the following—
- (a) the date on which and the time and place at which the board of inquiry will commence the hearing of the investigation;
 - (b) the names of the members of the board of inquiry.

35 Interdiction following referral to board of inquiry

- (1) If a board of inquiry has been convened under Section 33(1), the Committee—
- (a) may interdict the office-holder who is the subject of the investigation from office, pending the report of the board of inquiry; and
 - (b) may remove the interdiction at any time; and
 - (c) if the board of inquiry does not recommend that the office-holder be dismissed – must remove the interdiction.
- (2) Unless the Committee determines otherwise, interdiction under Subsection (1) is on full pay.
- (3) If no action is taken against a senior office-holder following an investigation, the office-holder is entitled to receive the full amount of the salary that would have been received had the office-holder not been interdicted.

36 Conduct of the investigation

- (1) On receipt of a referral from the Committee under Section 33(4), the board of inquiry must conduct the investigation as quickly as a proper consideration of the matter under investigation allows.
- (2) However, the investigation may be suspended—
- (a) if criminal proceedings have been or are likely to be started in relation to the matter under investigation – until the outcome of the criminal proceedings is known; or
 - (b) if a tribunal has been appointed under Section 27 of the *Organic Law on the Duties and Responsibilities of Leadership* of the National Parliament to inquire into the matter under investigation – until the inquiry has concluded; or

- (c) if a case of alleged misconduct in office related to the matter under investigation has been referred to the Bougainville High Court under a Bougainville law made to provide for the matters under Section 173 of the *Bougainville Constitution* – until the case has been determined.
- (3) The office-holder who is the subject of the investigation may be represented before the board of inquiry by another person (who may be a lawyer).
- (4) The failure of the office-holder who is the subject of the investigation to attend before the board of inquiry, either personally or by a representative, does not invalidate the proceedings.
- (5) In conducting the investigation, the board of inquiry—
 - (a) subject to this Act, is to determine its own procedures; and
 - (b) must ensure that a record is kept of the investigation; and
 - (c) must observe the rules of procedural fairness; and
 - (d) is not bound by the rules of evidence; and
 - (e) may invite and receive written submissions from any person the board considers relevant to the investigation; and
 - (f) may consult with any person; and
 - (g) may require—
 - (i) the senior office-holder who is the subject of the investigation to undergo an examination by a medical practitioner for an assessment of the office-holder’s fitness to perform the functions and duties of office; and
 - (ii) the medical practitioner to give the board a report of the examination.
- (6) On completion of its investigation, the board of inquiry must report its findings and recommendations to the Committee.
- (7) The board of inquiry may recommend to the Committee—
 - (a) if the investigation concerned the question of a senior office-holder’s inability to perform the functions and duties of office – that the Committee—
 - (i) remove the office-holder from office; or
 - (ii) take no action; or
 - (b) if the investigation concerned an allegation against a senior office-holder of misbehaviour or breach of the office-holder’s conditions of employment – that the Committee—
 - (i) issue a formal reprimand to the office-holder; or
 - (ii) fine the office-holder a sum not exceeding 20% of the office-holder’s gross fortnightly salary; or

- (iii) suspend the office-holder for a period of up to 20 working days, without pay, or on such proportion of the office-holder's salary as the Committee may consider appropriate; or
- (iv) remove the office-holder from office; or
- (v) take no action.

Division 4 — Removal from office

37 Removal from office

- (1) The Committee must remove a senior office-holder from office if it receives a recommendation that the office-holder be removed from office, made by—
 - (a) a board of inquiry, following an investigation conducted under Section 33; or
 - (b) a tribunal exercising powers under Section 27 of the *Organic Law on the Duties and Responsibilities of Leadership* of the National Parliament; or
 - (c) the Bougainville High Court, exercising powers under a Bougainville law made to provide for the matters under Section 173 of the *Bougainville Constitution*.
- (2) The Committee must give written notice of the removal of a senior office-holder to—
 - (a) the office-holder concerned; and
 - (b) the Speaker, for presentation to the House of Representatives.
- (3) Unless the Committee determines otherwise, on removal from office under this section a senior office-holder is entitled to receive a sum equivalent to 3 months' salary, in lieu of notice.

Division 5 — Disciplinary action other than removal from office

38 Disciplinary action other than removal from office

- (1) If a board of inquiry, following an investigation conducted under Section 33, recommends that action (other than removal from office) be taken with respect to a senior office-holder, the Committee must—
 - (a) consider the recommendations of the board of inquiry; and
 - (b) determine the action (if any) to be taken against the senior office-holder under Subsection (2).
- (2) The Committee may decide to—
 - (a) issue a formal reprimand to the senior office-holder; or
 - (b) fine the senior office-holder a sum not exceeding 20% of the office-holder's gross fortnightly salary; or

- (c) suspend the senior office-holder for a period of up to 20 working days, without pay, or on such proportion of the office-holder's salary as the Committee considers appropriate; or
 - (d) take no further action in relation to the subject matter of the investigation.
- (3) The Committee must give written notice of a decision under this section to the senior office-holder concerned.

Division 6 — Other matters

39 No reduction in emoluments

The total emoluments of a senior office-holder must not be reduced during the term of the office-holder, except—

- (a) as part of a general reduction applicable equally or proportionately to all senior office-holders; or
- (b) as a result of taxation that does not discriminate against the office-holder as a senior office-holder, or against senior office-holders generally.

40 Resignation

- (1) A senior office-holder may resign by giving 3 months' written notice to the Committee.
- (2) The Committee may, on receipt of a written request from a senior office-holder, waive or reduce the period of notice under Subsection (1).
- (3) The resignation of a senior office-holder may be withdrawn at any time before the date on which it takes effect.

PART 6 — MISCELLANEOUS PROVISIONS

Division 1 — General offences

41 Confidentiality of information

- (1) A person commits an offence if the person—
 - (a) obtains information while exercising a power or performing a function under this Act; and
 - (b) engages in conduct that results in the disclosure of information.

Penalty: K10,000 or 2 years' imprisonment.
- (2) Subsection (1) does not apply if the person discloses the information—
 - (a) for the administration of this Act; or
 - (b) with the consent of the person to whom the information relates; or

(c) for legal proceedings arising out of the operation of this Act.

(3) In this section—

‘**exercise**’, of a power, includes the purported exercise of the power;

‘**performance**’, of a function, includes the purported performance of the function.

42 Unlawful influence

(1) A person commits an offence if—

(a) the person intentionally engages in conduct; and

(b) the person intends by the conduct to influence a decision of—

(i) the Committee; or

(ii) an affiliate of the Committee.

Penalty: K10,000 and 12 months’ imprisonment.

(2) Subsection (1) does not apply if the conduct is—

(a) the provision of a reference or testimonial with respect to an applicant or candidate for appointment as a Bougainville Constitutional Office-holder or senior office-holder; or

(b) the making of representations by or on behalf of a Bougainville Constitutional Office-holder or senior office-holder before a—

(i) tribunal appointed under Section 190 of the *Bougainville Constitution*; or

(ii) board of inquiry convened under Section 33; or

(c) the provision of information or assistance requested by the Committee or the affiliate.

43 Giving misleading information

(1) A person commits an offence if the person—

(a) gives misleading information to another person who is exercising powers or performing functions under this Act; and

(b) knows the other person is acting in an official capacity; and

(c) knows the information is misleading.

Penalty: K10,000 and 12 months’ imprisonment.

(2) A person commits an offence if the person—

(a) gives a document containing misleading information to another person who is exercising powers or performing functions under this Act; and

(b) knows the other person is acting in an official capacity; and

(c) knows the document contains misleading information.

Penalty: K10,000 and 12 months' imprisonment.

(3) Subsection (2) does not apply if the person, when giving the document—

(a) draws the misleading aspect of the document to the other person's attention; and

(b) to the extent to which the person can reasonably do so – gives the other person the information necessary to correct the document.

(4) In this section—

'misleading information' means information that is misleading in a material particular because it—

(a) does not include relevant information; or

(b) includes misinformation.

Division 2 — Other matters

44 Act binds Autonomous Bougainville Government

This Act binds the Autonomous Bougainville Government.

Note for section 44

Under section 29 of the Interpretation Act 2005 the Autonomous Bougainville Government is not bound by a law unless it is provided, expressly or by implication, that the Government is bound by it.

45 Amendment of Schedule 1

The Bougainville Executive Council, acting with, and in accordance with, a recommendation of the Committee, may, by notice published in the Bougainville Gazette, amend Schedule 1.

46 Regulations

The Bougainville Executive Council may make regulations under this Act prescribing matters necessary or convenient to give effect to this Act.

PART 7 — REPEALS AND TRANSITIONAL MATTERS

Division 1 — Repeal of laws

47 Repeal

The following Acts are repealed—

(a) *Bougainville Senior Appointments Committee (Appointment of Representative Members) Act 2006;*

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

Division 2 — Consequential amendments

48 Amendment of Acts

Schedule 2 amends the Acts mentioned in it.

Division 3 — Transitional matters

49 Definitions for this Division

In this Division—

'commencement date' means the day this Act comes into force;

'repealed Acts' means the—

- (a) *Bougainville Senior Appointments Committee (Appointment of Representative Members) Act 2006*; and
- (b) *Bougainville Senior Appointments Committee (Appointments and Disciplinary Procedures of Bougainville Constitutional Office Holders) Act 2011.*

50 Secretary

The person holding office as Secretary to the Committee immediately before the commencement date continues in office as if appointed to that office under Section 11.

51 Transitional regulations

- (1) The regulations may make provision (a **'transitional regulation'**) about a matter for which—
- (a) it is necessary to make provision to achieve the transition from the operation of the repealed Acts to this Act; and
- (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a date not earlier than the commencement date.
- (3) However, to the extent a transitional regulation has retrospective operation, it must not operate to the disadvantage of a person (other than the Autonomous Bougainville Government) by detrimentally affecting the person's rights or imposing liabilities on the person.
- (4) This section expires 12 months after the commencement date.

Schedule 1

Procedures for selection and appointment

Sections 21 and 26

1.1 General principles

The following principles apply to the selection process to fill a vacancy in the office of a Constitutional Office-holder or senior office-holder—

- (a) the selection process must be objectively fair and equitable, and must not discriminate against an applicant on the basis of the applicant's sex, race or disability;
- (b) all applicants must receive the same information about the position and the selection process;
- (c) all applicants must be assessed against the same selection criteria;
- (d) only those persons who have duly applied for appointment to the vacancy may be considered for appointment;
- (e) confidentiality of the selection process must be maintained.

1.2 Selection criteria, terms of reference and emoluments

Prior to the Committee commencing the selection process, the Bougainville Executive Council must approve the selection criteria, terms of reference and emoluments of the office.

Notes for Item 1.2

Under Section 163 of the Bougainville Constitution, the House of Representatives determines (in accordance with the Bougainville Salaries and Remuneration Commission's recommendation) the emoluments of—

- (a) *a Bougainville Constitutional Office-holder; and*
- (b) *the Heads of Bougainville Government Services (ie. the Head of the Public Service, and the Chiefs of Bougainville Police and the Bougainville Correctional Service).*

In addition to prescribing grounds for disqualification from office for certain Bougainville Constitutional Office-holders (Item 5.7.2 of Schedule 5), the Bougainville Constitution prescribes minimum qualifications for appointment to the following offices—

- (a) *member of the Public Services Commission (Section 142(3));*
- (b) *Bougainville Ombudsman (Item 5.3 of Schedule 5);*
- (c) *Electoral Commissioner (Item 5.4 of Schedule 5);*
- (d) *Bougainville Auditor-General (Item 5.5.1 of Schedule 5).*

For senior office-holders, Section 25 of this Act sets out who is not qualified for appointment. For office-holders other than those mentioned above, additional qualification requirements may be set out in the Bougainville law concerning the particular office.

1.3 Advertising

- (1) The Committee must ensure that the vacancy is advertised as widely as possible in Bougainville and elsewhere in Papua New Guinea.
- (2) The Committee may direct that the vacancy also be advertised internationally.

- (3) In advertising the vacancy, the Committee must aim to ensure that everyone with an interest has a reasonable chance to know of and apply for the vacancy.
- (4) The last date for receipt of applications must be no earlier than 10 working days after the date on which the vacancy is advertised for the first time.

1.4 Interview panel

- (1) Subject to Item 1.5, the Committee must appoint an interview panel, comprising 3 independent people, to—
 - (a) review the applications received; and
 - (b) conduct preliminary interviews with selected applicants; and
 - (c) make relevant enquiries regarding the applicants; and
 - (d) from among the applicants eligible for appointment to the vacancy, determine a short list of applicants for consideration by the Committee, identifying the short-listed applicants in rank order; and
 - (e) report to the Committee on the work of the panel.
- (2) To be eligible for appointment to an interview panel, a person must—
 - (a) be a person of integrity; and
 - (b) be well-respected and a leader in their community; and
 - (c) have a clear understanding of the qualities expected of the holder of the office for which the vacancy exists.
- (3) The Secretary must provide administrative support to the interview panel.

1.5 Executive recruitment firm

Alternatively, the Committee may direct that a reputable executive recruitment firm be engaged to undertake the tasks of the interview panel under Item 1.4(1).

1.6 Reference checks

- (1) Reference checks relating to an applicant's work behaviour and performance may be conducted at any time during the selection process.
- (2) If an adverse comment made by a referee has the potential to affect the selection outcome, the applicant must be given an opportunity to respond.

1.7 Medical examination

The Committee may, at any time during the selection process, require an applicant to undergo a medical examination.

1.8 Consideration of short list and selection of preferred applicant

- (1) On receipt of the report under Item 1.4(1)(e), the Committee may conduct further interviews with the short-listed applicants as it considers appropriate.
- (2) The Committee must, from among the short-listed applicants, select the applicant who has, in the opinion of the Committee, the greatest merit (the '**preferred applicant**'), with the other short-listed applicants identified in rank order.

- (3) In determining the rank order of the short-listed applicants, the Committee may seek the views of—
 - (a) the Minister responsible for the office to which the vacancy relates; and
 - (b) the Head of the Bougainville Public Service.

1.9 Offer of appointment

- (1) The Committee must write to the preferred applicant—
 - (a) offering appointment to the office; and
 - (b) setting out the conditions of employment (including emoluments); and
 - (c) inviting the preferred applicant to accept the offer in writing within a specified time period, otherwise, the offer lapses.
- (2) If the preferred applicant declines the offer, or the offer lapses without the preferred applicant having accepted the offer, the Committee may offer the appointment to the next applicant in rank order.
- (3) If there is no suitable applicant willing to accept appointment, the Committee must re-advertise the vacancy.

1.10 Notification of appointment

Notification of the appointment must be published in the Bougainville Gazette.

Schedule 2

Amendment of Acts

Section 48

2.1 *Political Parties (Registration) Act 2006*

(1) Section 4

repeal, substitute

4 Registrar of Political Parties

- (1) The office of Registrar of Political Parties is established as a senior office for the purposes of Section 102(3) of the *Bougainville Constitution*.
- (2) The Registrar must be appointed by the Senior Appointments Committee in accordance with the *Bougainville Senior Appointments Act 2014*.
- (3) The Registrar may be appointed on a part-time basis.
- (4) In addition to the matters provided for under Section 25 of the *Bougainville Senior Appointments Act 2014*, a person is not qualified to be, or to remain, the Registrar if the person is a member of a political party registered under this Act or an Act of the National Parliament.
- (5) To avoid doubt, the procedures regarding the following are as set out in the *Bougainville Senior Appointments Act 2014*—
 - (a) the taking of disciplinary action against the Registrar;
 - (b) interdiction or removal from office of the Registrar.

(2) Sections 5, 6, 7 and 8

repeal

2.2 *Tax Administration Act 2006*

Section 3(1)

repeal, substitute

- (1) The office of Chief Bougainville Collector of Taxes is established as a senior office for the purposes of Section 102(3) of the *Bougainville Constitution*.
- (1A) The Chief Bougainville Collector must be appointed by the Senior Appointments Committee in accordance with the *Bougainville Senior Appointments Act 2014*.
- (1B) The Chief Bougainville Collector may be appointed on a part-time basis.
- (1C) To avoid doubt, the procedures regarding the following are as set out in the *Bougainville Senior Appointments Act 2014*—
 - (a) the taking of disciplinary action against the Chief Bougainville Collector;
 - (b) interdiction or removal from office of the Chief Bougainville Collector of Taxes.

2.3 Bougainville Elections Act 2007

(1) Section 4

repeal, substitute

4 Bougainville Electoral Commissioner

- (1) The office of Bougainville Electoral Commissioner is a constitutional office for the purposes of Section 102(3) of the *Bougainville Constitution*.
- (2) The Bougainville Electoral Commissioner must be appointed by the Senior Appointments Committee in accordance with—
 - (a) Section 106 of the *Bougainville Constitution*; and
 - (b) the *Bougainville Senior Appointments Act 2014*.
- (3) The Bougainville Electoral Commissioner may be appointed on a part-time basis.

(2) Section 14

repeal, substitute

14 Bougainville Boundaries Commissioner

- (1) The office of Bougainville Boundaries Commissioner is a senior office for the purposes of Section 102(3) of the *Bougainville Constitution*.
- (2) The Bougainville Boundaries Commissioner must be appointed by the Senior Appointments Committee in accordance with the *Bougainville Senior Appointments Act 2014*.
- (3) The Bougainville Boundaries Commissioner may be appointed on a part-time basis.
- (4) To avoid doubt, the procedures regarding the following are as set out in the *Bougainville Senior Appointments Act 2014*—
 - (a) the taking of disciplinary action against the Bougainville Boundaries Commissioner;
 - (b) interdiction or removal from office of the Bougainville Boundaries Commissioner.

(3) Sections 15, 16, 17, 18 and 19

repeal

2.4 Office of the Clerk Act 2009

(1) Section 3

repeal, substitute

3 Clerk of the House of Representatives

- (1) The office of Clerk of the House of Representatives is a senior office for the purposes of Section 102(3) of the *Bougainville Constitution*.
- (2) The Clerk must be appointed by the Senior Appointments Committee in accordance with—
 - (a) Section 78(1) of the *Bougainville Constitution*; and
 - (b) the *Bougainville Senior Appointments Act 2014*.
- (3) To avoid doubt, the procedures regarding the following are as set out in the *Bougainville Senior Appointments Act 2014*—
 - (a) the taking of disciplinary action against the Clerk;
 - (b) interdiction or removal from office of the Clerk.

(2) Sections 4, 6 and 7

repeal

2.5 Bougainville Physical Planning Act 2013

Section 7

repeal, substitute

7 Chief Physical Planner

- (1) The office of Chief Physical Planner is established as a senior office for the purposes of Section 102(3) of the *Bougainville Constitution*.
- (2) The Chief Physical Planner is responsible for maintenance of standards of physical planning in the Autonomous Region of Bougainville, and has the other powers, functions, duties and responsibilities prescribed by or under this Act.
- (3) The Chief Physical Planner must be appointed by the Senior Appointments Committee in accordance with the *Bougainville Senior Appointments Act 2014*.
- (4) To avoid doubt, the procedures regarding the following are as set out in the *Bougainville Senior Appointments Act 2014*—
 - (a) the taking of disciplinary action against the Chief Physical Planner;
 - (b) interdiction or removal from office of the Chief Physical Planner.

2.6 Bougainville Public Services (Management and Administration) Act 2014

(1) Section 7

repeal, substitute

7 Head of Bougainville Public Service

- (1) The office of Head of the Bougainville Public Service is established as a senior office for the purposes of Sections 102(3) and 147(1) of the *Bougainville Constitution*.
- (2) Subject to Section 79, the Head of the Bougainville Public Service must be appointed by the Senior Appointments Committee in accordance with—
 - (a) Section 147 of the *Bougainville Constitution*; and
 - (b) the *Bougainville Senior Appointments Act 2014*.
- (3) To avoid doubt, the procedures regarding the following are as set out in the *Bougainville Senior Appointments Act 2014*—
 - (a) the taking of disciplinary action against the Head of the Bougainville Public Service;
 - (b) interdiction or removal from office of the Head of the Bougainville Public Service.

(2) Section 19(3) and (4)

repeal, substitute

- (3) The office of Departmental Head is a senior office for the purposes of Section 102(3) of the *Bougainville Constitution*.
- (4) A Departmental Head must be appointed by the Senior Appointments Committee in accordance with the *Bougainville Senior Appointments Act 2014*.
- (5) To avoid doubt, the procedures regarding the following are as set out in the *Bougainville Senior Appointments Act 2014*—
 - (a) the taking of disciplinary action against a Departmental Head;
 - (b) interdiction or removal from office of a Departmental Head.

(3) Section 50(1), (3) and (4)

repeal

I certify that the above is fair copy of a Bill for an Act entitled *Bougainville Senior Appointments Act 2014*, passed by the House of Representatives on 8 August 2014 and now presented to the Speaker for his certificate under Section 66(1) of the *Bougainville Constitution*.

Dated 8 August 2014

Edwin Kenehata
Acting Clerk of the
House of Representatives

I, Andrew Miriki, Speaker of the House of Representatives, under Section 66(1) of the *Bougainville Constitution*, certify that the *Bougainville Senior Appointments Act 2014* was made by an absolute majority vote of the House of Representatives on 8 August 2014.

Dated 8 August 2014

Honourable Andrew Miriki
Speaker of the House of
Representatives