

# BOUGAINVILLE COMMUNITY GOVERNMENT ACT 2016

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SCHEDULE 1—MODEL HEAD TAX RULE

**AUTONOMOUS REGION OF BOUGAINVILLE**

(No 1 of 2016)

***BOUGAINVILLE COMMUNITY GOVERNMENT ACT 2016***

Being an Act to—

- (a) provide for community government; and
- (b) repeal the *Council of Elders Act 1996* and the *Council of Elders (Head Tax) (Enabling) Act 2006*; and
- (c) make consequential amendments to the *Bougainville Education Act 2013*, the *Bougainville Elections Act 2007*, the *Bougainville Mining Act 2015*, the *Bougainville Physical Planning Act 2013*, the *Constitutional Laws (Consultation) Act 2006*, the *Interpretation Act 2005* and the *Liquor Control Act 2001*.

MADE by the House of Representatives, to come into operation as set out in Section 2.

**PART 1 — PRELIMINARY**

**1 Short title**

This Act is the *Bougainville Community Government Act 2016*.

**2 Commencement**

This Act comes into operation on its certification under Section 66 of the Bougainville Constitution.

**3 Aims of Act**

This Act aims—

- (a) to provide for a system of community government to replace the Councils of Elders as a level of formal government below the level of the Autonomous Bougainville Government; and
- (b) to ensure that the system of community government is consistent with the Bougainville Constitution and best serves the people of Bougainville and the variations in circumstances and needs in various parts of Bougainville; and
- (c) to encourage the participation of communities in the affairs of community government; and
- (d) to improve the capacity of community government to plan for and develop community government areas; and
- (e) to encourage community government and the Autonomous Bougainville Government to coordinate appropriate services and facilities to meet the present and future needs of communities; and

- (f) to improve the capacity of community government to support communities to strengthen peace and security, in particular, through respect for customary authority; and
- (g) to ensure the accountability of community government to communities and the Autonomous Bougainville Government.

#### 4 Interpretation

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

**Accounts Clerk** means a person holding or acting in the office of Accounts Clerk (see Sections 18 and 20);

**Arawa**, see Sections 84 and 87;

**Bougainville Public Finance Act** means the *Bougainville Public Finance (Management and Administration) Act 2014*;

**Bougainville Public Service Act** means the *Bougainville Public Services (Management and Administration) Act 2014*;

**Buka**, see Sections 85 and 87;

**casual vacancy in the office of a member of a community government** means a vacancy that occurs under Section 65;

**Chief Secretary** means the person holding or acting in the office of Chief Secretary under the Bougainville Public Service Act;

**community government** means a community government established under this Act;

**community government area** means an area for which there is, or is to be, a community government as set out in Section 5;

**completion of an election** has the meaning assigned by the regulations;

**elector of a ward** means a person entitled to vote in an election of ward representatives for the ward (see Section 62);

**general election of a community government** means—

- (a) a periodic election of the community government; or
- (b) a supplementary election of the community government;

**Manager**, of a community government, means the person holding or acting in the office of Manager of the community government (see Sections 18 and 19);

**member of a community government** means a member of the governing body of the community government;

**periodic election of a community government** means an election held under Section 61;

**Public Service officer** means an officer or employee of the Bougainville Public Service;

**Secretary** means—

- (a) in a reference to a Secretary of a particular Department—the Departmental Head of that Department; and
- (b) in a reference to a Secretary responsible for a particular subject matter—the Departmental Head of the Department with responsibility for that subject matter; and
- (c) in a reference to the Secretary, without reference to the Secretary being the Secretary of a particular Department or responsible for a particular subject matter—the Departmental Head of the Department that is, under the Minister, responsible for the administration of this Act;

**single member constituency** means a single member constituency with boundaries determined under Section 105 of the Bougainville Constitution;

**supplementary election of a community government** means an election held under Section 67;

**urban community government** means a community government of an urban community government area;

**urban community government area**, see Section 5(2);

**ward assembly** means a meeting of the people of a ward;

**ward of a community government area** means a geographical area into which a community government area is divided under this Act or, if a community government area is comprised of a single ward under this Act, the whole of the community government area;

**ward recorder** means a person holding or acting in the office of ward recorder for a ward (see Section 43);

**ward records**, see Section 43(2);

**ward representative** means a member of a community government elected by the electors of a ward to represent the people of the ward (see Section 6(1) and (5));

**ward steering committee** means a steering committee established for the people of a ward (see Section 41).

- (2) Notes in this Act do not form part of the Act.
- (3) An example in this Act—
  - (a) forms part of the Act; and
  - (b) is not exhaustive; and
  - (c) may extend, but does not limit, the meaning of the Act or the provision to which it relates.

## PART 2 — COMMUNITY GOVERNMENT AREAS AND WARDS

### 5 Community government areas

(1) Bougainville is divided into community government areas as set out in this section.

*Note—A community government area may be:*

- *an urban community government area (see Subsection (2)); or*
- *the whole of a single member constituency, excluding any urban community government area (see Subsection (3)); or*
- *part of a single member constituency, excluding any urban community government area (see Subsection (4)).*

(2) There are the following urban community government areas—

- (a) Arawa is an urban community government area;
- (b) Buka is an urban community government area;
- (c) the Minister may, by notice in the Bougainville Gazette made on the advice of the Bougainville Executive Council, declare a specified area to be an urban community government area and assign a name to the area.

(3) Subject to Subsection (4)—

- (a) the area of each single member constituency is a community government area (excluding any urban community government area within the constituency); and
- (b) the community government area has the same name as the single member constituency.

(4) The Minister may, by notice in the Bougainville Gazette made on the advice of the Bougainville Executive Council—

- (a) divide the area of a single member constituency (excluding any urban community government area within the constituency) into a number of separate community government areas; and
- (b) assign a name to each such area.

(5) A notice under this section has effect for the next general election of a community government of the area and from the conclusion of that election.

(6) Before a notice is made under this section, the Minister must—

- (a) consult with—
  - (i) traditional chiefs and other traditional leaders of the people affected by the proposal to make the notice; and
  - (ii) each community government affected by the proposal to make the notice (except any community government that is a party to the proposal); and

- (b) in the case of a notice dividing a single member constituency into a number of separate community government areas—take into account that such a division should only occur if—
  - (i) there are communities in the constituency that are subject to such extraordinary isolation or requirements for development that they should be served by separate community governments; or
  - (ii) the nature of the cultural or linguistic differences between the communities in, or the geography or topography of, the constituency is such that the communities should be served by separate community governments; or
  - (iii) it is not practicable for a single community government to adequately serve all of the communities in the constituency for other reasons.
- (7) However, failure to comply with Subsection (6) is not a ground for invalidity of a notice under this section.

## **6 Principles for division of areas into wards and election of ward representatives**

- (1) Subject to this section—
  - (a) a community government area is to be divided into not less than 3 and not more than 15 wards; and
  - (b) the electors of a ward are to elect 1 man and 1 woman to represent the people of the ward as members of the community government.
- (2) In deciding how to divide a community government area into wards, the aims are—
  - (a) for a community government area other than an urban community government area—to divide the area in a way that strengthens customary authority, and facilitates communication between communities and their elected representatives, taking into account customary, linguistic and other ties and how geography and topography affect customary authority and the feasibility of such communication; and
  - (b) for an urban community government area—to divide the area in a way that means that there are a similar number of electors of each ward so as to avoid over-representation of the people of 1 ward as compared to another.
- (3) The regulations may specify other aims to be pursued in dividing a community government area into wards.
- (4) In special cases, if—
  - (a) the community government area is part of the area of a single member constituency under Section 5(4); and



(b) dividing the area into at least 3 wards would not be conducive to the required aims or is not practicable for other reasons,  
the community government area may be divided into 2 wards or may be comprised of a single ward.

- (5) If a community government area is comprised of 1 or 2 wards, the electors of a ward are to elect up to 4 men and 4 women to represent the people of the ward as members of the community government.

*Note—See Part 6 for provisions governing elections.*

## **7 Wards**

- (1) Before the first periodic election of a community government under this Act for a community government area, the Minister must, by notice in the Bougainville Gazette made on the advice of the Bougainville Executive Council—

(a) divide the community government area into wards and assign a name to each ward; or  
(b) declare that the community government area is to be comprised of a single ward (being the whole of the area) of the same name as the community government area.

- (2) If a community government area is divided into 2 wards or is comprised of a single ward, the notice must specify the number of men and the number of women (which must be the same number) to be elected as ward representatives.

- (3) Before a notice is made under this section, the Minister must—

(a) consult with traditional chiefs and other traditional leaders of the people of the community government area; and  
(b) take into account the principles set out in Section 6.

- (4) However, failure to comply with Subsection (3) is not a ground for invalidity of a notice under this section.

## **8 Alteration of areas, wards or number of ward representatives**

- (1) The Minister may, by notice in the Bougainville Gazette made on the advice of the Bougainville Executive Council—

(a) alter the boundaries of a community government area other than an area comprising the whole of a single member constituency; or  
(b) alter the boundaries of a ward; or  
(c) divide a community government area into wards and assign a name to each ward; or

- (d) declare that a community government area is to be comprised of a single ward (being the whole of the area) of the same name as the community government area; or
- (e) if a community government area is comprised of 1 or 2 wards—alter the number of men and the number of women (which must be the same number) to be elected as ward representatives; or
- (f) alter the name of a community government area other than an area comprising the whole of a single member constituency; or
- (g) alter the name of a ward.

*Note—It may be necessary to exercise the power to alter the area of a ward following an alteration of the boundaries of a single member constituency under Section 105 of the Bougainville Constitution.*

*The name of a community government area comprised of the whole of a single member constituency will alter if the name of the single member constituency is altered.*

- (2) A notice under Subsection (1) that results in a community government area being comprised of 1 or 2 wards must specify the number of men and the number of women (which must be the same number) to be elected as ward representatives.
- (3) Subject to Subsection (4), a notice under Subsection (1) has effect for the next general election of a community government of the area and from the conclusion of that election.
- (4) A notice under Subsection (1) that alters the name of a community government area or ward has effect—
  - (a) on and from a date (not earlier than the date of publication of the notice in the Bougainville Gazette) specified in the notice; or
  - (b) if no date is specified in the notice—for the next general election of a community government of the area and from the conclusion of that election.
- (5) Before a notice is made under this section, the Minister must—
  - (a) consult with traditional chiefs and other traditional leaders of the people affected by the proposal to make the notice; and
  - (b) consult with each community government affected by the proposal to make the notice (except any community government that is a party to the proposal); and
  - (c) take into account the principles set out in Section 6.
- (6) However, failure to comply with Subsection (5) is not a ground for invalidity of a notice.

## **9 Arrangements following alteration of areas or wards**

- (1) Following the making of a notice under this Part that alters the boundaries of a community government area or ward, the community governments and people of

the wards affected should work together to ensure the proper functioning of the community governments and the proper adjustment of ward records following the alteration.

*Example—The community governments affected may make arrangements for the sharing or transfer of records, staff, assets or liabilities.*

- (2) If a dispute arises—
- (a) a community government affected may refer the matter to the Minister; and
  - (b) the community governments and the people of the wards affected must act as directed by the Minister.

## **PART 3 — COMMUNITY GOVERNMENTS**

### **Division 1 — Introduction**

#### **10 Name**

Each community government area is to have a community government called “[Area name] Community Government”.

*Example—The single member constituency of Ramu has a community government called Ramu Community Government.*

#### **11 Status and structure**

- (1) A community government—
- (a) is a body corporate; and
  - (b) has perpetual succession and a common seal; and
  - (c) is capable of suing and being sued in its corporate name; and
  - (d) subject to this Act, has all the powers of a natural person that are capable of being exercised by a body corporate.
- (2) The governing body of a community government—
- (a) is comprised of the men and women elected as ward representatives (see Part 6); and
  - (b) has a Chair and a Deputy Chair chosen by the members of the governing body (see Section 15).
- (3) A community government has—
- (a) an executive committee (see Section 16); and
  - (b) other committees that it establishes (see Section 17); and

- (c) staff assigned to or employed by it (see Section 18), including—
  - (i) a Manager; and
  - (ii) an Accounts Clerk.
- (4) For each ward of a community government area, there is—
  - (a) a ward steering committee (see Section 41); and
  - (b) a ward recorder who is to keep ward records (see Section 43).
- (5) If a document appears to bear the common seal of a community government and the signatures of the Chair and the Manager of the community government attesting the affixation of the seal, it is to be taken, in the absence of proof to the contrary, to have been duly executed by the community government.
- (6) No act or proceeding of a community government is invalid by reason of—
  - (a) a vacancy or vacancies in the membership of its governing body; or
  - (b) a defect in the election or appointment of a member or members of its governing body; or
  - (c) the fact that the election of a member or members of the governing body is subsequently declared void by a court of competent jurisdiction.

## **Division 2 — Members**

### **12 Term of office and declaration of office**

- (1) The term of office of a member of a community government commences when, following the election or appointment of the member, the member makes, before the Manager of the community government, the following declaration of office—

*“I [name of member] of [name of ward] promise that I will well and truly serve the people of Bougainville, and the people of [name of community government area] as a member of [name of community government].”*
- (2) Subject to this Act, the term of office of a member of a community government expires at the conclusion of the next periodic election of the community government held after the member’s election or appointment to office.

*Note—Part 6 contains provisions relevant to elections and casual vacancies.*

### **13 Role**

The role of a member of a community government is—

- (a) as a member of the governing body of the community government—
  - (i) to participate in the deliberations and civic activities of the community government; and

- (ii) to keep under review the community government's resource allocation, expenditure and activities, and the efficiency and effectiveness of its service delivery; and
  - (iii) to ensure, as far as is practicable, that the requirements of this Act are observed; and
- (b) as a ward representative—
- (i) to represent the interests of the people of the ward; and
  - (ii) to participate in the ward steering committee; and
  - (iii) to facilitate communication between the people of the ward, the ward steering committee and the community government.

#### **14 Application of Leadership Code**

The office of a member of a community government is declared to be an office to and in relation to which Part XIII (Leadership Code) of the Bougainville Constitution applies.

### **Division 3 — Officers and committees**

#### **15 Chair and Deputy Chair**

- (1) The role of the Chair of a community government is—
- (a) to preside at meetings of the community government; and
  - (b) to participate in the annual conference of the Heads of all levels of formal government under Section 49(5) of the Bougainville Constitution; and
  - (c) to carry out the civic and ceremonial duties of the office of Chair; and
  - (d) to perform other functions assigned to the Chair under this Act.
- (2) The role of the Deputy Chair of a community government is—
- (a) to act in the office of the Chair in the absence of the Chair from official duties; and
  - (b) to perform other functions assigned to the Deputy Chair under this Act.
- (3) The Chair and Deputy Chair are to be chosen by the members of the community government from amongst their own number by secret ballot—
- (a) at the first meeting of the community government following a general election of the community government; and
  - (b) from time to time, at a meeting of the community government, as required to fill a vacancy in the office.
- (4) The Chair and Deputy Chair must not be ward representatives for the same ward (except if the community government area is comprised of a single ward).

- (5) If the Chair is a man, the Deputy Chair must be a woman and, if the Chair is a woman, the Deputy Chair must be a man.
- (6) The gender of the member chosen as Chair following a periodic election must not be the same as the gender of the person who was Chair immediately before the periodic election.
- (7) The gender of the member chosen as Chair following a supplementary election must be the same as the gender of the person who was Chair immediately before the supplementary election.
- (8) The gender of the member chosen to be the Chair or Deputy Chair to fill a vacancy in the office must be the same as the gender of the member's predecessor.
- (9) A secret ballot for choosing a Chair or Deputy Chair must be conducted by a Public Service officer designated by the Secretary.
- (10) If the votes for 2 or more candidates are equal after the first secret ballot, a second secret ballot is to be conducted, and, if the votes for 2 or more candidates are still equal after the second secret ballot, a third secret ballot is to be conducted.
- (11) If the votes for 2 or more candidates are still equal after a third secret ballot, the person who is to be Chair or Deputy Chair is to be chosen as follows—
  - (a) if the Member of the House of Representatives for the single member constituency that constitutes the community government area or in which the community government area is located is present—the Member is to choose the member of the community government who is to be Chair or Deputy Chair; or
  - (b) in any other case—the Public Service officer conducting the ballot is to draw lots to determine which candidate or candidates are to be excluded.
- (12) A member may resign as Chair or Deputy Chair by notice in writing to the Manager of the community government and the Manager must inform the other members of the community government of the resignation as soon as reasonably practicable.
- (13) Subject to Subsection (14), a member may be removed as Chair or Deputy Chair by resolution passed by a number of members that is at least  $\frac{1}{2}$  of the total number of members of the community government (ignoring any fraction resulting from the division) plus 1, on a motion signed or supported by a show of hands by a number of members that is at least  $\frac{1}{3}$  of the total number of members of the community government.
- (14) However, a motion for a resolution under Subsection (13) may not be moved—
  - (a) within 12 months of the member being chosen as Chair or Deputy Chair (as the case requires); or

(b) within the last 3 months before the next periodic election of the community government.

(15) The Chair and Deputy Chair must be guided in performing their functions by any manual issued by the Secretary for the use of Chairs and Deputy Chairs of community governments.

## **16 Executive committee**

(1) The executive committee of a community government is comprised of—

(a) the Chair of the community government; and

(b) the Deputy Chair of the community government; and

(c) either—

(i) if the community government has established committees—up to 3 other members of the community government selected at a meeting of the community government from amongst the presiding members of the committees established by the community government (see Section 17); or

(ii) if the community government has not established committees—up to 3 other members of the community government selected at a meeting of the community government.

(2) The role of the executive committee is—

(a) to ensure that the policies and lawful decisions of the community government are implemented in a timely and efficient manner; and

(b) to ensure that the assets and resources of the community government are properly managed and maintained; and

(c) to co-ordinate proposals for consideration by the community government for the performance of its functions; and

(d) to provide advice and reports to the community government on the performance or exercise of the functions or powers of the community government and its committees under this Act or another Bougainville law; and

(e) to perform other functions assigned to the executive committee under this Act.

(3) The Chair of the community government is the presiding member of the executive committee.

(4) The executive committee must make regular reports on its operations to the community government.

- (5) The executive committee must be guided in performing its functions by any manual issued by the Secretary for the use of executive committees of community governments.
- (6) The fact that there is an executive committee does not prevent the community government from acting in a matter.
- (7) No act or proceeding of the executive committee is invalid by reason of a vacancy or vacancies in the membership of the committee.

## **17 Committees**

- (1) Subject to this Act, a community government may establish committees.
- (2) A committee may be established—
  - (a) to assist the community government in the performance of its functions; or
  - (b) to inquire into and report on matters within the ambit of the functions of the community government; or
  - (c) to provide advice to the community government; or
  - (d) to perform or exercise functions or powers delegated to it by the community government.
- (3) If the community government makes a rule for the imposition of head tax, it must establish a committee (of not more than 5 members) to determine applications for relief from head tax and delegate that function to the committee.

*Note—See Sections 26, 36 and Schedule 1.*

- (4) The membership of a committee is to be determined by the community government.
- (5) A committee may include persons who are not members of the community government except if it is to exercise functions or powers delegated to it by the community government.
- (6) The community government must appoint a person as the presiding member of a committee, or make provision for the appointment of a presiding member by the committee.
- (7) The community government may remove a member from a committee, or alter the membership of a committee, as it considers appropriate.
- (8) A community government must, when establishing a committee, determine the reporting and other accountability requirements that are to apply in relation to the committee.



- (9) A committee of a community government must be guided in performing its functions by any manual issued by the Secretary for the use of committees of community governments.
- (10) The establishment of a committee does not prevent the community government from acting in a matter.
- (11) No act or proceeding of a committee is invalid by reason of—
  - (a) a vacancy or vacancies in the membership of the committee; or
  - (b) a defect in the appointment of a member or members of the committee.

#### **Division 4 — Staff**

##### **18 Staff**

- (1) Each community government is to be assigned—
  - (a) a Public Service officer to be the Manager of the community government; and
  - (b) a Public Service officer to be the Accounts Clerk of the community government.
- (2) The Secretary may, after consultation with the Chief Secretary and the Secretary responsible for the Public Service, assign other Public Service officers to a community government.
- (3) Subject to Subsection (4), the Bougainville Public Service Act applies to Public Service officers assigned to a community government.
- (4) While a Public Service officer is assigned to a community government, lawful directions given to the officer by or on behalf of the community government prevail over directions given to the officer by the Secretary responsible for the Department in which the officer is employed, to the extent of any inconsistency.
- (5) A community government may, with the approval of the Secretary, employ other staff (who are not Public Service officers) on terms and conditions approved by the Minister in consultation with the Minister responsible for the Public Service.
- (6) All staff assigned to or employed by a community government are responsible to the Manager of the community government.
- (7) If a function or power of a community government is delegated to a member of the staff of the community government other than the Manager, the staff member is responsible to the Manager for the efficient and effective exercise or performance of that function or power.

*Note—See Section 32 for the power of delegation.*

- (8) An individual member of a community government has no direct authority over a member of the staff of the community government with respect to the way in which the staff member performs official functions or powers.

*Note—However, the Manager is responsible to the community government for the performance of the Manager’s functions and the Accounts Clerk and other staff are responsible, through the Manager, to the community government for the performance of their functions.*

## **19 Manager**

- (1) The role of the Manager of a community government is to be the chief executive officer of the community government, and in that role—
- (a) to organise meetings of the community government and its committees; and
  - (b) to ensure proper records are kept of the operations and affairs of the community government; and
  - (c) to manage and oversee the work of the staff of the community government in accordance with proper practices; and
  - (d) to oversee the keeping of ward records for the wards of the community government area; and
  - (e) to otherwise manage the provision of the administrative support required by the community government to perform its functions; and
  - (f) to promptly advise the Secretary of any concerns about financial or administrative mismanagement of the operation or affairs of the community government; and
  - (g) to perform other functions assigned to the Manager under this Act.
- (2) The Manager may delegate to a member of the staff of the community government functions or powers under this Act (except a function or power excluded from delegation by the regulations).
- (3) A function or power that is delegated by the Manager may not be further delegated unless that is expressly allowed by the Manager.
- (4) The Manager must be guided in performing functions, exercising powers, and delegating functions and powers, by any manual issued by the Secretary for the use of Managers of community governments.

*Note—Part II Division 10 of the Interpretation Act 2005 contains provisions relevant to delegations under Bougainville law.*

## **20 Accounts Clerk**

- (1) The role of the Accounts Clerk of a community government is—
  - (a) to keep proper accounts and records of the transactions and affairs of the community government as required by the Bougainville Public Finance Act; and
  - (b) to promptly advise the Manager of any concerns about mismanagement of the funds of a community government; and
  - (c) to perform other functions assigned to the Accounts Clerk under this Act.
- (2) The Accounts Clerk may, with the approval of the Manager of the community government, delegate to a member of the staff of the community government functions or powers under this Act (except a function or power excluded from delegation by the regulations).
- (3) A function or power that is delegated by the Accounts Clerk may not be further delegated unless that is expressly allowed by the Accounts Clerk with the approval of the Manager of the community government.
- (4) The Accounts Clerk must be guided in performing functions, exercising powers, and delegating functions and powers, by any manual issued by the Secretary for the use of Accounts Clerks of community governments.

*Note—Part II Division 10 of the Interpretation Act 2005 contains provisions relevant to delegations under Bougainville law.*

## **Division 5 — Functions and powers of community government**

### ***Sub-division 1 — Aims and functions***

## **21 Aims**

The principal aims of a community government are to improve the lives of the people of its area and to improve the self-sufficiency and sustainability of its area.

## **22 General functions**

- (1) A community government has the following functions—
  - (a) to identify the present and future needs of the people of its area and to prioritise those needs, especially through consultation with its ward steering committees; and
  - (b) to contribute to district planning on behalf of the people of its area taking into account those needs and priorities; and
  - (c) to implement, or facilitate the implementation of, projects resulting from district planning, in conjunction with its ward steering committees and others; and

- (d) to carry out administrative and management functions assigned to it through district planning in an efficient and effective manner; and
  - (e) to otherwise work with the Autonomous Bougainville Government and other community governments to coordinate appropriate services and facilities for the benefit of the people of its area; and
  - (f) to monitor the provision of services and facilities by the Autonomous Bougainville Government in its area and facilitate the management of the performance of Public Service officers and teachers; and
  - (g) to encourage the development of business, commerce, industry and tourism in its area, and the use of the resources in its area, in a socially just and sustainable manner; and
  - (h) to encourage other initiatives for improving the quality of life of the people of its area; and
  - (i) to represent the interests of the people of its area to the wider community.
- (2) A community government may also carry out, or provide assistance for, projects for the benefit of the people of its area funded from sources other than money appropriated for its purposes by the House of Representatives or National Parliament.
- (3) A community government has the functions assigned to it under the *Bougainville Mining Act 2015* for the establishment of community mining licence reserves and relating to community mining licences and tenements.
- (4) A community government has any other functions assigned to it under this Act or under any other Bougainville law.

### **23 Special functions under Bougainville Constitution**

A community government has the following functions under the Bougainville Constitution—

- (a) to participate in the annual conference of the Heads of all levels of formal government under Section 49(5) of the Bougainville Constitution; and
- (b) to ensure, as far as is within its power, compliance with Section 51 (relating to traditional systems of government) of the Bougainville Constitution; and
- (c) to participate in consultation under Sections 217, 218 and 219 of the Bougainville Constitution (relating to constitutional amendments) in accordance with the *Constitutional Laws (Consultation) Act 2006*.

### **24 Waste management services**

- (1) An urban community government has the additional function of providing waste management services in its area.

- (2) Any rubbish that a community government collects within its area is the property of the community government and the community government may sell or dispose of it as it considers appropriate.

## **25 Donor funds and activities of non-government organisations**

- (1) A community government is entitled to be consulted before a decision is made by the Autonomous Bougainville Government about the expenditure of donor funds in its area.
- (2) A non-government organisation may not engage in activities in a community government area except with the prior approval of the community government.

### ***Sub-division 2 — Community government rules***

## **26 Community government rules**

- (1) A community government may, in accordance with this section and the *Interpretation Act 2005*, make rules for the peace, order and good government of its area.
- (2) A community government rule may only be made by consensus or by resolution passed by a number of members that is at least  $\frac{2}{3}$  of the total number of members of the community government.
- (3) A community government may not delegate the power to make rules.
- (4) Rules may not have the effect of increasing a fiscal responsibility of the Autonomous Bougainville Government unless the Bougainville Executive Council has expressly approved that effect.
- (5) Without limitation, rules may—
  - (a) provide for decisions of an administrative nature to be made according to the discretion of the Manager, a ward recorder, a committee of the community government or a ward steering committee; and
  - (b) provide for administrative fees to be paid in respect of a matter under the rules and regulate the payment (including by instalment), recovery, waiver or reduction of such fees; and

*Note—An administrative fee provided for by rules must be a reasonable approximation of the cost of the provision of the services to which the administrative fee relates (for example, a licence fee must be a reasonable approximation of the cost of administering the licensing scheme for a licence).*

*If the fee is not related to that cost or is designed to raise revenue, it is a tax and must be authorised by this Act (see Section 36) or another Act of the House of Representatives.*

- (c) provide for offences carrying a penalty of a fine not exceeding K2000, or imprisonment not exceeding 6 months, or both.

- (6) To the extent that it is practicable, rules should be made by adopting model rules made available by the Secretary, with or without modification.
- (7) A rule is invalid to the extent of any inconsistency with the Bougainville Constitution, the National Constitution or any Bougainville or National law applying in the community government area.
- (8) Before a rule may be notified in the Bougainville Gazette as required by Section 68 of the *Interpretation Act 2005*, it must be approved in writing by the Minister.
- (9) If the Minister refuses to approve a rule, the Minister must give the community government a written statement of the reasons for the refusal.

*Note—Sections 68 and 69 of the Interpretation Act 2005 govern the notification and commencement of rules as follows—*

**68 Notification of certain instruments**

*The making of a regulation, rule or by-law, and the place where copies of it can be purchased, shall be notified in the Bougainville Gazette.*

**69 Commencement of certain instruments**

- (1) *Unless the contrary intention appears in the instrument, a regulation, rule or bylaw comes into operation on the date of notification under Section 68.*
- (2) *A regulation, rule or by-law shall not be expressed to take effect from a date before the date of notification under Subsection (1) in a case where, if it so took effect—*
  - (a) *the rights of a person (other than the State or an authority of the State) existing at the date of notification would be effected in a manner prejudicial to that person; or*
  - (b) *liabilities would be imposed on a person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of notification,*

*and any part of any regulation, rule or by-law that is made in contravention of this section is void and of no effect.*

**27 Disallowance of community government rules**

- (1) A rule of a community government must be tabled in the House of Representatives within 2 sitting days after it is notified in the Bougainville Gazette.
- (2) The sitting days do not need not be in the same session or term of the House of Representatives.
- (3) The House of Representatives may, by resolution passed on the sitting day on which the rule is tabled or on the next sitting day, disallow the rule.
- (4) A rule ceases to have effect on the passing of a resolution disallowing it.

- (5) Notice of the disallowance must be published in the Bougainville Gazette as soon as practicable.
- (6) A rule, or a provision of a rule, that is the same in substance or effect as the disallowed rule must not be made within 6 months after the disallowance.
- (7) A rule has no effect if—
  - (a) it is not tabled under Subsection (1); or
  - (b) it is made in contravention of Subsection (6).

## **28 Minister may require modification or revocation of rules**

- (1) The Minister may—
  - (a) direct a community government to modify a specified rule in a specified manner, or to revoke a specified rule; and
  - (b) specify a date by which the modification or revocation must be effected.
- (2) Before acting under Subsection (1), the Minister must give the community government a reasonable opportunity to comment on the proposal to issue a direction.
- (3) If the community government does not modify or revoke the rule as directed, the rule ceases to have effect on the date by which the modification or revocation was directed to be effected.

### ***Sub-division 3 — Judicial powers***

## **29 Judicial powers vested in courts**

The judicial powers of community governments are vested in the Bougainville Courts and the courts within the National Judicial System and, in interpreting the law, all judicial officers must give paramount consideration to the dispensation of justice.

### ***Sub-division 4 — Supporting powers***

## **30 Powers of entry**

- (1) A community government may authorise an officer of the community government or a public officer (within the meaning of the National Constitution) to enter, if necessary, premises—
  - (a) in order to inspect those premises or anything in or on them in relation to a tax or rate; or
  - (b) in order to carry out work connected with property that is lawfully in or on those premises and belongs to the community government or the Autonomous Bougainville Government.

- (2) At least 24 hours' notice of an intention to enter must be given to the occupier of the premises unless—
- (a) the officer is satisfied that the matter is urgent; or
  - (b) the occupier agrees to a shorter period of notice.

### **31 Access to community government records by members**

- (1) A member of a community government or committee of the community government is entitled to have access to the records of the operations and affairs of the community government as reasonably necessary for the performance of the member's role.
- (2) If a record of the operations and affairs of the community government contains information that, in the opinion of the Manager of the community government or a member given access to the record, is or should be considered confidential, reasonable steps must be taken to maintain the confidentiality of the information.

### **32 Delegation**

- (1) A community government may delegate a function or power under this Act or another Bougainville law (except a function or power excluded from delegation by this Act or the regulations)—
- (a) to a committee of the community government; or
  - (b) to a member of the community government; or
  - (c) to a member of the staff of the community government.
- (2) A function or power delegated by the community government may not be further delegated.
- (3) A community government—
- (a) must cause a separate record to be kept of all delegations under this section; and
  - (b) should, at least once in each financial year, review the delegations for the time being in force under this section.

*Note—Part II Division 10 of the Interpretation Act 2005 contains provisions relevant to delegations under Bougainville law.*

### ***Sub-division 5 — Guidance***

### **33 Guiding principles**

- (1) A community government is to work cooperatively—
- (a) with persons involved in the governance of districts; and



- (b) with the ward steering committees and traditional chiefs and other traditional leaders of the people of the wards of its area.
- (2) It is to be recognised that there is no hierarchical relationship—
  - (a) between district managers and others involved in the governance of districts and community government; or
  - (b) between community government and the ward steering committees, traditional chiefs and other traditional leaders who are involved in the governance of the people of the wards of its area.
- (3) In performing its functions, a community government is to—
  - (a) encourage participation of the people of the wards of its area; and
  - (b) encourage communication and cooperation between the people of the wards of its area; and
  - (c) work closely with churches, youth organisations and other locally-based organisations; and
  - (d) liaise with district managers; and
  - (e) encourage communication and cooperation with the Autonomous Bougainville Government and with other community governments.
- (4) In performing its functions, a community government is to—
  - (a) consider mechanisms for self-sufficiency and sustainability of its area; and
  - (b) adopt cost-effective structures and methods; and
  - (c) act fairly and equitably and abide by the rule of law; and
  - (d) achieve and maintain standards of good public administration.

### **34 Guidance by Secretary**

A community government must be guided in performing functions, exercising powers, and delegating functions and powers, by any manual issued by the Secretary for the use of community governments.

## **Division 6 — Financial matters**

### **35 Sources of funds**

A community government may obtain funds—

- (a) by receiving money appropriated for its purposes by the House of Representatives or National Parliament; and
- (b) by obtaining grants and other allocations of money; and
- (c) by the imposition of taxes or rates as authorised under this Act or another Act of the House of Representatives; and

- (d) by the imposition of administrative fees under rules of the community government; and
- (e) by carrying out appropriate commercial activities and charging fees for services or goods provided by the community government; and
- (f) by borrowing or investing funds in accordance with the Bougainville Public Finance Act; and
- (g) as may otherwise be authorised under this Act or another Bougainville law.

### **36 Taxes and rates**

- (1) A community government may not impose taxes or rates except as authorised by this section or by another Act of the House of Representatives.
- (2) A community government may impose a head tax by making a rule in the form set out in Schedule 1, with any modifications allowed by that Schedule.
- (3) The regulations may establish a scheme for the making of rules for the payment of rates for rateable land in an urban community government area.
- (4) The scheme must require the amount of the rates to be approved by resolution of the House of Representatives.
- (5) If a community government imposes taxes or rates, the Manager of the community government has the following functions—
  - (a) to collect the taxes or rates; and
  - (b) to ensure records are kept relating to the liability for, and payment of, the taxes or rates and applications for relief from the taxes or rates.

### **37 Allowances and remuneration**

- (1) Members of a community government and ward recorders for wards of a community government area may be paid an allowance out of the funds of the community government for the performance of the functions of their respective offices.
- (2) The Minister may, by notice in the Bougainville Gazette made on the advice of the Bougainville Executive Council—
  - (a) fix a maximum amount that may be paid as an allowance to a member of a community government or a ward recorder; and
  - (b) in the case of an allowance for a member of the community government—provide for a different maximum amount according to whether or not the member is a member of the executive committee of the community government; and

(c) regulate how an allowance may be calculated.

*Example—The notice may require an allowance for a member of a community government to be calculated as an amount paid on a regular basis, or as an amount paid for each meeting attended, or as a combination of such amounts.*

- (3) A member or former member of a community government may not be paid any other amount by the community government or Autonomous Bougainville Government, including any *ex gratia* payment on the completion of a term of office.
- (4) Staff of a community government who are Public Service officers are entitled to be paid remuneration by the Autonomous Bougainville Government as provided by the Bougainville Public Service Act.
- (5) In addition to remuneration as referred to in Subsection (4), the Manager and Accounts Clerk of a community government are, out of the funds of the community government but subject to any directions of the Secretary—
- (a) to be provided reasonable residential accommodation; and
- (b) to be paid reasonable expenses incurred in the performance of official functions.
- (6) No other person is entitled to an allowance or remuneration for the performance or exercise of functions or powers under this Act (including as a member of a community government committee or ward steering committee, a delegate of a community government or a member of the staff of a community government), except if—
- (a) in the case of an allowance or remuneration paid to a member of a ward steering committee—the allowance or remuneration is paid out of funds raised by the people of the ward; and
- (b) in the case of an allowance or remuneration paid to any other person—the allowance or remuneration is paid out of funds other than money appropriated for the purposes of the community government by the House of Representatives or National Parliament; and
- (c) in any case—the payment (including its amount) is approved by the Secretary and any requirements specified in the regulations are complied with.
- (7) While a person is suspended from office under this Act, no allowance or remuneration is payable to the person (but, if the suspension is found to be invalid or improper, the person is entitled to backpay).

### **38 Compliance with Public Finance Act**

- (1) For the Bougainville Public Finance Act—
- (a) a community government is a statutory body; and

- (b) the governing body of a community government is the controlling body of the statutory body; and
  - (c) the Manager of a community government is the chief executive officer of the statutory body; and
  - (d) money appropriated for the purposes of a community government is public money.
- (2) A community government may not borrow or invest money except in accordance with the Bougainville Public Finance Act.
- (3) If a Specialized Tenders Board is established for a community government under the Bougainville Public Finance Act, and Section 49(3) of that Act does not apply, the community government must not purchase or dispose of real property or personal property or stores or obtain or supply works or services for an amount exceeding that prescribed under Section 49 of that Act, except by inviting tenders and submitting them to the Board.
- (4) Section 55 of the Bougainville Public Finance Act does not apply to a community government.

*Note—Section 55 relates to guidelines for the establishment or restructure of statutory bodies.*

*A community government may also have obligations under the Autonomous Bougainville Government Contracts and Tenders Act 2014.*

### **39 Responsibilities for financial planning and reporting**

- (1) The executive committee of a community government is responsible for preparing for consideration of the community government—
- (a) draft budgets, including estimates of the receipts and expenditure of the community government and the proposed works programme of the community government; and
  - (b) draft financial statements; and
  - (c) draft annual performance and management reports of the operations of the community government.
- (2) The Manager and Accounts Clerk of the community government are to assist the executive committee in the performance of those functions.
- (3) A community government may not delegate—
- (a) power to adopt or revise a budget of the community government or an associated document; or
  - (b) power to approve expenditure of money not contained in a budget adopted by the community government; or
  - (c) power to borrow money.

## **PART 4 — CUSTOMARY AUTHORITY AND WARD AFFAIRS**

### **40 Customary authority**

- (1) A community government is to respect customary authority in order to strengthen peace and security in each of the wards of its area.
- (2) To that end, a community government is to cooperate with and, as far as reasonably practicable, provide administrative and operational support for traditional chiefs and other traditional leaders of the people of each of the wards of its area and for Village Courts, land mediators and the Community Auxiliary Police operating within those wards.

### **41 Ward steering committee**

- (1) For each general election, a ward assembly must be held in each ward, as required by the regulations, to establish a ward steering committee for the ward for the period until the next general election of the community government.
- (2) A ward steering committee is to be comprised of—
  - (a) the ward representatives for the ward; and
  - (b) other electors of the ward chosen by whatever means the people of the ward consider appropriate.
- (3) The people of a ward may remove a member from the ward steering committee, or alter the membership of the ward steering committee, as they consider appropriate (except that they cannot remove the ward representatives from the ward steering committee).
- (4) A ward steering committee is not, of itself, a level of formal government below the level of the Autonomous Bougainville Government.
- (5) No act or proceeding of a ward steering committee is invalid by reason of—
  - (a) a vacancy or vacancies in the membership of the committee; or
  - (b) a defect in the appointment of a member or members of the committee.

### **42 Functions of ward steering committee**

- (1) The functions of a ward steering committee for a ward of a community government area are—
  - (a) to respect customary authority in order to strengthen peace and security in the ward; and
  - (b) to that end, to cooperate with and, as far as reasonably practicable, provide administrative and operational support for traditional chiefs and other traditional leaders of the people of the ward and for Village Courts, land mediators and the Community Auxiliary Police operating within the ward; and

- (c) to identify the present and future needs of the people of the ward and to prioritise those needs; and
  - (d) to inform the community government, through the ward representatives, about those needs and priorities; and
  - (e) to facilitate the making of decisions affecting the people of the ward relevant to community government; and
  - (f) to otherwise facilitate communication between the people of the ward and the community government; and
  - (g) to ensure that there is a ward recorder for the ward and to oversee the keeping of ward records.
- (2) In identifying the present and future needs of the people of the ward, the ward steering committee should consider—
- (a) the potential impact of natural disasters; and
  - (b) requirements for conflict resolution and peace-building; and
  - (c) issues relating to health; and
  - (d) issues relating to land; and
  - (e) environmental issues; and
  - (f) any other matters that the committee considers relevant.

#### **43 Ward recorder and ward records**

- (1) Each ward of a community government area is to have a ward recorder, being a person approved by the Manager of the community government as a suitable person to perform the function of the ward recorder.
- (2) The function of the ward recorder is to keep the following official records (the **ward records**)—
- (a) an up-to-date record of the people who reside in the ward and, consequently, a record of—
    - (i) each birth occurring in the ward; and
    - (ii) each death of a person who resides in the ward; and
    - (iii) each event involving a person commencing or ceasing to reside in the ward; and
  - (b) for each fiscal year for which the community government of the ward imposes head tax—a record of all persons who may be liable to pay head tax in the fiscal year (prepared under the guidance of the Manager of the community government); and
  - (c) a record of each decision made at a meeting of the ward steering committee or at a ward assembly; and

- (d) other records relevant to the ward as directed by the ward steering committee or Manager of the community government.
- (3) To the extent that the ward records contain incomplete information, the ward recorder must make every effort to complete the records.
- (4) Ward records must be made available for official purposes of the community government or the Autonomous Bougainville Government.

#### **44 Guidance by Secretary**

- (1) The Secretary may provide guidance material or other assistance for establishing ward steering committees.
- (2) A ward steering committee and ward recorder must be guided in performing functions and exercising powers by any manual issued by the Secretary for the use, respectively, of ward steering committees or ward recorders.

## **PART 5 — MEETINGS AND WARD ASSEMBLIES**

### **Division 1 — Community government meetings**

#### **45 Ordinary meetings of community government**

- (1) Subject to this section, ordinary meetings of a community government are to be held at times and places appointed by a decision of the community government.
- (2) There must be at least 4 ordinary meetings in each 12 months.
- (3) If a time and place has not been appointed for the holding of the next ordinary meeting, the Manager of the community government (after consulting with the Chair of the community government) must appoint the time and place at which the next ordinary meeting is to be held.
- (4) The Manager of a community government must also appoint the time and place at which the first ordinary meeting of the community government is to be held after a general election of the community government (which must be within 14 days after the completion of the election).

#### **46 Special meetings of community government**

- (1) The Manager of a community government must call a special meeting of the community government at the request of—
  - (a) the Chair of the community government; or
  - (b) at least 3 other members of the community government.

- (2) The Manager must be provided with an explanation of the reason for the special meeting at the time that a request is made under Subsection (1) (and, if a reason is not provided, the request has no effect).

#### **47 Date, time and notice of meetings of community government**

- (1) A meeting of a community government—
- (a) must not be held on a weekend or public holiday; and
  - (b) must not be scheduled to start before 9:00am or after 7:00pm on any day.
- (2) A meeting of a community government must be open to the public, but only members of the community government may vote on any question for decision at the meeting.
- (3) The Manager of a community government must give each member of the community government notice of a meeting of the community government at least 3 clear days before the date of the meeting.
- (4) If the Manager is satisfied that a meeting of the community government is urgently required and it is practicable for all members to be notified and for those who wish to attend to do so with less notice than that required by Subsection (3), a lesser period of notice may be given.

#### **48 Procedure at meetings of community government**

- (1) The Chair of a community government is to preside at a meeting of the community government.
- (2) If there is no Chair or the Chair is absent from a meeting, the Deputy Chair is to preside and, if there is no Deputy Chair or the Deputy Chair is absent from the meeting, a member of the community government chosen by those present is to preside.
- (3) A quorum of a community government consists of  $\frac{1}{2}$  of the total number of its members (ignoring any fraction resulting from the division) plus 1 and no business may be transacted at a meeting unless a quorum is present.
- (4) Subject to this Act, a question arising for decision at a meeting of a community government is to be decided by consensus, with the person presiding at the meeting announcing the decision at the time.
- (5) If members at a meeting decide to put a question to a vote or at least 2 members present at a meeting do not agree that the decision announced was the decision of the meeting and immediately ask that the question be put to a vote, the question is to be decided by a majority of the votes cast in a secret ballot by the members present at the meeting and entitled to vote on the question.

*Note—This means that if the votes are tied on the secret ballot, the question is answered in the negative.*



- (6) If a question is put to a vote by secret ballot—
- (a) each member present at the meeting has 1 vote; and
  - (b) the person presiding at the meeting has a deliberative vote on the question but does not, in the event of an equality of votes, have a casting vote.
- (7) Subject to this Act, a community government may determine the procedure to be observed at a meeting.

#### **49 Records of decisions of community government**

A community government must keep accurate records of each of its decisions.

#### **Division 2 — Executive committee and other committee meetings**

#### **50 Notice of, and procedure at, committee meetings**

Subject to this Act and any direction of the community government, the executive committee or any other committee of a community government may determine the requirements for notice of its meetings and the procedure to be observed at its meetings.

#### **51 Records of decisions of committees**

The executive committee and any other committee of a community government must keep accurate records of each of its decisions.

#### **Division 3 — Ward assemblies**

#### **52 Ordinary ward assembly**

- (1) Subject to this section, ordinary ward assemblies are to be held at times and places appointed by a decision of the ward steering committee.
- (2) There must be at least 2 ordinary ward assemblies in each 12 months.
- (3) If a time and place has not been appointed for the holding of the next ordinary ward assembly, the ward representatives for the ward may jointly appoint the time and place at which the next ordinary ward assembly is to be held.

#### **53 Special ward assemblies**

- (1) The ward representatives for a ward must jointly call a special ward assembly at the request of—
- (a) the ward steering committee; or
  - (b) traditional chiefs or other traditional leaders of the people of the ward; or
  - (c) the community government of the ward; or
  - (d) 20 electors of the ward.

- (2) The ward representatives must be provided with an explanation of the reason for the special ward assembly at the time that a request is made under Subsection (1) (and, if a reason is not provided, the request has no effect).
- (3) The ward representatives for a ward may jointly call a special ward assembly in any other circumstances if they consider that necessary or desirable.

#### **54 Notice of, and procedure at, ward assemblies**

- (1) A ward assembly—
  - (a) must not be held on a weekend or public holiday; and
  - (b) must not be scheduled to start before 9:00am or after 7:00pm on any day.
- (2) A ward assembly must be open to all people who reside or carry on business in the ward, whether or not they are electors of the ward, but only electors of the ward may vote on any question for decision at the assembly.
- (3) Subject to this Act, notice of a ward assembly must be given—
  - (a) in the manner approved by the ward steering committee; or
  - (b) if no manner has been so approved, in the manner that the ward representatives for the ward jointly consider most likely to be effective and sufficient to give the people of the ward a reasonable opportunity to attend.
- (4) Subject to this Act, the ward representatives for a ward must take turns at presiding at ward assemblies (with the order of turns being determined by the drawing of lots in the absence of agreement).
- (5) Subject to this Act, the people of a ward may determine the procedure to be observed at ward assemblies.

#### **55 Records of decisions of ward assembly**

The ward recorder for a ward must ensure that—

- (a) accurate records are kept of each decision made at a ward assembly; and
- (b) a copy of each decision is given to the Manager of the community government of the ward.

#### **56 Resolution of failure to agree by ward representatives**

If ward representatives are required to make a joint decision under this Division and they cannot agree, the Manager of the community government of the ward is to make the decision.

#### **Division 4 — Ward steering committee meetings**

##### **57 Notice of, and procedure at, ward steering committee meetings**

- (1) Subject to this Act, a ward steering committee may determine the requirements for notice of its meetings and the procedure to be observed at its meetings.
- (2) The ward representatives for a ward must take turns at presiding at meetings of the ward steering committee (with the order of turns being determined by the drawing of lots in the absence of agreement).

##### **58 Records of decisions of ward steering committee**

The ward recorder for a ward must ensure that—

- (a) accurate records are kept of each of the decisions of the ward steering committee; and
- (b) a copy of each decision is given to the Manager of the community government of the ward.

#### **Division 5 — Rights of Member of House of Representatives**

##### **59 Rights of Member of House of Representatives**

- (1) The Member of the House of Representatives for a single member constituency comprising a community government area or in which a community government area is located is entitled—
  - (a) to attend and participate in any meeting of the community government, a committee of the community government, or a ward steering committee for a ward, of the community government area; and
  - (b) to attend and participate in ward assemblies for wards of the community government area; and
  - (c) to receive—
    - (i) notice of such meetings or assemblies; and
    - (ii) copies of papers relating to such meetings or assemblies; and
    - (iii) copies of records of decisions made at such meetings or assemblies.
- (2) The Member is not entitled to cast a vote at any such meeting or assembly (except as an elector of a ward).

## **Division 6 — Obstruction of meetings or ward assemblies**

### **60 Obstruction of meetings or ward assemblies**

A person commits an offence if the person intentionally obstructs or hinders proceedings at—

- (a) a meeting of a community government, a committee of a community government or a ward steering committee; or
- (b) a ward assembly.

*Penalty:* K2000.

## **PART 6 — ELECTIONS AND CASUAL VACANCIES**

### **61 Periodic elections**

(1) Subject to Subsection (2), periodic elections to determine the membership of each community government must be held in accordance with this Act—

- (a) at intervals as close as practicable to 5 years; and
- (b) as far as is practicable, within 12 months after the holding of a general election of the Autonomous Bougainville Government under Section 107 of the Bougainville Constitution.

(2) For the first and second periodic elections under this Act, the following rules apply—

- (a) the elections are to be held as set out in the regulations;
- (b) the regulations may provide for the first elections of urban community governments and the first elections of other community governments to be held at separate times.

(3) The elections are to be conducted by the Bougainville Electoral Commissioner as required by Section 4A of the *Bougainville Elections Act 2007* in accordance with the regulations.

### **62 Entitlement to vote**

(1) A person is entitled to vote at an election of ward representatives for a ward if—

- (a) the person is at least 18 years of age; and
- (b) the person is a Bougainvillean; and
- (c) the person is a citizen; and
- (d) the person is not of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; and
- (e) the person ordinarily resides in the ward and has so resided for at least the last 6 months.

- (2) However, a person who is serving a sentence of imprisonment is not entitled to vote in an election of a community government.

**63 Eligibility to be candidate for election**

- (1) A person is eligible to be a candidate for election as a ward representative for a ward if—
- (a) the person is an elector of the ward for the election; and
  - (b) the person’s nomination as a candidate is supported by at least 2 electors of the ward; and
  - (c) the person is acting of his or her own free will.
- (2) However, a person is not eligible to be a candidate for election as a ward representative if—
- (a) the person is a member of, or a candidate in an election of, the House of Representatives or National Parliament; or
  - (b) the person is a ward representative for a different ward or, in the case of a general election, the person is or has been a candidate for a different ward in the election; or
  - (c) the person is a member of the staff of the community government; or
  - (d) the person has been sentenced to imprisonment and is, or could on the happening of some contingency become, liable to serve the sentence or the remainder of the sentence; or
  - (e) the person is not eligible for election under Part XIII (Leadership Code) of the Bougainville Constitution.
- (3) The candidates must also be of the required gender.
- (4) However, a person of unspecified gender may assume a gender for becoming a candidate (and, if the person is elected, the person will be taken to be of that gender for this Act).

**64 Removal from office by Bougainville Executive Council**

- (1) The Bougainville Executive Council may, by notice in the Bougainville Gazette made on the recommendation of the Minister, remove a member of a community government from office—
- (a) for incapacity to carry out official functions or powers satisfactorily; or
  - (b) for serious misconduct while in office; or
  - (c) if the member has ceased to be an elector of the ward that the member represents and has refused to resign from office at the request of the community government.

- (2) The Minister must, before making a recommendation under Subsection (1), give each of the following a reasonable opportunity to make submissions to the Minister about the proposal to remove the member—
- (a) the member;
  - (b) the community government;
  - (c) the ward steering committee of the ward for which the member is a ward representative.

## **65 Casual vacancies**

- (1) The office of a member of a community government becomes vacant if the member—
- (a) dies; or
  - (b) resigns by notice in writing to the Manager of the community government; or
  - (c) is removed from office by the Bougainville Executive Council under Section 64; or
  - (d) is removed from office by the community government on the ground that he or she has been absent, without leave of the community government, from 3 or more consecutive meetings (the first of which was held 3 months or more before the last); or
  - (e) becomes a member of, or a candidate in an election of, the House of Representatives or the National Parliament; or
  - (f) becomes a candidate in an election of a ward representative for a ward other than the one represented by the member; or
  - (g) becomes a member of the staff of the community government; or
  - (h) is sentenced to imprisonment and is, or could on the happening of some contingency become, liable to serve the sentence or the remainder of the sentence; or
  - (i) is dismissed from office for misconduct in office under Part XIII (Leadership Code) of the Bougainville Constitution.
- (2) A community government may request that a member resign from office on the ground that the member has ceased to be an elector of the ward represented by the member.
- (3) The regulations may specify other circumstances in which the office of a member becomes vacant.
- (4) Once the office of a member has become vacant, the member cannot resume office except if the grounds on which the office of the member has become vacant

are subject to challenge in a court and the proceedings are decided in favour of the member.

*Example—If a member becomes a candidate in an election of the Autonomous Bougainville Government, the office of the member becomes vacant and he or she does not resume office even if not successful in the election of the Autonomous Bougainville Government.*

- (5) Nothing in Subsection (4) prevents a person from being re-elected to office under this Act.

## **66 Filling of casual vacancies**

- (1) If a casual vacancy occurs in the office of a member of a community government in the last 12 months before the next periodic election of the community government, the office is not to be filled.
- (2) If the grounds on which the office of a member has become vacant are subject to challenge in a court, proceedings to fill the vacancy must not be commenced until the challenge has been finally determined.
- (3) If a casual vacancy in the office of a member of a community government is to be filled, the Manager of the community government must inform the Bougainville Electoral Commissioner of that requirement.
- (4) If the member whose office has become vacant was elected to that office, a candidate at that election is an eligible candidate to fill the vacancy if the candidate—
- (a) survives the member; and
  - (b) is of the same gender as the member; and
  - (c) remains eligible to be a candidate in an election of ward representatives for the ward represented by the member; and
  - (d) is willing and able to be a ward representative for the ward.
- (5) The eligible candidates are entitled to fill the vacancy in the order of priority of the number of votes received by them at the election, with the candidate receiving the highest number having the highest order of priority.
- (6) The Bougainville Electoral Commissioner must—
- (a) determine if there is an eligible candidate entitled to fill the vacancy; and
  - (b) if necessary, determine the eligible candidate having the highest order of priority; and
  - (c) advise the Manager of the community government accordingly.
- (7) The candidate so determined is appointed to fill the vacancy.

- (8) The Manager must inform the other members of the community government of the appointment of the member to fill the vacancy as soon as reasonably practicable.
- (9) If the member whose office has become vacant was appointed to office under this section rather than elected to office or there is no eligible candidate to fill the vacancy, the Bougainville Electoral Commissioner must conduct a by-election to fill the vacancy in accordance with the regulations.
- (10) A person elected or appointed to fill a casual vacancy holds office for the balance of the term of office of that person's predecessor.

## **67 Supplementary elections**

- (1) A supplementary election of a community government must be conducted by the Bougainville Electoral Commissioner in accordance with the regulations if—
  - (a) the Bougainville Executive Council exercises its powers under Section 72(8) to declare all offices of the members of a community government vacant; or
  - (b) the Bougainville Executive Council exercises its powers under Section 56(3) of the Bougainville Public Finance Act to terminate the appointment of all of the members of the community government; or
  - (c) all the members of the community government resign.

*Note—See Section 73 for provisions about administration of the community government in that event.*

- (2) However, a supplementary election need not be conducted if the event that would otherwise require a supplementary election occurs in the last 12 months before the next periodic election of the community government.
- (3) The persons elected at a supplementary election hold office for the balance of the terms of the offices of their predecessors.

## **68 Election regulations**

The regulations for community government general elections and by-elections—

- (a) must require voting to be by secret ballot; and
- (b) may require a person to be present at a polling station in order to cast a vote; and
- (c) need not require the preparation or use of an electoral roll; and
- (d) may set out other circumstances in which an election must be held.



## **PART 7 — OVERSIGHT OF COMMUNITY GOVERNMENT BY AUTONOMOUS BOUGAINVILLE GOVERNMENT**

### **69 Records to be made available to Secretary**

- (1) A community government must make the records of its operations and affairs available for inspection at the request of the Secretary at any reasonable time.
- (2) For Subsection (1), the records of the operations and affairs of a community government that must be made available include records that relate to the operations and affairs of a body that the community government controls or has an interest in.
- (3) A ward recorder must make the ward records available for inspection at the request of the Secretary at any reasonable time.
- (4) The Secretary may copy or take extracts from the records or require a person to provide a copy of or extract from the records.

### **70 Information gathering powers of Secretary**

- (1) The Secretary may, by notice in writing, require a person whom the Secretary reasonably suspects has knowledge of matters in respect of which information is reasonably required for the administration of this Act to provide to the Secretary such information as may be specified in the notice.
- (2) Information required under a notice must be provided in the manner and form, and within the period, specified in the notice.
- (3) A person commits an offence if the person—
  - (a) is required to provide information under Subsection (1); and
  - (b) without reasonable excuse, fails or refuses to comply.

*Penalty:* K2000.
- (4) A person is not obliged to provide information as required under this section if to do so might tend to incriminate the person or make the person liable to a penalty.

### **71 Minister may request community government to take specified action**

The Minister may request a community government to take specified action to meet standards in the conduct or administration of the operations or affairs of the community government identified by the Minister as being consistent with the aims of this Act or any requirements of this Act.

### **72 Action on grounds community government in default or pending investigation**

- (1) If the Secretary forms the opinion that a community government is or may be in default and that action should be taken under this section, the Secretary must promptly report the matter to the Minister.

- (2) If the Minister is satisfied that a community government is in default, the Minister may give directions to the community government to rectify the default or to prevent a recurrence of the default.

*Note—See Subsection (11) for a definition of when a community government is in default.*

- (3) The Bougainville Executive Council may, by notice in the Bougainville Gazette made on the recommendation of the Minister—

- (a) declare that a community government is in default and either that—
- (i) specified functions or powers are withdrawn from the community government; or
  - (ii) all the members of the community government are suspended from office; or
- (b) declare that, pending an investigation into an allegation that a community government is in default—
- (i) specified functions or powers are withdrawn from the community government; or
  - (ii) all the members of the community government are suspended from office.

*Note—See Section 73 for provisions about the administration of the community government if all the members are suspended from office.*

- (4) The Minister may only make a recommendation under Subsection (3)(a) if the Minister is satisfied—

- (a) that the community government has failed to comply with directions given under Subsection (2); or
- (b) that the default is serious and that giving directions under Subsection (2) would not be an adequate response.

- (5) The Minister may only make a recommendation under Subsection (3)(b) if the Minister is satisfied that there appears to be evidence of a default that, if proven, would be serious and for which the giving of directions under Subsection (2) would not be an adequate response.

- (6) The Minister must, before taking action under Subsection (2) or making a recommendation under Subsection (3), give the community government a reasonable opportunity to make submissions to the Minister about the proposal to take the action or make the recommendation.

- (7) If a notice is made under Subsection (3)(b), the notice ceases to have effect after 3 months unless a notice declaring the community government to be in default is sooner made.

*Note—This allows 3 months for the investigation. If the members of the community government are suspended from office and action is not taken within that time so that the notice ceases to have effect, the members will resume their respective offices.*

- (8) If—
- (a) a community government is declared to be in default; and
  - (b) the members of the community government have been suspended from office for at least 3 months,
- the Bougainville Executive Council may, by notice in the Bougainville Gazette made on the recommendation of the Minister, declare the offices of all the members of the community government to be vacant.
- Note—See Section 67 for provisions about the holding of a supplementary election in that event.*
- (9) If a community government is declared to be in default but after 12 months the Bougainville Executive Council has not declared the offices of all the members of the community government to be vacant, the notice declaring the community government to be in default ceases to have effect.
- Note—If the members of the community government are suspended from office, this allows a maximum of 12 months for a decision to be made about whether a supplementary election is required or the members are to be allowed to resume their respective offices. It also means that functions and powers of a community government cannot be withdrawn under this section for more than 12 months.*
- (10) The Bougainville Executive Council may, by further notice in the Bougainville Gazette, vary or revoke a notice under this section.
- (11) For this section, a community government is **in default** if—
- (a) it contravenes or fails to comply with this Act or another Bougainville law; or
  - (b) an irregularity (that is more than trivial) occurs in the conduct of the operations or affairs of the community government.

### **73 Administration of community government**

- (1) The Bougainville Executive Council may, by notice in the Bougainville Gazette, appoint a suitable person or suitable persons to be administrator or administrators of the operations and affairs of a community government if—
- (a) the Bougainville Executive Council exercises its powers under Section 72 to suspend all the members of the community government from their respective offices; or
  - (b) an event occurs that requires a supplementary election of the community government (even if that election will not be held because the event occurs in the last 12 months before the next periodic election of the community government).

*Note—See Section 67 for a description of the events that require a supplementary election.*

- (2) By the same or a subsequent notice in the Bougainville Gazette, the Bougainville Executive Council may—
  - (a) declare that the provisions of this Act or any other Bougainville law apply, while the operations and affairs of the community government are being administered under this section, subject to exclusions or modifications specified in the notice (and those provisions apply accordingly); and
  - (b) make any other arrangements as are necessary or desirable as a consequence of the operations and affairs of the community government being administered under this section.
- (3) The Bougainville Executive Council may, by further notice in the Bougainville Gazette, vary or revoke a notice under this section.
- (4) An administrator or administrators appointed under this section must administer the operations and affairs of the community government in the name of and on behalf of the community government (and for that purpose have all the functions and powers of the community government).
- (5) If 2 or more administrators are appointed under this section, any disagreement between them is to be settled by the decision of the majority or, if they are equally divided in opinion, by determination of the Minister.
- (6) The remuneration of an administrator (which is to be determined by the Minister) and any liability incurred by an administrator in the course of the administration is to be paid or satisfied out of the funds of the community government whose operations and affairs are being administered.
- (7) The administrator or administrators appointed under this section must report to the Minister at intervals of not more than 3 months on the administration of the operations and affairs of the community government.
- (8) Administration under this section comes to an end as follows—
  - (a) if the members of the community government have been suspended from office under Section 72 pending an investigation and the community government has not since been declared to be in default—on the completion of the investigation or the expiry of 3 months (whichever first occurs); or
  - (b) if the community government has been declared to be in default under Section 72—on the completion of a general election of the community government or on revocation of the notice declaring the community government to be in default or on the expiry of 12 months (whichever first occurs); or
  - (c) in any other case—on the completion of a general election of the community government.

## PART 8 — MISCELLANEOUS

### 74 False or misleading information

A person commits an offence if the person makes a statement that is false or misleading in a material particular (whether by reason of the inclusion or omission of a particular) in information provided, or records kept, under this Act.

*Penalty:* (a) If the person made the statement knowing that it was false or misleading—K10,000 or 12 months' imprisonment; or  
(b) in any other case—K2000.

### 75 Delegation by Minister or Secretary

- (1) The Minister may delegate to a Secretary or a Public Service officer a function or power under this Act (other than a function or power excluded from delegation by the regulations).
- (2) The Secretary may delegate to a Public Service officer a function or power under this Act (other than a function or power excluded from delegation by the regulations).
- (3) A function or power delegated by the Minister or Secretary may not be further delegated unless that is expressly allowed by the Minister or Secretary (as the case requires).

*Note—Part II Division 10 of the Interpretation Act 2005 contains provisions relevant to delegations under Bougainville law.*

### 76 Service of applications, notices and other documents

- (1) An application, notice or other document required or authorised to be served on or given to a community government, or a member or staff of a community government, under this Act or another Bougainville law may be served or given—
  - (a) by leaving it at, or posting it to, the principal office of the community government (if it has one); or
  - (b) by a means (such as email) indicated by the community government as being an available means of service (in which case, the application, notice or other document is to be taken to be served or given when it would be received by that means in usual circumstances); or
  - (c) by leaving it with the Chair or Manager of the community government or another person who has authority to accept documents on behalf of the community government.
- (2) A notice or other document required or authorised to be served on or given to a person by or on behalf of a community government under this Act or another Bougainville law may be served or given—
  - (a) personally; or

- (b) by leaving it with a person apparently over the age of 16 years at, or posting it to, the last residential or business address of the person known to the community government (including, in the case of a body corporate, the registered address of the body corporate); or
  - (c) by a means (such as email) indicated by the person as being an available means of service (in which case, the notice or other document is to be taken to be served or given when it would be received by that means in usual circumstances); or
  - (d) if the document is to be served on a person as the owner of land and the land is unoccupied, and the identity or address of the owner is unknown to the community government—by placing the document on a conspicuous part of the land; or
  - (e) by any means provided for service of the document by another Bougainville law.
- (3) If a document must be served on the owner or occupier of land and there is more than one owner or occupier, it is sufficient if the document is served on any owner or occupier (and not on all owners or occupiers).

#### **77 Protection from civil liability**

- (1) This section applies to—
- (a) a member of a community government; and
  - (b) a member of the staff of a community government; and
  - (c) a person to whom a function or power of a community government or a member of the staff of a community government is delegated in accordance with this Act or another Bougainville law.
- (2) Subject to this Act, no civil liability attaches to a person to whom this section applies for an act or omission in the exercise or purported exercise of official functions or powers.
- (3) An action that would, but for Subsection (2), lie against a person lies instead against the community government.
- (4) This section does not prejudice rights of action of the community government in respect of an act or omission of a person not in good faith.

#### **78 Evidentiary aid**

- (1) In proceedings, a certificate apparently signed by the Chair or Manager of a community government certifying as to a matter listed below constitutes proof, in the absence of proof to the contrary, of the matter so certified—
- (a) the members, officers, committees or staff of the community government;

- (b) the members of a ward steering committee or a ward recorder of a ward of the community government area;
  - (c) the boundaries of the community government area or of a ward of the community government area;
  - (d) a rule of the community government;
  - (e) a decision of the community government or a committee of the community government, or a member of the staff of a community government;
  - (f) a delegation by the community government or a member of the staff of the community government;
  - (g) the receipt or non-receipt of tax, rates or information by the community government.
- (2) In proceedings, a certificate apparently signed by a ward recorder certifying as to a matter in the ward records constitutes proof, in the absence of proof to the contrary, of the matter so certified.

## **79 Human rights**

For Section 180(3) of the Bougainville Constitution, in the opinion of the House of Representatives—

- (a) this is a law restricting human rights in a manner that is reasonably justifiable for the purpose in a democratic society that has a proper regard for the rights and dignity of mankind; and
- (b) the human rights that are restricted are as follows—
  - (i) the right to vote and stand for public office;
  - (ii) freedom from arbitrary search and entry; and
- (c) the restriction is necessary for the purpose of giving effect to the public interest in public safety, public order and public welfare, as referred to in Section 180(2)(a) of the Bougainville Constitution.

## **80 Act binds Autonomous Bougainville Government**

This Act binds the Autonomous Bougainville Government.

## **81 Regulations**

- (1) The Bougainville Executive Council may make such regulations as are contemplated by, or as are necessary or expedient for, this Act.
- (2) Without limitation, the regulations may—
  - (a) limit the powers of a community government; and
  - (b) limit the committees that may be established by a community government; and

- (c) limit the circumstances in which a committee of a community government may consist of, or include, persons who are not members of the community government; and
  - (d) assign functions to a community government or its Chair, Deputy Chair, executive committee, Manager or Accounts Clerk; and
  - (e) authorise a community government to obtain funds by specified means; and
  - (f) determine procedures to be followed at a meeting of a community government, a committee of a community government, or a ward steering committee or at a ward assembly; and
  - (g) provide for conditional or unconditional exemptions from the application of this Act; and
  - (h) impose a penalty of a fine not exceeding K2000 or imprisonment not exceeding 6 months, or both, for an offence against the regulations.
- (3) The regulations may make provisions of a saving or transitional nature consequent on the making of this Act or an Act that amends this Act.
- (4) A provision of regulations made under Subsection (3) may, if the regulations so provide, take effect from the date of certification of the Act concerned under Section 66 of the Bougainville Constitution or a later date.
- (5) To the extent that a provision takes effect under Subsection (4) from a date earlier than the date of notification of the regulations in the Bougainville Gazette under Section 68 of the *Interpretation Act 2005*, the provision does not operate to the disadvantage of a person by decreasing the person's rights or imposing liabilities on the person.

## **PART 9 — REPEALS, AMENDMENTS, SAVING AND TRANSITIONAL PROVISIONS**

### **Division 1 — Saving provision**

#### **82 Continuation of Council of Elders until repeal of Act**

- (1) Despite the *Council of Elders Act 1996*, the term of office of a member of a Council of Elders is to be taken to continue until that Act is repealed.
- (2) Subsection (1) applies—
  - (a) to a Council of Elders as most recently constituted before the commencement of this section; and
  - (b) even if the term of office of the member expired before the commencement of this section.



- (3) If the terms of office of all the members of a Council of Elders as most recently constituted before the commencement of this section expired before that commencement, all acts of the Council that could have been validly engaged in had those terms not expired are to be taken to be valid and to always have been valid.
- (4) For this section, Arawa Town Council and Buka Town Council are to be regarded as Councils of Elders established under the *Council of Elders Act 1996*, whether or not they have been validly established under any law.

## **Division 2 — Repeal of Acts**

### **83 Repeal of Acts**

- (1) The following Acts are repealed on the completion of the first periodic election of community governments held under this Act—
  - (a) *Council of Elders Act 1996*;
  - (b) *Council of Elders (Head Tax) (Enabling) Act 2006*.
- (2) Subsection (1) applies whether the first periodic election of community governments is of all community governments or only community governments other than urban community governments or urban community governments.

## **Division 3 — Transitional provisions**

### **84 Continuation of Arawa Town Council as Arawa Community Government**

If an election of Arawa Community Government has not been held before the repeal of the *Council of Elders Act 1996*, on that repeal—

- (a) Arawa Town Council is to be taken to be Arawa Community Government (and to continue as the same body corporate); and
- (b) subject to Section 87, the area of Arawa Town Council as established under a law immediately before the repeal is to be taken to be the urban community government area of Arawa; and
- (c) the members of Arawa Town Council who held office immediately before the repeal are to be taken to have been elected as members of Arawa Community Government under this Act; and
- (d) the terms of office of those members are to continue, subject to this Act, until the completion of the first periodic election of Arawa Community Government under this Act; and
- (e) any constitution of Arawa Town Council ceases to have effect; and
- (f) any rules of Arawa Town Council purportedly made under a law, as then in force, are to be taken to be rules made under Section 26 by the Arawa Community Government; and

- (g) the rules continued under Paragraph (f) will be taken to expire on 31 December of the year after the year in which the first election of Arawa Community Government under this Act is completed.

*Note—Arawa will be divided into wards under Section 7 before the first election of Arawa Community Government under this Act.*

*Arawa Community Government must make new rules under Section 26 before the expiry of the rules previously made by Arawa Town Council if it wants the rules to continue to operate.*

## **85 Continuation of Buka Town Council as Buka Community Government**

If an election of Buka Community Government has not been held before the repeal of the *Council of Elders Act 1996*, on that repeal—

- (a) Buka Town Council is to be taken to be Buka Community Government (and to continue as the same body corporate); and
- (b) subject to Section 87, the area of Buka as established under a law immediately before the repeal is to be taken to be the urban community government area of Buka; and
- (c) the members of Buka Town Council who held office immediately before the repeal are to be taken to have been elected as members of Buka Community Government under this Act; and
- (d) the terms of office of those members are to continue, subject to this Act, until the completion of the first periodic election of Buka Community Government under this Act; and
- (e) any constitution of Buka Town Council ceases to have effect; and
- (f) any rules of Buka Town Council purportedly made under a law, as then in force, are to be taken to be rules made under Section 26 by Buka Community Government; and
- (g) the rules continued under Paragraph (f) will be taken to expire on 31 December of the year after the year in which the first election of Buka Community Government under this Act is completed.

*Note—Buka will be divided into wards under Section 7 before the first election of Buka Community Government under this Act.*

*Buka Community Government must make new rules under Section 26 before the expiry of the rules previously made by Buka Town Council if it wants the rules to continue to operate.*

## **86 Continuation of rules of Arawa and Buka Town Councils**

If Arawa Community Government and Buka Community Government have been elected when the *Council of Elders Act 1996* is repealed, then, on that repeal—

- (a) any rules of Arawa Town Council or Buka Town Council purportedly made under a law, as then in force, are to be taken to be rules made under

Section 26 by, respectively, Arawa Community Government and Buka Community Government; and

- (b) the rules continued under Paragraph (a) will be taken to expire on 31 December of the year after the year in which that Act is repealed.

### **87 Definition of Arawa and Buka community government areas**

The Minister may, by notice in the Bougainville Gazette made on the recommendation of the Bougainville Executive Council, define an area that is to be the area of the Arawa or Buka Town Council or Community Government with effect from the date of publication of the notice in the Bougainville Gazette (and the notice has effect according to its terms despite any other law).

*Note—If community governments other than urban community governments are to be elected before urban community governments, a notice should be made before the first election of those community governments under this Act because the boundaries of Arawa and Buka will affect the boundaries of surrounding or adjoining community government areas.*

### **88 Dissolution of Councils of Elders**

- (1) If the term of office of members of a Council of Elders is continued under Section 82, the Council of Elders is, on the repeal of the *Council of Elders Act 1996*, dissolved and its assets and liabilities transferred to the Minister (who may deal with them as the Minister considers appropriate).
- (2) Subsection (1) does not apply to Arawa Town Council or Buka Town Council if the first periodic elections of urban community governments have not been held under this Act before the repeal of the *Council of Elders Act 1996*.

### **89 References**

On the repeal of the *Council of Elders Act 1996*, a reference in a legislative or other instrument—

- (a) to a Council of Elders is to be taken to be a reference to a community government; and
- (b) to the area of a Council of Elders is to be taken to be a reference to a community government area; and
- (c) to the head of a Council of Elders is to be taken to be a reference to the Chair of a community government; and
- (d) to a Village Assembly is to be taken to be a reference to a ward assembly or to the people of a ward, as the case requires.

**Division 4 — Consequential amendments of other Acts**

**90 Consequential amendments of other Acts**

The Acts specified in the table below are amended in the manner indicated.

<i>Provision amended</i>	<i>How amended</i>
<i>Bougainville Education Act 2013</i>	
Section 7(2)	Delete “the Councils of Elders” and substitute “community governments”
Section 13(1)	Delete “Councils of Elders” and substitute “community governments”
Section 16(2)(c)	Delete “Councils of Elders” and substitute “community governments”
Section 19(1)(a)	Delete “Councils of Elders” and substitute “community governments”
Section 19(2)(e)	Delete “Councils of Elders” and substitute “community governments”
<i>Bougainville Elections Act 2007</i>	
Section 3(1), definition of <b>officer</b> , paragraph (f)	Delete “Council of Elders” and substitute “community government”
Section 23(2)(c)(ii)	Delete “Council of Elders” and substitute “community government”
Section 66(2)(b)	Delete “Council of Elders” and substitute “community government”
Section 89(2)	Delete “Councils of Elders” and substitute “community governments”
Section 152(4)(b)	Delete “Council of Elders” and substitute “community government”
Section 225 (including section heading)	Delete “Council of Elders” wherever occurring and, in each case, substitute “community government”
<i>Bougainville Mining Act 2015</i>	
Section 20(1)(f)	Delete “Council of Elders for the area” and substitute “each community government of a community government area”

<b><i>Provision amended</i></b>	<b><i>How amended</i></b>
Section 34(3)(a)	Delete “Council of Elders with jurisdiction over the area” and substitute “community government of a community government area”
Section 46(3)(a)(ii)	Delete “each Council of Elders with jurisdiction over the area of the proposed geological survey reserve area” and substitute “each community government of a community government area in which the proposed geological survey reserve area is located”
Section 49(6)	Delete “Councils of Elders” and substitute “community governments”
Section 54(1)	Delete “Council of Elders” and substitute “community government” Delete “jurisdiction” and substitute “community government area”
Section 55(1)(a)	Delete “Council of Elders’ proposed management plan” and substitute “proposed management plan of the community government”
Section 55(1)(b)	Delete “Council of Elders” and substitute “community government”
Section 56(2)	Delete “Council of Elders” and substitute “community government”
Section 56(5)	Delete “Council of Elders” substitute “community government area”
Section 57(2)	Delete “Council of Elders with jurisdiction over the area” and substitute “community government in whose community government area the reserve area is located”
Section 59(3)	Delete “Council of Elders” and substitute “community government”
Section 60 (section heading)	Delete “Councils of Elders and Village Assemblies” and substitute “granting authorities and potential applicants”
Section 60(1)(a) and (b)	Delete Paragraphs (a) and (b) and substitute: “(a) the granting authority or proposed granting authority (within the meaning of Part 7 Division 1) for community mining licences in the area; and”

<b><i>Provision amended</i></b>	<b><i>How amended</i></b>
Section 61(1)	Delete “Council of Elders with jurisdiction over the area” and substitute “community government of a community government area in which the reserve area is located”
Section 61(7)	Delete “Council of Elders” and substitute “community government”
Section 62 (section heading)	Delete “Council of Elders” and substitute “Community government”
Section 62(1)	Delete “the Council of Elders with jurisdiction over the area” and substitute “the community government of the community government area in which the reserve area is located”
Section 62(1)(e)	Delete “Village Assemblies that” and substitute “the wards of the community government area, the steering committees of which”
Section 62(2)	Delete “Council of Elders” wherever occurring and, in each case, substitute “community government”
Section 63(a)	Delete “Council of Elders or Village Assembly” and substitute “community government or delegate of a community government”
Section 64(1)	Delete “Council of Elders” and substitute “community government”
Section 65(2)(a)(ii)	Delete “Council of Elders with jurisdiction over the area of the proposed mining reserve area” and substitute “community government of a community government area in which the proposed mining reserve area is located”
Section 70(a)	Delete “Council of Elders or Village Assembly with power under Section 71 to grant and revoke” and substitute “community government or delegate of a community government with power under Section 71 to grant”
Section 71(1)	Delete “Council of Elders with jurisdiction over an approved community mining licence reserve area” and substitute “community government of the community government area in which an approved community mining licence reserve area is located”

<b><i>Provision amended</i></b>	<b><i>How amended</i></b>
Section 71(2)	Delete Subsection (2) and substitute: “(2) If the area of a ward within a community government area includes land subject to a community mining licence reserve area, the community government may, by notice in writing, delegate its power to grant community mining licences with respect to that part of the reserve area to the steering committee of the ward, but only if training has been given to the delegate under Section 60(1)(b).”
Section 71(4)	Delete Subsection (4)
Section 73(1)(a)(i)	Delete Subparagraph (i) and substitute: “(i) the community government of the community government area in which the community mining licence reserve area is located; or”
Section 73(2)(b)	Delete “Council of Elders with jurisdiction over the community mining licence reserve area” and substitute “community government of the community government area in which the community mining licence reserve area is located”
Section 98(1)(a)	Delete “Council of Elders with jurisdiction over the area of the proposed exploration licence” and substitute “community government of a community government area in which the area of the proposed exploration licence is located”
Section 98(1)(b)	Delete “Council of Elders” and substitute “community government”.
Section 98(2)	Delete “Councils of Elders” and substitute “community governments”
Section 140(7)(c)	Delete “Council of Elders with jurisdiction over the area of land the subject of the application” and substitute “community government of a community government area in which land the subject of the application is located”
Section 141(3)	Delete “Council of Elders” and substitute “community government”

<i>Provision amended</i>	<i>How amended</i>
Section 207(5)	Delete “Council of Elders or Village Assembly” and substitute “community government or delegate of the community government”
Section 247(a)	Delete “Council of Elders with jurisdiction over the area the subject of the application” and substitute “community government of a community government area in which land the subject of the application is located”
Section 248 (including section heading)	Delete “Council of Elders” wherever occurring and, in each case, substitute “community government”
Section 297(2)	Delete “Councils of Elders” and substitute “community governments”
Schedule 1, table	Delete the definitions of <b>Council of Elders</b> and <b>Village Assembly</b>
<i>Bougainville Physical Planning Act 2013</i>	
Section 48(8)	Delete “an Urban Council or a Council of Elders established under the Bougainville Council of Elders Act 1996” and substitute “a community government”
<i>Constitutional Laws (Consultation) Act 2006</i>	
Section 1	Delete the definition of <b>Council of Elders</b>
Section 1, definition of <b>heads of levels of formal government below the level of the Autonomous Bougainville Government</b> , paragraph (a)	Delete “Council of Elders, the Chairman of that Council” and substitute “community government, the Chair of that community government”
<i>Interpretation Act 2005</i>	
Section 4(1)	After the definition of <b>citizen</b> insert: “ <b>community government</b> means a community government established under the <i>Bougainville Community Government Act 2016</i> ; <b>community government area</b> means a community government area established under the <i>Bougainville Community Government Act 2016</i> .”
Section 77(1)(c)	Delete Paragraph (c)



<b><i>Provision amended</i></b>	<b><i>How amended</i></b>
<i>Liquor Control Act 2001</i>	
Section 5(a)	Delete “Community Government Assembly” and substitute “community government”

## Schedule 1

## Model Head Tax Rule

Section 36(2)

### **[Name of Community Government] Head Tax Rule [Year]**

Made by [Name of Community Government] under Section 26 of the *Bougainville Community Government Act 2016*.

#### **1 Short title**

This Rule is the [Name of Community Government] Head Tax Rule [Year of making].

#### **2 Commencement**

- (1) Subject to Subsection (2), this Rule commences on the next 1 January after the day it is notified in the Bougainville Gazette as required by Section 68 of the *Interpretation Act 2005*.
- (2) If this Rule is made in the year in which the community government is first elected under the Act and head tax applied for that year in all or a part of the community government area, this Rule will be taken to have commenced on 1 January of that year.

*Note—If this Rule is made in a later year, Subsection (2) is to be omitted and “Subject to Subsection (2)” is to be omitted from Subsection (1).*

#### **3 Interpretation**

In this Rule—

***business taxpayer of the community government for a fiscal year*** means a natural person (who has attained 18 years of age but who is not a resident taxpayer of the community government for the fiscal year), or a body corporate, who has carried on business in the area of the community government for more than 186 days during the fiscal year;

***community government*** means the [Name of Community Government];

***resident taxpayer of the community government for a fiscal year*** means a natural person who has attained 18 years of age and has resided in the area of the community government for more than 186 days during the fiscal year (disregarding any period served as imprisonment);

***taxable business*** means a business carried on in the area of the community government that would result in the person being a business taxpayer of the community government if the business were carried on in the area of the community government for more than 186 days during a fiscal year;

***taxpayer of the community government for a fiscal year*** means—

- (a) a resident taxpayer of the community government for the fiscal year; or
- (b) a business taxpayer of the community government for the fiscal year.

#### **4 Liability to pay head tax**

- (1) A taxpayer of the community government for a fiscal year must pay to the community government, on or after 1 January and before 1 March in the next fiscal year, the following amount of head tax—
  - (a) in the case of a resident taxpayer—K20;
  - (b) in the case of a business taxpayer—K100.
- (2) A taxpayer who is liable to pay head tax under Subsection (1) commits an offence if the taxpayer does not pay the head tax to the community government.  
*Penalty:* K100.
- (3) However, a business taxpayer is not liable to pay head tax to the community government if the business is—
  - (a) a member school or member institution that is recognised under the *Bougainville Education Act 2013* or a permitted school or permitted institution that is registered under that Act; or
  - (b) a health care service within the meaning of the *National Health Administration Act 1997* of the National Parliament; or
  - (c) a not-for-profit business that provides community services to youth, women or other disadvantaged groups; or
  - (d) a business carried on for religious purposes; or
  - (e) a business carried on by a body or institution established for charitable purposes approved under Section 25A of the *Income Tax Act 1959* of the National Parliament.

*Note—Other exemptions may be added by the community government.*

#### **5 Notifications about taxable business**

- (1) A person must notify the ward recorder for a ward in the area of the community government if the person—
  - (a) commences to carry on a taxable business in the ward; or
  - (b) ceases to carry on a taxable business in the ward.
- (2) If, at the commencement of this Rule, a person is carrying on a taxable business in a ward of the area of the community government, the person must notify the ward recorder for the ward of that fact.
- (3) A person commits an offence if the person—
  - (a) is required to notify a ward recorder under Subsection (1) or (2); and
  - (b) without reasonable excuse, fails or refuses to do so.

*Penalty:* K100.

#### **6 Provision of information to determine liability for head tax**

- (1) The Manager of the community government may require a person to provide information as is reasonably necessary for the administration of this Rule.
- (2) A person commits an offence if the person—
  - (a) is required to provide information under Subsection (1); and

(b) without reasonable excuse, fails or refuses to comply.

*Penalty:* K50 or 2 weeks' imprisonment.

*Note—A request for information may take the form of a general survey or census applying to all persons who reside or carry on business in the community government area or a request directed to specific persons.*

## **7 Application for relief from head tax**

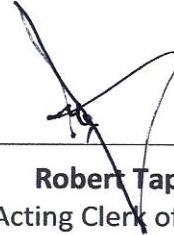
- (1) A taxpayer of the community government for a fiscal year may apply to the community government for relief from head tax for that fiscal year on the grounds that payment would cause undue hardship to the taxpayer or to dependents of the taxpayer.
- (2) An application for relief must be made between 1 January and 1 March in the following fiscal year.
- (3) A community government may choose to accept a late application.
- (4) On an application for relief, the community government may—
  - (a) refuse the application; or
  - (b) excuse the taxpayer from the liability for head tax; or
  - (c) do either or both of the following—
    - (i) reduce the amount of head tax for which the taxpayer is liable;
    - (ii) require the taxpayer to provide a number of hours of community work instead of paying an amount of head tax, calculated at the rate of 1 day of community work for each K4 of head tax.
- (5) If community work is required, it is to consist of work without remuneration undertaken at times and places as directed by the community government.
- (6) The community government must make every effort to determine an application for relief within 2 months.

## **8 Appeal against decision**

- (1) An applicant for relief from head tax who is dissatisfied with the decision of the community government on the application may appeal against the decision to a Magistrate.
- (2) An appeal must be instituted within 2 months after the applicant receives notice of the decision or such longer period as the Magistrate allows on application.
- (3) On an appeal, the Magistrate may—
  - (a) affirm the decision; or
  - (b) rescind the decision and substitute the decision with a decision that the Magistrate considers appropriate; or
  - (c) remit matters to the community government for consideration or further consideration in accordance with any directions or recommendations of the Magistrate.
- (4) The decision of a Magistrate on an appeal is final.

I certify that the above is fair copy of a Bill for an Act entitled *Bougainville Community Government Act 2016*, passed by the House of Representatives on 8 June 2016 and now presented to the Speaker for his certificate under Section 66(1) of the *Bougainville Constitution*.

Dated 9 June 2016



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**Robert Tapi**  
Acting Clerk of the  
House of Representatives

I, Simon Pentanu, Speaker of the House of Representatives, hereby certify that the *Bougainville Community Government Act 2016* was made by the House of Representatives on 8 June 2016 by an absolute majority vote in accordance with the *Bougainville Constitution*.

Dated 9 June 2016



**Honourable Simon Pentanu**  
Speaker of the House of  
Representatives