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[1976

CONSTITUTION

PROPOSED ORGANIC LAW ON PROVINCIAL GOVERNMENT AND PROPOSED LAW TO ALTER THE ORGANIC LAW ON NATIONAL ELECTIONS

Organic Law on Provincial Government National Elections (Amendment No. 1) Law

THE proposed—

- (a) Organic Law on Provincial Government referred to above, being a proposed Law to implement Part VIA (*Provincial Government and Local Level Government*) of the Constitution is published in full in Supplement No. 1 to this *National Gazette*; and
- (b) Law to alter the Organic Law on National Elections to provide for—
- (i) the placing of marks on voters at National elections; and
 - (ii) a last day for a polling period,
- referred to above is published in full in Supplement No. 2 to this *National Gazette*.

Dated this 28th day of October, 1976.

BARRY HOLLOWAY,
Speaker.

NOTICE OF THE MAKING OF REGULATIONS

THE following Regulations set out in the table below have been made under the Acts set out in the table.

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No.	Citation or Nature	Act under which made	Price
Statutory Instrument No. 32 of 1976	Postal (Papua) (Amendment) Regulation 1976	<i>Post and Telegraph Act</i> (P) 1912	—
Statutory Instrument No. 33 of 1976	Postal (New Guinea) (Amendment) Regulation 1976	<i>Post and Telegraph Act</i> (NG) 1912	—
Statutory Instrument No. 35 of 1976	Telephone (Papua) (Amendment) Regulation 1976	<i>Post and Telegraph Act</i> (P) 1912	—
Statutory Instrument No. 36 of 1976	Telephone (New Guinea) (Amendment) Regulation 1976	<i>Post and Telegraph Act</i> (NG) 1912	—
Statutory Instrument No. 38 of 1976	Telegraph (Papua) (Amendment) Regulation 1976	<i>Post and Telegraph Act</i> (P) 1912	—
Statutory Instrument No. 39 of 1976	Telegraph (New Guinea) (Amendment) Regulation 1976	<i>Post and Telegraph Act</i> (NG) 1912	—

Dated this 28th day of October, 1976.

JOHN GUISE,
Governor-General.

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THE INDEPENDENT STATE OF PAPUA NEW GUINEA.

PROPOSED ORGANIC LAW

entitled

Organic Law on Provincial Government,

Being an Organic Law to implement Part VIA (*Provincial Government and Local Level Government*) of the Constitution,

MADE by the National Parliament, to come into operation in accordance with a notice published in the National Gazette by the Head of State acting with, and in accordance with, the advice of the National Executive Council.

PART I. - PRELIMINARY.

1. - INTERPRETATION.

In this Organic Law, unless the contrary intention appears -

"the provincial constituent assembly", in relation to a province, means the body recognized under Section 2 in relation to the province;

"provincial law", in relation to a province, means -

- (a) the constitution of the province or a law made by the provincial legislature; or
- (b) a subordinate legislative enactment made under that constitution or any such law.

PART II. - GRANT OF PROVINCIAL GOVERNMENT.

2. - PROVINCIAL CONSTITUENT ASSEMBLIES.

The Minister responsible for provincial affairs may, by notice in the National Gazette, recognize, for the purposes of this Organic Law and of Section 187B (*grant of provincial government*) of the National Constitution, any properly organized body, that in his opinion provides an adequate means of consultation with a province, as the constituent assembly for the province.

3. - CONSULTATION ON GRANT OF PROVINCIAL GOVERNMENT.

As soon as practicable after the recognition of a constituent assembly for a province, the Minister responsible for provincial affairs shall, on behalf of the National Government, consult with the provincial constituent assembly on a constitution for the province and on the granting of provincial government to the province.

4. - AUTHORIZATION OF GRANT OF PROVINCIAL GOVERNMENT.

After consultation, as required by Section 3, by the Minister responsible for provincial affairs with a provincial constituent assembly -

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- (a) that Minister may move in the National Parliament;
and
- (b) the Parliament may, by an absolute majority vote,
resolve,

that the National Executive Council be authorized to approve the grant of provincial government, and the granting of a Charter under Section 6, to the province.

5. - RESCISSION, ETC., OF RESOLUTIONS RECOGNIZING
CONSTITUENT ASSEMBLIES.

(1) At any time before the making of a resolution under Section 4, the Minister responsible for provincial affairs may revoke a notice under Section 2, but otherwise shall not alter it.

(2) At any time before a Charter is granted under Section 6, the National Parliament may, by an absolute majority vote, rescind a resolution under Section 4.

6. - GRANT OF PROVINCIAL GOVERNMENT.

(1) When -

- (a) a resolution authorizing the grant of provincial government to a province has been made and is in force under Section 4; and
- (b) the provincial constituent assembly has adopted, in accordance with Part III, a constitution for the province that is not inconsistent with the National Constitution or this Organic Law,

the National Executive Council shall advise the Head of State to grant provincial government to the province, and the Head of State shall, by Charter under his hand, grant provincial government to the province accordingly.

(2) At the first meeting of the National Parliament after a Charter is granted under Subsection (1), the Prime Minister shall table a copy of the Charter in the Parliament.

(3) The granting of a Charter under Subsection (1) in relation to a province is conclusive evidence that the requirements of this Organic Law in relation to the grant and to the adoption of a constitution for the province have been complied with.

7. - ENTRY INTO EFFECT OF PROVINCIAL CONSTITUTIONS.

The constitution of a province comes into effect on the date of the granting of a Charter under Section 6 or on such later date as is provided for by that constitution.

PART III. - MANNER OF ADOPTION OF PROVINCIAL
CONSTITUTIONS.

8. - ADOPTION OF PROPOSED CONSTITUTIONS BY PROVINCIAL
CONSTITUENT ASSEMBLIES.

A constitution for a province shall be adopted by the

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provincial constituent assembly in accordance with the standing orders of the assembly made in accordance with Section 9.

9. - STANDING ORDERS OF PROVINCIAL CONSTITUENT ASSEMBLIES.

Not less than one day before the day on which a constitution for a province is adopted, the provincial constituent assembly shall make standing orders providing for -

- (a) the manner of adoption of the constitution; and
- (b) the manner in which the adoption is to be authenticated.

10. - EFFECT OF RATIFICATION.

Authentication, in accordance with the standing orders made by the provincial constituent assembly for the purposes of Section 9 (b), of the adoption of a constitution for a province is conclusive evidence as to the manner and form of its adoption.

11. - ALTERATION OF PROVINCIAL CONSTITUTIONS.

Subject to this Organic Law and to Section 100(3) (*exercise of the legislative power*) of the National Constitution, the constitution of a province may be repealed or otherwise altered only -

- (a) in accordance with its provisions; or
- (b) by an Organic Law.

PART IV. - LEGAL STATUS OF PROVINCIAL GOVERNMENTS, PROVINCIAL CONSTITUTIONS, ETC.

12. - LEGAL CAPACITY OF PROVINCIAL GOVERNMENTS.

A provincial government -

- (a) may acquire, hold and dispose of property of any kind; and
- (b) may sue and be sued,

and a provincial law may make provision for and in respect of the manner and form in which it may do so.

13. - LEGAL STATUS OF PROVINCIAL CONSTITUTIONS.

The constitution of a province that has come into effect in accordance with Section 7 takes effect for the purposes of any law of Papua New Guinea as if it were an Organic Law, but may be altered only in a manner prescribed by Section 11.

14. - RECOGNITION OF PROVINCIAL LAWS.

Full faith and credit shall be given throughout Papua New Guinea to the laws, the public acts and records and the judicial proceedings of all provinces.

PART V. - STRUCTURE OF PROVINCIAL GOVERNMENTS.

15. - GENERAL STRUCTURE.

In accordance with Section 187C(2) (*constitution, functions, etc., of provincial governments*) of the National Constitution,

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a provincial government shall consist of -

- (a) a provincial legislature; and
- (b) a provincial executive.

16. - PROVINCIAL LEGISLATURES.

(1) The legislative power of a province shall be vested in the provincial legislature.

(2) A provincial legislature -

- (a) must include not less than 15 elected members; and
- (b) shall not include more appointed or nominated members than -

- (i) three; or
- (ii) 10% of the number of the elected members,

whichever is the greater number.

(3) For the purposes of Subsection (2) and without in any way affecting the operation of Section 187C(2)(a) (*constitution, functions, etc., of provincial governments*) of the National Constitution, members appointed or nominated by local, community or village governments, or other local level governments within the meaning of Section 187I (*local and village governments*) of the National Constitution shall be deemed to be elected members.

(4) A provincial legislature may, in accordance with and subject to the constitution of the province, make laws as provided for by this Organic Law, and has such other powers, functions, duties and responsibilities as are conferred or imposed on it by or under that constitution.

(5) Nothing in Subsection (1) or (4) prevents a provincial law from providing for the conferring of legislative powers or functions on an authority other than the provincial legislature.

17. - PROVINCIAL EXECUTIVES.

(1) The executive power of a province, and the execution of the provincial laws, shall, subject to this Organic Law, be vested in the provincial executive.

(2) The provincial executive has such powers, functions, duties and responsibilities as are conferred or imposed on it by or under this Organic Law or a provincial law.

(3) The provincial executive shall consist of a head of the provincial executive and such other members as are provided for by or under the constitution of the province.

(4) Nothing in Subsection (1) or (2) prevents a provincial law from providing for the conferring or imposing of powers, functions, duties or responsibilities on a person or authority outside the provincial executive.

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PART VI. - LEGISLATIVE POWERS.

Division 1. - Introductory.

18. - INTERPRETATION OF PART VI.

In this Part, "provincial law" means a provincial law as defined in Section 1, other than the constitution of the province.

19. - GENERAL LEGISLATIVE POWER OF THE NATIONAL PARLIAMENT.

Except as is expressly provided by this Part, this Part does not affect the power of the National Parliament, under Section 109 (*general power of law-making*) of the National Constitution, to make laws for the peace, order and good government of Papua New Guinea.

20. - GENERAL LEGISLATIVE POWER OF PROVINCIAL GOVERNMENTS.

(1) Within the limits allowed or imposed by this Organic Law and the other National Constitutional Laws, a provincial legislature has full legislative power to make laws for the peace, order and good government of the province.

(2) Where this Organic Law or any other National Constitutional Law makes specific provision for an Act of the Parliament as to any matter, a provincial legislature has no power to make laws for the purpose of that provision, but this subsection does not affect the operation of Subsection (3).

(3) Provincial laws may be made -

- (a) on any subject provision for which by way of a provincial law is expressly authorized by any provision of this Organic Law other than this Part, or by any other National Constitutional Law; and
- (b) in the field of primarily provincial competence, as provided for by Division 3; and
- (c) in the field of competence concurrent with that of the National Parliament, as provided for by Division 4; and
- (d) in any other field in which there is no competing National legislation, as provided for by Division 5; and
- (e) in relation to judicial matters, as provided for by Part VII; and
- (f) under delegation by the National Government as provided for by Part VIII; and
- (g) in relation to taxation, as provided for by Division X.2.

21. - EXTRATERRITORIALITY.

Except as provided by Part IV, a provincial law has effect only in relation to the province.

22. - INTERPRETATION OF PROVINCIAL LAWS.

All provincial laws (including the constitutions of the

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provinces) shall be read and construed subject to this Organic Law and to the other National Constitutional Laws, and so as not to exceed the authority to make them properly given, to the intent that where any such law would, but for this section, have been in excess of the authority so given it is nevertheless a valid law to the extent to which it is not in excess of that authority.

Division 2. - Technical Definition.

23. - EXHAUSTIVE LAWS.

(1) For the purposes of this Part, a law is exhaustive in relation to a matter if it shows, by reason of -

- (a) its subject-matter; or
- (b) the method of dealing with the matter that has been adopted by it or by any other law that should be considered with it; or
- (c) the form or complexity of it or of any other law that should be considered with it,

that the legislature has intended to set out completely, exhaustively or exclusively -

- (d) the statutory requirements of the matter; or
- (e) the statute law to govern the matter; or
- (f) the policy on the matter.

(2) The operation of Subsection (1) is not affected by reliance placed by the law on -

- (a) any principle or rule of the underlying law; or
- (b) any other statute,

for purposes of definition or interpretation, or for procedural, evidentiary or other ancillary or adjectival purposes.

(3) For the purposes of this section, a statement in a law that it is or is intended to be exhaustive is not conclusive on the point.

(4) The fact that a law is exhaustive in its relation to a matter does not of itself involve inconsistency with any other law.

Division 3. - Primarily "Provincial" Subjects.

24. - APPLICATION OF DIVISION 3.

(1) Subject to Subsection (2), the subjects to which this Division applies are -

- (a) the control by licensing of mobile traders (other than mobile banks); and
- (b) primary schools (including community schools and village self-help schools) and primary

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- education; and
- (c) the sale and distribution of alcoholic liquor; and
- (d) the control by licensing of public entertainments and of places of public entertainment; and
- (e) housing (other than housing owned or to be owned by the State); and
- (f) libraries, museums, cultural centres and Cultural Councils; and
- (g) sporting activities; and
- (h) to the extent provided for by Section 39, village courts; and
- (i) subject to Section 187I (*local and village governments*) of the National Constitution, local, community and village governments and other local level governments within the meaning of that section,

but not including the imposition of taxation (which is provided for by Division X.2).

(2) Subsection (1)(f) does not apply to libraries, museums, cultural centres and Cultural Councils (as the case may be) that are -

- (a) conducted, or to be conducted, by the State or by an authority established by or under an Act of the Parliament; or
- (b) established or conducted, or to be established or conducted, by or under an Act of the Parliament,

or to the establishment or conduct of such institutions.

25. - LEGISLATIVE POWERS OF THE PROVINCES.

A provincial legislature may make a law with respect to a subject or subjects to which this Division applies.

26. - LEGISLATIVE POWERS OF THE NATIONAL PARLIAMENT.

(1) Except as provided by Subsection (2), the National Parliament has no power to make an Act of the Parliament on a subject to which this Division applies.

(2) If a provincial legislature has not made an exhaustive law, in accordance with Section 25, on a subject to which this Division applies, an Act of the Parliament on the subject may have effect in the province so far as it is not inconsistent with any provincial law made in accordance with that section.

Division 4. - "Concurrent" Subjects.

Subdivision A. - Preliminary.

27. - APPLICATION OF DIVISION 4.

The subjects to which this Division applies are -

- (a) community development and rural development; and

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- (b) agriculture and stock; and
- (c) fishing and fisheries; and
- (d) health; and
- (e) public works; and
- (f) trade and business, and commercial and industrial investment and development; and
- (g) high schools, and vocational and technical schools; and
- (h) gambling, lotteries and games of chance; and
- (i) tourism; and
- (j) transportation and transportation facilities; and
- (k) town planning; and
- (l) land and land development; and
- (m) forestry; and
- (n) wild life protection; and
- (o) parks and reserves; and
- (p) family and marriage laws (including laws relating to divorce and other matrimonial proceedings and to the custody of children); and
- (q) courts and tribunals (other than village courts), and their jurisdiction; and
- (r) communications and mass media; and
- (s) wharves and harbours; and
- (t) aviation; and
- (u) labour and employment; and
- (v) research and training institutions; and
- (w) marketing; and
- (x) renewable and non-renewable natural resources,

but not including the imposition of taxation (which is provided for by Division X.2).

Subdivision B. - "Concurrent" Legislative Powers.

28. - LEGISLATIVE POWERS OF THE PROVINCES.

(1) A provincial legislature may make a law with respect to a subject or subjects to which this Division applies, that shall have effect so far as it is not inconsistent with any Act of the Parliament.

(2) For the purposes of Subsection (1), a question -

- (a) whether or not a provincial law is a law with respect to a particular subject to which this Division applies; or
- (b) whether or not a provincial law is inconsistent with an Act of the Parliament,

is non-justiciable except at the instance of the National Government or of a provincial government.

29. - LEGISLATIVE POWERS OF THE NATIONAL PARLIAMENT.

(1) The National Parliament shall not make an Act of the

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Parliament on a subject to which this Division applies except -

- (a) in relation to a matter that is of national interest; and
- (b) to the extent that the matter is of national interest.

(2) A question, whether or not an Act of the Parliament complies with Subsection (1), is non-justiciable.

Subdivision C. - Consultation, etc.

30. - CONSULTATION GENERALLY.

(1) Failure to comply with Subsection (2) in relation to a law does not invalidate the law.

(2) The Minister responsible for provincial affairs shall, if so requested by the head of a provincial executive, consult with the provincial executive on any proposed Act of the Parliament relating to a subject to which this Division applies.

31. - NOTICE OF ACTS OF THE PARLIAMENT.

(1) This section does not apply in respect of -

- (a) emergency laws within the meaning of Section 226 (*definitions for the purposes of Part X*) of the National Constitution; or
- (b) any Act of the Parliament dealing with a matter of urgent national importance when it is in the national interest that the Act be made without delay.

(2) In a case to which Subsection (1)(b) applies, the Minister responsible for provincial affairs shall, as soon as practicable, advise the provincial government concerned of the law or proposed law and of the reason for the urgency.

(3) If -

- (a) the Minister responsible for provincial affairs asks the head of a provincial executive that the provisions of this section be waived in relation to any proposed law; and
- (b) the head of the provincial executive thinks that it is in the public interest to do so,

the head of a provincial executive may, in writing, waive the requirements of this section, so far as they relate to the province, in relation to the proposed law.

(4) Not less than two months before an Act of the Parliament is made concerning a subject to which this Division applies, the Minister responsible for provincial affairs shall give to each provincial government notice by registered post of the proposed Act.

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(5) A question, whether the provisions of this section have been complied with in relation to a law, is non-justiciable except at the instance of a provincial government.

Division 5. - "Unoccupied" Legislative Fields.

32. - APPLICATION OF DIVISION 5.

This Division does not apply in relation to the powers of provincial legislatures in respect of -

- (a) any matter that can be dealt with only as an Organic Law; or
- (b) a law that can be made only as an emergency law within the meaning of Section 226 (*definitions for the purposes of Part X*) of the National Constitution; or
- (c) a law of a kind to which Division 3 or 4 applies; or
- (d) a law of a kind referred to in Section 109(2) (*general power of law-making*) of the National Constitution; or
- (e) the imposition of taxation (which is provided for by Division X.2).

33. - ADDITIONAL LEGISLATIVE POWERS OF THE PROVINCES.

(1) If the National Parliament has not made an exhaustive law, applying in a province, on any subject, the provincial legislature may make a law, not inconsistent with any Act of the Parliament, on that subject.

(2) If an Act of the Parliament that is inconsistent with a provincial law made under Subsection (1) comes into force, the provincial law shall, to the extent of the inconsistency, be deemed to be repealed by a provincial law.

Division 6. - Miscellaneous Matters Relating to Provincial Laws.

34. - APPLICATION OF DIVISION 6.

(1) Subject to Subsection (2), this Division applies in relation to all provincial laws (including any amendments to the constitution of a province made or to be made otherwise than by an Organic Law), other than provincial laws so far as they impose taxation.

(2) This Division does not affect the operation of Part VIII.

35. - NOTICE OF PROVINCIAL LAWS.

(1) Failure to comply with this section in relation to a law does not invalidate the law.

(2) If -

- (a) the provincial government asks the Minister responsible for provincial affairs that the provisions of this section be waived in relation to any proposed provincial law, or to any

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- proposed amendments to a proposed provincial law; and
- (b) the Minister thinks that it is in the public interest to do so,

the Minister may, in writing, waive the requirements of this section in relation to the proposed law or to all or any amendments to the proposed law.

(3) Before a provincial law is made, the provincial executive shall give to the Minister responsible for provincial affairs by registered post, or otherwise in the quickest practicable manner, copies of the text of the proposed law and of any amendments made or proposed to be made to the proposed law.

36. - COMMENCEMENT OF PROVINCIAL LAWS.

(1) Notwithstanding anything in any provincial law, except with the consent of the Minister responsible for provincial affairs a provincial law shall not come into operation until the end of the period of 30 days after the provincial government has forwarded to the Minister, by registered mail, a copy of the text of the law.

(2) If copies of the text of the law as proposed and of any amendments to it have been given in accordance with Section 35(3), the period referred to in Subsection (1) runs from the date on which notice of the making of the law is given to the Minister responsible for provincial affairs.

37. - DISALLOWANCE OF PROVINCIAL LAWS.

(1) Subject to Subsections (2) and (3), the National Parliament may, by a two-thirds absolute majority vote, by resolution disallow any provincial law, if in its opinion the disallowance is in the public interest.

(2) The National Parliament shall not disallow a provincial law unless, at least two months before the disallowing resolution is made, the Parliament has, by a simple majority vote, resolved to consider the matter of the disallowance.

(3) The Speaker of the National Parliament shall, by the quickest practicable means, formally advise the provincial legislature concerned of the making of a resolution under Subsection (1).

(4) A resolution under Subsection (1) shall not be made unless the Minister responsible for provincial affairs has, not less than 30 days before the date on which it is proposed to make it, consulted with the provincial executive on the issues related to the provincial law in question that are involved in the proposed disallowance.

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PART VII. - JUDICIAL MATTERS.

38. - EXTENT OF POWERS AS TO JUDICIAL MATTERS.

(1) Except as provided in this Part, a provincial government has no power to make laws relating to the establishment or administration of courts, or to the exercise of judicial power.

(2) Nothing in Subsection (1) prevents -

- (a) an Act of the Parliament making provision, in accordance with Part VIII, for the exercise or performance by a provincial government of powers or functions (other than judicial powers or functions) in relation to the administration of courts or tribunals; or
- (b) the establishment, by or under a provincial law, of tribunals of an administrative or quasi-judicial kind; or
- (c) a provincial law making provision for offences and fines and other punishments, penalties and forfeitures for offences against provincial laws.

39. - VILLAGE COURTS.

(1) Subject to Subsection (2), a provincial law may, as permitted by and subject to Division VI.3, make provision for or in respect of the establishment and administration of village courts of civil or criminal jurisdiction, or both.

(2) The jurisdiction of village courts established under Subsection (1) is as determined by or under an Act of the Parliament, but in any event such courts have the jurisdiction possessed, immediately before the commencement of this Organic Law, by village courts established under the pre-Independence *Village Courts Act 1973*.

40. - OTHER PROVINCIAL COURTS.

As permitted by, and in accordance with, Division VI.4, a provincial law may make provision for or in respect of the establishment, jurisdiction and administration of courts and tribunals of civil or criminal jurisdiction, or both.

41. - COURT FEES, FINES, ETC.

The powers of provincial legislatures under this Part in relation to courts and tribunals extend to matters relating to the imposition of fees in, and the disposition of fines, penalties and forfeitures imposed by, such courts and tribunals.

PART VIII. - DELEGATED POWERS.

42. - APPLICATION OF PART VIII.

This Part does not -

- (a) apply in respect of judicial powers or functions; or
- (b) affect the operation of Section 209 (*Parliamentary responsibility*) of the National Constitution or any corresponding provision of the constitution

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of a province.

43. - DELEGATIONS OF POWERS AND FUNCTIONS.

(1) An Act of the Parliament may make provision for and in relation to the exercise or performance by a provincial legislature, in or in relation to the province, of -

(a) any legislative power or function of the National Government, including a power to make subsidiary legislation but not including a power to make -

- (i) an amendment to the National Constitution; or
- (ii) an Organic Law; or
- (iii) a law of a kind that can be made only as an emergency law within the meaning of Section 226 (*definitions for the purposes of Part X*) of the National Constitution; or
- (iv) a Constitutional Regulation; or

(b) any power or function of the National Government under an Act of the Parliament.

(2) A provincial law may make provision for and in relation to the exercise by the National Government of -

- (a) any legislative power or function of the provincial government, including a power to make subsidiary legislation; or
- (b) any power or function under a provincial law.

(3) The powers and functions to which Subsection (1) and (2) apply include powers of delegation and subdelegation.

44. - ALTERATIONS TO DELEGATING LAWS.

(1) A law repealing or otherwise altering a provision of a law made for the purposes of Section 43 shall not come into operation until reasonable notice of it has been given by notification in the National Gazette.

(2) A question, whether or not notice was given as required by Subsection (1) or as to the reasonableness of any such notice, is non-justiciable except in the Supreme Court at the instance of the delegate government.

PART IX. - PROVINCIAL STAFF.

Division 1. - Preliminary.

45. - INTERPRETATION OF PART IX.

In this Part -

"Departmental Head" means the Departmental Head within the meaning of the pre-Independence *Public Service (Interim Arrangements) Act 1973*, as in force immediately before the commencement of this Organic

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(4) To the extent to which in the exercise and performance of his powers, functions, duties and responsibilities a Departmental Head may be, under the National Public Service Act, subject to the supervision and control of any person or authority, the person appointed under Subsection (1) is subject to the supervision and control of a Committee of Management to be appointed, under a provincial law, by the provincial executive.

51. - GRANTS ON ACCOUNT OF PROVINCIAL STAFFING.

(1) In addition to any other grants and assistance provided or that may be provided under Division X.3 or otherwise, the National Government shall, in respect of each fiscal year, grant unconditionally to each provincial government an amount equal to the sum of the salaries and allowances, and the cost of other conditions of employment, of members of the National Public Service occupying in the National Public Service -

- (a) one office classified at Level 1; and
- (b) one office classified at Class 11; and
- (c) two offices classified at Class 10; and
- (d) two offices classified at Class 9.

(2) If in the case of an office in the National Public Service referred to in Subsection (1) there is a scale or range of salary, allowances or other conditions, the amount to be granted in accordance with that subsection is such amount within the scale or range as the Public Services Commission thinks appropriate.

(3) If at any time there is no office, or no appropriate office, in the National Public Service corresponding to an office in that Service referred to in Subsection (1), the Public Services Commission shall decide what in its opinion is the corresponding office as at that time, and the amount to be granted in accordance with that subsection shall be calculated accordingly.

(4) This section does not limit the right of a provincial government to apply any amount granted under this section in such manner as it thinks to be in the best interests of the province.

Division 3. - Teaching Staff.

52. - MEMBERS OF THE TEACHING SERVICE IN PROVINCIAL SCHOOLS.

An Act of the Parliament, made after consultation between the National Government and the provincial government, shall make provision for and in relation to -

- (a) the continued availability of members of the Teaching Service to teach in -
 - (i) primary schools (including community schools and village self-help schools); and
 - (ii) other schools subject to the jurisdiction of the provincial government; and

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- (b) the transfer to the provincial executive of control over members of the Teaching Service in and for schools referred to in paragraph (a).

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PART X. - FISCAL MATTERS.

Division 1. - Preliminary.

53. - OUTLINE OF PROVINCIAL FINANCES.

The finances of a province shall consist of -

- (a) receipts from taxation -
 - (i) imposed by provincial laws, as provided for by Division X.2; or
 - (ii) imposed under delegation from the National Government, in accordance with Part VIII; and
- (b) grants from the National Government as provided for by Division X.3, including grants on account of provincial staffing in accordance with Section 51; and
- (c) the proceeds of court fees, fines and penalties as provided for by Sections 41 and 69, and other fees and charges under provincial laws as provided for by Section 70; and
- (d) the proceeds of certain borrowings in accordance with Section 71; and
- (e) the proceeds of investments by it (including interest on bank deposits) and income from commercial enterprises conducted by it; and
- (f) such other moneys as are lawfully available to it under an Act of the Parliament or a provincial law.

Division 2. - Provincial Taxation.

Subdivision A. - Taxation Generally.

54. - PROVINCIAL TAXATION GENERALLY.

A provincial government has no power to impose taxation except -

- (a) as provided by this Part; or
- (b) by virtue of a delegation from the National Government under Part VIII.

55. - GOVERNMENT EXEMPTIONS.

(1) In this section, "income" includes dividends or other payments in the nature of dividends or returns from investments by the State or a provincial government in commercial enterprises.

(2) Subject to Subsection (3) and to any agreement between the governments concerned -

- (a) the property and income of the State or of another provincial government is exempt from taxation under any provincial law; and
- (b) property imported or otherwise obtained by a

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- provincial government for its own use and not for sale or other disposal is exempt from duties of customs (including export duties) or excise under any Act of the Parliament; and
- (c) other property and income of a provincial government is exempt from taxation under an Act of the Parliament; and
 - (d) a provincial government is exempt from stamp duties or similar charges under any Act of the Parliament; and
 - (e) the National Government and other provincial governments are exempt from retail sales tax imposed under a provincial law so far as goods purchased by the National Government or the other provincial government for its own use and not for sale are concerned.

(3) Subsection (2) does not apply in relation to property or income of, or to property used for the purposes of -

- (a) a commercial enterprise conducted by the State or by a provincial government; or
- (b) an instrumentality of the National Government or of a provincial government.

(4) This section does not limit the power of the National Government or a provincial government to grant any exemption from taxation imposed by it.

Subdivision B. - Provincial Taxes.

56. - EXCLUSIVELY PROVINCIAL TAXES.

(1) Subject to the constitution of the province and to this Organic Law, a provincial law may impose or provide for the imposition of taxation of all or any kinds referred to in Section 57.

(2) The National Parliament has no power to impose or to provide for the imposition of taxation of any kind referred to in Section 57.

57. - KINDS OF PROVINCIAL TAXES.

The kinds of taxation referred to in Section 56 are -

- (a) retail sales tax, in accordance with Section 58; and
- (b) taxes on public entertainments for which admission is charged, and on places kept for the purpose of such entertainments; and
- (c) fees for licences for mobile traders (other than mobile banks within the meaning of the *pre-Independence Banks and Financial Institutions Act 1973*); and
- (d) fees for the licensing of places where intoxicating liquor is sold; and
- (e) fees for licences to operate or carry on gambling, lotteries and games of chance; and

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- (f) taxes on land, in accordance with Section 59; and
- (g) head tax, in accordance with Section 60; and
- (h) any other tax that could, and to the extent that it could, have been imposed, immediately before the commencement of this Organic Law, by Local Government Councils.

58. - RETAIL SALES TAX.

(1) For the purposes of Section 57(a), a retail sales tax is a tax that is imposed on or by reference to -

- (a) the retail sale in the province of all or any goods; or
- (b) the sale in the province of all or any services by persons holding themselves out as offering such services to the public or to any section of the public.

(2) In Subsection (1) -

"retail sale of goods" means the sale of goods for consumption or use and not for re-sale -

- (a) at a place to which the public has access, by invitation or otherwise, for the purposes of the sale or purchase of such goods; or
- (b) in pursuance of an offer or invitation to the public or a section of the public, or of an advertisement addressed to the public or a section of the public;

"services" does not include services under a contract of employment.

(3) In the case of the sale of goods, a retail sales tax may be levied on -

- (a) the retail seller; or
- (b) a seller other than the retail seller by reference to his sale of goods for retail sale.

(4) In the case of the sale of services by way of contract and subcontract, a retail sales tax may be levied on -

- (a) the principal contractor; or
- (b) the sub-contractor,

but not on both.

59. - TAXES ON LAND.

(1) Land rent is not a tax for the purposes of Section 57.

(2) For the purposes of Section 57(f) -

- (a) rates or taxes on land for services supplied or to be supplied, or for services that are available to be supplied; and
- (b) taxes on receipts from rent; and

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- (c) taxes on capital gains; or
- (d) death, estate or succession taxes, or like taxes,

are not taxes on land.

(3) Subsection (2)(a) does not affect the operation of Section 70.

(4) The Minister responsible for financial matters, after consultation with the provincial government concerned, may, by notice in the National Gazette, exempt any land that is used for the purpose of any mining or industrial activity (including the generation of electricity) from any tax on land imposed by a provincial law, to the extent that the law imposes a tax otherwise than on the unimproved value of the land.

60. - HEAD TAX.

(1) For the purposes of Section 57(g), a head tax -

- (a) may be imposed on corporations as well as on natural persons; and
- (b) shall not be imposed by reference to income.

(2) Subsection (1) does not prevent exemptions, in whole or in part, from a head tax being provided for by reference to capacity to pay.

Subdivision C. - Avoidance of Discrimination.

61. - DISCRIMINATION.

(1) Where in the opinion of the National Parliament a tax imposed by a provincial law -

- (a) discriminates unjustly between any persons; or
- (b) discriminates against persons who are not residents of the province, or against products originating or coming from outside the province; or
- (c) is set, wholly or partly, at an unreasonably high level,

an Act of the Parliament that is expressed to be made for the purpose may make such provision as seems to the Parliament proper to remove or correct the discrimination or unreasonableness.

(2) The powers of the National Parliament under Subsection (1) include power -

- (a) to repeal or otherwise alter the offending law; or
- (b) to order compensation or restitution to be made by the provincial government.

(3) A question -

- (a) whether or not a provincial law is discriminatory or unreasonable for the purposes of this section; or

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- (b) as to the propriety of any Act of the Parliament made for the purpose of this section,

is non-justiciable.

62. - SPECIAL REFERENCES TO NATIONAL FISCAL COMMISSION.

(1) The National Parliament shall not make an Act of the Parliament under Section 61 unless -

- (a) the National Executive Council has referred the matter to the National Fiscal Commission; and
- (b) either -
- (i) the Commission has reported to the National Parliament and to the provincial assembly in accordance with Subsection (3) and the Parliament has considered the report; or
 - (ii) the Commission fails to report, as required by Subsection (3), to the Parliament within 30 days after notice of the reference is published under Subsection (2).

(2) On the making of a reference under Subsection (1)(a), the National Executive Council shall cause notice of the reference to be published in the National Gazette.

(3) Where a matter is referred to the National Fiscal Commission under Subsection (1)(a), it is the duty of the Commission to report on the matter to the National Parliament and to the provincial assembly within 30 days after notice of the reference is published under Subsection (2).

Division 3. - Grants and Aid from National Government.

63. - GRANTS GENERALLY.

The National Government may make the following grants to a provincial government, in accordance with this Division :-

- (a) unconditional grants in accordance with Section 64; and
- (b) conditional grants in accordance with Section 65; and
- (c) derivation grants in accordance with Section 66; and
- (d) the share of national taxation provided for by Section 67.

64. - UNCONDITIONAL GRANTS.

(1) For each fiscal year, the National Government shall, out of moneys lawfully available for the purpose, make unconditional grants to the provincial governments.

(2) The minimum amount of the unconditional grant to a provincial government in respect of a fiscal year shall be as

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calculated in accordance with Schedule 1.

65. - CONDITIONAL GRANTS.

(1) The National Government may, out of moneys lawfully available for the purpose, make conditional grants to a provincial government, for any purpose agreed on by the National Government and the provincial government.

(2) A grant under Subsection (1) -

- (a) may be subject to such conditions as are agreed on by the National Government and the provincial government; and
- (b) shall be expended only on and for the purpose for which it was made and in accordance with the conditions so agreed on.

66. - DERIVATION GRANTS.

(1) For each fiscal year, the National Government shall, out of moneys lawfully available for the purpose, pay to a provincial government an amount equal to 1.25% of the value derived from the province of goods exported from Papua New Guinea during the preceding fiscal year, less the total amount received by the provincial government under Section 67(2)(a) in respect of that preceding fiscal year.

(2) For the purposes of Subsection (1), the value derived from a province shall be calculated in accordance with Schedule 2.

(3) For the purposes of this section, no account shall be taken of -

- (a) goods exported as passengers' baggage or personal effects; or
- (b) ship's or aircraft's stores for the use of the vessel or aircraft on which they are exported; or
- (c) imported goods not released from bond before re-export; or
- (d) goods comprising or including imported components where the value attributable to those components (exclusive of any increment of value due to processing in Papua New Guinea) exceeds 70% of the export value.

67. - TRANSFER OF PROCEEDS OF CERTAIN NATIONAL TAXATION.

(1) In this section -

"net payment to the State", in relation to any amount of royalty or fees, means the amount of the payment concerned, less -

- (a) the costs of collection and recovery; and
- (b) any amount that is paid by the State, or that the State is liable to pay, to any person under any other law;

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"royalty" -

- (a) in relation to any goods referred to in Subsection (2)(a)(i) - means any net payment to the State in consideration of the right to win, cut or take the goods that is calculated by reference to the value or amount of the goods won, cut or taken; and
- (b) in relation to private hydro-electric undertakings - means any net payment to the State in consideration of the right to take or use water for the purpose of the generation of electricity that is calculated by reference to the volume of

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water taken or used or to the value or amount of electricity produced.

(2) As soon as practicable after the end of each fiscal year, the National Government shall, out of moneys lawfully available for the purpose, grant to a provincial government an amount calculated by the National Executive Council as being equal to the sum of -

(a) subject to Subsection (3), royalties -

(i) in respect of -

- (A) minerals (other than petroleum and natural gas); and
- (B) petroleum; and
- (C) natural gas; and
- (D) timber; and
- (E) fish,

won, cut or taken from the province; and
(ii) in respect of electricity produced from private hydro-electricity undertakings in the province,

collected by the National Government during the fiscal year in question; and

(b) subject to Subsection (4), the net payments to the State of fees (other than insurance premiums, inspection charges and similar payments) for the registration or licensing of motor vehicles, and for licences and permits to drive motor vehicles, paid in the province under any Act of the Parliament relating to motor vehicles.

(3) Where there is a doubt as to the province (if any) in which any fish was taken, the National Executive Council may apportion, for the purposes of this section, royalties collected by the State in respect of the fish in such reasonable manner as seems to it just and in accordance with the purpose of this section.

(4) If at any time the arrangements for -

- (a) the grant of registrations, licences and permits referred to in Subsection (2)(b); or
- (b) the making or acknowledgement of payments for such registrations, licences or permits,

are such that they tend to be granted, made or given in a province other than the province in which they would be granted, made or given if there were suitable arrangements in the latter, the National Executive Council shall make or cause to be made such adjustments as between the amounts payable to the respective provinces in accordance with Subsection (2)(b) as it thinks appropriate.

*Organic Law on Provincial Government***68. - PRE-APPROPRIATION OF CERTAIN GRANTS.**

(1) Any amount payable by the National Government to a provincial government -

- (a) as the minimum amount of unconditional grant payable in accordance with Section 64(2); or
- (b) by way of a derivation grant in accordance with Section 66; or
- (c) by way of the share of national taxation provided for by Section 67,

shall be paid out of the Consolidated Revenue Fund which is, to the necessary extent, appropriated accordingly.

(2) A certificate by the Minister responsible for financial matters as to any amount payable in accordance with Subsection (1)(b) or (c) is, in the absence of proof to the contrary, proof that that amount is so payable.

*Division 3. - Other Provincial Revenue.***69. - COURT FEES AND FINES.**

(1) Where a provincial law made for the purpose of Section 41 provides for the imposition of fines or penalties, or of forfeitures, for any offence against any provincial law, the amount of the fines or penalties shall be paid, or the forfeitures shall be made, as the case may be, to the provincial government.

(2) Where a provincial law made for the purpose of Section 41 provides for a fee to be payable in any court, the amount of the fee shall be paid to the provincial government.

70. - OTHER FEES, CHARGES, ETC.

A provincial law may impose, or may provide for the imposition of, fees or charges in respect of goods or services supplied, rendered or made available, or to be supplied, rendered or made available, under a provincial law.

*Division 4. - Borrowings.***71. - LOANS AND GUARANTEES.**

(1) In this section -

"medium- or long-term loan" means a loan other than a short-term loan;

"short-term loan" means a loan under which, by agreement or by informal arrangement, both principal and interest are payable on demand or within a period not exceeding six months, and includes any case where, by agreement or by informal arrangement, on the repayment of any such loan a further loan will or may be expected to be granted such that the total repayment period over the loans will exceed, or may be expected to exceed, six months.

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(2) For the purposes of this section, money shall be deemed to have been borrowed on loan where, by agreement or arrangement, payment for any goods or services is deferred, and the period of the deferment shall be deemed to be the repayment period of the loan.

(3) Subject to, and in accordance with, any provincial law regulating the obtaining of loans and the giving of guarantees by it, a provincial government may -

- (a) borrow money on short-term loan, or guarantee a short-term loan to any other person; or
- (b) borrow money from the State; or
- (c) with the approval of the Minister responsible for financial matters -
 - (i) borrow money on medium- or long-term loan from any other person; or
 - (ii) guarantee a medium- or long-term loan to any person.

*Division 6. - Accounts and Audit.***72. - ACCOUNTS AND RECORDS TO BE KEPT.**

A provincial government shall cause to be kept proper accounts and records of its transactions and affairs, and shall do all things necessary to ensure that -

- (a) all payments out of its moneys are correctly made and properly authorized; and
- (b) adequate control is maintained over its assets or assets in its custody, and over the incurring of expenses by it.

73. - SUBMISSION OF PROVINCIAL ACCOUNTS.

As soon as practicable after the end of a fiscal year, each provincial government shall submit to the Minister responsible for provincial affairs a full statement of the financial position and of the affairs of the province for that year, in such form and detail, and containing such information, as the Minister requires.

74. - AUDIT OF PROVINCIAL ACCOUNTS.

(1) Subject to Subsections (2) and (3), the provisions of Section 214 (*functions of the Auditor-General*) of the National Constitution, and of any Act of the Parliament relating to the inspection and audit of the public accounts of Papua New Guinea and of transactions referred to in Section 214(1) of the National Constitution, extend to the accounts, moneys and property of a provincial government.

- (2) The report of the Auditor-General shall be given to -
- (a) the Minister responsible for provincial affairs; and
 - (b) the provincial government.

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(3) Subdivision VIII.1.C (*The Public Accounts Committee*) of the National Constitution does not apply in respect of the accounts, moneys or property of a provincial government.

PART XI. - INTER-GOVERNMENTAL RELATIONS.

Division 1. - The National Fiscal Commission.

75. - ESTABLISHMENT OF THE COMMISSION.

As required by Section 187H(1) (*inter-governmental relations*) of the National Constitution, a National Fiscal Commission is hereby established.

76. - COMPOSITION OF THE COMMISSION.

(1) The National Fiscal Commission shall consist of five members, all of whom must be citizens.

(2) The members of the Commission shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after consultation with -

- (a) the heads of the provincial executives of the provinces whose constitutions have come into effect (other than any provinces whose provincial governments are suspended); and
- (b) the chairmen or analogous officers of provincial constituent assemblies for the provinces that have such assemblies but that do not yet have constitutions that are in effect; and
- (c) the Presidents of Local Government Area Authorities for other provinces.

(3) Unless he earlier ceases to hold office, a member of the Commission holds office for a term of four years, and is eligible for re-appointment.

77. - INDEPENDENCE OF THE COMMISSION.

In the exercise and performance of its powers, functions, duties and responsibilities, the National Fiscal Commission is not subject to direction or control by any person or authority.

78. - FUNCTIONS OF THE COMMISSION.

(1) In addition to any other functions, duties and responsibilities under this Organic Law or any Act of the Parliament, the National Fiscal Commission has the following functions and duties :-

- (a) in accordance with Section 62, to consider, and to report to the National Parliament and to the provincial assembly concerned on, any alleged discrimination or unreasonableness in provincial taxation, and any proposals by the National Government to remove or correct it; and
- (b) in accordance with Section 79, to consider, and to make recommendations to the National

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Executive Council on, the allocation of unconditional grants under Section 64 to provincial governments and as between provincial governments; and

- (c) to consider, and to make recommendations to the National Government and provincial governments on, other fiscal matters relating to provincial government referred to it by the National Government or a provincial government.

(2) Copies of all advice, reports and recommendations by the Commission referred to in Subsection (1) shall be sent by it to -

- (a) the Speaker of the National Parliament, for presentation to the Parliament; and
 (b) the Minister responsible for provincial affairs; and
 (c) the Speaker or analogous officer of each provincial legislature; and
 (d) the head of each provincial executive.

79. - PRINCIPLES OF ALLOCATION OF UNCONDITIONAL GRANTS.

(1) This section applies only in respect of amounts of unconditional grants in excess of the minimum amounts of such grants provided for by Section 64(2) and Schedule 1.

(2) Before a decision is made as to -

- (a) the total amount of the unconditional grants under Section 64 for any fiscal year; or
 (b) the allocation of such amounts as between provinces,

the Minister responsible for provincial affairs shall consult the National Fiscal Commission on the matter.

(3) In accordance with Section 78, the Commission shall consider the matter, and shall recommend to the National Executive Council a just and equitable allocation, within the limits of finance available, to each province.

(4) In making a recommendation under Subsection (3), the Commission -

- (a) shall, in principle, base its decision on equal grants per head of population, or its estimate of population, to each province; and
 (b) may depart from the principle set out in paragraph (a) where, and to the extent that, in its opinion -
- (i) the location and physical nature of a province; or
 (ii) the lack of development of a province; or
 (iii) any other relevant factor (whether or not of a similar kind),

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would make the strict application of that principle unjust or inequitable.

80. - MEETINGS OF THE COMMISSION.

The National Fiscal Commission shall meet at least once in each year, and on such other occasions as are necessary for the performance of its functions and duties, at such times and places as are, subject to any Act of the Parliament made for the purpose of Section 81, determined by it.

81. - PROCEDURES, ETC., OF THE COMMISSION.

Subject to this Organic Law, an Act of the Parliament may make provision for or in respect of -

- (a) the manner of appointment, and the conditions of employment, of members of the National Fiscal Commission; and
- (b) the procedures, powers, functions and duties of the Commission.

*Division 2. - The Premiers' Council.***82. - ESTABLISHMENT OF THE COUNCIL.**

A Premiers' Council is hereby established.

83. - CONSTITUTION OF THE COUNCIL.

The Premiers' Council shall be constituted as provided by Section 187H(2) and (3) (*inter-governmental relations*) of the National Constitution.

84. - FUNCTIONS OF THE COUNCIL.

The Premiers' Council shall meet at least once in each year to discuss -

- (a) all matters regarding grants, loans, taxation and other aspects of provincial finance; and
- (b) the legislative powers of the provinces; and
- (c) any other matters concerning inter-provincial and inter-governmental problems,

with a view, in particular, to avoiding legal proceedings between governments by providing a forum for the non-judicial settlement of inter-governmental disputes.

*Division 3. - Particular Consultations.***85. - CONSULTATION AS TO MAJOR INVESTMENT.**

(1) The National Government and the provincial government shall consult with each other concerning any major investment or proposed investment in or affecting a province, and concerning the implications of any such investment for Papua New Guinea and the province.

(2) Without limiting the operation of Subsection (1), in principle such consultation shall take place as far as practicable before any major or special assistance is given by the National Government or a provincial government in relation to any such investment.

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PART XII. - SUSPENSION OF PROVINCIAL GOVERNMENTS.

Division 1. - Re-establishment.

86. - AFFIRMATION OF POWER OF RE-ESTABLISHMENT.

This Part does not affect the operation of Section 187F (re-establishment of provincial governments) of the National Constitution.

87. - LIFTING OF SUSPENSION.

(1) The suspension of a provincial government by the National Parliament in accordance with Division 2 may be lifted by the Parliament by an absolute majority vote.

(2) The suspension of a provincial government by the National Executive Council under Section 187E(4) (suspension of provincial governments) of the National Constitution may be lifted -

- (a) by resolution of the National Executive Council; or
- (b) by resolution of the National Parliament.

(3) A resolution lifting the suspension of a provincial government may not be rescinded or otherwise altered.

Division 2. - Suspension by the National Parliament.

Subdivision A. - Suspension Generally.

88. - APPLICATION OF DIVISION 2.

(1) This Division applies in relation to the suspension of a provincial government on a ground set out in Section 187E(1) (suspension of provincial governments) of the National Constitution.

(2) This Division does not affect the operation of Section 187E(4) of the National Constitution.

89. - GROUNDS OF SUSPENSION.

A provincial government may be suspended only on a ground set out in Section 187E(1) of the National Constitution.

90. - MOTION FOR SUSPENSION.

(1) A motion for the suspension of a provincial government -

- (a) shall not be moved unless the Head of State, acting with, and in accordance with, the advice of the National Executive Council, has made a report to the Speaker of the National Parliament, for presentation to the Parliament, that, after consultation or attempted consultation with the provincial executive, the National Executive Council is satisfied that -

- (i) a ground for suspension set out in Section 187E(1) of the National Constitution exists; and

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- (ii) the matter cannot be corrected unless the provincial government is suspended; and
 - (iii) the provincial government ought, in the national interest or in the interests of the people of the province, be suspended accordingly,
- giving the reasons for the opinion; and
- (b) may be moved only by a Minister.

(2) A motion for the suspension of a provincial government stands referred to the Commission established under Subdivision B, and may not be withdrawn or dealt with until the Commission has reported to the National Parliament as required by that Subdivision unless -

- (a) in the case of the withdrawal of the motion - the Parliament, by an absolute majority vote, approves its withdrawal; or
- (b) the Commission fails to report as required by that Subdivision.

91. - RESOLUTION FOR SUSPENSION.

(1) A motion for the suspension of a provincial government must be supported on a division, in accordance with the Standing Orders of the National Parliament, by an absolute majority vote expressed on at least two occasions after opportunity for debate on the merits.

(2) The opportunities for debate referred to in Subsection (1) must be separated in time by at least 24 hours.

92. - COMMENCEMENT OF SUSPENSION.

(1) The suspension of a provincial government takes effect at such time as is specified for the purpose in the resolution for suspension, or if no such time is so specified at midnight on the day on which the resolution is made.

(2) If the Parliament so resolves, whether in the resolution for suspension or in a separate resolution, the Minister responsible for provincial affairs may, after the passing of the motion for suspension and before the suspension takes effect, take, or authorize the taking of, any reasonable action that is reasonably necessary for the protection of the property of the provincial government and the orderly assumption of its functions in accordance with Division 3.

(3) Subsection (2) does not authorize the taking of any action that is contrary to any provision of Division III.3 (*basic rights*) of the National Constitution.

*Organic Law on Provincial Government*Subdivision B, - Commission on Proposed
Suspensions of Provincial
Governments.

93. - THE COMMISSION.

(1) An Act of the Parliament shall make provision for a Commission on Proposed Suspensions of Provincial Governments, all of the members of which must be citizens.

(2) The Commission shall consist of -

- (a) four permanent members, at least two of whom are members of the National Parliament other than Ministers; and
- (b) one ad hoc member to represent the interests of the province.

(3) The Act shall make provision for deputies or alternates of the members of the Commission to act in cases where the independence of the Commission may otherwise be in doubt.

94. - FUNCTIONS OF THE COMMISSION.

(1) As soon as practicable after the moving of a motion for the suspension of a provincial government, the Commission shall investigate the matter, with particular reference to the matters set out in the report under Section 90(1)(a).

(2) The Commission shall make its report to the Speaker of the National Parliament, for presentation to the Parliament, within 21 sitting days of the Parliament after the moving of the notice or within such further period as the Parliament allows.

Division 3. - Effect, etc., of Suspension.

95. - APPLICATION OF DIVISION 3.

This Division applies in relation to the suspension of a provincial government -

- (a) by the National Parliament in accordance with Division 2; or
- (b) by the National Executive Council in accordance with Section 187E(4) (*suspension of provincial governments*) of the National Constitution.

96. - EFFECT OF SUSPENSION.

(1) Subject to Subsection (2), while a provincial government is suspended its powers and functions are, as provided for by Section 187E of the National Constitution, divested from it and vested in the National Executive Council, to be exercised and performed in accordance with Sections 97 and 98.

(2) The suspension of a power or function of a provincial government does not affect -

- (a) any right, privilege, obligation or liability

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- acquired, accrued or incurred under or in respect of the suspended power or function; or
- (b) any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation or liability.

97. - EXERCISE OF LEGISLATIVE POWERS, ETC., OF SUSPENDED PROVINCIAL GOVERNMENTS.

(1) While a provincial government is suspended; the National Executive Council has and may exercise and perform, subject to Subsection (2), all the legislative powers, functions, duties and responsibilities of the provincial legislature.

(2) A law made in the exercise of the power conferred by Subsection (1) -

- (a) shall be made by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; and
- (b) shall be tabled in the National Parliament as soon as practicable after being made; and
- (c) unless earlier repealed, expires at the end of the period of seven sitting days of the Parliament after it is made, unless within that period the Parliament, by resolution, confirms it.

98. - EXERCISE OF EXECUTIVE POWERS, ETC., OF SUSPENDED PROVINCIAL GOVERNMENTS.

(1) While a provincial government is suspended, the National Executive Council has and may exercise and perform all the executive powers, functions, duties and responsibilities of the provincial government.

(2) The power conferred by Subsection (1) may be exercised -

- (a) by the Head of State, acting with, and in accordance with, the advice of the National Executive Council; or
- (b) subject to any decision or direction of the National Executive Council, by a Minister authorized by the National Executive Council for the purpose, acting on behalf of the Council.

99. - VALIDITY AND EFFECT OF EXERCISE OF SUSPENDED POWERS, ETC.

(1) The exercise or performance of a power, function, duty or responsibility of a suspended provincial government by the National Executive Council is as valid and effectual, and has the same effect, for all purposes as if it had been exercised or performed by the provincial government.

(2) All things that might have been done or suffered, or might have continued to be done or suffered, by or in relation to the suspended provincial government may be done or suffered, or may continue to be done or suffered, by or in relation to the State in the name and on behalf of the suspended government.

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(3) The exercise or performance of a power, function, duty or responsibility of a suspended provincial government by the National Executive Council does not affect the identity or existence of the provincial government and of its separate rights and liabilities, and for those purposes the National Executive Council shall be treated as the agent of the suspended provincial government for all purposes.

PART XIII. - GRADATION OF PROVINCIAL GOVERNMENTS.

100. - LIMITATIONS ON PROVINCIAL GOVERNMENTS.

With the approval of the National Parliament given by resolution supported by a two-thirds absolute majority vote, the constitution of a province may provide that some or all of the powers, functions, duties or responsibilities of provincial governments provided for by this Organic Law -

- (a) shall not be assumed by the provincial government; or
- (b) shall be assumed subject to such conditions and limitations as are provided for in that constitution.

101. - EFFECT OF LIMITATIONS.

(1) In a resolution approving limitations on the powers, functions, duties or responsibilities of a provincial government, the National Parliament may make it a condition of its approval that the province accept -

- (a) such adjustments to the aid (including financial support) to be otherwise provided for the province under this Organic Law; and
- (b) such increased powers of the National Government in relation to the province,

as the Parliament thinks appropriate in the circumstances and includes in the resolution.

(2) The acceptance by the province of the conditions to which an approval is made subject under Subsection (1) shall be signified -

- (a) where the limitations on the powers, functions, duties and responsibilities of the province are to be included in the original constitution of the province - in the same way and subject to the same conditions as those by and on which that constitution is or is to be adopted; or
- (b) where the limitations are to be imposed by alteration to the constitution of the province - in the same way and subject to the same conditions as those by and on which that constitution may be altered.

(3) Where the conditions to which an approval is made subject are accepted under Subsection (2) by the province, this Organic Law and the constitution of the province take effect subject to the conditions included, under Subsection (1),

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in the resolution.

PART XIV. - MISCELLANEOUS.

102. - PROVINCIAL GOVERNMENT PURPOSES TO BE PUBLIC PURPOSES.

The purposes of this Organic Law and of the system of Provincial Government for Papua New Guinea established by Part VIA (*Provincial Government and Local Level Government*) of the National Constitution are public purposes for the purpose of that Constitution and of all Acts of the Parliament.

103. - POWERS, PRIVILEGES AND IMMUNITIES OF PROVINCIAL LEGISLATURES.

(1) A provincial law may make provision declaring the powers (other than legislative powers), privileges and immunities of the provincial legislature, and of its members and committees, but so that the powers, privileges and immunities so declared do not exceed the powers, privileges and immunities of the National Parliament under Section 115 (*Parliamentary privileges, etc.*) of the National Constitution.

(2) Until a provincial law makes provision in accordance with Subsection (1), Section 115 of the National Constitution, with the necessary modifications, applies.

104. - HANDING-OVER OF CERTAIN ASSETS OF THE NATIONAL GOVERNMENT.

(1) The Minister responsible for provincial affairs may, at the request of a provincial government, by order vest in the provincial government any land or building formerly used by the National Government for the purpose of carrying out any activity responsibility for which has been, or is to be, assumed by the provincial government.

(2) Any such land or building vests for -

- (a) the largest interest for which, under any Act of the Parliament in force at the time of the making of the order, the National Government has the power to vest it in the provincial government; or
- (b) for such lesser interest as is agreed on between the Minister and the provincial government.

PART XV. - IMMEDIATE AND TRANSITIONAL PROVISIONS.

105. - EFFECT OF PART XV.

The provisions of this Part have effect notwithstanding anything in the preceding provisions of this Organic Law.

106. - INTERPRETATION OF PART XV.

In this Part, "provincial government body" means a body declared to be a provincial government body under the pre-Independence *Provincial Government (Preparatory Arrangements) Act 1974*.

107. - CONTINUANCE OF PREPARATORY ARRANGEMENTS ACT.

(1) Except as expressly provided in this Organic Law, in

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its application to and in relation to a provincial government body established, immediately before the commencement of this Organic Law, for a province the pre-Independence *Provincial Government (Preparatory Arrangements) Act 1974* continues in force as though this Organic Law had not been made.

(2) Subsection (1) ceases to apply when a Charter is granted under Section 6 in relation to the province concerned.

(3) Except as provided by this section, the pre-Independence *Provincial Government (Preparatory Arrangements) Act 1974* is repealed.

108. - FIRST PROVINCIAL CONSTITUENT ASSEMBLIES.

A provincial government body established for a province immediately before the commencement of this Organic Law shall be deemed to have been recognized under Section 2 as the provincial constituent assembly for the province.

109. - FIRST AUTHORIZATIONS OF GRANT OF PROVINCIAL GOVERNMENT.

The National Parliament shall be deemed to have made a resolution under Section 4 authorizing the National Executive Council to approve the grant of provincial government to all provinces in respect of which provincial government bodies were established immediately before the commencement of this Organic Law.

110. - RESCISSION OF FIRST RECOGNITIONS AND AUTHORIZATIONS.

The recognition of a provincial constituent assembly or the authorization of approval to the grant of provincial government to a province deemed to have been effected by Section 108 or 109 may be rescinded with, and only with, the consent of the provincial constituent assembly concerned.

111. - ABOLITION OF FORMER PROVINCIAL GOVERNMENT BODIES.

When the constitution of a province for which a provincial government body was established comes into effect -

- (a) the provincial government body is abolished; and
- (b) all assets and liabilities of the body are transferred to and become assets of the provincial government; and
- (c) all legal proceedings pending by or against the body may be continued by or against the provincial government.

112. - CONTINUANCE OF CERTAIN NATIONAL LAWS.

(1) Subject to Subsections (2) and (3) and to Sections 107, 113 and 114, each Act of the Parliament made before the date of the coming into effect of the constitution of a province continues in force, and may be altered by another Act, after that date.

(2) When a provincial law is made in accordance with Division VI.3, all Acts of the Parliament that were -

- (a) made with respect to a subject or subjects to which that Division applies; and

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(b) continued in force in relation to the province by Subsection (1),

cease to have effect, to the extent of any inconsistency, in relation to the province as if they had been repealed, in relation to the province, by another Act.

(3) As soon as practicable after receiving a request from a provincial government to do so, the National Executive Council shall take whatever action is in its power to secure the repeal, in relation to the province, of a law dealing with a subject to which Division VI,3 applies to the extent that it does not concern matters of national interest.

113. - CONTINUANCE OF NATIONAL TAXING POWERS.

(1) Subject to Subsection (2), in particular any Act of the Parliament dealing with any kind of taxation that, under Section 56, is reserved for the provincial government remains in force in accordance with Section 112 until a provincial law is made dealing with that kind of taxation.

(2) A provincial law may declare that an Act of the Parliament to which Subsection (1) applies shall cease to have effect in relation to the province, and thereupon the Act shall be deemed to be repealed by another Act.

114. - FIRST PROVINCIAL LAWS,

(1) Subject to the National Constitution and to this Organic Law, on the date on which the constitution of a province for which a provincial government body was established comes into effect all laws made by the provincial government body and in force immediately before that date shall be deemed to be provincial laws for the province.

(2) Where an Act of the Parliament made before the grant to a province of a Charter under Section 6 deals with a matter that could be dealt with by a provincial law to which Division VI:3 applies, the Head of State, acting with, and in accordance with, the advice of the National Executive Council given at the request of the provincial executive or the provincial legislature, may, by notice in the National Gazette, declare that the Act shall apply in a province as if it were a provincial law.

(3) A law that is deemed under Subsection (1) to be a provincial law takes effect, and a notice under Subsection (2) may provide that an Act of the Parliament shall take effect under that subsection, subject to such changes as to names, titles, offices, persons and institutions, and to such other formal and non-substantive changes, as are necessary to adapt the law to the circumstances of the province and to the constitution of the province.

(4) A notice under Subsection (2) shall not be revoked or otherwise altered except at the request of the provincial executive or the provincial legislature.

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(5) When a notice is published under Subsection (2), the Act of the Parliament to which it relates shall, subject to any changes made in accordance with the notice, be deemed -

- (a) to be a provincial law that came into force on the date of publication of the notice or on such later date as is provided for in the notice; and
- (b) to have been repealed, on that date, by another Act.

Sec. 64(2):

SCHEDULE 1.

MINIMUM UNCONDITIONAL GRANTS.

Sch.1.1. - INTERPRETATION OF SCHEDULE 1.

In this Schedule -

"the adjusted base figure", for a transferred activity, in relation to a year of grant, means the adjusted base figure calculated for that year in accordance with Section Sch.1.2;

"the base figure", for a transferred activity, means -

(a) for the year of grant 1977-78 -

- (i) the cost to the National Government, in the fiscal year 1976-77, of the transferred activities in the province; plus
- (ii) in the case of the Bougainville Province - the amount paid by the National Government to the provincial government body for that province in respect of the activities to which paragraphs (c) and (d) of the definitions of "transferred activity" in this section relate, and

(b) for any subsequent year of grant - the adjusted base figure for the preceding year of grant;

"the preceding fiscal year" -

- (a) in relation to the year of grant 1977-78 - means the fiscal year 1976-77; and
- (b) in relation to any later year of grant - means the fiscal year immediately preceding that year of grant;

"transferred activity", in relation to a province, means an activity that -

- (a) was carried out by the National Government in the fiscal year 1976-77; and

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- (b) was carried out by the provincial government at some time after the fiscal year 1976-77 or is to be carried out in the year of grant,

and includes, in relation to the Bougainville Province, any activity that -

- (c) was carried out by the provincial government body for that province in the fiscal year 1976-77; and
 (d) was previously carried out by the National Government;

"the year of grant" means the fiscal year for which the minimum amount of unconditional grant, under Section 64, is to be calculated.

Sch.1.2. - THE ADJUSTED BASE FIGURE.

(1) Subject to the succeeding provisions of this section, the adjusted base figure for a transferred activity, in relation to a province and to a year of grant, means the smaller of the amounts calculated in accordance with the formulas -

$$A + AB; \text{ and} \\ A + AC,$$

where -

- A = the base figure for the activity.
 B = the percentage increase (if any) in the cost of living in the preceding fiscal year.
 C = the percentage increase or decrease (shown as a positive or negative figure, as the case requires) in the total of the payments to the Consolidated Revenue Fund for the year of grant as compared with the total for the preceding fiscal year, from -

- (i) income tax and corporate taxes; and
 (ii) customs and excise duties; and
 (iii) the Mineral Resources Stabilization Fund established under the pre-Independence *Mineral Resources Stabilization Fund Act 1974*, or any fund established in place of that fund; and
 (iv) non-repayable grants (conditional and unconditional) from foreign governments.

(2) For the purpose of calculating the adjusted base figure for a transferred activity that is, in the year of grant, to be carried out for the first time by the provincial government, an adjusted base figure shall be calculated in relation to each year of grant commencing with the year 1977-78 and ending with the year of grant in question, and the final figure so obtained becomes the adjusted base figure for the transferred activity for the year of grant in question.

(3) In Subsection (1), the reference to the cost of living is a reference to that cost obtained by averaging the Consumer

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Price Index and the Statistician's Import Price Index, adjusted (if the Government Statistician thinks it proper to do so for the purpose of comparison) to make allowance for any changes in the bases of calculation.

(4) If the Consumer Price Index or the Statistician's Import Price Index is not available at any time, the Government Statistician shall calculate the increase in the cost of living for the purposes of Subsection (1) on such basis as seems to him to give, as nearly as may be, the result required by that subsection and Subsection (3).

(5) The Government Statistician is not subject to the control or direction of any person or authority as to the manner in which calculations are to be made for the purposes of this section.

Sch.1.3. - MINIMUM AMOUNT OF THE UNCONDITIONAL GRANT.

The amount of the unconditional grant, under Section 64, to a provincial government for a year of grant shall be at least the amount of the adjusted base figure for all activities that are transferred activities in relation to the province, less the estimated cost to the National Government, for the year of grant, of the salary and allowances of members of the National Public Service assigned to the provincial government for the carrying out, in the year of grant, of transferred activities.

Sch.1.4. - CHANGE OF FISCAL YEAR.

If at any time there is a change in the period of the fiscal year, appropriate proportional changes shall be made in the adjusted base figure for each year or years in which the change occurs, and in the base figure for the next fiscal year.

Sec. 66.

SCHEDULE 2.

VALUATION OF GOODS AND APPORTIONMENT BETWEEN PROVINCES.

Sch.2.1. - INTERPRETATION OF SCHEDULE 2.

In this Schedule -

from Papua New Guinea, means, subject to Section Sch.2.2, the F.O.B. value at the port or airport of export;

"goods" includes electricity, but does not include negotiable instruments or the like;

"port or airport of export", in relation to any goods, means the port or airport at which the goods are entered for export;

"processing", in relation to any goods, includes any packaging, or submission to any process of manufacture, by which the export value of the goods is increased;

"province of production" means -

- (a) in the case of goods imported into Papua New Guinea and subsequently re-exported after processing - the province in which they were processed; and
- (b) in the case of any other goods, other than imported goods - the province in which they were originally produced.

*Organic Law on Provincial Government***Sch.2.2. - EXPORT VALUES ASSESSED UNDER OTHER LAWS.**

Where for the purposes of the calculation of the amount of tax payable under any Act of the Parliament an export value is attributed to or determined for any goods, the value so attributed or determined (or if there is more than one such value the higher or highest of them) shall be deemed to be the export value of the goods for the purposes of this Schedule.

Sch.2.3. - EXPORT OF GOODS FROM PROVINCE OF PRODUCTION.

In the case of any goods exported from Papua New Guinea without processing in any province other than the province of production, the export value of the goods shall be attributed to the province of production.

Sch.2.4. - PROCESSED GOODS.

(1) In the case of any goods exported from Papua New Guinea that have been processed, before export, in a province other than the province of production, the export value of the goods shall be apportioned between the province of production and the province in which the processing took place, in accordance with the amounts or proportions of that value that are attributable to the unprocessed goods and to the processing, respectively.

(2) For the purpose of the application of Subsection (1) to goods that are processed more than once, the reference in that subsection to the amount or proportion of the export value that is attributable to the processing shall be read as a reference to the amount or proportion of that value that is attributable to any re-processing, and the balance of the value shall be apportioned as if -

- (a) the goods were exported immediately before the re-processing; and
- (b) that balance were the export value of the goods.

Sch.2.5. - APPORTIONMENT OF VALUE OF CERTAIN FISH.

Where there is any doubt as to the province (if any) in which any fish was taken or processed, the National Executive Council may, for the purposes of this Schedule, apportion the export value of the fish in such reasonable manner as seems to it just and in accordance with the purposes of Section 66 and of this Schedule.

