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INDEPENDENT STATE OF PAPUA NEW GUINEA

THE CONSTITUTION

ALTERATION TO THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.

The Government proposes to alter the Organic Law on Provincial Governments and Local-level Governments, and pursuant to Section 14(2) (making of alterations to the Constitution and Organic Law) of the Constitution, I, Jeffrey Nape, Speaker of the National Parliament hereby publish the proposed law:-

INDEPENDENT STATE OF PAPUA NEW GUINEA

PROPOSED LAW TO ALTER THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.

The Organic Law on Provincial Governments and Local-level Governments
(Amendment No.) Law.

ARRANGEMENT OF CLAUSES.

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1. Outline of Provincial Government and Local-level Government Finances (Amendment of Section 82).
2. Repeal of sections.
3. Insertion of new Section 95C.

"95C. PROVISION OF GRANTS DURING FISCAL YEARS 2004 TO 2007"

4. Repeal and replacements of Schedules 1, 2, 3, 4, 5 AND 6.

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PART B - AMENDMENTS RELATING TO A NEW INTERGOVERNMENTAL FINANCING SYSTEM (FISCAL YEARS 2008 AND BEYOND).

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

5. Application of this Law.
6. General Principles (Amendment of Section 1).
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8. Repeal and replacement of Subdivision B of Division 3 of Part III.

"Subdivision B.—Administrative Functions, and Service Delivery Functions and Responsibilities of Provincial Governments."

"43. PRINCIPAL ADMINISTRATIVE FUNCTIONS, AND SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES."

9. Repeal and replacement of Subdivision B of Division 4 of Part III.

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"45. PRINCIPAL ADMINISTRATIVE FUNCTIONS, AND SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES OF LOCAL-LEVEL GOVERNMENTS."

10. Repeal and replacement of Section 50.

"50. DELEGATION OF LEGISLATIVE POWERS."

11. Assigned service delivery functions and responsibilities (amendment of Section 80).
12. Amendment of heading of Part IV.
13. Repeal and replacement of Division 2 of Part IV.

"Division 2. — Provincial Government and Local-level Government Financial Arrangements."

"82. OUTLINE OF PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT FINANCIAL ARRANGEMENTS."

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"Division 2A. —Division and Distribution of Revenue Among and Between the Levels of Government and Other Financial Arrangements."

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"82G. ADDITIONAL PAYMENTS."

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15. Repeal and replacement of Section 83.

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"85 PROVINCIAL AND LOCAL LEVEL TAXES, FEES AND CHARGES IN EXISTENCE IMMEDIATELY BEFORE 1 JANUARY 2008."**"86. PROVINCIAL TAXES, FEES AND CHARGES."****"87. LOCAL-LEVEL TAXES, FEES AND CHARGES."**

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18. Repeal and replacement of Section 90.

"90. ANTI-DISCRIMINATION."

19. Resource development process (amendment of Section 116).

20. National Economic and Fiscal Commission (amendment of section 117).

21. Notice of provincial laws and local-level laws (amendment of Section 140).

22. Repeal and replacement of Section 141.

"141. COMMENCEMENT OF PROVINCIAL LAWS AND LOCAL-LEVEL LAWS."

23. Insertion of new Schedule 2.

**"SCHEDULE 2 – TRANSITIONAL AND SAVINGS
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INDEPENDENT STATE OF PAPUA NEW GUINEA

**ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS
(AMENDMENT LAW NO.) LAW.**

Being a law to alter the *Organic Law on Provincial Governments and Local-level Governments* relating to the fiscal years 2004 to 2007, a new intergovernmental financing system (fiscal years 2008 and beyond) and for related purposes,

MADE By the National Parliament to come into operation-

(a) in relation to sections 1, 2, 3 and 4 of this Organic Law – shall be deemed to have come into operation on 1 January 2004; and

(b) in relation to sections 5 to 14 and sections 18 to 20 - to come into operation on 1 January 2007; and

(c) in relation to sections 15, 16, 17, 21, 22 and 23 – to come into operation on 1 January 2008.

**PART A - AMENDMENTS RELATING TO THE FISCAL YEARS
2004 TO 2007.**

**1. OUTLINE OF PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT FINANCES
(AMENDMENT OF SECTION 82).**

Section 82 of the *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing paragraph (b) and substituting the following new Paragraph—

"(b) the grants from the National Government as provided for by Section 95C; and"

2. REPEAL OF SECTIONS.

The *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing Sections 91, 92, 93, 94, 95, 96 and 97.

*Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued***3. INSERTION OF NEW SECTION 95C.**

The *Organic Law on Provincial Governments and Local-level Governments* is amended by inserting after Section 95B the following new Section—

"95C. PROVISION OF GRANTS DURING FISCAL YEARS 2004 TO 2007.

- "(1) The National Government, in the fiscal years commencing on 1 January 2004, 1 January 2005, 1 January 2006 and 1 January 2007—
- (a) shall make the following grants to each Provincial Government—
 - (i) function grant; and
 - (ii) block grant; and
 - (iii) provincial and local level staff grant; and
 - (iv) derivation grant; and
 - (v) such other economic grants as are specified in any other law or agreement; and
 - (b) may make to a Provincial Government a less-developed districts grant; and
 - (c) shall make to each Local-level Government (other than urban Local-level Governments) a rural Local-level Government grant; and
 - (d) shall make to each urban Local-level Government a town services grant.
- "(2) The grants referred to in Subsection (1) shall be made and used in accordance with Schedule 1 and any Act of the Parliament made for the purpose.
- "(3) This section ceases to have effect on 31 December 2007."

4. REPEAL AND REPLACEMENT OF SCHEDULES 1, 2, 3, 4, 5 AND 6.

The *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing Schedules 1, 2, 3, 4, 5 and 6 and replacing them with the following new Schedule—

"Section 95C

"SCHEDULE 1.

"SCHEDULE 1 - GRANTS PAYABLE TO PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS FOR THE FISCAL YEARS COMMENCING 1st JANUARY 2004, 1st JANUARY 2005, 1st JANUARY 2006 AND 1st JANUARY 2007.

"Sch. 1.1. Function Grants.

- 1.1.1. The National Government shall make to each Provincial Government a separate function grant for the cost of the administration in the province of each of the following-
- (a) primary health;
 - (b) basic education;
 - (c) maintenance of transport infrastructure and buildings; and
 - (d) village court officials allowances.
- 1.1.2. When a function grant is made, the National Government –
- (a) shall specify the purpose (being one of the purposes specified in Section Sch. 1.1.1) for which it is made; and
 - (b) may specify that the grant may be used to meet the cost of salaries, wages or capital items (other than maintenance).
- 1.1.3. A Provincial Government –
- (a) shall use a function grant only for the purposes specified in accordance with Section Sch. 1.1.2(a); and
 - (b) may use a function grant to meet the cost of salaries, wages or capital items (other than maintenance) only if specified in accordance with Section Sch. 1.1.2(b); and
 - (c) shall allocate to spend at least one half of each function grant in the districts.
- 1.1.4. The amount of function grants shall be calculated in accordance with Section Sch. 1.3.

"Sch. 1.2. Block Grants.

- 1.2.1. The National Government shall make to each Provincial Government a block grant.
- 1.2.2. Subject to Section Sch. 1.2.3, the use of the block grant should be at the discretion of the Provincial Government.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

- 1.2.3. The Provincial Government shall allocate to spend at least one half of the block grant in the districts.
- 1.2.4. The amount of the block grant shall be calculated in accordance with Section Sch. 1.3.
- "Sch. 1.3. **Calculation of Function Grants and Block Grants.**
- 1.3.1. The minimum amount to be available for apportionment, in accordance with Section Sch. 1.3.2, between functions grants and the block grant to a province, shall be calculated in accordance with the formula –
- (a) K10 per head of population of the province (being the population of the province according to the most recent national census figures); plus
 - (b) K4 per square kilometre of the certified land mass of the province.
- 1.3.2. The National Executive Council shall, in consultation with the Provincial Government concerned, determine the proportion of the minimum grant calculated in accordance with Section Sch. 1.3.1 (or such larger amount as may be determined by the National Government) which is to be applied to the function grants and the block grant for the province.
- "Sch. 1.4. **Provincial and Local-level Staff Grant.**
- 1.4.1. The National Government shall make to each Provincial Government and Local-level Government a provincial and local-level staff grant.
- 1.4.2. The amount of the provincial and local-level staff grant shall be an amount equal to the sum of the salaries and allowances, and the cost of other conditions of employment as prescribed by an Act of Parliament, for the –
- (a) offices of the Provincial Administrator and District Administrators as provided for in Section 73;
 - (b) extended service of the National Departments and agencies as provided for in Section 80;
 - (c) teaching services as provided for in Section 77;
 - (d) other staff as provided for in Section 78; and
 - (e) Provincial Government and Local-level Government Secretariats as provided for in Section 81.
- 1.4.3. A –
- (a) provincial staff grant shall be used towards the cost of staffing referred to in Section Sch. 1.4.2; and
 - (b) local-level staff grant shall be used towards the cost of staffing referred to in Section Sch. 1.4.2.
- 1.4.4. The provisions of Section Sch. 1.4 do not limit the right of a Provincial Government or Local-level Government to apply any revenues raised by the Provincial Government or the Local-level Government to the cost of their staffing.
- "Sch. 1.5 **Derivation Grant.**
- 1.5.1. In Section Sch. 1.5 –
- "export value", in relation to a primary product, means, subject to Section Sch. 1.5.2, the FOB value value at the port or airport of export;
- "port or airport of export", in relation to any primary product, means the port or airport at which the primary product is entered for export;
- "primary product" includes timber, fish, agricultural products, but does not include–
- (a) any product more than 40% of the components of which are imported; or
 - (b) any product the province of origin of which cannot be determined, except where the product is processed and a value-added component due to processing can be attributed to a particular province;
- "processing", in relation to any primary product, includes any package, or submission to any process of manufacture, by which the export value of the primary product is increased; and
- "province of production" means the province in which the primary product was produced.
- 1.5.2. 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 primary products, the value so attributed (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 primary products for the purposes of this Schedule.
- 1.5.3. The National Government shall pay to each Provincial Government a derivation grant.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

- 1.5.4. The derivation grant is calculated at the rate of 0.75% of the export value of the primary products produced or processed in the province, other than primary products in respect of which the province receives a royalty.
- 1.5.5. In the case of goods exported from Papua New Guinea without processing in any province of production, the export value of the goods shall be attributed to the province of production.
- 1.5.6. 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 of proportions of that value that are attributed to the unprocessed goods and to the processing, respectively.
- 1.5.7. For the purpose of the application of Section Sch. 1.5.6. to goods that are processed more than once, the reference in that Section 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 was the export value of the goods.
- 1.5.8. Where the origins or value of goods, including fish, cannot be identified or where the goods were taken or processed, the National Economic and Fiscal Commission shall, for the purposes of this Schedule, apportion the export value of the goods in such reasonable manner as seems to it just and in accordance with the purposes of this Schedule.
- 1.5.9. A Provincial Government shall use the derivation grant only for –
- (a) promoting the production of primary products for export and for secondary processing and export; and
 - (b) rehabilitating the infrastructure necessary to enable the producers of primary products, whether processed or not, to convey their products to a port or airport or other market place.
- "Sch. 1.6. **Other Economic Grants.**
- 1.6.1. The National Government shall make available to Provincial Governments and Local-level Governments such other economic grants as are specified in any other law or agreement.
- "Sch. 1.7. **Rural Local-level Government Grant.**
- 1.7.1. The National Government shall pay to each Local-level Government (other than urban Local-level Governments) a rural Local-level Government grant in accordance with this section.
- 1.7.2. The minimum amount of rural Local-level Government grant for each province to be available for distribution in accordance with Section Sch. 1.7.3 shall be calculated in accordance with the formula –
- (a) K3 per head of the rural population of the province (being population of the province according to the most recent national census, less the population of the urban areas in the province according to the most recent national census); plus
 - (b) K2 per square kilometre of the certified land mass of the province.
- 1.7.3. The rural Local-level Government grant for a province shall be apportioned between the Local-level Governments (other than urban Local-level Governments) in the province in accordance with the population of the Local-level Government areas.
- 1.7.4. The amount apportioned for a Local-level Government in accordance with Section Sch. 1.7.3 shall be paid directly to the Local-level Government through the Provincial and District Treasury.
- 1.7.5. A Local-level Government in receipt of an amount of rural Local-level Government grant under this section shall –
- (a) use the grant to fund the functions which are the responsibility of that Local-level Government; and
 - (b) not use the grant towards the payment of salaries, fees or allowances unless the National Government gives specific authorisation.
- "Sch. 1.8. **Town Services Grant.**
- 1.8.1. The National Government shall pay to each urban Local-level Government a town services grant in accordance with this section.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

- 1.8.2. The minimum amount of town services grant for each province to be available for distribution in accordance with Section Sch. 1.8.3 shall be calculated at the rate of K9 per head of urban population (being the population according to the most recent national census of townships in the Province declared prior to the coming into operation of this provision, under any Act of the National Parliament relating to the declaration of town boundaries and townships).
- 1.8.3. The town services grant for each province shall be apportioned between the urban Local-level Governments in the province in accordance with the population of each urban area.
- 1.8.4. The amount apportioned for an urban Local-level Government in accordance with Section Sch. 1.8.3 shall be paid directly to that Local-level Government through the Provincial and District Treasury.
- 1.8.5. An urban Local-level Government in receipt of an amount of town services grant under this section shall use the grant only to fund the functions for which it is responsible.
- "Sch. 1.9. **Less-developed District Grant.**
- 1.9.1. The National Government may make a less-developed district grant to a Provincial Government in accordance with this section.
- 1.9.2. Where the National Executive Council determines that –
- (a) a district within a province is a less-developed district; and
 - (b) the Provincial Government of that province lacks the fiscal capacity to address underdevelopment in that district through the use of its own resources, it may direct the making of a less-developed district grant to that province.
- 1.9.3. Before making a determination under Section Sch. 1.9.2 the National Executive Council shall consider a report from the National Economic and Fiscal Commission –
- (a) as to which districts are considered as less-developed; and
 - (b) as to the amount of internal revenue likely to be received by the Provincial Government in the fiscal year.
- 1.9.4. The total amount available to a Provincial Government as less-developed district grant shall be divided equally among the less-developed districts in respect of which the grant is made.
- 1.9.5. Subject to Section Sch. 1.9.4, a Provincial Government in receipt of a less-developed district grant shall obtain the approval of the Departmental Head of the Department responsible for national planning and monitoring matters, in consultation with the Departmental Head of the Department responsible for finance matters, to all projects for the expenditure of the grant, before implementation of such projects."

PART B - AMENDMENTS RELATING TO A NEW INTERGOVERNMENTAL FINANCING SYSTEM (FISCAL YEARS 2008 AND BEYOND).

5. APPLICATION OF THIS LAW.

For the avoidance of doubt, this Organic Law does not apply to Bougainville Province or the National Capital District.

6. GENERAL PRINCIPLES (AMENDMENT OF SECTION 1).

Section 1 of the *Organic Law on Provincial Governments and Local-level Governments* is amended by repeal- ing Subsection (3) and substituting the following new Subsection—

- "(3) Each Provincial Government and Local-level Government shall receive sufficient funding to deliver similar levels of goods and services in accordance with the principles that
- (a) every effort shall be made to achieve an equitable distribution of incomes and other benefits of development among individuals and throughout the various parts of the country, pursuant to the Second National Goal (**Equality and Participation**) of the National Goals and Directive Principles of the *Constitution*; and
 - (b) wise use shall be made of our natural resources and the environment in and on the land or seabed, in the sea, under the land, and in the air, in the interests of our development and in trust for future generations, pursuant to the Fourth National Goal (**Natural Resources and Environment**) of the National Goals and Directive Principles of the *Constitution*."

7. INTERPRETATION (AMENDMENT OF SECTION 3).

Section 3 of the *Organic Law on Provincial Governments and Local-level Governments* is amended by inserting the following definitions in their correct alphabetical positions in Subsection (1)—

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

" 'assigned service delivery function or responsibility' means a service delivery function or responsibility assigned or reassigned by or under an Act of the Parliament in accordance with section 43 or 45 to –

- (a) a Provincial Government or a class of Provincial Governments; or
- (b) a Local-level Government or a class of Local-level Governments; or
- (c) a service delivery entity or a class of service delivery entities;

'service delivery entity' means an entity to which a service delivery function or responsibility is assigned or reassigned by or under an Act of the Parliament in accordance with section 43 or 45;".

8. REPEAL AND REPLACEMENT OF SUBDIVISION B OF DIVISION 3 OF PART III.

Part III of the *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing Subdivision B of Division 3 and substituting the following new Subdivision—

"Subdivision B. – Administrative Functions, and Service Delivery Functions and Responsibilities of Provincial Governments.

"43. PRINCIPAL ADMINISTRATIVE FUNCTIONS, AND SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES

"(1) Subject to the *Constitution* and this Organic Law, an Act of the Parliament shall provide for-

- (a) the principal administrative functions of Provincial Governments; and
- (b) the assigned service delivery functions and responsibilities of Provincial Governments.

"(2) An Act of the Parliament may provide for all or any of the following-

- (a) the determination of, or the means of determining, the service delivery functions and responsibilities of Provincial Governments;
- (b) the assignment of, or the means of assigning, service delivery functions and responsibilities to:-
 - (i) a Provincial Government or a class of Provincial Governments; or
 - (ii) a person or body, or a class of persons or bodies;
- (c) the alteration of, or the means of altering, service delivery functions and responsibilities of:-
 - (i) a Provincial Government or a class of Provincial Governments; or
 - (ii) a person or body, or a class of persons or bodies;
- (d) the reassignment of, or the means of reassigning, service delivery functions and responsibilities to or from:-
 - (i) a Provincial Government or a class of Provincial Governments; or
 - (ii) a person or body, or a class of persons or bodies."

9. REPEAL AND REPLACEMENT OF SUBDIVISION B OF DIVISION 4 OF PART III.

Part III of the *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing Subdivision B of Division 4 and substituting the following new Subdivision –

"Subdivision B. – Principal Administrative Functions, and Service Delivery Functions and Responsibilities of Local-level Governments.

"45. PRINCIPAL ADMINISTRATIVE FUNCTIONS, AND SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES OF LOCAL-LEVEL GOVERNMENTS.

"(1) Subject to the *Constitution* and this Organic Law, an Act of the Parliament shall provide for-

- (a) the principal administrative functions of Local-level Governments; and
- (b) the assigned service delivery functions and responsibilities of Local-level Governments.

"(2) An Act of the Parliament may provide for all or any of the following-

- (a) the determination of, or the means of determining, the service delivery functions and responsibilities of Local-level Governments;
- (b) the assignment of, or the means of assigning, service delivery functions and responsibilities to:-
 - (i) a Local-level Government or a class of Local-level Governments; or
 - (ii) a person or body, or a class of persons or bodies;
- (c) the alteration of, or the means of altering, service delivery functions and responsibilities of:-

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

- (i) a Local-level Government or a class of Local-level Governments; or
- (ii) a person or body, or a class of persons or bodies;
- (d) the reassignment of, or the means of reassigning, service delivery functions and responsibilities to or from:—
 - (i) a Local-level Government or a class of Local-level Governments; or
 - (ii) a person or body, or a class of persons or bodies."

10. REPEAL AND REPLACEMENT OF SECTION 50.

Section 50 of the *Organic Law on Provincial Governments and Local-level Governments* is repealed and replaced with the following new Section—

"50. DELEGATION OF LEGISLATIVE POWERS.

"(1) This section does not—

- (a) apply in respect of judicial powers and functions; or
- (b) affect the operation of Section 209 (parliamentary responsibility) of the *Constitution*.

"(2) An Act of the Parliament may make provision for, or in relation to, the exercise in, or in relation to, a province—

- (a) by a Provincial Government or a Local-level Government; or
- (b) as provided by a provincial law or a local-level law (not inconsistent with any Act of the Parliament) by or by direction of the Provincial Executive Council, of any legislative power of the National Government,

including a power to make subsidiary legislation, but not including a power to make—

- (c) an amendment to the *Constitution*; or
- (d) an Organic Law (including this Organic Law); or
- (e) 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 *Constitution*.

"(3) A provincial law may make provision for and in relation to the exercise by the National Government or a Local-level Government of any legislative power of the Provincial Government, including a power to make subsidiary legislation.

"(4) A local-level law may make provision for and in relation to the exercise by the National Government or a Provincial Government of any legislative power of a Local-level Government, including a power to make subsidiary legislation."

11. ASSIGNED SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES (AMENDMENT OF SECTION 80).

Section 80 of the *Organic Law on Provincial Governments and Local-level Governments* is amended —

- (a) by repealing the heading of the section and substituting the following new heading—

"ASSIGNED SERVICE DELIVERY FUNCTIONS AND RESPONSIBILITIES"; and

- (b) by repealing from Subsection (1), the words "national government functions and responsibilities" and substituting the words "assigned service delivery functions and responsibilities".

12. AMENDMENT OF HEADING OF PART IV.

The heading of Part IV. of the *Organic Law on Provincial Governments and Local-level Governments* is amended by inserting after the word "ADMINISTRATIVE" the words "AND FINANCIAL".

13. REPEAL AND REPLACEMENT OF DIVISION 2 OF PART IV.

Part IV of the *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing Division 2 and substituting the following new Division —

"Division 2. – Provincial Government and Local-level Government Financial Arrangements.

"82. OUTLINE OF PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT FINANCIAL ARRANGEMENTS.

From the fiscal year commencing on 1 January 2008, the finances of Provincial Governments and Local-level Governments shall consist of—

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

- (a) receipts from taxes, fees and charges—
 - (i) imposed by provincial laws and local-level laws; and
 - (ii) imposed under delegation from the National Government in accordance with Section 50, or any other law; and
- (b) distributions from the National Government as provided for by Division IV.2A; and
- (c) the proceeds of court fees, fines and penalties as provided for by Sections 49 and 88 and other fees and charges under provincial laws and local-level laws as provided for by Sections 86 and 87; and
- (d) the proceeds of certain borrowings in accordance with Section 101; and
- (e) the proceeds of investments by them (including interest on bank deposits) and income from commercial enterprises conducted by them; and
- (f) such other moneys as are lawfully available to them under this Organic Law, an Act of the Parliament, a provincial law or a local-level law."

14. INSERTION OF NEW DIVISION 2A IN PART IV

Part IV of the *Organic Law on Provincial Governments and Local-level Governments* is amended by inserting after Division 2 the following new Division –

"Division 2A. – Division and Distribution of Revenue Among and Between the Levels of Government and Other Financial Arrangements.

"Subdivision A. - Preliminary Matters.

"82A. MATTERS TO BE TAKEN INTO ACCOUNT IN MAKING AN ACT UNDER THIS DIVISION.

"In making an Act of the Parliament of the kind referred to in this Division, the National Parliament shall take into account the following matters –

- (a) the principles of equality and participation and of wise use of natural resources and the environment, as set out in Section 1(3);
- (b) the need to encourage provincial governments and local-level governments to be self-sufficient;
- (c) the national interest;
- (d) the debt-servicing and other financial obligations of the National Government;
- (e) the expenditure requirements of the National Government;
- (f) the need to ensure that each Provincial Government and Local-level Government has a similar financial capacity to meet the costs of its assigned service delivery functions and responsibilities;
- (g) the differing cost of providing services in different areas of the country;
- (h) the level of development and the development needs of each province;
- (i) the economic disparities between provinces;
- (j) the financial capacity of each Provincial Government or Local-level Government;
- (k) the revenue generated within a province;
- (l) the benefits derived by the National Government or a Provincial Government or Local-level Government from a natural resource development within a province;
- (m) the financial obligations (if any) of a Provincial Government or Local-level Government;
- (n) the need to be flexible and to ensure that changes to intergovernmental financing arrangements are introduced in a manner that ensures their proper implementation.

"Subdivision B.—Funding for Service Delivery.

"82B. INTERPRETATION OF SUBDIVISION B.

"In this Subdivision–

"derivation basis", in relation to revenue, means the sharing of revenue based on where the revenue was originally raised or collected;

"equalisation system" means a system under which an amount of money is made available each year by the National Government to meet the costs of assigned service delivery functions and responsibilities;

"equitable distribution" is a distribution made by the National Government to Provincial Governments, Local-level Governments and service delivery entities of an amount of money made available under the equalisation system and that –

- (a) is made in accordance with the principles of equality and participation and of wise use of natural resources and the environment as set out in Section 1(3); and

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

- (b) is made so that each Provincial Government and Local-level Government has a similar financial capacity to meet the costs of assigned service delivery functions and responsibilities;

"national revenue" means any taxes, fees, charges and other revenue received by the National Government.

"82C. DIVISION OF REVENUE BETWEEN LEVELS OF GOVERNMENT FOR SERVICE DELIVERY.

"An Act of the Parliament shall provide for the division of revenue between the levels of government by way of—

- (a) the establishment of an equalisation system; and
 (b) the making of an equitable distribution from the equalisation system; and
 (c) the sharing of national revenue between the National Government, and Provincial Governments and Local-level Governments; and
 (d) the making of any other payments which the National Government determines shall be made to Provincial Governments, Local-level Governments and service delivery entities.

"82D. EQUITABLE DISTRIBUTION OF REVENUE FROM EQUALISATION SYSTEM.

"(1) An Act of the Parliament shall provide for —

- (a) a method of calculation of the amount of money to be made available each year for distribution under the equalisation system; and
 (b) an equitable distribution of that money to meet the costs of assigned service delivery functions and responsibilities; and
 (c) the equitable distribution to be determined by reference to a formula which takes into consideration—
 (i) the costs of assigned service delivery functions and responsibilities; and
 (ii) any other revenue available to a Provincial Government or a Local-level Government.

"(2) An Act of the Parliament may provide for all or any of the following—

- (a) the equitable distribution or any part of it to be made subject to conditions;
 (b) the manner of payment of the equitable distribution;
 (c) the amount to be distributed to a Provincial Government, a Local-level Government or a service delivery entity in some circumstances is zero;
 (d) the nature or use of the equitable distribution or any part of it to be specified;
 (e) any other matter necessary or convenient for making an equitable distribution.

"(3) Subsection (1) does not prevent the Act of the Parliament from distinguishing between urban Local-level Governments and rural Local-level Governments.

"82E. SHARED NATIONAL REVENUE DISTRIBUTED TO PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.

"(1) An Act of the Parliament shall provide for the determination of, or the means of determining, the national revenue that is to be shared among Provincial Governments and Local-level Governments.

"(2) The Act of the Parliament shall provide for the distribution of, or the means of distributing, the shared national revenue by the National Government to Provincial Governments and Local-level Governments on a derivation basis or some other basis.

"(3) The Act of the Parliament may provide for all or any of the following —

- (a) the distribution of the shared national revenue or any part of it to be made subject to conditions;
 (b) the manner of payment of the shared national revenue;
 (c) the amount to be distributed to a Provincial Government or a Local level Government in some circumstances is zero;
 (d) any other matter necessary or convenient for making adequate provision for the distribution of the shared national revenue.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued**"82F. PAYMENTS FOR STAFFING.**

- "(1) An Act of the Parliament shall provide for annual payments by the National Government to Provincial Governments and Local-level Governments for the salaries, allowances and other conditions of employment of such staff as are specified by or under that Act.
- "(2) The Act of the Parliament shall provide for a method of calculation of annual payments.
- "(3) The Act of the Parliament may provide for all or any of the following—
- (a) the annual payments or any part of them to be made subject to conditions;
 - (b) the manner of making the annual payments;
 - (c) the amount of an annual payment to a Provincial Government or a Local-level Government in some circumstances is zero or less than the full cost of funding the relevant salaries, allowances and other conditions of employment; and
 - (d) any other matter necessary or convenient for making adequate provision for annual payments.

"82G. ADDITIONAL PAYMENTS.

- "(1) An Act of the Parliament shall provide for, or the means of determining, additional payments by the National Government to a Provincial Government or a Local-level Government if the Provincial Government or Local-level Government performs a function or has a responsibility which is not an assigned service delivery function or responsibility.
- "(2) The Act of the Parliament shall provide for the other circumstances in which an additional payment shall be made.
- "(3) The Act of the Parliament shall provide for a method of calculation of additional payments.
- "(4) The Act of the Parliament may provide for all or any of the following—
- (a) the additional payments or any part of them to be made subject to conditions;
 - (b) the manner of making the additional payments;
 - (c) the amount of an additional payment to a Provincial Government or a Local-level Government in some circumstances is zero;
 - (d) any other matter necessary or convenient for making adequate provision for additional payments.

"82H. TRANSITIONAL PROVISIONS

"An Act of the Parliament may provide transitional arrangements for or in relation to any matter under this Subdivision for a period of up to five years from the commencement of this section.

"Subdivision C.— Arrangements to Address Development Needs and Related Matters.

"82I. INTERPRETATION OF SUBDIVISION C.

- "(1) In this subdivision, "development needs" means the disparities between different areas of the country which may result from all or any of the following—
- (a) a lack of infrastructure;
 - (b) a poor state of repair of infrastructure;
 - (c) factors inhibiting economic activity or investment;
 - (d) the wealth or otherwise of the population;
 - (e) health indicators;
 - (f) educational levels;
 - (g) remoteness;
 - (h) potential threats to food security; and
 - (i) any other factor.
- "(2) A reference in this subdivision to a "Provincial Government" includes a reference to a District Authority established under the *District Authorities Act 2006*.
- "(3) A reference in this subdivision to a "Local-level Government" includes a reference to a Local-level Government Special Purposes Authority established under the *Local-level Government Administration Act 1997* or a District Authority established under the *District Authorities Act 2006*.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued**"82J. FINANCIAL ARRANGEMENTS TO ADDRESS DEVELOPMENT NEEDS.**

"An Act of the Parliament shall provide for financial arrangements to enable Provincial Governments and Local-level Governments to address development needs by way of—

- (a) payments by the National Government under section 82K and 82L; and
- (b) payments as set out in Sections 95A and 95B; and
- (c) other mechanisms or arrangements to address development needs including but not limited to—
 - (i) the establishment of a financing facility or facilities; and
 - (ii) the facilitation of borrowing by Provincial Governments and Local-level Governments; and
 - (iii) the provision of benefits other than in cash.

"82K. SPECIFIC PAYMENTS TO ADDRESS DEVELOPMENT NEEDS.

"(1) An Act of the Parliament may provide for all or any of the following:

- (a) the basis of entitlement to payments to address specific development needs;
- (b) the method of calculating those payments;
- (c) the manner of making those payments;
- (d) the making of those payments or any part of them to be subject to conditions;
- (e) any other matter necessary or convenient for making specific payments.

"(2) In providing for the specific payments, the Act of the Parliament may take into account—

- (a) the amount of revenue received or likely to be received by the relevant Provincial Governments and Local-level Governments; and
- (b) the following benefits:
 - (i) the benefits to Provincial Governments and Local-level Governments from prescribed infrastructure developments as described in the *Income Tax Assessment Act 1959*; and
 - (ii) any other benefits that a Provincial Government or Local-level Government may receive.

"(3) The Act of the Parliament may make provision for the definition and determination of a less-developed area, taking into account —

- (a) the development needs of an area; and
- (b) any other matters connected with those development needs.

"82L. OTHER PAYMENTS TO PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.

"(1) An Act of the Parliament may provide for such other payments by the National Government to Provincial Governments and Local-level Governments for development or capital purposes, including but not limited to —

- (a) payments that are provided for in agreements relating to the development of natural resources; and
- (b) payments for development projects.

"(2) The Act of the Parliament may provide for all or any of the following—

- (a) the basis of entitlement to, the payments;
- (b) the method of calculation of the payments;
- (c) the manner of making the payments; and
- (d) provide for the making of the payments or any part of them to be subject to conditions.
- (e) any other matter necessary or convenient for making specific payments.

"(3) In providing for the payments, the Act of the Parliament may take into account —

- (a) the amount of revenue received or likely to be received by the relevant Provincial Governments and Local-level Governments under any existing agreements relating to the development of natural resources; and
- (b) the following benefits-
 - (i) the benefits to Provincial Governments and Local-level Governments from prescribed infrastructure developments as described in the *Income Tax Assessment Act 1959*; and
 - (ii) any other benefits that a Provincial Government or Local-level Government may receive."

*Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued***15. REPEAL AND REPLACEMENT OF SECTION 83.**

Section 83 of the *Organic Law on Provincial Governments and Local-level Governments* is repealed and replaced by the following new Section—

"83. INTERPRETATION OF DIVISION 3 OF PART IV.

"In this Division —

"national road" means a road which the National Government is responsible for maintaining in accordance with the *Roads Maintenance Act* 1971;

"road user tax" means a tax paid by way of a toll by a user of a road, other than a national road;

"small craft" means a vessel that is not registered in Papua New Guinea or any other country and that is —

- (a) less than 10 metres in length; or
- (b) an air-cushioned vessel; or
- (c) a pleasure craft,

other than a vessel of traditional build that is not used for commercial purposes;"

16. REPEAL AND REPLACEMENT OF SUBDIVISION B OF DIVISION 3 OF PART IV.

Part IV of the *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing Subdivision B of Division 3 and substituting the following new Subdivision—

"Subdivision B. — Provincial Government and Local level Government Taxation.

"85. PROVINCIAL AND LOCAL LEVEL TAXES, FEES AND CHARGES IN EXISTENCE IMMEDIATELY BEFORE 1 JANUARY 2008.

"Schedule 2 sets out savings and transitional provisions for provincial and local-level taxes, fees and charges that existed immediately before 1 January 2008.

"86. PROVINCIAL TAXES, FEES AND CHARGES.

"(1) A Provincial Government may impose either or both of the following taxes: —

- (a) a sales and services tax; and
- (b) a road user tax.

"(2) A sales and services tax may be imposed concurrently with any sales and services tax imposed by the National Government.

"(3) A Provincial Government may impose all or any of the following fees and charges: —

- (a) fees for liquor licences;
- (b) fees for registration of small craft; and
- (c) any other fees or charges in respect of goods or services supplied, rendered or made available, or to be supplied, rendered or made available—
 - (i) by or under a provincial law; or
 - (ii) in relation to a matter for which the Provincial Government has responsibility.

"(4) An Act of the Parliament may further define the taxes, fees and charges referred to in Subsections (1) and (3).

"(5) A provincial law shall provide for—

- (a) the determination of the rates of taxes, fees and charges; and
- (b) the manner of imposition of taxes, fees and charges; and
- (c) the management and collection of taxes, fees and charges.

"(6) A provincial law may provide for —

- (a) arrangements between the National Government and Provincial Governments concerning taxes, fees and charges; and
- (b) arrangements between Provincial Governments concerning taxes, fees and charges; and
- (c) arrangements between Provincial Governments and Local-level Governments concerning taxes, fees and charges.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued**"87. LOCAL-LEVEL TAXES, FEES AND CHARGES.**

- "(1) A Local-level Government may impose a head tax on a natural person.
- "(2) A Local-level Government may impose all or any of the following fees and charges:—
- (a) land rates charged on the unimproved value of alienated land;
 - (b) fees for a general trading licence, including but not limited to a fee for a trade store licence and a fee for a peddler's licence;
 - (c) fees for a licence in respect of public entertainment for which admission is charged;
 - (d) fees for a domestic animal licence;
 - (e) any other fees or charges in respect of goods or services supplied, rendered or made available, or to be supplied, rendered or made available—
 - (i) by or under a local-level law; or
 - (ii) in relation to a matter for which the Local-level Government has responsibility.
- "(3) An Act of the Parliament may further define the taxes, fees and charges provided for in Subsections (1) and (2).
- "(4) A local-level law shall provide for—
- (a) subject to Subsection (5), the determination of the rates of taxes, fees and charges; and
 - (b) the manner of imposition of taxes, fees and charges; and
 - (c) the management and collection of taxes, fees and charges.
- "(5) The rate of head tax is not to be calculated by reference to a person's income.
- "(6) A local-level law may provide for —
- (a) arrangements between the National Government and Local-level Governments concerning the taxes, fees and charges; and
 - (b) arrangements between Local-level Governments concerning the taxes, fees and charges; and
 - (c) arrangements between Local-level Governments and Provincial Governments concerning the taxes, fees and charges."

17. REPEAL OF SECTION 89

Section 89 of the *Organic Law on Provincial Governments and Local-level Governments* is repealed.

18. REPEAL AND REPLACEMENT OF SECTION 90.

Section 90 of the *Organic Law on Provincial Governments and Local-level Governments* is repealed and replaced with the following new Section —

"90. ANTI-DISCRIMINATION.

- "(1) An Act of the Parliament shall provide that the Minister responsible for preparation of the annual recurrent budget may by instrument in writing declare invalid a provincial or local-level law imposing a tax, fee or charge if—
- (a) the law discriminates unjustly between any persons; or
 - (b) the law discriminates against persons who are not residents of the province; or
 - (c) the law discriminates against products originating or coming from outside the province; or
 - (d) the rate of the tax, fee or charge is set, wholly or partially, at an unreasonably high level; or
 - (e) the law unreasonably disadvantages any other Provincial Government or Local-level Government.
- "(2) The Act of the Parliament —
- (a) shall provide that the Minister shall furnish reasons for the Minister's decision to declare a law invalid; and
 - (b) may provide for the making of any orders by the Minister related to or consequent on that decision; and
 - (c) may provide for any other related matters.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

"(3) This section is in addition to and not in derogation of Section 141."

19. RESOURCE DEVELOPMENT PROCESS (AMENDMENT OF SECTION 116).

Section 116 of the *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing Subsection (2).

20. NATIONAL ECONOMIC AND FISCAL COMMISSION (AMENDMENT OF SECTION 117).

Section 117 of the *Organic Law on Provincial Governments and Local-level Governments* is amended by repealing Subsections (2), (7), (8) and (11) and substituting the following new Subsections –

"(11) An Act of the Parliament shall provide for –

- (a) the members of the Commission; and
- (b) the terms and conditions of appointment of members; and
- (c) the meetings and procedures of the Commission; and
- (d) the functions of the Commission, in addition to the functions as set out in Section
- (e) the powers of the Commission, in addition to the powers in subsection (5); and
- (f) the establishment of an office of the Secretariat to the Commission.

"(12) A person who is a member of the Commission immediately before 1 January 2007 continues on and after that date as a member, and ceases to be a member on the date on which an Act of Parliament mentioned in Subsection (11) comes into operation."

21. NOTICE OF PROVINCIAL LAWS AND LOCAL-LEVEL LAWS (AMENDMENT OF SECTION 140).

Section 140 of the *Organic Law on Provincial Governments and Local-level Governments* is amended –

- (a) by inserting before Subsection (1) the following new Subsection–

"(1A) In this section–

"appropriate Minister" means–

- (a) in relation to a law which is not a financial law- the Minister responsible for intergovernmental relations; or
- (b) in relation to a financial law – the Minister responsible for preparation of the annual recurrent budget;

"financial law" means a law authorising the appropriation of monies or a law imposing taxes, fees or charges."; and

- (b) by repealing from Subsection (2)(a) the words "the Minister responsible for provincial government and local-level government matters" and replacing them with the words "the appropriate Minister"; and
- (c) by repealing from Subsection (3) the words "provincial law of a local-level law" and replacing them with the words "provincial law or a local-level law"; and
- (d) in by repealing from Subsection (3) the words "the Minister responsible for provincial government and local-level government matters" and replacing them with the words "the appropriate Minister"."

22. REPEAL AND REPLACEMENT OF SECTION 141.

Section 141 of the *Organic Law on Provincial Governments and Local-level Governments* is repealed and replaced with the following new Section –

"141. COMMENCEMENT OF PROVINCIAL LAWS AND LOCAL-LEVEL LAWS.

"(1) For the purposes of this section –

"appropriate Minister" means –

- (a) in relation to a law which is not a financial law – the Minister responsible for intergovernmental relations; or
- (b) in relation to a financial law – the Minister responsible for preparation of the annual recurrent budget;

"financial law" means a law authorising the appropriation of monies or a law imposing taxes, fees or charges.

"(2) Notwithstanding anything in any provincial law or local-level law, a Provincial Government or a Local-level Government has full powers to make laws as provided for in this Organic Law.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

- "(3) The—
- (a) Provincial Government, in the case of a provincial law; and
 - (b) Local-level Government, in the case of a local-level law, shall give a copy of the law by registered post, or otherwise in the quickest practical manner, to the appropriate Minister.
- "(4) Subject to Subsection (5), a provincial law or a local-level law shall not take effect until it is approved by the appropriate Minister.
- "(5) Where the appropriate Minister has not made a decision as to whether or not to approve a provincial law or local-level law within 60 days on and from the date on which the law was served on him, the law shall be deemed to have been approved by him."

23. INSERTION OF NEW SCHEDULE 2.

The *Organic Law on Provincial Governments and Local-level Governments* is amended by inserting after Schedule 1 the following new Schedule -

"Section 85

"SCHEDULE 2.**"TRANSITIONAL AND SAVINGS ARRANGEMENTS FOR CERTAIN PROVINCIAL AND LOCAL-LEVEL TAXES, FEES AND CHARGES.****1. INTERPRETATION.**

- "(1) In this Schedule -
- "commencement date" means 1 January 2008;
 - "new law" means this Organic Law as in force on and after 1 January 2008;
 - "old local-level law" means -
 - (a) a local-level law that is in force immediately before the commencement date and that imposes a tax, fee or charge; or
 - (b) any delegation made under an Act of the National Parliament or any other law, being a delegation that in force immediately before the commencement date and under which a tax, fee or charge is collected and retained by a Provincial a Local level Government; or
 - (c) any other legal instrument or arrangement that is in force immediately before the commencement date and under which a tax, fee or charge is collected and retained by a Local level Government;
 - "old provincial law" means -
 - (a) a provincial law in force immediately before the commencement date and that imposes a tax, fee or charge; or
 - (b) any delegation made under an Act of the National Parliament or any other law, being a delegation that is in force immediately before the commencement date and under which a tax, fee or charge is collected and retained by a Provincial Government; or
 - (c) any other legal instrument or arrangement that is in force immediately before the commencement date and under which a tax, fee or charge is collected and retained by a Provincial Government.

1. CONTINUATION OF CERTAIN OLD PROVINCIAL LAWS.

- "(1) Subject to subsection (2), an old provincial law continues in force on and after the commencement date as if it had been made under the new law.
- "(2) If an old provincial law would be invalid under the new law, the old provincial law ceases to have effect on the commencement date.
- "(3) Nothing in this Schedule prevents an old provincial law being invalidated by some other means.

2. CONTINUATION OF CERTAIN OLD LOCAL-LEVEL LAWS.

- "(1) Subject to subsection (2), an old local-level law continues in force on and after the commencement date as if it had been made under the new law.

Organic Law on Provincial Governments and Local-level Governments (Amendment) Law—continued

"(2) If an old local-level law would be invalid under the new law, the old local-level law ceases to have effect on the commencement date, other than an old local-level law referred to in subsection (3).

"(3) If -

- (a) an old local-level law imposed a community service tax, fee or charge immediately before the commencement date; and
- (b) the amount of the tax, fee or charge was calculated having regard to the unimproved value of land or the value of a service that was provided by the relevant Local-level Government, the old local-level law continues in force on and after the commencement date.

"(4) Nothing in this Schedule prevents an old local level law being invalidated by some other means."