

Provincial Governments Administration Act 1997.



No. 7 of 1997.

Provincial Governments Administration Act 1997.

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SCHEDULE.



AN ACT

entitled

Provincial Governments Administration Act 1997,

Being an Act to implement the ***Organic Law on Provincial Governments and Local-level Governments*** insofar as an Act of the Parliament is required to make provision for various aspects of administration of Provincial Governments,

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

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, to the extent that it regulates or restricts a right of freedom referred to in Subdivision III.3.C. (*qualified rights*) of the ***Constitution***, namely -

- (a) freedom of conscience, thought and religion conferred by Section 45; and
- (b) freedom of expression conferred by Section 46; and
- (c) the right to vote and stand for public office conferred by Section 50,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

2. INTERPRETATION.

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

“Chairman” means the Chairman of a Provincial Assembly;

“Joint Provincial Planning and Budget Priorities Committee” means the Joint Provincial Planning and Budget Priorities Committee required to be established by each Provincial Executive Council by Section 25(1)(a) of the ***Organic Law***;

“member” means a member of a Provincial Assembly;

“***Organic Law***” means the ***Organic Law on Provincial Governments and Local-level Governments***;

“Provincial Assembly” means a Provincial Assembly established by Section 10 of the ***Organic Law***;

“Provincial Executive Council” means a Provincial Executive Council established under Section 23 of the ***Organic Law***;

“Provincial Governor” means the person holding office as Provincial Governor in accordance with Section 17 or 21 of the ***Organic Law***;

“this Act” includes the Regulations.

(2) In this Act, unless the contrary intention appears, a reference, in relation to a province, Provincial Assembly or Provincial Government, to a provincial office or body or to a Local-level Government office or body, is a reference to the provincial office or body established in relation to

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that province or to a Local-level Government office or body established in relation to a Local-level Government in that province.

3. APPLICATION.

This Act applies to each Provincial Government.

PART II. - PROVINCIAL ASSEMBLY MEMBERS.

4. WOMAN REPRESENTATIVE IN PROVINCIAL ASSEMBLY.

(1) The -

- (a) Provincial Council of Women in a province; or
- (b) where there is no Provincial Council of Women in a province, the Joint Provincial Planning and Budget Priorities Committee for the province,

shall nominate three women candidates for consideration by the Provincial Executive Council for the appointment of a woman representative to the Provincial Assembly as required by Section 10(3)(e) of the *Organic Law*.

(2) A person may only be nominated under Subsection (1) where that person -

- (a) is eligible to stand for election -
 - (i) as a member of the Parliament for an electorate in the province; or
 - (ii) as a member of a Local-level Government in the province; and
- (b) is not already a member of the Provincial Assembly.

(3) Nominations under Subsection (1) shall be -

- (a) made as and when there is vacancy in the office of woman representative in the Provincial Assembly under Section 10(3)(e) of the *Organic Law*; and
- (b) intimated to the Provincial Governor, who shall put them before the Provincial Executive Council for consideration.

(4) The Provincial Executive Council shall make an appointment of a woman representative from among the persons nominated.

(5) Notification of the woman representative appointed shall be -

- (a) given to the Minister; and
- (b) published in the Provincial Gazette.

5. QUALIFICATIONS AND DISQUALIFICATIONS OF APPOINTED MEMBERS OF A PROVINCIAL GOVERNMENT.

(1) A person who -

- (a) is eligible to stand for election -
 - (i) as a member of the Parliament for an electorate in the province; or
 - (ii) as a member of a Local-level Government in the province; and
- (b) is not already a member of the Provincial Assembly,

is qualified to be appointed a member of the Provincial Assembly under Section 10(3)(f) of the *Organic Law*.

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(2) A person who has been appointed as a member of a Provincial Assembly under Section 10(3)(f) and whose membership has expired according to law, is, subject to the provisions of any Constitutional Law, eligible for re-appointment.

6. ROLES AND FUNCTIONS IN PROVINCIAL ASSEMBLY OF MEMBERS WHO ARE MEMBERS OF THE PARLIAMENT.

In addition to the roles and functions given to them by the *Organic Law*, members of the Parliament in a Provincial Assembly shall perform the following roles and functions:

- (a) encourage co-operation among government and non-government agencies and persons in the development of the district, the Province and the Nation; and
- (b) participate in the approval of policies, guidelines, strategies and plans in regard to the development of the district, Province and Nation; and
- (c) act as the voice of the people and represent their interests and those of the Provincial Assembly to the National Government and other State authorities.

PART III. - PROCEDURES OF PROVINCIAL ASSEMBLIES.

7. STANDING ORDERS.

(1) A Provincial Assembly shall make Standing Orders which shall, subject to the *Organic Law* and this Act, provide for -

- (a) the calling, regulating and conducting of the meetings of the Provincial Assembly and of the Committees of the Provincial Assembly; and
- (b) the authentication of all documents required to be sealed with the seal of the Provincial Assembly; and
- (c) such other matters relative to the procedures of the Provincial Assembly and committees of the Provincial Assembly as are necessary or convenient or as are directed by the Minister.

(2) The Chairman shall cause a copy of the Standing Orders made by the Provincial Assembly (and of any amendments to the Standing Orders), certified under the hand of the Chairman and the Clerk, to be submitted to the Minister for approval.

(3) The Minister shall consider Standing Orders (or amendments to Standing Orders) submitted to him and shall -

- (a) approve the Standing Orders or amendments; or
- (b) require changes to be made prior to approval.

(4) Standing Orders or amendments to Standing Orders shall not have effect until approved by the Minister.

(5) The Minister may draw up and have published in the National Gazette model Standing Orders, which may be adopted, with or without modification, by a Provincial Assembly.

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8. QUORUM AND VOTING AT MEETINGS.

(1) Subject to Subsection (2), the quorum for a meeting of the Provincial Assembly is half the total membership of the Provincial Assembly.

(2) Where -

(a) at the time determined for the commencement of a meeting of the Provincial Assembly a quorum is not present, the meeting stands adjourned for one hour; and

(b) at the expiry of the period of one hour referred to in Paragraph (a) -

(i) a quorum is present - the meeting shall proceed; or

(ii) a quorum is not present - the meeting stands adjourned for such period as the person presiding determines, being a period of not less than one day nor more than one week, and at the same time and place as was determined for the meeting adjourned and at the time and place to which the meeting was so adjourned the members then and there present are a quorum.

(3) Subject to the *Organic Law*, all questions before a meeting of a Provincial Assembly shall be decided in accordance with a majority of the members present at the meeting and voting, and the person presiding at the meeting has a deliberative vote and, in the event of an equality of votes on a matter, also a casting vote.

9. VACANCY IN MEMBERSHIP OF PROVINCIAL ASSEMBLY.

No act or proceedings of a Provincial Assembly or of a Committee of a Provincial Assembly or of any person acting as a member of a Provincial Assembly or of a committee of a Provincial Assembly is invalid by reason of there being a vacancy in the number of members of the Provincial Assembly or committee of the Provincial Assembly at the time or the act or proceedings.

10. MINUTES.

Minutes of all meetings of a Provincial Assembly and of a committee of a Provincial Assembly shall be taken, preserved and made available as provided in the Standing Orders.

11. DISCLOSURE OF INTEREST.

(1) A person presiding over a meeting of a Provincial Assembly, a committee of a Provincial Assembly or a Board or authority established by a Provincial Assembly under this Act or any other law who -

(a) has any direct or indirect pecuniary interest in any contract or proposed contract or other matter, the terms of which or a decision on which is a subject for consideration at the meeting; or

(b) holds any office or appointment that is likely to lead to a conflict of duty or interest in the performance of his duty and functions as the person presiding,

shall immediately disclose that fact, specifying the interest, office or appointment, and shall not continue to preside over the meeting.

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(2) A member of a Provincial Assembly or of a committee of a Provincial Assembly or of a board of authority established by a Provincial Assembly who -

- (a) has any direct or indirect pecuniary interest in any contract or proposed contract or any other matter with the Provincial Government; and
- (b) is present at a meeting of the Provincial Assembly or a committee of the Provincial Assembly or of a board or authority established by the Provincial Assembly at which the terms of the contract or a decision on the matter is the subject of consideration,

shall disclose the interest at the meeting and, without the permission of the Provincial Assembly, committee, board or authority, as the case may be, given by resolution, shall not take part in any consideration or discussion of or vote on, any question relating to the contract or matter.

(3) In a case to which Subsection (2) applies, where the person presiding at the meeting so directs, the member concerned shall withdraw from the meeting during the consideration, discussion or voting.

(4) This section does not apply to a pecuniary interest that a member may have as a rate-payer only, or as a member of the community in which he resides, and that is common to all or most other members of that community.

(5) A person who fails to comply with Subsection (1), (2) or (3) is guilty of a misconduct in office and the provisions of the *Leadership Code* shall apply.

12. MEETINGS OF A PROVINCIAL ASSEMBLY.

(1) A Provincial Assembly shall meet within 15 days of the day fixed for the return of the writs following a general election to Local-level Governments.

(2) A Provincial Assembly shall meet at least once in each period of three months.

(3) A Provincial Assembly shall have additional meetings -

- (a) where not less than one third of the total number of members of the Provincial Assembly make written request to the Chairman; or
- (b) where the Chairman gives notification; or
- (c) in accordance with the provisions of an Act of the Parliament or of a provincial law or of the Standing Orders.

(4) Unless the Minister gives written authority to the contrary a meeting of a Provincial Assembly shall not be held at the same time as a meeting of the Parliament.

13. PRIVILEGES OF A PROVINCIAL ASSEMBLY.

(1) Subject to the Constitutional Laws and this Act, the powers (other than the legislative powers), privileges and immunities of a Provincial Assembly and its members and Committees are as specified in this section.

(2) There shall be freedom of speech and of debate in a Provincial Assembly and the exercise of those freedoms shall not be questioned in any court or proceedings (other than proceedings in the Provincial Assembly or in a committee of the Provincial Assembly).

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(3) No member of a Provincial Assembly is subject to the jurisdiction of any court in respect of the exercise of his powers or the performance of his powers as such, but this subsection does not affect the operation of Section 27 (*responsibilities of office*) of the **Constitution**.

(4) No member of a Provincial Assembly is liable to civil or criminal proceedings, arrest, imprisonment, fine, damages or compensation by reason of any matter or thing that he has brought by petition, bill, question, resolution or motion, or otherwise, or has said or submitted, to or before the Provincial Assembly or a committee of the Provincial Assembly.

(5) No process of any court in the exercise of its civil jurisdiction shall be served or executed through the Governor or through an officer of the Provincial Assembly or within the precincts of a Provincial Assembly while the Provincial Assembly is sitting.

(6) The powers and privileges that may be conferred by or under this section do not include the power to impose or provide for the imposition of a fine, imprisonment, forfeiture of property or other penalty as for an offence of a criminal nature, but this section does not prevent the creation of offences for the purposes of this section that are triable in the ordinary way by the courts.

PART IV. - COMMITTEES.

14. PROVINCIAL ASSEMBLY COMMITTEES.

(1) A Provincial Assembly may -

- (a) establish such committees as it considers necessary to assist in carrying out its functions; and
- (b) appoint members of the Assembly to be members of a committee.

(2) A Provincial Assembly may delegate to a committee established under Subsection (1) any power conferred on the Provincial Assembly by the **Organic Law** or this Act, other than -

- (a) the power to make provincial laws; or
- (b) the power to impose or levy rates, taxes, charges or fees; or
- (c) the power to borrow money; or
- (d) any other power that by this Act or any other law may not be delegated to a committee; or
- (e) this power of delegation.

(3) No act of a committee of a Provincial Assembly is binding on the Provincial Assembly until it has been submitted to and approved by the Provincial Assembly, except where a Provincial Assembly has, by resolution, authorised a committee to manage, regulate or conclude a matter.

(4) The number of members of a committee of a Provincial Assembly and their term of office and the functions and part of the Province within which the committee may exercise authority are as fixed by the Provincial Assembly.

(5) The quorum for a meeting of a committee of a Provincial Assembly is half of the total membership of the committee.

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(6) Meetings of a committee of a Provincial Assembly shall be held at such times and places as the Provincial Assembly or the committee determines and shall be convened by the chairman of the committee.

15. PROVINCIAL EXECUTIVE COUNCIL COMMITTEES.

(1) A Provincial Executive Council shall by resolution establish a Joint Provincial Planning and Budget Priorities Committee in accordance with Section 25 of the *Organic Law*.

(2) A Provincial Executive Council shall from time to time by resolution establish such other committees as it considers necessary to carry out its functions and appoint members of the Provincial Executive Council to be members of a committee.

(3) A Provincial Executive Council may delegate to a committee established under Subsection (2) any power conferred on the Provincial Executive Council by the *Organic Law* or this Act, other than -

- (a) the power to make provincial laws; or
- (b) the power to impose or levy rates, taxes, charges or fees; or
- (c) the power to borrow money; or
- (d) any other power that by this Act or any other law may not be delegated to a committee; or
- (e) this power of delegation.

(4) No act of a committee established under Subsection (2) is binding on the Provincial Executive Council until it has been submitted to and approved by the Provincial Executive Council, except where the Provincial Executive Council has, by resolution, authorised a committee to manage, regulate or conclude a matter.

(5) The number of members of a committee established under Subsection (2) and their term of office and the functions and part of the Province within which the committee may exercise authority are as fixed by the Provincial Executive Council.

(6) The quorum for a meeting of a committee of a Provincial Executive Council is half of the total membership of the committee.

(7) Meetings of a committee of a Provincial Executive Council shall be held at such times and places as the Provincial Executive Council or the committee determines and shall be convened by the chairman of the committee

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PART V. - PRINCIPAL ADMINISTRATIVE FUNCTIONS.

16. PRINCIPAL ADMINISTRATIVE FUNCTIONS.

Subject to -

- (a) the *Constitution*; and
- (b) the *Organic Law*; and
- (c) any overall policy directions by the National Government or the Provincial Executive Council,

a Provincial Government shall, in addition to its other functions, in relation to the province, be responsible for -

- (d) establishing the basic minimum needs for the development of rural and urban areas and maintaining minimum standards as required by law in relation to -
 - (i) maintenance of roads, bridges and infrastructures; and
 - (ii) urban roads, public facilities and environment; and
 - (iii) health facilities, health programmes and hygiene; and
 - (iv) education facilities; and
 - (v) safe housing; and
 - (vi) safe and accessible water; and
 - (vii) safe environment and proper rubbish disposal; and
 - (viii) family values and community relationships; and
- (e) providing support to the activities of the extended services of the National Departments and other State Services in the province; and
- (f) providing support and assistance to the Local-level Governments and to other public bodies in the province to enable them to carry out their functions effectively; and
- (g) maintaining peace and harmony and good-will in the province; and
- (h) assisting churches within the province by promoting spiritual values; and
- (i) providing support to non-government agencies in carrying out the development programmes in the province; and
- (j) maintaining standards of performance of public servants; and
- (k) providing advice to landowners in relation to the development and control of their traditional land.

17. POWERS AND FUNCTIONS DELEGATED.

Any legislative power or function of the National Government or power or function of the National Government under an Act of the Parliament delegated to a Provincial Government under Section 50 of the *Organic Law* shall be exercised and performed as prescribed.

PART VI. - MISCELLANEOUS.

18. MAKING OF PROVINCIAL LAWS.

- (1) An Act of a Provincial Assembly is effective where -
 - (a) it has been made by the Assembly; and
 - (b) it has been certified -
 - (i) by the Clerk to the effect that it is a true copy of the Act made by the Assembly; and
 - (ii) by the Chairman that it was made by the Assembly; and

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- (c) it has been sealed with the Seal of the Assembly in accordance with the Standing Orders of the Assembly; and
- (d) it has been brought into operation in accordance with its commencement clause.

(2) An Act of a Provincial Assembly may have retrospective or retroactive effect.

19. COMPENSATION FOR DEATH OR INJURY TO A MEMBER OF A PROVINCIAL ASSEMBLY.

For the purposes of the *Workers' Compensation Act* (Chapter 179), a member of a Provincial Assembly is deemed to be a worker employed by the Provincial Government of which whose Provincial Assembly he is a member.

20. PROVINCIAL GOVERNMENT GAZETTE.

Each Provincial Government shall cause to publish an official journal which shall be known as the Provincial Gazette of the province.

21. OTHER NATIONAL ACTS CONTAINING PROVISIONS RELATING TO PROVINCIAL GOVERNMENTS IN IMPLEMENTATION OF THE *ORGANIC LAW*.

(1) Other Acts of the Parliament which contain provisions relating to Provincial Governments in implementation of the *Organic Law* are as specified in Schedule.

(2) The Minister may, from time to time, by notice in the National Gazette, amend the Schedule as circumstances require.

(3) This section and the Schedule are for reference only and in no way affect the provisions of the Acts specified in Schedule.

22. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with the *Organic Law* or this Act prescribing all matters which by this Act are required or permitted to be prescribed or are necessary or convenient to be prescribed for the purpose of giving effect to the provisions and purposes of this Act.

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SCHEDULE.

Sec. 21.

Subject matter relating to Provincial Government

1. Audit
2. Education
3. Finance
4. Public Service, personnel and administration.
5. Teaching Service

Act of the Parliament containing relevant provisions.

- Audit Act 1989***
Education Act (Chapter 163)
Public Finances (Management) Act 1995
Public Services (Management) Act 1995
Teaching Services Act 1988

Note: Reference to Acts is a reference to Acts amended to date.

Office of the Commissioner-Revised Laws, PNG