

## **Unvalidated References:**

This reprint of this Statutory Instrument incorporates all amendments, if any, made before 25 November 2006 and in force at 1 July 2001.

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Legislative Counsel  
Dated 25 November 2006

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

Chapter 56A.

***Provincial Government (Constituencies) Regulation 1975***



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### ***Provincial Government (Constituencies) Regulation 1975***

MADE under the *Provincial Government (Preparatory Arrangements) Act 1974*.

Dated                      200 .

1. **INTERPRETATION.**

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

**“the Boundaries Commission”**, in relation to a province, means the Boundaries Commission established by Section 25 of the *Organic Law on National Elections* and, unless expressly stated otherwise, includes an additional member appointed to represent the province under Section 3;

**“constituency”** means the area within the area for which a provincial government body has been declared in relation to which a person or persons is or are elected or to be elected to the provincial legislature and includes—

- (a) an open constituency; and
- (b) where applicable, a provincial constituency,

but, notwithstanding that the area of a provincial government body is divided into constituencies, this definition does not prevent the whole of the area from being a constituency;

**“elector”** means a person whose name appears on a Roll as an elector;

**“the Electoral Commission”** means the Electoral Commission established under Section 4 of the *Organic Law on National Elections*;

**“member”** means a member of a provincial legislature;

**“officer”** means—

- (a) an officer or employee of the National Public Service; and
- (b) a member of the Defence Force; and
- (c) a member of the Police Force; and
- (d) a member of the Correctional Service; and
- (e) an officer or employee of a provincial service; and
- (f) an officer or employee of a Local Government Authority or Council or other local level government; and
- (g) an officer or employee of a governmental body;

**“population”** means—

- (a) in the case where a National Census of Population has, in the opinion of the Government Statistician, been completed and—
  - (i) from which in his opinion, he is able to provide satisfactory estimates of population; and
  - (ii) in relation to which an initial distribution or subsequent redistribution has not previously been carried out,

the population as at the date of that National Census of Population as estimated by the Government Statistician; and

- (b) in any other case—the population as estimated by the Government Statistician as at such date prior to the date of the redistribution as in the opinion of the Government Statistician is the most recent date at which he can give a satisfactory estimate;

**“province”** means a province in respect of the whole or part of which a provincial government body has been declared under the Act;

**“the provincial constitution”**, in relation to a provincial government body or an area for which a provincial government body has been declared, means the regulations made under the Act relating to the constitution of the provincial government body;

**“provincial legislature”** means—

- (a) in the case where a provincial government body has a legislative arm—the legislative arm; and
- (b) in any other case—the provincial government body;

**“Roll”** means an Electoral Roll under this Regulation.

(2) Notwithstanding any other law, where a time limit is imposed under this Regulation for the taking of an action, then, unless the contrary intention is expressly stated, that time limit is mandatory.

(3) An opinion given by the Government Statistician as to the population is non-justiciable.

## **2. ELECTION OF MEMBERS TO PROVINCIAL LEGISLATURES.**

(1) Subject to this Regulation and the provincial constitution, for the purposes of elections to a provincial legislature, there shall be such constituencies in a province as are provided by this Regulation.

(2) Subject to this Regulation, the number of open and provincial constituencies in a province is as determined by or under the provincial constitution.

(3) Subject to the provincial constitution, one member shall be elected for each constituency by the electors entitled to vote in respect of that constituency.

(4) An alteration to the number of constituencies or to the boundaries of a constituency takes effect for the purposes of the next general election and of succeeding elections.

## **3. BOUNDARIES COMMISSION.**

(1) For the purposes of the first distribution and subsequent distributions of a province into constituencies, the Boundaries Commission shall include an additional person, other than an officer, appointed—

- (a) by resolution of the provincial legislature; or

- (b) in the case of an initial distribution where no members have been elected or appointed to the provincial legislature—by the Minister responsible for provincial government matters after such consultation with the people of the province as he sees fit.

(2) A deputy for the additional member referred to in Subsection (1) shall be appointed in the same way as the member for whom he is the deputy.

(3) In the event of the absence of a member of the Boundaries Commission from a meeting of the Commission or his inability for any reason to act in relation to a matter, his deputy has and may exercise and perform all his powers and functions for the purpose of that meeting or in relation to that matter.

(4) The Boundaries Commission is not subject to direction or control by any person or authority.

#### **4. TERM OF OFFICE AND CONDITIONS OF EMPLOYMENT OF ADDITIONAL MEMBER.**

(1) A member of the Boundaries Commission referred to in Section 3 shall be appointed—

- (a) in the case of any citizen of Papua New Guinea appointed to office for the first time within 10 years after Independence Day—for a term of three years; and
- (b) in the case of any other citizen—for a term of six years; and
- (c) in the case of a non-citizen—for a term of three years,

and is eligible for re-appointment.

(2) The term of office of a deputy referred to in Section 3 expires at the same time as the member for whom he was appointed the deputy.

(3) The salary and other conditions of employment of a member and deputy member of the Boundaries Commission referred to in Section 3 shall be as determined under Section 26(3) of the *Organic Law on National Elections* for other members of the Commission.

#### **5. DISQUALIFICATIONS FROM OFFICE OF ADDITIONAL MEMBER.**

A person is not qualified to be, or to remain, a member or deputy member of the Boundaries Commission under this Regulation if he is—

- (a) a member of the National Parliament; or
- (b) a member of a provincial legislature; or
- (c) a member of a Local Government Council or Authority or other local level government; or
- (d) an office-holder in a registered political party; or
- (e) an undischarged bankrupt or insolvent; or

- (f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (g) under sentence of death or imprisonment.

#### **6. SPECIAL CONDITIONS OF EMPLOYMENT OF ADDITIONAL MEMBER.**

(1) A member and deputy member of the Boundaries Commission appointed under Section 3 shall not—

- (a) actively engage in politics; or
- (b) except on leave granted by the Head of State or because of illness—absent himself from duty; or
- (c) subject to Subsection (3)—
  - (i) acquire by way of gift or otherwise, or use or hold in any other manner any interest in any property of Papua New Guinea; or
  - (ii) solicit, accept or receive any other benefit in addition to his terms and conditions of employment.

(2) Subsection (1) does not prevent a member of the Boundaries Commission from holding office in a professional body in relation to which his qualifications are relevant.

(3) Subject to any Organic Law made for the purposes of Division III.2 (*leadership code*) of the Constitution, a member of the Boundaries Commission who is a citizen may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

#### **7. RESIGNATION.**

(1) A member or deputy member of the Boundaries Commission appointed under Section 3 may resign by giving three months' written notice of his intention to do so to the provincial legislature or the Minister responsible for provincial government matters, as the case requires.

(2) The period of three months specified in Subsection (1) shall be deemed to commence on the twenty-second day after the receipt by the Head of State of the notice except where the provincial legislature or Minister, as the case may be, by written notice to the member, fixes an earlier date for the commencement.

(3) A member or deputy member of the Boundaries Commission may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

#### **8. RETIREMENT.**

(1) Subject to Subsection (2), a person who has attained the age of 55 years shall not be appointed or re-appointed as a member or deputy member of the

Boundaries Commission under Section 3 and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 55 years.

(2) The provincial legislature or Minister, as the case requires, may, for special reason in a particular case, under Section 3 appoint or re-appoint a person who is over 55 years of age to be a member or deputy member of the Boundaries Commission but a member of the Boundaries Commission shall not continue to act as a member after he attains the age of 60 years.

## 9. ACTING APPOINTMENTS TO THE COMMISSION.

(1) Where—

- (a) a position of a member of the Boundaries Commission or of a deputy of a member of the Boundaries Commission is not filled on a permanent basis under this Regulation; or
- (b) a member of the Boundaries Commission is away from the country or for any reason is not able to carry out his duties,

the provincial legislature or the Minister responsible for provincial government matters, as the case requires, may appoint a person to be an acting member of the Boundaries Commission or an acting deputy of a member of the Boundaries Commission, as the case requires, on such terms and conditions as is determined under Section 31 of the *Organic Law on National Elections* in relation to other acting members.

(2) The appointment of an acting member of the Boundaries Commission or of an acting deputy of a member of the Boundaries Commission continues until—

- (a) a permanent member or deputy member is appointed; or
- (b) the permanent member or deputy member returns to the country or becomes able again to carry out his duties,

as the case may be.

(3) An acting member of the Boundaries Commission and an acting deputy of a member of the Boundaries Commission has and may exercise and perform all the powers, duties and functions of the position on the Boundaries Commission to which he was appointed.

(4) This Regulation applies to an acting member of the Boundaries Commission and to an acting deputy of a member of the Boundaries Commission in the same way as it applies to a permanent member or deputy who held the position to which he was appointed.

## 10. MEETINGS.

At a meeting of the Boundaries Commission—

- (a) three members of the Commission form a quorum; and

- (b) the Chairman shall preside or in his absence the members of the Commission present shall appoint one of their number to preside; and
- (c) questions arising shall be decided by a majority of votes of the members of the Commission present and voting; and
- (d) the person presiding has a deliberative, and, in the event of an equality of votes on a question, also a casting vote.

**11. PROVINCIAL CONSTITUENCIES.**

(1) The boundaries of a provincial constituency are the boundaries of the area of the provincial government body for which it is the provincial constituency.

(2) A change in the boundaries of the area of any provincial government body shall, for the purposes of this Regulation, take effect only after the next following redistribution of constituencies.

(3) The Boundaries Commission may make recommendations concerning the boundaries of provinces and provincial constituencies to the Minister responsible for provincial government matters and to the relevant provincial legislature.

**12. OPEN CONSTITUENCIES.**

(1) Where the provincial constitution—

- (a) makes no provision as to the number of open constituencies; or
- (b) provides that the number of open constituencies is within certain specified limits and does not specify the precise number,

the number of open constituencies shall be as determined—

- (c) for the first time—by the Head of State, acting with, and in accordance with, the advice of the Boundaries Commission contained in its report recommending the number and boundaries of the open constituencies; and
- (d) for the second and subsequent times—by the provincial legislature, after considering a report of the Boundaries Commission.

(2) Where the provincial constitution makes no provision as to the number of open constituencies or elected members, in recommending the number of open constituencies the Boundaries Commission shall be guided by the following criteria:—

- (a) the area of each provincial government body shall be divided into at least 15 open constituencies and, in addition, one further open constituency for each 10 000 or part of 10 000 by which the population in the area exceeds 150 000; and
- (b) the number of constituencies may be increased or decreased by not more than two but shall not in any case be decreased so that the number is less than 15.

(3) For the purposes of a determination under Subsection (1)(d), the provincial legislature may accept or reject, but may not amend, any recommendation of the Boundaries Commission under this section.

(4) The Boundaries Commission shall make its recommendations in relation to a provincial government body—

- (a) in the case of an initial distribution—as soon as practicable after a provincial government body has been declared for the whole or a part of the province; and
- (b) in the case of redistributions—as soon as practicable after estimates of “population”, as defined in Paragraph (a) of that definition in Section 1 are available, but never more than 10 years after making its previous recommendation.

### **13. SIZE OF OPEN CONSTITUENCIES.**

(1) Subject to this Regulation, the Boundaries Commission, in recommending open constituencies and their boundaries, shall endeavour to ensure that all open constituencies contain approximately the same population.

(2) For the purposes of a proposed distribution or redistribution of the area of a provincial government body into open constituencies, the Boundaries Commission shall determine a population quota by the following formula:—

$$Q = P/N$$

where—

“Q” is the population quota for the constituency; and

“P” is the total population of the area of the provincial government body; and

“N” is—

- (a) in the case where the provincial constitution specifies a precise number of open constituencies—that number; or
- (b) in any other case—the provisional number of open constituencies as determined by the Boundaries Commission within the limits specified—
  - (i) in Section 12; or
  - (ii) in the provincial constitution, as the case may be.

(3) Subject to Subsection (4), in drawing the boundaries of open constituencies, the Boundaries Commission shall not draw them in such a way that—

- (a) the population of any constituency is more than 30% more than or less than 30% less than the population quota prescribed by Subsection (2) except in circumstances which, in the opinion of the Boundaries Commission, would otherwise lead to an unreasonable result; or

- (b) the boundaries of an open constituency cut across the boundaries of a provincial constituency.
- (4) Where the Boundaries Commission—
  - (a) at a meeting has determined the provisional number of constituencies and proceeded to determine the population quota calculated for that number of constituencies in accordance with Subsection (2); and
  - (b) at a later meeting determines that there is more or less constituencies than the provisional number determined at the earlier meeting,

the Boundaries Commission shall not redetermine the population quota.

(5) In determining the degree of variation of size between constituencies (within the 30% plus or minus allowable) the Boundaries Commission shall give due consideration to—

- (a) density of population; and
- (b) physical features and communications; and
- (c) existing electoral boundaries; and
- (d) Local Government Council, other local level government, provincial and other administrative areas; and
- (e) the community and diversity of interests where it considers it relevant to do so.

#### **14. NOTICE OF PROPOSED DISTRIBUTION OR REDISTRIBUTION.**

Before making its report, the Boundaries Commission shall—

- (a) cause a map with a description of the boundaries of the proposed constituencies to be exhibited at such National, provincial and Local Government offices as will give the people of the province a reasonable opportunity of seeing it; and
- (b) invite public attention to the map by advertisement in the National Gazette and by such other means as to it seems proper.

#### **15. OBJECTIONS AND SUGGESTIONS.**

Written objections or suggestions may be lodged with the Chairman of the Boundaries Commission not later than two months after the first advertisement in the National Gazette, and the Boundaries Commission shall consider all objections and suggestions so lodged before making its report.

#### **16. REPORT OF BOUNDARIES COMMISSION.**

(1) The Boundaries Commission shall, as soon as practicable after the expiration of the period of two months referred to in Section 15—

- (a) in the case of an initial distribution—forward to the Head of State; or

- (b) in any other case—forward to the Premier of the provincial government body,

a report of its proposals for the distribution or redistribution of the area of the provincial government body into constituencies, with a map signed by not less than three members of the Boundaries Commission showing the boundaries of each proposed constituency.

(2) The report referred to in Subsection (1) shall state, as nearly as can be ascertained, the population of each proposed constituency.

#### **17. REPORT TO BE LAID BEFORE PROVINCIAL LEGISLATURE.**

The report and map forwarded to the Premier under Section 16 shall be presented by the Premier to the provincial legislature within seven sitting days after its receipt by him.

#### **18. DETERMINATION OF INITIAL CONSTITUENCIES.**

(1) Where the Head of State has received a report from the Boundaries Commission under Section 16 relating to the distribution of the area of a provincial government body into constituencies, he shall determine that the number of the initial open constituencies and their boundaries are the number and boundaries specified in the recommendations contained in that report.

(2) The constituencies as determined under Subsection (1) in relation to the area of a provincial government body, until altered, and the provincial constituency (if any), shall be the constituencies for the purposes of the election of members to the provincial legislature.

(3) The Head of State shall cause the number of open constituencies and their boundaries determined in accordance with Subsection (1) to be published.

#### **19. DETERMINATION OF CONSTITUENCIES AFTER REDISTRIBUTION.**

(1) The provincial legislature may accept or reject, but may not amend, any recommendation of the Boundaries Commission under Section 16(1)(b) or this section.

(2) A resolution of the provincial legislature accepting the recommendations of the Boundaries Commission for a proposed redistribution constitutes a determination of the number of open constituencies and their boundaries, and those constituencies, until altered, together with the provincial constituency (if any), shall subject to Subsection (4), be the constituencies for the purposes of the election of members to the provincial legislature.

(3) The Premier shall cause the number of open constituencies and their boundaries determined in accordance with Subsection (2) to be published.

(4) Until the dissolution or expiration of the provincial legislature next following a determination under Subsection (2), the redistribution shall not affect the election of a new member to fill a vacancy happening in the provincial legislature,

but for the purposes of any such election the constituencies as previously existing, and the Rolls in respect of those constituencies, shall continue to have full force and effect, notwithstanding that new Rolls for the new constituencies may have been prepared.

(5) Where the provincial legislature—

- (a) passes a resolution rejecting a proposed redistribution; or
- (b) negatives a motion for the acceptance of a proposed redistribution,

the Boundaries Commission shall within three months of the resolution rejecting or negating an acceptance for a proposed redistribution—

- (c) make new recommendations for the redistribution of the area of the provincial government body into constituencies; or
- (d) confirm its previous recommendations,

and forward a copy of its new recommendations or its confirmation, as the case may be, to the Premier with, in the case of any new recommendations, a map signed by not less than three members of the Commission showing the boundaries of each proposed constituency.

(6) Where the Boundaries Commission makes new recommendations under Subsection (5), it is not necessary for it to cause the action required by Section 14 to be taken.

(7) The new recommendations referred to in Subsection (5) shall state, as nearly as can be ascertained, the population in each proposed constituency.

(8) The new recommendations and map or the confirmation forwarded under Subsection (5) shall be presented to the provincial legislature by the Premier within seven sitting days after its receipt by him.

(9) Where the provincial legislature—

- (a) passes a resolution rejecting the new or confirmed recommendations for a redistribution; or
- (b) negatives a motion for the acceptance of the new or confirmed recommendations,

the matter lapses and the constituencies for the purposes of the next succeeding general election shall be the constituencies determined after the redistribution conducted immediately prior to that redistribution.

## **20. CHANGE OF ELECTORS FROM ONE ROLL TO ANOTHER.**

(1) When boundaries of a constituency are altered, such changes as are rendered necessary for the transfer of the names of the electors from one Roll to another shall be made—

- (a) by removing the names of those electors from the Roll from which they are changed; and

- (b) by inserting the names so removed in the Roll to which they are changed.

(2) The transfer of names of electors from one Roll to another Roll under this section shall be notified by the Electoral Commission in the National Gazette and in a newspaper circulating in the province concerned.

(3) Where the Electoral Commission considers that a notification in accordance with Subsection (2) is not effective as notice to a particular elector whose enrolment has been transferred, it may—

- (a) cause notice of the transfer to be sent by post or otherwise to the elector;  
or
- (b) take such other action as it considers desirable to ensure adequate publicity.

*Provincial Government (Constituencies) Regulation 1975*