

No.3 of 2009.

Office of the Principal Legal Officer Act 2009.

Certified on: 18 December 2009.

AUTONOMOUS REGION OF BOUGAINVILLE.

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AUTONOMOUS REGION OF BOUGAINVILLE

No.3 of 2009.

AN ACT

entitled

Office of the Principal Legal Officer Act 2009.

EXPLANATORY NOTE

Background

The Bougainville Constitution sets out the structure of the Government of the Autonomous Region of Bougainville and provides for the creation of institutions or offices to assist the Government administer the affairs of the Region or provide services to the people of the Region. The Government has a duty to comply with the rule of law in everything it does. The Principal Legal Officer is an Office created under the Bougainville Constitution to be the Legal Adviser of the Government. It is an important institution in the democratic style of Government established under the Bougainville Constitution.

Section 113 (1) (a) and (2) provides for the Office of the Principal Legal Officer to be the Principal Legal Adviser to the Government.

Provisions of the Bill

The purpose of this Bill is to establish the Office of the Principal Legal Officer in accordance with section 113 (1) (a) and (2) of the Bougainville Constitution.

Part 1 of the Bill provides for the commencement of the Bill and for the interpretation of certain terms used in the Bill.

Part 2 of the Bill –

- (a) establishes the Office of the Principal Legal Officer;
- (b) sets out the principal functions of the Office;
- (c) provides that the Principal Legal Officer is the head of the Office;
- (d) provides for the President to be responsible for the Office or another Minister designated by the President.

Part 3 of the Bill –

- (a) provides for the appointment of the Principal Legal Officer by the Bougainville Senior Appointments Committee;
- (b) declares the Principal Legal Officer to be a Bougainville Constitutional Office Holder;
- (c) provides for the qualifications of the Principal Legal Officer (must be a practicing lawyer with 7 years or more in practice and is admitted to practice in Papua New Guinea);
- (d) provides for the term of office and employment. The Principal Legal Officer is appointed for a 5 year term and may be reappointed for only another term. The terms and conditions of employment are determined by the Bougainville Senior Appointments Committee on the advice of the Chief Administrator;
- (e) sets out the role and functions of the Principal Legal Officer. The Office holder is the Principal Legal Adviser to the Government and also the Principal Legal Officer of Bougainville. The Principal Legal Officer is authorized to attend BEC meetings to provide legal advice on matters before the BEC but has no vote and is not a member of the BEC. The Principal Legal Officer may advise the Government at any time on legal matters as they arise.
- (f) provides that the Principal Legal Officer must carry out his or her functions under the Constitution and the law independently;
- (g) provides that the Principal Legal Officer may exercise his or her functions through the legal officers employed in the Office.

Part 4 of the Bill –

- (a) provides for the appointment of a Deputy Principal Legal Officer who is responsible for civil litigation and to act in the place of the Principal Legal Officer when the Principal Legal Officer is unable to perform his or her functions;
- (b) provides for the appointment of a Parliamentary Counsel whose principal function is to prepare legislations on behalf of the Government;
- (c) provides for the appointment of other legal officers to assist in the functions of the Principal Legal Officer and the Office.

Part 5 of the Bill provides for the appointment of support staff.

Part 6 provides for the relationship between the Government and the Office and the Principal Legal Officer. It provides for the Government to consult the Principal Legal Officer in all legal matters. It further prohibits interference from the Government in the performance and independence of the Office and the Principal Legal Officer.

Part 7 deals with miscellaneous matters. It –

- (a) prohibits legal officers from engaging in private practice;
- (b) provides for rights of legal officers to practice law in Bougainville;
- (c) provides for regulations to give effect to the Act.

AUTONOMOUS REGION OF BOUGAINVILLE

No. 3 of 2009

AN ACT

entitled

Office of the Principal Legal Officer Act 2009.

Being an Act to implement sections 113 (1) (a) and (2) of the Bougainville Constitution to provide for the Office of the Principal Legal Officer and for related purposes.

MADE by the House of Representatives.

PART 1 – PRELIMINARY.

1. COMMENCEMENT.

This Act shall come into operation on a date appointed by the Minister and published in the Gazette.

2. INTERPRETATIONS.

In this Act, unless the context otherwise requires –

"Government" means the Autonomous Bougainville Government;

"legal officer" means a person appointed to the Office of the Principal Legal Officer under this Act and includes the Principal Legal Officer;

"Office" means the Office of the Principal Legal Officer;

"Principal Legal Officer" means the person referred to in section 113 (1) (a) of the *Bougainville Constitution* and appointed under section 7.

PART 2 - OFFICE OF THE PRINCIPAL LEGAL OFFICER.

3. OFFICE OF THE PRINCIPAL LEGAL OFFICER

There is established the Office of the Principal Legal Officer.

4. MINISTER RESPONSIBLE FOR OFFICE

The Minister responsible for the Office shall be the President or a Minister designated by the President for that purpose.

5. HEAD OF OFFICE.

The Principal Legal Officer is the head of the Office.

6. PRINCIPAL FUNCTIONS OF OFFICE.

The principal functions of the Office shall be –

- (a) to provide advice to, and represent the Government on legal matters that may be referred to it by the President, the Bougainville Executive Council, a Minister, a head of a Department, or a head of a Division; and
- (b) to provide legislative drafting services to Government.

PART 3 - PRINCIPAL LEGAL OFFICER.

7. PRINCIPAL LEGAL OFFICER.

(1) The Principal Legal Officer shall be appointed by the Bougainville Senior Appointments Committee.

(2) The Principal Legal Officer is hereby declared to be a Bougainville Constitutional Office Holder in accordance with section 189 (1) of the *Bougainville Constitution*.

8. QUALIFICATIONS OF PRINCIPAL LEGAL OFFICER.

A person is not to be appointed to the position of Principal Legal Officer unless he or she has –

- (a) been in practice as a barrister or solicitor or both in Papua New Guinea or in a Commonwealth country or partly in one and partly in the other for a period of, or periods amounting in aggregate to, not less than seven years; and
- (b) is admitted to practice in Papua New Guinea as a legal practitioner.

9. TERM OF OFFICE AND EMPLOYMENT.

(1) The Principal Legal Officer is to be appointed for a term of five years and may be reappointed.

(2) The Principal Legal Officer may on three months' notice resign from office in writing addressed to the Bougainville Senior Appointments Committee.

(3) The Principal Legal Officer may only be removed from office by the Bougainville Senior Appointments Committee on any of the grounds set out in section 190 (1) of the Bougainville Constitution.

(4) Subject to the provisions of any other enactment, the terms and conditions of employment of the Principal Legal Officer shall be determined by the Bougainville Senior Appointments Committee, on the advice of the Chief Administrator.

10. ROLE, FUNCTIONS AND POWERS OF PRINCIPAL LEGAL OFFICER

(1) The Principal Legal Officer is the principal legal officer of the Autonomous Region of Bougainville and the principal legal adviser to the Bougainville Executive Council.

(2) The Principal Legal Officer shall be vested with all such duties, functions and powers as may be provided for by the *Bougainville Constitution*, statute and the underlying law.

(3) The Principal Legal Officer shall participate in all meetings and deliberations of the Bougainville Executive Council for the purpose of providing independent legal advice but shall have no vote, and shall not be deemed to be a member of the Council.

(4) The Principal Legal Officer may, of his or her own initiative, provide such legal advice where it appears to him or her to be necessary or appropriate for legal advice to be given on a matter.

(5) The Principal Legal Officer shall have a right of audience in, and shall take precedence over, any other person appearing before any court or tribunal established under the *Bougainville Constitution* or law.

(6) The Principal Legal Officer may provide advice to a Minister or the head of a Department or Division on a matter relating to the portfolio or responsibilities of that Minister or arising within the Division or Department, as the case may be.

11. INDEPENDENCE OF PRINCIPAL LEGAL OFFICER.

(1) The Principal Legal Officer must carry out his or her obligations under the Bougainville Constitution, this Act or any other enactment or the underlying law independently and shall provide legal advice to the Government accordingly.

(2) The Principal Legal Officer is not to be subject to the direction or control by any person or authority in the exercise of his or her functions.

12. EXERCISE OF THE PRINCIPAL LEGAL OFFICERS' FUNCTIONS AND POWERS.

(1) The Principal Legal Officer may exercise his or her functions through the Deputy Principal Legal Officer or any other legal officer appointed to the Office.

(2) Notwithstanding the delegation of functions under subsection (1), the Principal Legal Officer must supervise the legal officers and remain responsible for their performance of such functions.

PART 4 - LEGAL OFFICERS.

13. LEGAL OFFICERS.

(1) There shall be appointed to the Office, the following legal officers –
(a) a Deputy Principal Legal Officer; and
(b) a Parliamentary Counsel; and
(c) such other legal officers as are required to assist in fulfilling the functions of the Office.

(2) The principal function of legal officers is to assist in the functions of the Principal Legal Officer and the Office, as directed by the Principal Legal Officer.

14. DEPUTY PRINCIPAL LEGAL OFFICER.

(1) The principal function of the Deputy Principal Legal Officer is to conduct civil proceedings as directed by the Principal Legal Officer.

(2) Any function authorized or required by any enactment or at common law to be performed by the Principal Legal Officer may be discharged by the Deputy Principal Legal Officer if –
(a) the office of the Principal Legal Officer is vacant; or
(b) the Principal Legal Officer is unable to act owing to absence or illness; or
(c) the Principal Legal Officer authorizes the Deputy Principal Legal Officer to act in any particular case.

(3) During any period when the office of the Principal Legal Officer is vacant, any certificate, petition, direction, notice, proceeding or other document, matter or thing whatsoever authorized or required by any enactment to be given, delivered, served, taken or done to, on or against the Principal Legal Officer, may be given, delivered served, taken or done to, on or against the Deputy Principal Legal Officer.

15. PARLIAMENTARY COUNSEL.

The principal function of the Parliamentary Counsel is to draft legislation on behalf of the Government as directed by the Principal Legal Officer.

16. APPOINTMENT OF LEGAL OFFICERS.

(1) The appointment of legal officers to the Office must be done in accordance with the procedures for recruitment into the Public Service under the Public Service (Management) Act 1995.

(2) A person must not be appointed to the Office as a legal officer unless that person –

- (a) has a law degree from a recognized tertiary institution or similar qualification; and
- (b) has sufficient experience and ability to fulfil the role to which he or she is to be appointed.

17. INDEPENDENCE OF LEGAL OFFICERS.

(1) A legal officer must carry out his or her duties under the *Bougainville Constitution*, this Act or any other enactment and the underlying law at the direction of the Principal Legal Officer.

(2) A legal officer is not to be subject to the direction or control by any person or authority in the exercise of his or her functions other than by the Principal Legal Officer.

PART 5 - SUPPORT STAFF.

18. SUPPORT STAFF.

Other employees may be appointed from time to time as may be necessary for the efficient carrying out of the functions of the Office in accordance with the procedures for recruitment into the Public Service under the Public Service (Management) Act 1995.

PART 6 - GOVERNMENT AND THE PRINCIPAL LEGAL OFFICER.

19. INTERFERENCE WITH PRINCIPAL LEGAL OFFICER AND OFFICE PROHIBITED.

The Government and all other persons whether in the Bougainville Government Service or otherwise must not interfere or attempt to interfere in the performance and independence of the Principal Legal Officer and the Office.

20. DUTY TO CONSULT WITH PRINCIPAL LEGAL OFFICER.

(1) In all legal matters concerning the Autonomous Region of Bougainville or Government, the President, and the Government, must consult the Principal Legal Officer.

(2) The President or the Government will not instruct another legal practitioner in relation to legal matters concerning the Autonomous Region of Bougainville without the prior written approval of the Principal Legal Officer.

(3) The Principal Legal Officer may, after consultation with the Minister, engage another legal practitioner from outside the Office to undertake legal work on behalf of the Office, where the Principal Legal Officer considers it prudent or when the circumstances warrant it.

PART 7 - MISCELLANEOUS.

21. LEGAL OFFICERS NOT ENTITLED TO PRIVATE PRACTICE.

A legal officer appointed to the Office, including the Principal Legal Officer, must not engage in private practice of any kind.

22. RIGHTS OF LEGAL OFFICERS TO PRACTICE LAW.

(1) The Principal Legal Officer, Deputy Principal Legal Officer or any other legal officer when carrying out work of a legal professional nature in that capacity for the Office –

- (a) is entitled to practice as a barrister and solicitor in any court in Bougainville; and
- (b) is entitled to all the rights and privileges of a barrister and solicitor in that court, whether or not he or she is so entitled apart from this subsection.

(2) If –

- (a) the Principal Legal Officer, Deputy Principal Legal Officer or any other legal officer does or omits to do any act; and
- (b) he or she does or omits to do that act in the course of carrying out work of a legal professional nature in that capacity for the Office;

he or she is subject to the duties and obligations to which he or she would be subject if that act had been done or omitted to be done in the course of practice by him or her as a barrister and

solicitor.

23. REGULATIONS.

The Minister may, in writing, make regulations not inconsistent with this Act for the better carrying out or giving effect to the provisions of this Act.

I hereby certify that the foregoing is a fair copy of the *Office of the Principal Legal Officer Act 2009* which has been made by the House of Representatives.


Acting Clerk of the House of Representatives

I, HONOURABLE ANDREW MIRIKI, Speaker of the House of Representatives, hereby certify that the *Office of the Principal Legal Officer Act 2009* was made by the House of Representatives on 16 December 2009, by an absolute majority vote in accordance with the *Bougainville Constitution*.


Speaker of the House of Representatives