

# **SOLOMON ISLANDS**

## **JOINT CONSTITUTIONAL CONGRESS**

### **SECOND 2014 DRAFT FOR PROPOSED**

# **CONSTITUTION OF THE FEDERAL DEMOCRATIC REPUBLIC OF SOLOMON ISLANDS, 2014**

**TUESDAY 06 MAY 2014**



## THE CONSTITUTION OF SOLOMON ISLANDS, 2014

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## PREAMBLE

We, the people of Solomon Islands, under the guidance and blessings of God the Creator, and with the authority of our traditional clan and tribal systems and leadership----

**Acknowledge** God's divine purpose and design for these islands, and for ourselves;

**Honour** the noble heritage, customs and wisdom of our ancestors and the freedom they enjoyed since time immemorial;

**Affirm** the indigenous political units of our original society, whose cultures, traditions, customs, practices and social relationships have always existed, based on tribes, clans and lineages;

**Respect** our diversity, even as we are proud of our common identity and conscious of our shared destiny;

**Believe** that Solomon Islands will evolve to reflect a changing world and local circumstances;

**Desire** that those changes will be directed through constitutional and legal channels and not by violent or unlawful means;

**Declare** our determination to live together in harmony, to preserve our freedom, autonomy, wisdom and customs, and to establish a system of government that will—

- uphold Christian and other similar spiritual principles and our customs and traditions;
- recognize the sovereignty of the people and strive to bring together a people of diversity;
- be based on the federation of our nation states, while recognizing the autonomy and interdependence of tribes, clans, lineages, natural family or communities;
- provide autonomous arrangements for the governance of the people;
- be democratic, accountable, and transparent,
- promote equality, social justice and the rule of law;
- Protect our cultural identity and intellectual property rights for the present and future generations;
- protect the environment, and manage and monitor population growth; and
- create, protect, manage and sustain a viable economic base, for the economic growth of the Republic.

In humility, and with honour in our hearts, we establish the Federal Democratic Republic of Solomon Islands, and adopt this Constitution as its supreme law for ourselves, our children and theirs, with the prayer that Solomon Islands may enjoy peace and harmony as long as the rains water our land, the rivers run from the mountains to the sea, and the oceans wash the reefs and shores of our island home.

**GOD BLESS THE FEDERAL DEMOCRATIC REPUBLIC OF SOLOMON ISLANDS**





## CHAPTER 1—FOUNDING PROVISIONS

### 1. The Republic of Solomon Islands

- (1) All sovereign authority of Solomon Islands belongs to the people, who humbly acknowledge the place of Almighty God the Creator, the importance of personal faith in building meaningful lives, and the significant role of religion in the history and development of Solomon Islands.
- (2) The people of Solomon Islands establish the Federal Democratic Republic of Solomon Islands as a sovereign state, founded on the principles of—
  - (a) respect for the indigenous political units, wisdom, customs, traditions and governing practices of our original society,
  - (b) respect for the obligations of Solomon Islands under international law;
  - (c) human rights and freedoms;
  - (d) the rule of law, including—
    - (i) an independent, impartial, competent and accessible system of justice; and
    - (ii) involvement of communities in dispute resolution;
  - (e) unity, peace, reconciliation and security; and
  - (f) the principles of good governance, including—
    - (i) the limitation and separation of powers and other forms of checks and balances;
    - (ii) both competitive and consensual democratic processes, in appropriate circumstances;
    - (iii) promotion of creativity and innovation for the common good; and
    - (iv) integrity, transparency, and accountability.

## **2. Supremacy of this Constitution**

- (1) This Constitution is the supreme law of Solomon Islands, which every person has an obligation to respect, uphold and defend.
- (2) The obligations imposed by the Constitution must be fulfilled, and any law, decree or conduct inconsistent with this Constitution is invalid to the extent of the inconsistency.
- (3) Determined to establish an enduring democracy, the People declare that any act after the effective date of this Constitution by any person or group of persons is invalid if it purports, attempts, or aids and abets an attempt—
  - (a) to suspend or abrogate this constitution;
  - (b) to repeal or alter this Constitution, other than in compliance with this Constitution;
  - (c) to establish a government other than in compliance with this Constitution; or
  - (d) to interfere in the lawful conduct of government or any organ established by this Constitution.
- (4) No law may grant, or authorize any person to grant, any amnesty or immunity to any person for an act or attempted act referred to in subsection (3).

## **3. Values governing power and authority under the Constitution**

- (1) The authority of the Federal Democratic Republic of Solomon Islands may be exercised only in accordance with this Constitution and the law, as defined in Section 244.
- (2) Public office is a trust conferred by the people through the Constitution, which vests in the holder the responsibility to serve and lead, rather than the power to be self-serving.
- (3) Everyone exercising authority under this Constitution must always—
  - (a) promote the principles listed in Section 1;

- (b) uphold the Constitution and foster a strong and sustainable federation and sense of nationhood;
- (c) support governance carried out in Federal, State and Community Government spheres, including clan, tribal village communities, church and other local communities;
- (d) uphold and protect the customs of the clan and tribal communities, including their rights of customary ownership of land and natural resources and their customary and intellectual properties, as recognised and protected by this Constitution;
- (e) uphold the fundamental rights and freedoms of the individual as recognised and protected by this Constitution;
- (f) promote the culture of democracy and an appreciation of the spirit of citizenship;
- (g) ensure open and transparent government, and accountability by all government officials and public authorities;
- (h) promote equal participation of men and women in public affairs, with particular emphasis on the involvement of women, youth and persons with special needs in the life of the Republic;
- (i) seek to eliminate injustice, corruption and wastefulness;
- (j) foster conditions for stability, peace, and the orderly conduct of daily life and relations between Solomon Islands communities;
- (k) assist language and cultural groups to write, print and document their native languages and cultures.
- (l) promote the rights of every person to access equitable education, health and economic development;
- (m) ensure ready access for all people to formal and traditional institutions of justice;

- (n) seek to reduce poverty and ensure that the basic needs of the most vulnerable and less fortunate are satisfied;
- (o) maintain the environment and biodiversity of Solomon Islands for the benefit of future generations, and encourage sustainable resource utilization and management; and
- (p) remove and destroy unauthorised firearms from Solomon Islands.

#### **4. Languages**

- (1) English and Pijin are the official languages of the Republic, and have equal status within all spheres of Government.
- (2) Each organ of Government in every sphere must be prepared to transact business with any person in English or Pijin, either directly or through a competent translator.
- (3) All indigenous vernaculars and other languages used in Solomon Islands must be recognised and respected, and may be used, as appropriate, by the Government within any sphere, or in dealings with any organ of Government in any sphere,.

#### **5. National Capital, National Symbols and Honours**

- (1) Honiara City on Guadalcanal is the Capital of the Republic, and the seat of the Federal Government. The land and sea boundaries of Honiara are determined in the manner set out in Section 194.
- (2) The Federal Parliament, by legislation, may determine—
  - (a) the national flag of the Solomon Islands;
  - (b) the national anthem of Solomon Islands;
  - (c) the national emblems of Solomon Islands;
  - (d) the national motto of Solomon Islands;
  - (e) any other national symbols of Solomon Islands; and

- (f) any system of national honours and awards.
- (3) The national flag, anthem, emblems, and motto existing immediately before the effective date of this Constitution remain and continue under this Constitution until changed by legislation contemplated in subsection (2).
- (4) No officer of the Republic may confer any honour or award granted by a foreign government.
- (5) A citizen of Solomon Islands may accept any honour or award granted by a foreign government.

## **6. The People of Solomon Islands**

- (1) The People of Solomon Islands acknowledge the spirit, value and uniqueness of each individual, affirming their inherent human dignity.
- (2) In return, each individual is encouraged to—
  - (a) enrich their community by—
    - (i) practicing self-reliance, and seek gainful occupation;
    - (ii) behaving with integrity at all times;
    - (iii) promoting and protecting family life;
    - (iv) caring for the children, teaching and nurturing the youth, and helping them to find their own place within the nation; and
    - (v) treating the elderly, the vulnerable and the disadvantaged members of the community with dignity, empathy and compassion;
  - (b) foster national unity and mutual understanding by—
    - (i) upholding and respecting local customs and cultures;
    - (ii) according the greatest tolerance and respect to all others, particularly those who are of other religions, cultures or lifestyles; and

- (iii) endeavouring to respect, learn and use our languages;
- (c) engage in the civic life of the community and nation by—
  - (i) upholding and respecting the Constitution and its values, and the laws of Solomon Islands;
  - (ii) exercising democratic rights;
  - (iii) promoting democracy, human rights, and the rule of law;
  - (iv) holding public officials accountable for the fair and lawful conduct of government;
  - (v) refraining from conducting, assisting or condoning corruption in any form;
  - (vi) co-operating with public officials as appropriate to maintain law and order; and
  - (vii) protecting public property from damage, waste and misuse;
- (d) conserve resources and protect the environment for the benefit of present and future generations; and
- (e) live in harmony with others—
  - (i) by upholding and respecting Christian or other religious ethics, principles and values;
  - (ii) by avoiding harm to others, and by acknowledging and accepting personal responsibility for actions that affect or harm others; and
  - (iii) by making restitution to those harmed, seeking forgiveness, and being reconciled within the community and nation.

## CHAPTER 2—CITIZENSHIP

## **7. Citizens of Solomon Islands**

- (1) As a manifestation of national unity, citizenship is a concept that applies only to the Republic as a whole, and not to any State within the Republic.
- (2) Every citizen of Solomon Islands has equal status, and is—
  - (a) equally entitled to all the rights, privileges and benefits of citizenship;
  - (b) equally subject to the duties and responsibilities of citizenship; and
  - (c) equally entitled to hold and use a Solomon Islands passport, and any other identifying document issued to citizens by the Federal Government or an organ of the Federal Government.
- (3) Citizenship of Solomon Islands may be acquired only by birth or naturalisation, in accordance with the provisions of this Chapter or a Federal law referred to in Section 14.
- (4) No citizen of Solomon Islands may be arbitrarily deprived of citizenship, and a citizen may lose Solomon Islands citizenship only—
  - (a) by renunciation in accordance with Section 13; or
  - (b) in accordance with a Federal law referred to in Section 14.

## **8. Retention of citizenship**

Every person who was a citizen of Solomon Islands immediately before the effective date of this Constitution continues to be a citizen under this Constitution.

## **9. Dual Citizenship**

- (1) Citizens of Solomon Islands may hold dual citizenship, which means that—
  - (a) upon accepting the citizenship of a foreign country, a person remains a citizen of Solomon Islands, unless the person renounces that status;
  - (b) a former citizen of Solomon Islands, who lost that citizenship upon acquiring foreign citizenship—



- (i) may reclaim citizenship of Solomon Islands at any time; and
- (ii) upon regaining Solomon Islands citizenship, may retain that foreign citizenship, unless the laws of that foreign country provide otherwise; and
- (c) upon becoming a citizen of Solomon Islands, a foreign person may retain their existing foreign citizenship, unless the law of that foreign country provides otherwise.

## **10. Citizenship by birth**

- (1) Every child born on or after the effective date is a citizen of Solomon Islands if either parent of the child was a citizen.
- (2) A child found in Solomon Islands who is, or appears to be, under age 14 and whose nationality and parents are unknown is deemed to have been born in Solomon Islands to parents who are citizens, unless there is evidence to the contrary.
- (3) A person who is a citizen by birth may not be deprived of that citizenship, but a child referred to in subsection (2) may be deprived of citizenship in the circumstances contemplated in Section 13(c).

## **11. Citizenship by naturalisation**

- (1) A person may apply to become a naturalised citizen of Solomon Islands if the person—
  - (a) is at least 18 years of age, and certified by the Police to be of good character;
  - (b) has been lawfully present in Solomon Islands for at least a total of 10 of the 12 years immediately before the date of the application;
  - (c) demonstrates knowledge of the Constitution, and a willingness to live in the expected manner set out in Section 6;

- (d) maintains a permanent residence in the Solomon Islands, states the place of residence, and has been accepted as a resident by the State and Community government;
- (e) knows and respects the traditions, customs and culture of the applicant's place of residence; and
- (f) satisfies any other requirements of any Federal law referred to in Section 14.

## **12. Right to reclaim citizenship**

- (1) An indigenous Solomon Islander who previously was a citizen, but is now a citizen of another country that does not allow or recognize dual citizenship, may reclaim Solomon Islands citizenship at any time—
  - (a) upon renouncing citizenship of that other country; and
  - (b) without having to comply with the requirements of Section 11.
- (2) A person who previously was a naturalized citizen of Solomon Islands, but is now a citizen of another country that does not allow or recognize dual citizenship, may reclaim Solomon Islands citizenship at any time—
  - (a) upon renouncing citizenship of that other country; and
  - (b) after complying with the requirements of Section 11.

## **13. Renunciation of citizenship**

A person may lose Solomon Islands citizenship only—

- (a) by renouncing it;
- (b) by acquiring citizenship of another country that does not permit or recognise dual citizenship; or
- (c) in the case of a naturalized citizen, or in the case of a child deemed to be a citizen by birth in accordance with Section 10 (3), by cancellation of their

citizenship, only on the grounds that the person acquired citizenship by fraud, false representation, concealment of a material fact, or similar unlawful means.

#### **14. Legislation concerning citizenship and residency**

- (1) The Federal Parliament may enact laws to—
  - (a) regulate applications for citizenship by naturalization, including, but not limited to—
    - (i) the calculation of time an applicant has been lawfully present in Solomon Islands;
    - (ii) additional conditions that applicants for naturalisation must satisfy; and
    - (iii) the manner and form of making applications;
  - (b) provide for the children of naturalized citizens to be naturalized; and
  - (c) provide the procedures for reviewing grants of citizenship, and for cancellation of citizenship.
- (2) The Federal Parliament may enact laws prescribing the conditions for residency in the Republic for any descendents of indigenous Solomon Islanders who are not citizens, but wish to reside in the Republic.

## CHAPTER 3—OUR HUMAN RIGHTS

### *Part A—Bill of Rights*

#### **15. Rights and freedoms**

Our rights and freedoms, as recognised in this Chapter—

- (a) express the customary traditions of Solomon Islanders and the nation's fundamental values and principles;
- (b) are essential to democracy, justice and the rule of law;
- (c) belong to each person and are not granted by the government in any sphere; and
- (d) may be limited only as provided in Section 16.

#### **16. Reasonable limits of rights and freedoms**

- (1) The rights and freedoms set out in this Chapter are subject only to limits that are—
  - (a) expressly set out in relation to a particular right or freedom, or elsewhere in the Constitution;
  - (b) contemplated in subsection (2) or (3); or
  - (c) contemplated in section 46 and applicable during a state of emergency.
- (2) The rights and freedoms set out in this Chapter are subject to any necessary limitation or qualification to accommodate a custom or customary practice that is—
  - (a) traditionally observed and currently practiced in a particular locality of the Republic;
  - (b) is not harsh, or repugnant to general humanity; and
  - (c) is reasonably justifiable in a democratic society.
- (3) The rights and freedoms set out in this Chapter are further subject to any limits that are set out in any law of the Republic, and—

- (a) are reasonably necessary to protect or promote—
    - (i) the Republic, this Constitution and the constitutional principles and values;
    - (ii) customary traditions and ownership of land, resources or property;
    - (iii) the rights and freedoms of others; or
    - (iv) the public interest, including safety, health, good behaviour and order; and
  - (b) are justifiable, considering both customary traditions and the principles of an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
    - (i) the nature of the right or freedom;
    - (ii) the importance of the purpose of the limitation;
    - (iii) the nature and extent of the limitation; and
    - (iv) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- (4) The Government or a person seeking to justify a particular limitation must demonstrate to the court, tribunal or other authority that the requirements of this Section have been satisfied.
- (5) The obligation on government to progressively realize the fulfillment of certain rights, as set out in Sections 31(3), 33 (5), and 38(3), is not absolute, but government in every sphere is to strive to fulfill those obligations, having regard to the resources available to the government.
- (6) Government in every sphere, and every organ of government, must respect, protect, promote and fulfill the rights and freedoms recognised in this Chapter.

**17. Right to life**

Everyone has the right to life, which is recognized as beginning at conception.

**18. Right to dignity**

Everyone has inherent dignity, is entitled to respect, and has the right to have their dignity respected and protected.

**19. Right to equality and freedom from discrimination**

- (1) Everyone is equal before the law and has the right to equal protection and benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and freedoms recognised in this Chapter or elsewhere in the law.
- (3) The government in every sphere, and every organ of government, must not discriminate directly or indirectly against anyone on one or more grounds, including birth, age, ethnicity, social origin, race, colour, language, religion, conscience, belief or opinion, culture, sex, pregnancy, marital status, disability, social status or economic status. In this subsection, “sex” is not to be interpreted as including sexual orientation.
- (4) No person may discriminate directly or indirectly against anyone on one or more of the grounds set out or contemplated in subsection (3).
- (5) Treating one person differently from another on any of the grounds set out or contemplated in subsection (3) is discrimination, unless it can be established that the difference in treatment is reasonable in the circumstances.
- (6) To promote the achievement of equality, the Government in any sphere may take legislative and other measures designed to protect or advance persons, or categories of persons, who are disadvantaged.

**20. Children**

- (1) Every child has the right—

- (a) to be registered at or soon after birth, and to have a name and nationality;
  - (b) to basic nutrition, clothing, shelter, sanitation and health care;
  - (c) to ask questions, and to learn;
  - (d) to rest, to play and to participate in sports and creative activities;
  - (e) to receive cultural knowledge, personal guidance and responsible training from parents, family and other responsible adults;
  - (f) to family care, protection and support, which includes the equal responsibility of the child's parents to provide for the child—
    - (i) whether or not the parents are, or have ever been, married to each other; and
    - (ii) whether or not the parents are living together, have ever been living together, or are separated;
  - (g) to express the child's own views on any matter affecting the child;
  - (h) to all the rights recognised in this Constitution, other than those that are restricted to adults;
  - (i) to be protected from abuse, neglect, harmful practices, any form of violence, inhuman punishment or treatment, or hazardous or exploitative labour; and
  - (j) not to be detained, except as a measure of last resort and, when detained, to be held—
    - (i) for the shortest appropriate period of time; and
    - (ii) separate from adults, and in conditions that take account of the child's sex and age.
- (2) A child's best interests are the primary consideration in every matter concerning the child.

**21. Freedom from slavery, servitude, forced labour and trafficking**

- (1) No one may be held in slavery or servitude, subjected to human trafficking, or required to perform forced labour.
- (2) In subsection (1), the expression “forced labour” does not include work that is reasonably required to be undertaken as a civic or communal obligation to participate in the care of the local community.

**22. Right to liberty and personal security**

- (1) Everyone has the right to liberty, which includes the right not to be detained without trial.
- (2) Everyone has the right to freedom from physical, mental or any other kind of torture.
- (3) No one may be subjected to cruel, inhumane, degrading or disproportionately severe treatment or punishment.

*Drafter’s Note: Subsection (3) revised to reflect formulation agreed at the 4<sup>th</sup> Plenary discussion of this Section.*

- (4) Everyone has the right to security of the person, which includes the right to be free from any form of violence from any source, at home, at school, at work or in any other place.
- (5) Everyone has the right to bodily and psychological integrity, which includes the right—
  - (a) to exercise control over their own body; and
  - (b) not to be subjected to any scientific or medical treatment or procedure without their informed consent.

**23. Right to privacy**

Everyone has the right to privacy, which includes the right—

- (a) to confidentiality of their personal information;



- (b) to confidentiality of their communications;
- (c) to respect for their private and family life; and
- (d) not to have—
  - (i) their person, home or property searched; or
  - (ii) their possessions seized.

#### **24. Freedom of religion, belief and opinion**

- (1) Everyone has freedom of conscience, religion, belief, thought and opinion.
- (2) Everyone has the right, either individually or in community with others, in private or in public, to manifest and practise their religion or belief in worship, observance, practice or teaching.
- (3) Everyone has the right not to be compelled—
  - (a) to act in any manner that is contrary to the person's religion or belief; or
  - (b) to take an oath, or take an oath in a manner, that—
    - (i) is contrary to the person's religion or belief; or
    - (ii) requires the person to express a belief that the person does not hold.

#### **25. Freedom of expression, publication and media**

- (1) Everyone has freedom of expression and publication, which includes—
  - (a) freedom to seek, receive and impart information, knowledge and ideas;
  - (b) freedom of the press, including print, electronic and other media;
  - (c) freedom of imagination and creativity; and
  - (d) academic freedom and freedom of scientific research.
- (2) Freedom of expression and publication does not protect a person who expresses—

- (a) propaganda for war;
- (b) incitement to violence or insurrection against this Constitution; or
- (c) advocacy of hatred that—
  - (i) is based on any prohibited ground of discrimination listed or contemplated in Section 19 (3); and
  - (ii) constitutes incitement to cause harm.

## **26. Freedom of movement**

- (1) Everyone has freedom of movement.
- (2) Everyone has the right to leave Solomon Islands.
- (3) Every citizen or former citizen, and any foreign spouse, widow, widower or child of a citizen, has the right to enter Solomon Islands and to remain and reside in Solomon Islands.

## **27. Freedom of association**

Everyone has freedom of association.

## **28. Freedom of assembly, demonstration and picketing**

Everyone has the right, peaceably and unarmed, to assemble, to demonstrate, and to picket.

## **29. Political Rights**

- (1) Every citizen has the freedom to make political choices, and the right—
  - (a) to present petitions to the Government in any sphere, or to any public authority;
  - (b) to form or join a political party;
  - (c) to participate in the activities of, or recruit members for, a political party; and
  - (d) to campaign for a political party, candidate or cause.

- (2) Every citizen has the right to free, fair and regular elections for any elective institution or office established under this Constitution.
- (3) Every citizen who has reached age 18 has the right—
  - (a) to be registered as a voter;
  - (b) to vote by secret ballot in any election or referendum under this Constitution;
  - (c) to be a candidate for elected public office, or office within a political party of which the citizen is a member, subject only to satisfying any qualifications for such an office; and
  - (d) if elected, to hold office.

### **30. Access to information**

- (1) Everyone has the right of access to—
  - (a) information held by any organ of government in any sphere; and
  - (b) information held by another person and required for the exercise or protection of any legal right.
- (2) Everyone has the right to the correction or deletion of untrue or misleading information that affects that person.
- (3) The government in each sphere must publish and publicize any significant information affecting the nation that would ordinarily be published in a free and democratic society.
- (4) Despite any other provision of this Constitution, subsection (1) does not take effect until the earlier of—
  - (a) The effective date of an Act of the Federal Parliament regulating access to information and protection of personal privacy; or
  - (b) The fifth anniversary of the date that this Constitution takes effect.

*Drafter's Note: Subsection (4) was inserted as a proposal to be considered by 4<sup>th</sup> Plenary, but was overlooked and not drawn to the attention of Plenary when the Chapter was introduced.*

*It should be flagged for further consideration and possible approval.*

### **31. Education**

- (1) Education is a lifelong process of preparation for the responsibilities and opportunities of life.
- (2) Everyone has the right to—
  - (a) early childhood education;
  - (b) free primary and free secondary education;
  - (c) vocational or technical education; and
  - (d) tertiary education.
- (3) The governments with authority over education must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of the right—
  - (a) to early childhood education, and further education; and
  - (b) to education for persons who were unable to complete their primary education.
- (4) Every religious community or denomination, every cultural or social community, and any private person or entity, has the right to establish, maintain and manage places of education, whether or not government in any sphere provides financial assistance for that place of education, provided that the educational institution maintains any standards prescribed by legislation.
- (5) In exercising its rights under subsection (4), a religious community or denomination has the right to provide religious instruction as part of any education that it provides, whether or not it receives financial assistance from Government for the provision of that education.

- (6) A person attending a place of education has the right to choose whether or not to—
  - (a) receive religious instruction provided at that educational institution; or
  - (b) attend, participate in, or be subjected to any religious ceremony, observance or practice.
- (7) Any standards of education imposed by Government must promote the customary traditions, national values, and Constitutional principles recognised in this Constitution.

### **32. Economic participation**

- (1) Everyone has the right to full and free participation in the economic life of the nation, which includes the right to choose their own work, trade, occupation, profession or other means of livelihood.
- (2) Everyone has the right, as producer, supplier or consumer, of reasonable access to all markets, including markets for capital, labour, goods and services, and access to means of conveying the produce of their labour to marketplaces.

### **33. Right to an adequate standard of living**

- (1) Everyone has the right to an adequate standard of living, which includes the right—
  - (a) to work, and to a just minimum wage;
  - (b) to have reasonable access to means of transport and communication;
  - (c) to accessible and adequate housing and sanitation;
  - (d) to be free from hunger, and to have adequate food of acceptable quality;
  - (e) to clean and safe water in adequate quantities; and
  - (f) to social security schemes, whether private or public, for their support in times of need, if the person is unable to be self-reliant as expected by section 6(2)(a)(i).

*Drafter's Note: Paragraph (f) has been revised to reflect the decision of the 4<sup>th</sup> Plenary when the Chapter was reviewed.*

- (2) Everyone has the right to health, and to the conditions and facilities necessary to good health, and to health care services, including reproductive health care.
- (3) A person must not be evicted from their home, or have their home demolished, without an order of a court made after considering all the relevant circumstances.
- (4) No legislation may permit arbitrary evictions.
- (5) Governments in each sphere, and all organs of those governments, must respect and protect the rights recognised in subsections (1) and (2) in their respective laws, policies and administrative practices, and have the obligation to fulfill them progressively to the extent possible within their available resources.

#### **34. Employment relations**

- (1) Everyone has the right to fair and non-discriminatory employment practices and to safe working conditions.

*Drafter's Note: Subsection (1) has been revised to reflect the decision of the 4<sup>th</sup> Plenary when the Chapter was reviewed*

- (2) Every worker has the right to form and join a trade union, and participate in its activities and programmes, and to strike.
- (3) Every employer has the right to form and join an employers' organisation, and to participate in its activities and programmes.
- (4) Trade unions and employers have the right to bargain collectively.

#### **35. Freedom from arbitrary expropriation**

Everyone has the right not to have any interest in any property expropriated other than in accordance with legislation contemplated in Chapter 4, and no law may permit arbitrary expropriation of any interest in any property.

### **36. Environmental rights**

Everyone has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations through legislative and other measures.

### **37. Executive and administrative justice**

- (1) Everyone has the right to executive or administrative action that is lawful, rational, proportionate, procedurally fair, and reasonably prompt.
- (2) Everyone who has been adversely affected by any executive or administrative action has the right to be given written reasons for the action.
- (3) Any executive or administrative action may be reviewed by a court, or if appropriate, another independent and impartial tribunal, in accordance with the law.

### **38. Access to courts or tribunals**

- (1) Everyone has the right to have any dispute that can be resolved by application of law decided within a reasonable time in a fair public hearing before a court or, if appropriate, another independent and impartial tribunal.
- (2) In any civil, criminal or other matter before a court, everyone has the right to justice that is timely and not excessively expensive or distant.
- (3) The Federal Government, through legislation and other measures, must provide for legal aid for those who cannot afford to pursue justice on the strength of their own resources, if injustice would otherwise result.
- (4) If any fee is required to access a court or tribunal, it must be reasonable and must not impede access to justice.
- (5) In any proceedings, evidence obtained in a manner that infringes any right in this Chapter, or any other law, must be excluded unless the interests of justice require it to be admitted.

### 39. Rights of arrested and detained persons, and prisoners

- (1) An arrested person has the right—
- (a) to be informed promptly, in language that the person understands, of—
    - (i) the reason for the arrest;
    - (ii) the right to remain silent, and the right to consult a legal practitioner; and
    - (iii) the consequences of not remaining silent;
  - (b) to remain silent;
  - (c) to communicate with a family member, legal practitioner, and with other persons whose assistance is necessary;

*Drafter's Note: Paragraph (c) has been revised to respond to concerns raised during the 4<sup>th</sup> Plenary when the Chapter was reviewed. The words "family member" have been inserted.*

- (d) not to be compelled to make any confession or admission that could be used in evidence against the person;
- (e) to be held separately from persons who are serving a sentence;
- (f) to be brought before a court as soon as reasonably practicable, but in any case—
  - (i) not later than 48 hours after being arrested; or
  - (ii) not later than the end of the next court day immediately following the arrest, if the 48 hours would end outside ordinary court hours, or on a day that is not an ordinary court day;
- (g) at the first court appearance, to be charged or informed of the reasons for the detention to continue, or to be released; and



- (h) to be released on reasonable terms and conditions, pending a charge or trial, unless there are compelling reasons for the person not to be released.

*Drafter's Note: the former subsection (2) has been deleted to reflect the decision of the 4<sup>th</sup> Plenary when the Chapter was reviewed.*

- (2) Whenever this section requires information to be given to a person, that information must be given simply and clearly in a language that the person understands.
- (3) A person who is deprived of liberty, by being detained, held in custody or imprisoned under any law, retains all the rights and freedoms set out in this Chapter except to the extent that any particular right or freedom is clearly incompatible with the fact of being so deprived of liberty.

#### **40. Rights of accused persons to a fair trial**

- (1) Every person charged with an offence has a right to a fair trial, as described in Section 178.
- (2) No person may be tried at all for—
  - (a) any act or omission that was not an offence under either national or international law at the time it was committed or omitted; or
  - (b) an offence in respect of an act or omission for which that person has previously been either acquitted or convicted.

#### *Part B—Elaboration of Rights and Freedoms*

#### **41. Elaboration of rights in relation to particular groups**

Sections 42 to 45—

- (a) elaborate certain rights and freedoms to ensure greater certainty as to their application to particular groups of persons; and
- (b) are not to be construed as—
  - (i) limiting or qualifying any right or freedom; or

- (ii) limiting the application to other groups of any rights or freedoms recognised in this Chapter.

#### **42. Persons with disabilities**

- (1) A person with any disability has the right—
  - (a) to be treated with dignity and respect, and to be addressed and referred to in a manner that is not demeaning;
  - (b) to be free from abuse and violence, and from treatment without their informed consent;
  - (c) to be educated, to live, to work and to engage in recreation and sporting activities, as part of the general community;
  - (d) to reasonable access to all places, public transport and information;
  - (e) to use sign language, Braille or other appropriate means of communication; and
  - (f) of access to necessary materials, substances and devices relating to the person's disability.
- (2) Persons with disability have the right to reasonable adaptation of buildings, infrastructure, vehicles, working arrangements, rules, practices or procedures, to enable their full participation in society and the effective realisation of their rights.

#### **43. Men, women and families**

*Drafter's Note: This section has been revised as requested by the 4<sup>th</sup> Pleanry when the Chapter was reviewed. The formulation "women and men" has been reversed in each case.*

- (1) Men and women have the right to equal treatment, including the right to equal opportunities in political, economic, educational, social, cultural and sporting spheres.
- (2) Men and women have the right to equal pay for work of equal value.

- (3) Subject to customary ownership, and to customary laws relating to land ownership and land usage, men and women have —
- (a) equal rights relating to land, land ownership, land occupation and land use; and
  - (b) an equal right to inherit, to have access to property, and to manage property.

*Drafter's Note: In accordance with decisions at the 4<sup>th</sup> Plenary discussion of the Chapter, the former subsection (2) has been divided, and the new subsection (3) has been reformulated to subject the rights to customary laws.*

- (4) In the Republic, marriage is recognised exclusively as a relationship between a man and a woman, founded on the full and free consent of each party to the marriage.
- (5) Each party to a marriage has equality of status, rights and responsibilities before, during, and at the dissolution of marriage, subject to customary laws relating to land ownership and land usage.
- (6) Women have the right—
- (a) to maternal health care services;
  - (b) appropriate paid pregnancy and maternity leave; and
  - (c) not to be dismissed from work during pregnancy or maternity leave.
- (7) Men have the right to—
- (a) appropriate paid paternity leave; and
  - (b) not to be dismissed from work during paternity leave.
- (8) [Women and men have the right to be free from any law, culture, custom or tradition that undermines their dignity, health, welfare, interest or status.]

*Drafter's Note: the 4<sup>th</sup> Plenary agreed to re-visit subsection (8) after further expert opinion.*

- (9) The parties to a *de facto* relationship have the same rights and responsibilities, and the same status in relation to each other, as the parties to a marriage.

#### **44. Elderly**

- (1) The elderly have the right—
- (a) to participate fully in society;
  - (b) to pursue their personal development;
  - (c) to be free from all forms of discrimination and abuse;
  - (d) to live in dignity and respect, and to be addressed and referred to in a manner that is not demeaning; and
  - (e) to live independent, active and full lives, making their own choices free from coercion or undue influence.
- (2) The elderly continue to have all of their rights including, in particular, the right to an adequate standard of living recognised in Section 33.
- (3) Any organ of government in any sphere, and any other supplier of any goods or services, may—
- (a) provide preferential attention or service to the elderly; and
  - (b) offer or provide goods or services at a discounted price to the elderly generally.

#### **45. Cultural, religious and linguistic communities**

- (1) A person who belongs to a customary, cultural, religious or linguistic community has the right, with other members of that community—
- (a) to enjoy their customary traditions and culture, practise their religion, and use their language; and

- (b) to form, join and maintain cultural, religious or linguistic associations and other organs of civil society.
- (2) The rights recognised in subsection (1) may not be exercised in a manner inconsistent with any provision of this Chapter.

*Part C—Applying the Bill of Rights*

**46. Limitation of rights under states of emergency**

- (1) Any legislation enacted or promulgated in consequence of a declaration of a state of emergency under Section 238—
  - (a) may limit a right or freedom in this Chapter only to the extent that—
    - (i) the limitation is strictly required by the emergency, and is justifiable under Section 16; and
    - (ii) the legislation is consistent with the Republic’s obligations under international law applicable to a state of emergency; and
  - (b) takes effect only when it has been published.
- (2) A person detained under legislation contemplated in subsection (1) retains all the rights recognised in this Chapter, subject only to the limitations referred to in subsection (1).
- (3) Any legislation contemplated in subsection (1)—
  - (a) must not authorise or permit the detention of a person for more than 7 days before being brought before a court as required by Section 39 (1)(f); and
  - (b) must require that every detainee be given reasonable opportunity to communicate with, and to be visited by —
    - (i) the detainee’s spouse, *de facto* spouse or next of kin;
    - (ii) a political representative;

- (iii) a religious counsellor or social worker; and
- (iv) a legal practitioner chosen by the detainee.

*Drafter's Note: Clause (i) has been revised to reflect a decision taken by 4<sup>th</sup> Plenary when the Chapter was reviewed. "de facto spouse" has replaced "life partner".*

#### **47. Application of rights**

- (1) This Chapter applies to all law in the Republic, and binds Parliament, the Cabinet, the judiciary, and government in each sphere, and every organ of those governments.
- (2) A provision of this Chapter binds a natural or legal person, taking into account—
  - (a) the nature of the right or freedom recognised in that provision; and
  - (b) the nature of any restraint or duty imposed by that provision.
- (3) A legal person has the rights and freedoms recognised in this Chapter, to the extent required by the nature of the right or freedom, and the nature of the particular legal person.
- (4) When deciding any matter according to the common law, a court must apply and, where necessary, develop the common law in a manner that respects the rights and freedoms recognized in this Chapter.
- (5) In applying any right under Section 31(3), 33(1) and (2), 38(3) or 42(2), if a government, or organ of a government, claims that it does not have the resources to implement the right, it is the responsibility of the government or government organ to show that the resources are not available.

#### **48. Interpretation of this Chapter**

- (1) In addition to complying with Section 245, when interpreting and applying this Chapter, a court, tribunal or other authority—
  - (a) must protect the customs and customary practices referred to in Section 16(2);
  - (b) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom;

- (c) must consider international law relevant to the protection of the rights and freedoms in this Chapter; and
  - (d) may consider foreign law from other open and democratic societies.
- (2) This Chapter does not deny, or prevent recognition of, any other right or freedom recognised or conferred by common law, customary law, or legislation, except to the extent that it is inconsistent with this Chapter.

#### **49. Solomon Islands Human Rights Commission**

- (1) The Solomon Islands Human Rights Commission is established as an Independent Commission under Chapter 12 of this Constitution.
- (2) The Solomon Islands Human Rights Commission consists of a Chair and 2 other members, each of whom is appointed by the President, acting in accordance with the recommendation of the Judicial and Legal Services Commission.
- (3) At least one of the three members must be qualified to be a judge of the High Court.
- (4) The chair of the Solomon Islands Human Rights Commission may be full or part time, as determined by the Judicial and Legal Services Commission when recommending an appointment. All the other members of the Solomon Islands Human Rights Commission serve part time.
- (5) The Solomon Islands Human Rights Commission is responsible for—
  - (a) promoting the protection and observance of, and respect for, human rights in public and private institutions, and to develop a culture of human rights in Solomon Islands;
  - (b) education about the rights and freedoms recognised in the Bill of Rights, as well as other internationally recognised rights and freedoms;
  - (c) monitoring, investigating and reporting on the observance of human rights in all spheres of life;

- (d) making recommendations to government in any sphere, and to any organ of those governments, concerning the matters affecting the rights and freedoms recognised in this Chapter, including recommendations concerning existing or proposed legislation;
  - (e) receiving and investigating complaints about alleged abuses of human rights and taking steps to secure appropriate redress if human rights have been violated;
  - (f) investigating or researching, on its own initiative or on the basis of a complaint, any matter in respect of human rights, and making recommendations to improve the functioning of public or private entities;
  - (g) monitoring compliance by government in every sphere, and organs of those governments, with obligations under treaties and conventions relating to human rights; and
  - (h) performing any other functions conferred on the Commission by legislation.
- (6) Any person has the right to complain to the Solomon Islands Human Rights Commission, alleging that a right or freedom in this Chapter has been denied, violated or infringed, or is threatened.
- (7) The Solomon Islands Human Rights Commission has other general powers, as set out in Section 198 including, in particular, the authority to enforce compliance with rights by issuing a notice under 198 (3)(c).



## CHAPTER 4—OUR NATURAL HERITAGE

### 50. The natural environment

Our island home is a rich and complex natural environment. Each of us living here—

- (a) acknowledges the spirit in all living things;
- (b) accepts the responsibility to care for and preserve the natural environment;
- (c) bears an obligation to leave a clean and healthy environment to future generations; and
- (d) undertakes to—
  - (i) care for the air, the land, the water, and all living things within them; and
  - (ii) use resources in moderation.

### 51. Security of existing property rights

- (1) All ownership of land, and all rights and interests in land, whether customary, private or public, that existed immediately before the effective date of this Constitution—
  - (a) continue to exist under this Constitution; and
  - (b) are subject to the laws recognised by or made under this Constitution.
- (2) Indigenous Solomon Islanders retain the full ownership, possession, control and protection of their ‘tabu’ traditional properties, and of the intellectual property rights in their culture and arts, subject to law.

### 52. Principles

- (1) In Solomon Islands, land is to be held, used and managed in accordance with the following principles—
  - (a) recognition and enforcement of customary law in relation to the ownership and use of land and natural resources;

- (b) recognition of the capacity of customary law to develop to meet new needs, provided those changes are accepted by the land owners and community;
  - (c) as far as possible, land is to be restored to the community to which it belonged under the relevant customary law;
  - (d) deprivation, exploitation and development of land is permitted only—
    - (i) with the full, free and informed consent of the owners or, where appropriate, the users; and
    - (ii) with full compensation for those affected;
  - (e) respect for the environment and for the interests of future generations; and
  - (f) the improvement of the conditions of life, work, levels of health and education of the customary owners concerned, with their participation and co-operation.
- (2) Customary rights over areas of the sea, reefs, and fishing grounds are recognised, subject to other provisions of this Constitution.
- (3) Indigenous Solomon Islanders, as owners and custodians of the customary land—
- (a) have the right to decide their own priorities for the development, use or exploitation of their customary lands and resources as they affect their lives, beliefs, institutions and spiritual well-being; and
  - (b) may exercise the rights recognised in paragraph (a) through the institutions established by or under this Constitution, and subject to the principles and values set out in this Constitution.
- (4) Except to the extent permitted by Section 62 or legislation required by subsection (5), a non-citizen of the Solomon Islands may not be granted any interest in land exceeding—
- (a) 50 years, in the case of a residential lease or residential fixed term interest; or
  - (b) 75 years, in any other case,

but, in either case, such a lease or fixed term interest may be renewed after its expiry date.

*Subsection (4) has been revised as instructed by the 4<sup>th</sup> Plenary. One question remains.*

*The new provision, clarifying that an interest can be renewed “after expiry” opens the question whether it may be replaced before expiry: in other words, can a 50 year lease be replaced at year 45, with a further 50 year lease? Or must the parties wait until the first lease has expired before agreeing a new lease?*

- (5) The Federal Parliament must enact legislation protecting the rights and interests of Solomon Island citizens with respect to land, by setting out the circumstances in which corporate bodies, associations, trusts, churches or other legal persons are—
- (a) exempt from the restrictions set out in subsection (4), on the grounds that the corporate bodies, associations, trusts, churches or other legal persons—
    - (i) are partially or completely owned or controlled by Solomon Island citizens; or
    - (ii) operate substantially for the benefit of Solomon Islands citizens; or
  - (b) are to enjoy the same rights as Solomon Island citizens under any other section of this Chapter.

*Drafter’s Note: As directed by the 4<sup>th</sup> Plenary (when considering problems in Section 62) Subsection (4) has been inserted as a proposal for consideration, to address a number of problems respecting corporate bodies, associations, etc, who are intended to enjoy the same rights as citizens under various clauses in this Chapter.*

### **53. Categories of land**

- (1) Land in Solomon Islands is either—
- (a) customary land;
  - (b) public land; or
  - (c) private land.

- (2) Customary land is all the land held under customary law by a tribe, clan, lineage or other customary group, entity or individuals, described as the “*customary owners*” in this Chapter, according to the customary law applicable to the land in question.
- (3) Customary land includes the air-space above the land, and everything on or below the surface of the land down to the centre of the earth including, in particular, all minerals, petroleum and natural gas.
- (4) Public land is all land held in perpetual estate by the Federal Government, a State Government or a Community Government, in trust for the people of the nation, the state or the community.
- (5) Private land is land held in perpetual estate by any person other than a Government or organ of government.
- (6) Customary land leased or otherwise transferred for a limited time to a Government, organ of Government, or any other person—
  - (a) remains customary land; but
  - (b) during the period of the lease or other transaction or arrangement, the land—
    - (i) may be governed by laws relating to private land; and
    - (ii) customary rights are suspended.

#### **54. Ownership and use of Customary Lands, Resources or Properties**

- (1) The right to own any particular customary land or other customary resource or property may vest only in the groups or individuals recognised by the customary law applying to that particular land, resource or property.
- (2) The rights to use any particular customary land or other customary resource or property, including the sea, reef and fishing grounds, are governed by the customary law and practice of that particular resource or property.
- (3) The relevant customary law governs succession to rights to own and to use customary land and other customary resources or property.

## **55. Alienation of customary land**

- (1) Ownership or usage rights in customary land may be leased, transferred, charged or alienated only—
  - (a) by compulsory acquisition in accordance with Section 58; or
  - (b) in accordance with the following clauses of this section.
- (2) Customary land, resources or properties, including usage rights, may not be alienated unless the customary owners have given their prior, free and fully informed consent to the alienation.
- (3) Perpetual estates in customary land may be granted or transferred only to the groups or individuals and, in the circumstances permitted, under the applicable customary law.
- (4) In all circumstances respecting any alienation of customary land—
  - (a) it is presumed that the customary owners or holders of usage rights have not given their prior, free and fully informed consent unless they have had the opportunity to obtain independent legal advice;
  - (b) a person seeking to uphold the transaction has the responsibility of establishing that customary owners or holders of usage rights had adequate opportunity to obtain independent legal advice; and
  - (c) if the compensation or return for the owners or holders of usage rights was significantly short of being fair in the circumstances at the time of the transaction, that fact—
    - (i) is evidence that the transaction did not receive the free and fully informed consent of the owners; but
    - (ii) may be rebutted by contrary evidence offered by any party seeking to uphold the transaction.

- (5) For the purposes of subsection (4)(c), the relevant circumstances include the use for which the land or rights were transferred, or are to be transferred.
- (6) Any customary law restriction on the alienation of land or rights is a justifiable limitation of rights, within the meaning of Section 16.

**56. Right of owners to control development of customary lands and resources**

- (1) The rights of customary owners and holders set out in Sections 52 (1)(d) and (4), and 55 (2), apply to any—
  - (a) development of customary land; or
  - (b) exploitation of resources, including any development, utilization or exploitation of forests, minerals, water and other natural resources.
- (2) Any public authority, body or person seeking to develop customary land or resources must ensure that studies are carried out by a reputable and recognized independent body, in cooperation with the owners and other people concerned, to assess the social, spiritual, cultural and environmental impact of the planned development or exploitative activity, and on the general environment.
- (3) The findings of an impact study carried out as required by subsection (2)—
  - (a) must be taken into account in considering a scheme of development or exploitative activity; and
  - (b) are required conditions for the development or activity, if it is approved.
- (4) The Federal Parliament must enact legislation to protect the environment from harmful development by—
  - (a) regulating development to balance its social and economic benefits against the need for environmental protection;
  - (b) prohibiting or restricting categories of developments that would cause gross harm that could not be remediated;
  - (c) providing for conditions to be imposed on potentially harmful developments—

- (i) to reduce the potential for harm; and
- (ii) require mitigation of harm; and
- (d) require remediation of the environment affected by development, to the extent compatible with the development.

*Drafter's Note: Subsection (4) has been replaced as per previous recommendation and decision by the 4<sup>th</sup> Plenary.*

*On further reflection, consider whether it might be better placed as Section 52 (6), that is, as a general principle affecting all land development.*

- (5) If an impact study required by subsection (2) is not carried out for any particular development or activity, that fact is evidence that the owners of the affected land have not given their prior, free and fully informed consent to the project or development.
- (6) Customary land and resource owners are entitled to negotiate and receive—
  - (a) a just and fair return from the financial and economic benefits of the development, utilisation or exploitation of their resources; and
  - (b) fair compensation for measures taken to mitigate adverse environmental, economic, social, cultural and spiritual impacts.

*Drafter's Note: Paragraph (b) seems odd. The developer pays to mitigate adverse consequences, and then has to compensate the owners for taking those mitigation measures. If the mitigation benefits the customary owners (the only purpose of mitigation) why do the owners then have to be further compensated for receiving those benefits? Normally, one is compensated only when there has been a loss.*

*The 4<sup>th</sup> Plenary flagged this clause for further discussion.*

## **57. Right against forceful removal**

- (1) Forceful eviction of customary owners or users from land is permissible only if they have refused to leave after having freely agreed within the provisions of this Chapter.
- (2) If unavoidable, evictions may be carried out only in accordance with internationally recognised standards, including that —

- (a) appropriate notice is given to all potentially affected persons that eviction is being considered;
- (b) evictions must not result in individuals being rendered homeless or vulnerable to the violation of other human rights;
- (c) evictions must be carried out in the presence of governmental officials or their representatives, and with the possibility of independent observers;
- (d) evictions must not be carried out in a manner that violates the dignity and human rights to life and security of those affected; and
- (e) adequate steps must be taken to ensure that women are not subject to gender-based violence and discrimination in the course of evictions, and that the human rights of children are protected.

## **58. Compulsory acquisition of land**

- (1) Land or other property may be compulsorily acquired by the Federal Government, a State Government or a Community Government for any public work or purpose, but only in accordance with the provisions of this section.

*Drafter's Note: Consider whether subsection (1) should be revised to include a power of government organs to acquire land or property. For example, if the Government established a transportation authority to own, build and operate highways, shouldn't that authority have the ability to acquire the needed land for the highways?*

- (2) Compulsory acquisition may not be used unless free negotiations have first taken place in which the owners or holders of all interests are made fully aware of —
  - (a) the reason for the acquisition;
  - (b) the compensation that will be paid to them; and
  - (c) other relevant information.
- (3) Reasonable compensation must be paid or delivered within a reasonable period of time to every owner of any land or property that is acquired by compulsory action,



and for any disturbance or inconvenience to the owner. Compensation may be in the form of—

- (a) financial compensation;
  - (b) replacement land or property; or
  - (c) a combination of financial compensation and replacement land or property.
- (4) The government in any sphere may not acquire customary land for any period in excess of the reasonably anticipated—
- (a) working life span of the public works for which the land is required; or
  - (b) duration of the public purpose for which the land is required.

*Drafter's Note: Subsection (4) has been replaced as directed by the 4<sup>th</sup> Plenary.*

- (5) The Federal Parliament must enact legislation providing for—
- (a) adequate notice to owners of any proposed compulsory acquisition;
  - (b) the regulation of negotiations respecting any proposed compulsory acquisition;
  - (c) opportunities, including access to court or other impartial tribunal, to challenge—
    - (i) any proposed acquisition; or
    - (ii) the amount or terms of the proposed compensation.

## **59. Mutual obligations in the provision of public works**

Customary land and resource owners, and government in each sphere, owe each other reciprocal obligations of good faith and fairness in dealing with each other over requests to acquire rights of access or ownership of customary land or use of resources to the extent permitted by this Chapter.

**60. Reinstatement**

If the grounds for the removal from or acquisition of customary land cease to exist, the law and the procedures must provide for the original customary landowners to reoccupy the lands, on reasonable terms.

**61. Restoration**

- (1) The reversionary interest in land previously held by non-citizens, which was vested in the Government by virtue of Section 111 of the previous Constitution and the law, must be restored to the original customary owners or their descendants on terms that take account of—
  - (a) the terms on which the original customary owners parted with the land; and
  - (b) any compensation paid by the Government to the non-citizens who had owned the land.
- (2) All public land, whether developed or undeveloped, must be returned by the Commissioner of Lands to the descendants of the original customary land owners, on terms that take account of—
  - (a) the basis on which the original customary owners parted with the land; and
  - (b) any compensation paid by the Government to those original owners.
- (3) If any public land referred to in subsection (2) is developed, the Federal Government holds a leasehold title, or a fixed term estate title, from the original customary land owners or their descendants, for a period of 50 years beginning from the effective date of this Constitution.
- (4) Subsections (1) and (3) do not apply to land that is being used for infrastructure projects such as those mentioned in Section 58 (4).

*Drafter's Note: Because of changes to s. 58(4), that section no longer has a list of infrastructure projects. Consider instead substituting the words "a public work or public purpose contemplated in section 58 (4)".*

## 62. Exceptions to restrictions on holding land

- (1) The perpetual estate titles of all public land in Honiara City, which were held immediately before the effective date of this Constitution by the Commissioner of Lands, are—
  - (a) to be held from that date by the Lands Commission established under Section 63; and
  - (b) are not subject to the restoration requirements of Section 61.

*Drafter's Note: Subsection (1) has been reformulated for grammatical refinement.*

- (2) The perpetual estate titles of all public land in the various Provincial Capitals, which were held immediately before the effective date of this Constitution by the Commissioner of Lands, the Premier or the Provincial Assembly, are—
  - (a) to be held from that date by each respective State Government; and
  - (b) are not subject to the restoration requirements of Section 61.

*Drafter's Note: Subsection (2) has been reformulated for grammatical refinement, and as directed by the 4<sup>th</sup> Plenary.*

- (3) The following classes of persons or institutions are also permitted to hold perpetual titles in land—
  - (a) a trustee for any customary landowning group;
  - (b) the trustee, including the Public Trustee, trustee in bankruptcy, or personal representative of any person entitled to hold a perpetual interest in any particular land;
  - (c) registered co-operatives under the Co-operatives Societies Act;
  - (d) community companies, under the Companies Act 2009;
  - (e) State Owned Enterprises incorporated by any written law of Solomon Islands;
  - (f) Community Governments;

- (g) a settler from the former Gilbert and Ellice Islands Colony who, prior to 15th September 1977, had been granted, had acquired, or was holding land in perpetuity or a descendant of such settler, in respect only of the land so granted or acquired; or
- (h) any Solomon Islands citizen; or
- (i) any company, trust, association, church or other legal person that enjoys the same rights as a citizen in terms of the legislation required by section 52 (5).

*Drafter's Note: Subsection (3) has been reformulated as requested by the 4<sup>th</sup> Plenary. The former paragraphs (c) and (h) have been removed, and replaced with new paragraph (i).*

*The new paragraph (h) has been inserted to address an apparent gap, as nothing previously asserted the right of SI citizens to hold land in perpetual estate, although section 53 (5) appears to contemplate that in defining "private land", and paragraph (b0) above seems to contemplate the same.*

### **63. Establishment of the Lands Commission**

- (1) The Lands Commission is established as an Independent Commission under Chapter 12 of this Constitution, comprising—
  - (a) a representative from each of the States; and
  - (b) the Commissioner of Lands, the Surveyor General and the Director of Physical Planning of Honiara City Council.
- (2) The Lands Commission has—
  - (a) the authority to allocate leasehold or fixed term estates only in respect of the public land within Honiara city; and
  - (b) any other powers and functions—
    - (i) provided for in an Act of the Federal Parliament; or
    - (ii) reasonably necessary or incidental to the functions of the Lands Commission.

#### **64. Natural resources**

- (1) Policy, legislation and decision making relating to natural resources must be guided by the following principles:
  - (a) Resource development and use must promote the social and economic benefit of the people.
  - (b) Government in each sphere, and all organs of those governments, must keep the public informed and involved in decisions relating to resource policy and management.
  - (c) Resource development permits should be granted on the basis of competitive tendering, unless there is a substantial reason to do otherwise.
  - (d) The decision to approve, licence or otherwise permit any development should be made only after careful consideration of all foreseeable benefits and social, economic and environmental consequences.
  - (e) All enterprises engaged in resource extraction must be required to maintain best practice standards in contracting, operations, payments, transparency and accountability.
- (2) A government in any sphere, or any organ of those governments, must not—
  - (a) use assets of its water as security for any purpose; or
  - (b) divest its ownership or other interest in a water service or infrastructure necessary to providing water services except to another government or organ of government.

#### **65. Duty to consult with respect to land and resources**

- (1) If any project is proposed to develop infrastructure, or to develop or extract resources, on any land in a manner that may reasonably be anticipated to adversely affect the rights or interests of other persons or a community with respect to that land or any other land, the proponent of the project, and the government in any sphere, or

any organ of those governments, with authority over the project, have a joint duty before licensing, permitting or undertaking that project to —

- (a) inform those persons or that community about the project in sufficient detail for the affected persons to assess the possible effects of the project on their rights and interests;
  - (b) engage in constructive discussions with the affected persons to identify any reservations they may have about the effects of the project; and
  - (c) seek consensus with the affected persons by making any reasonable and necessary modifications to the project to protect their rights and interests and accommodate their reservations.
- (2) Government in any sphere, and any organ of those governments, with authority over a project, when licensing or permitting the project, must impose conditions that, so far as reasonably possible, protect the rights and interests and accommodate the reservations of the affected persons with respect to the project.
- (3) The duty to consult, as set out in subsection (1), continues while the project is underway, so long as it affects the rights or interests of other persons or communities.

## **66. Environmental Principles**

- (1) Government in every sphere, and any organ of those government, and any entity or person exercising a power or performing a function involving the management of land, natural resources, water, sea and air must strive to—
  - (a) protect the wildlife, genetic resources and biological diversity of Solomon Islands;
  - (b) protect Solomon Islands from foreign invasive species;
  - (c) protect forests and carry out reforestation;
  - (d) protect the fisheries and ensure that the commercial fishery is sustainable;

- (e) practise, encourage and, where practicable, require waste minimisation and recycling;
  - (f) preserve water quality and practise, encourage and where practicable require water conservation, and specifically to protect water catchment areas, water ways and ground water areas or reserves;
  - (g) practise, encourage and where practicable require the use and development of energy efficient technology and the use of renewable energy resources;
  - (h) protect the environment, giving priority to prevention of environmental damage and degradation, but also providing for restoration in case of damage including unavoidable damage and for compensation;
  - (i) establish systems for environmental audit and monitoring on projects likely to have a significant impact on the environment;
  - (j) protect against the importation or use of toxic wastes; and
  - (k) ensure that environmental standards enforced by the Republic reflect the best of appropriate international standards.
- (2) The Federal Parliament must enact legislation to protect the environment by regulating the importation and use of genetically engineered seeds or other genetically engineered agricultural stock.

*Drafter's Note: As requested by the 4<sup>th</sup> Pleanry, Subsection (2) has been introduced for consideration as a replacement for the previous paragraph (l).*

## **67. Legislation and other measures**

The Federal, State and Community Governments, within their respective spheres of authority, may enact laws and take administrative measures necessary to fulfil the provisions of this Chapter including—

- (a) to prevent any unauthorized alienation of, intrusion upon, interference with or encroachment upon the rights of ownership or use of customary law;
- (b) to protect the environment for the people of the Solomon Island;

- (c) to protect and enhance the productive capacity of the land, especially of customary lands; and
- (d) to protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities.

*Drafter's Note: The opening clause has been revised by the insertion of the underlined words, to ensure certainty that this section does not over-ride the Federal distribution of legislative authority set out in the rest of the Constitution.*

*The former paragraph (c) has been divided to correct what was previously a formatting error.*





## CHAPTER 5—GOVERNMENT OF SOLOMON ISLANDS

### *Part A—Co-operative Federalism*

#### **68. Structure of Government in the Republic**

- (1) As a Federal Democratic Republic, governing authority of Solomon Islands is distributed among the following spheres:
  - (a) Federal Government
  - (b) State Governments
  - (c) Community Governments.
- (2) Each State Government and Community Government has autonomy in matters relating to its internal affairs within the limits given by this Constitution.
- (3) Each State has the right under this Constitution, with its communities and people, to participate fully through procedures determined by them, in devising governmental, administrative and other measures of democratic governance through Community Governments.
- (4) Governments within each sphere, and all organs of those governments, must—
  - (a) observe and adhere to the principles set out in Section 69; and
  - (b) conduct their activities within the limits of their authority.

#### **69. Principles of co-operative government**

- (1) Governments within each sphere, and all organs of those governments, must be loyal to this Constitution, and in particular, must—
  - (a) preserve the federation of States and Communities;
  - (b) secure the well being of the people;
  - (c) provide efficient, effective, transparent, accountable and coherent government;

- (d) respect the constitutional status, institutions, powers and functions of government in all spheres;
  - (e) not assume any powers or functions except those conferred on them under this Constitution;
  - (f) not budget for or spend any budgeted funds on a matter that falls within the exclusive authority of government within another sphere;
  - (g) exercise their powers and perform their functions in a manner that does not impede the activities, prejudice the authority or encroach on the geographical, functional or institutional integrity, of government within another sphere; and
  - (h) co-operate with one another in mutual trust and good faith by—
    - (i) fostering unity and peaceful coexistence;
    - (ii) assisting and supporting one another;
    - (iii) informing one another of, and consulting one another on matters of interest;
    - (iv) coordinating their actions and legislation with one another; and
    - (v) adhering to agreed procedures.
- (2) To the extent possible, any dispute between governments or organs of government must be addressed through mediation before resorting to legal proceedings.
- (3) The Federal Parliament may enact laws regulating —
- (a) the conduct of inter-governmental relations;
  - (b) the resolution of disputes between or among governments within all spheres; and
  - (c) the conduct and procedures of the inter-governmental structures established under Part B of this Chapter.

*Part B - Inter-governmental structures*

**70. Prime Minister and State Premiers Conference**

- (1) The Prime Minister and State Premiers may meet from time to time, as determined in accordance with a Federal law, to address—
- (a) development strategies, plans, implementation and experience within all the spheres of government;
  - (b) social, economic, political and financial circumstances within each sphere of government;
  - (c) revenue sharing ratios;
  - (d) intelligence and security matters pertaining to the whole Republic;
  - (e) matters pertaining to international agreements and relations;
  - (f) foreign investment and trade;
  - (g) the need to create and allocate additional seats in the Federal Parliament for any reason contemplated in section 120 (3);
- Drafter's Note: Paragraph (g) has been inserted as a consequence of 4<sup>th</sup> Plenary instructions relating to sections 72 and 120.*
- (h) any other matters of intergovernmental concern arising within the Republic;
  - (i) progress on matters previously discussed and agreed; and
  - (j) administrative and financial matters relating to the Conference.
- (2) Implementation of any agreement reached by consensus of the Conference may be assigned to, or carried out by—
- (a) all spheres of governments, acting in concert; or
  - (b) separately by any particular sphere of government as agreed at the Conference.

- (3) If the Conference creates and allocates any new seats in Parliament, as contemplated in subsection (1)(g), the Conference decision must be referred to the National Boundaries Commission, which must consider the boundaries of Federal Parliament constituencies and make appropriate changes to give full effect to the Conference decision.

*Drafter's Note: subsection (3) has been inserted as a consequence of 4<sup>th</sup> Plenary instructions relating to sections 72 and 120.*

## **71. Congress of States**

- (1) There is established a Congress of States comprising—
  - (a) the President, who is the chairperson of the Congress;
  - (b) the State Governor of each State; and
  - (c) one man and one woman to represent each State, appointed by the President on the advice of the State Governor.
- (2) Each person appointed under subsection (1)(c) —
  - (a) must be a citizen of Solomon Islands and be of high moral integrity and good character;
  - (b) holds office for a period of four years; and
  - (c) may be re-appointed on the expiry of their term of office.

*Drafter's Note: Subsection (2) has been re-structured and re-formulated for greater clarity and coherence.*

- (3) The Congress of States may—
  - (a) advise on matters affecting the national interests;
  - (b) review and advise on any proposed legislation affecting the affairs of the Republic, taking into particular account the views of the State Governments;

- (c) advise on the fair selection of suitable persons to hold office under this Constitution unless a contrary intention appears elsewhere in this Constitution;
  - (d) advise and report on constitutional, electoral or constituency review or reform taking into particular account the views of State Governments;
  - (e) examine and report on any matter that the Congress of States sets for investigation or review on its agenda; and
  - (f) monitor to ensure constitutional democracy works in the Republic.
- (4) The Congress of States reports—
- (a) to the Federal Parliament, through the President in his annual address to Parliament; and
  - (b) to each State Parliament through the State Governor.
- (5) The Congress of States must meet at least three times each calendar year at times and places appointed by the President, when there is business relating to matters specified in subsection (3).
- Drafter's Note: Subsection (5) as been re-formulated as directed by the 4<sup>th</sup> Plenary.*
- (6) The Congress of States may—
- (a) determine and control its own internal arrangements, proceedings and procedures; and
  - (b) make rules and orders concerning its business.
- (7) Each member of the Congress of States—
- (a) serves in that capacity without a salary or remuneration; but
  - (b) is entitled to allowances and reimbursement of reasonable expenses for attending meetings, as—

- (i) determined and approved by the National Remuneration Commission;  
and
- (ii) paid out of the Federal Consolidated Fund.

*Part C—Distribution of jurisdiction among spheres of government*

**72. Territorial jurisdiction**

- (1) The Republic comprises no more than twelve States, each of which have the powers assigned to them by this Constitution within their respective boundaries.
- (2) Each of the nine provinces in Solomon Islands existing immediately before the effective date of this Constitution become a State on the effective date, with its boundaries as described in Schedule Four.
- (3) Two or more States may amalgamate to create a new State, or a State may partition to create a number of States, but—
  - (a) an amalgamation or partition must be in accordance with an arrangement agreed between the States concerned and the Federal Government; and
  - (b) no more than three additional States may be created as a result of the partition of any States.
- (4) A State may surrender part of its territory to create an additional Federal Territory by altering the boundary of the State, upon terms and conditions agreed between the States concerned and the Federal Government.
- (5) The Constitution of a State may regulate the process by which the State exercises its powers under subsection (4).
- (6) The Federal government—
  - (a) exercises all Federal powers assigned to it by or under this Constitution within the whole of the Republic;
  - (b) exercises powers equivalent to those of a State Government within any Federal Territory; and

- (c) in consultation with the State government and the people of the applicable territory, may exercise powers equivalent to those of a State Government within any other territory that has been surrendered to the Federal government by a State, as referred to in subsection (4).

*Drafter's Note: Section 72 has been revised according to directions from the 4<sup>th</sup> Plenary. Subsections (4), (5) and (6)(c) seek to capture the provisions for special areas dealt with in [2013:264]*

*The matter of representation of such territories in Parliament has been addressed at sections 70, 107 and 120.*

*It is not clear what is intended by the required consultation in Paragraph (c). and that matter may deserve further consideration.*

*Points (4) to (8) of the Plenary's instructions for this section concern the representation of States in Parliament, and have therefore been addressed at section 120, which deals with Representation in Parliament.*

#### *Part D—Distribution of Powers*

### **73. Exclusive authority of Federal Government**

- (1) The Federal Government has exclusive authority over all matters listed in List I of Schedule Five.
- (2) In addition to the authority assigned to the Federal Government elsewhere in this Constitution, the Federal Government—
  - (a) may make an arrangement with a State regarding the public debt of the State, in the manner provided in Section 87 (3); and
  - (b) has exclusive responsibility for negotiating and signing international agreements, subject to subsection (3).
- (3) The Federal Government must consult the States before and during any international negotiations that primarily concern—
  - (a) the borders of the Republic; or
  - (b) any matter that is listed in Lists II to V of Schedule Five.



- (4) Authority and responsibility to implement any international agreement lies with the sphere of government having paramount jurisdiction over the matters dealt with in that agreement.
- (5) Authority to participate in any international forum lies with the sphere of government having paramount jurisdiction over the matters dealt with by that forum.

*Drafter's Note: Subsections (4) and (5) has been revised by inserting the word 'paramount' in each case. This addresses possible concerns that might have arisen from matters of concurrent jurisdiction.*

*The former subsection (6) which previously captured [2013:264] has been moved to section 72 and conflated with the new subsections there, which now cover [2013:264]*

#### **74. Exclusive authority of State Governments**

Each State government has exclusive authority, within its State, over all matters listed in List II of Schedule Five.

#### **75. Concurrent Federal and State authority**

- (1) The Federal Government, and each State Government within its State, have concurrent authority over all matters listed in Lists III and IV of Schedule Five.
- (2) Both the Federal government, and any State government, may make, implement and administer laws on any aspect of a matter over which they have concurrent authority.
- (3) If both the Federal Government and a State government enact laws on a particular matter within their concurrent authority—
  - (a) both laws are of full force and effect, to the extent that the laws are mutually compatible and it is possible to comply with both laws simultaneously; and
  - (b) only to the extent that the laws are mutually incompatible, or to the extent that it is not possible to comply with both laws simultaneously—
    - (i) the Federal law prevails over the State law, if the law concerns a matter listed in List III of Schedule Five; and

- (ii) the State law prevails over the Federal law, if the law concerns a matter listed in List IV of Schedule Five.

#### **76. State and Community Powers**

- (1) Each State Government, and each Community Government, has authority over all matters listed in List V of Schedule Five, subject to subsections (2) and (3).
- (2) The constitution of a State may allocate any matter in List V to the exclusive authority of the Community Governments within that State.
- (3) Any matter listed in List V of Schedule Five that is not allocated by a State to the exclusive authority of its Community Governments falls within the concurrent authority of the State Government and the Community Governments, with any State law prevailing over any conflicting Community law.

#### **77. Powers over matters not otherwise assigned**

- (1) If a matter arises that does not fall within the topics listed in Schedule Five, so that it is uncertain which sphere of government has exclusive authority over that matter, or which spheres of government share concurrent authority over that matter—
  - (a) the matter may be resolved by unanimous resolution at a meeting of the Prime Minister and State Premiers Conference, which may add that power to any particular list in Schedule Five; or
  - (b) if the Prime Minister and State Premiers Conference is unable to reach a unanimous resolution for allocation of the matter, the Prime Minister or any State Premier may apply to the Court of Appeal for an order adding that matter to a list in Schedule Five.
- (2) If an application is made to the Court of Appeal under subsection (1)(b), the Court must—
  - (a) consider the nature of the matter, and the nature, themes and scope of each of the lists in Schedule Five; and

- (b) add the matter to the particular list in Schedule Five which appears to the Court to be most compatible with the matter in question.

**78. Delegation of powers**

- (1) The Federal Government and any State Government, or any two State Governments, may arrange for—
  - (a) any functions within the power of one government to be performed by the other, and
  - (b) for payments between the two governments in respect of any costs incurred under such an arrangement.
- (2) Federal or State law may regulate the manner in which the Federal Government, or the State Government, as the case may be, may enter into an arrangement contemplated in subsection (1).

*Part E—Taxation and Allocation of Revenue*

**79. Powers to levy and collect taxes**

- (1) The Federal Government may levy and collect taxes on any matter listed in Part 1 of Schedule Six.
- (2) The Federal Government may levy and collect sales, excise, profit and personal income taxes on enterprises it jointly owns with a State Government, or a Community Government, or both.
- (3) Each State Government may levy and collect taxes on any matter listed in Part 2 of Schedule Six.
- (4) A State Government must not impose taxes in a way that prejudices the economic policies outlined in the National Development Plan, economic activities across State boundaries, or the mobility of goods, services, capital or labour.
- (5) Each Community Government may levy and collect taxes on any matter listed in Part 3 of Schedule Six.

- (6) The Federal Government, by an agreement with a State Government, may collect specific State taxes and account for them.
- (7) A State Government, by agreement with the Federal Government, may collect specific federal taxes, excise, duties or fees and account for them on behalf of the Federal Government.
- (8) The Federal Government, or a State Government, by an agreement with the Community Government may collect specific Community Government taxes and account for them.

*Drafter's Note: Subsection (8) inserted as directed by the 4<sup>th</sup> Plenary.*

#### **80. Taxation of unassigned matters**

- (1) If a matter arises that does not fall within the topics listed in Schedule Six, so that it is uncertain which government has authority to levy and collect particular taxes—
  - (a) the matter may be resolved by unanimous resolution at a meeting of the Prime Minister and State Premiers Conference, which may add that taxing authority to any particular list in Schedule Six; or
  - (b) if the Prime Minister and State Premiers Conference is unable to reach a unanimous resolution for allocation of the matter, the Prime Minister or any State Premier may request the National Finance Commission to add that matter to a list in Schedule Six.
- (2) If a request is made to the National Finance Commission under subsection (1)(b), the Commission must—
  - (a) consider the economic nature of the proposed tax, and the nature, themes and scope of each of the lists in Schedule Six; and
  - (b) add the matter to the particular list in Schedule Six which appears to the Commission to be most economically suitable.

## **81. Sharing Federal revenue**

- (1) Federal revenue derived from Federal taxes must be apportioned among the various spheres of government in accordance with Part One of Schedule Seven, except as provided in subsections (2) and (3).
- (2) Federal revenue from enterprises contemplated in Section 79 (2) must be shared in accordance with a sharing formula to be agreed between the partners to the enterprise.
- (3) Federal revenue derived from royalties, corporate income and profit tax, and import, export and excise duties arising from the exploitation of forestry, mining, petroleum, gas, agricultural products, CEMA products, marine and non-migratory fisheries, air space and other natural resources, must be apportioned in accordance with Part Two of Schedule Seven among—
  - (a) the State Governments and Community Governments in whose territories the natural resources are located; and
  - (b) the tribe, clan, group, family or individual, as the case may be, who owns the land or other natural resources, from which the revenue arises.
- (4) The sharing ratios of the Federal revenues may be reviewed and amended only in accordance with Part III of Schedule Seven.
- (5) Any allocation of revenue to a state or community that is required by this section, must be unconditionally transferred by the Federal Government.
- (6) The Federal Government may make additional transfers to a State or Community Government, either conditionally or unconditionally.

## **82. Equalization transfers**

- (1) The Federal Government, in accordance with recommendations from the National Finance Commission, must make equalization transfers to the State Governments from its own consolidated fund to ensure that—

- (a) each State, regardless of its ability to raise revenue, has the resources to provide comparable levels of services at comparable levels of taxation;
  - (b) State disparities in development and living standards are minimized; and
  - (c) minimum standards of State services are maintained.
- (2) Equalization transfers to the States are to be unconditional.
- (3) The Federal Parliament may enact legislation to give full effect to this section.

### **83. Sharing of Foreign Aid funds**

- (1) Foreign funds from bilateral or multilateral agreements or other sources that are provided to the Federal Government generally for budgetary support to its Recurrent or Development Budget must be shared with the State Governments and Community Governments, after appropriation by the Federal Parliament, in the ratio of **40%** to the Federal Government and **60%** to the State Governments.
- (2) The share of the State Governments referred to in subsection (1) must be divided among the several State Governments with the least developed State getting the highest share, the more developed States getting a lower share and the most developed State getting the lowest share.
- (3) The share of each State Government, after appropriation by the Legislature of that state, must be divided with its Community Governments in the ratio of **30%** to the State Government and **70%** to its Community Governments.
- (4) The share of the Community Governments within each State referred to in subsection (3), after appropriation by the State Legislature, must be shared among the number of Community Governments by the State Government using the same sharing criteria referred to in subsection (2).
- (5) Any foreign aid funds that fall outside subsection (1), and that are provided for specific projects or purposes, and directed specifically—
- (a) to the Federal Government, a State Government or a Community Government;
- or

(b) to a non-governmental entity

shall be utilized as intended.

(6) No foreign aid funds, and no local funds generated within Solomon Islands by the government in any sphere, or by any organ of those governments, may be transmitted directly or indirectly through any—

(a) member of the Federal Parliament;

(b) member of a State Parliament; or

(c) member of a Community Government Legislature.

*Drafter's Note: Subsection (5) and (6) have each been re-structured for greater clarity.*

#### **84. Special sharing arrangements**

(1) Guadalcanal State is entitled to a share of revenues from Honiara City according to an arrangement between the Federal Government, Honiara City and the Guadalcanal State Government.

(2) The governments named in subsection (1) must negotiate an arrangement in good faith, which must be enacted by the Federal Parliament as a final settlement of all claims and grievances by affected people within Guadalcanal, arising out of the taking of land comprising Honiara City and the adjacent sea, reefs and seabed.

(3) The “affected people within Guadalcanal”, referred to in subsection (2), must be determined by an Act of the Guadalcanal State Parliament.

(4) Every State, other than Guadalcanal, must negotiate with the descendants of the original landowners of the area constituting the State Capital for a lump sum payment as a final settlement for the permanent deprivation of that area, including its foreshore, adjacent sea, reefs and fishing grounds.

(5) The “descendants of the original landowners of the area constituting the State Capital”, referred to in subsection (4), must be determined by an Act of each State Parliament.

**85. Sharing finances between States and Communities**

State revenue derived from State taxes may be apportioned among the State and Communities within the State in accordance with State legislation.

**86. National Finance Commission**

- (1) The National Finance Commission is established as an independent Constitutional Institution under Chapter 12 of this Constitution.
- (2) The National Finance Commission has the following functions:
  - (a) Every third year, to recommend changes to the revenue sharing arrangements, which recommendations may be adopted in accordance with Part Three of Schedule Seven;
  - (b) Monitoring the accruals and disbursement of revenue from the National Revenue Sharing Account;
  - (c) Monitoring the processes of revenue sharing and the general operation of the financial arrangements between Federal, State and Community Governments;
  - (d) Monitoring the decentralization of expenditures;
  - (e) Promoting the desirability of stable and predictable allocations of revenue to Federal, State and Community Governments;
  - (f) Advising the Federal, State and Community Governments on fiscal efficiency and methods by which their revenue can be increased;
  - (g) Receiving petitions, representations or submissions from the Federal, State and Community Governments, Congress of States, the Reserve Bank or other interested parties regarding financial arrangements;
  - (h) Advising Federal, State and Community Governments on development needs and broadening the economic base;
  - (i) Making recommendations to relevant spheres of governments and their personnel to ensure the proper implementation of financial arrangements;



- (j) Facilitating the settlement of inter-governmental disputes relating to financial or fiscal matters by conciliation and, failing conciliation, by arbitration; and
  - (k) Discharging any other functions conferred on the Commission by Federal legislation.
- (3) A Federal law contemplated in subsection (2)(k) may not be introduced in Parliament unless it has been supported by a resolution adopted by more than half of the State Parliaments.
- (2) The National Finance Commission comprises—
- (a) a full-time Chairperson to be appointed by the Federal Cabinet;
  - (b) a full-time Deputy Chairperson, to be appointed by majority agreement of the members of the several State executives responsible for Finance; and
  - (c) four part-time members, of whom—
    - (i) two are to be appointed by the Federal cabinet; and
    - (ii) two are to be appointed by majority agreement of the members of the several State executives responsible for Finance.
- (4) Each person appointed to the Commission—
- (a) must have experience or expertise in economics, public finance or a related field;
  - (b) serve for a term of five years;
  - (c) may be re-appointed on the expiry of their term; and
  - (d) may be removed from the Commission only in accordance with Schedule Nine on the grounds of misconduct, incapacity or incompetence.

*Drafter's Note: Paragraph (d) has be re-formulated for improved coherence and clarity.*

**87. State Loans**

- (1) A State Government must not raise a loan, receive any money as a loan or give a guarantee unless it has been approved following consultations between the Reserve Bank, the National Finance Council, and the State Government concerned.

*Drafter's Note: Subsection (1) reformulated to remove reference to Federal Finance Minister approval, as directed by 4<sup>th</sup> Plenary.*

*The current formulation leaves somewhat vague who does the approving, though it implies it is the Reserve Bank, NFC, etc.*

*Consider whether it should read "approved by the NFC, following consultations with the Reserve Bank and the State Government".*

- (2) A State Government must not raise a loan to finance recurrent expenditures or raise a loan from banks or related financial institutions or enterprises that it either owns or in which it has a controlling interest.
- (3) The Federal Government may make an arrangement with a State regarding the public debt of the State, including—
- (a) taking over all or part of the debt by the Federal Government;
  - (b) the management of any debt;
  - (c) the payment of interest and the provision and management of a sinking fund in respect of any debt;
  - (d) the consolidation, renewal, conversion and redemption of any debt;
  - (e) the borrowing of money by a State or the borrowing of money by the Federal Government for the State; or
  - (f) the indemnification of the Federal Government by the State in respect of any debt taken over by the Federal Government.

**88. Development Planning**

- (1) A National Development Plan must be prepared and maintained for the economic and social development of the Republic.

- (2) The Prime Minister and Premiers Conference—
- (a) must establish a National Planning Commission, in accordance with subsection (3); and
  - (b) assisted by the National Planning Commission, is responsible for the National Development Plan, which must—
    - (i) be reviewed at least once every three years; and
    - (ii) take into consideration the State and Community Government Plans.

*Drafter's Note: The opening clause of subsection (2) revised to change "planning committee" to "National Planning Commission", as directed by 4<sup>th</sup> Plenary.*

- (3) The National Planning Commission—
- (a) is an Independent Commission under Chapter 12 of this Constitution;
  - (b) comprises a Chairperson and supporting full-time expert staff, each appointed by the Federal Cabinet, following consultation with the Prime Minister and Premiers Conference;
  - (c) is responsible for making recommendations to the Prime Minister and Premiers Conference for the economic and social development of the Republic, and assisting the Conference in the preparation and maintenance of a National Development Plan; and
  - (d) is accountable to the Prime Minister and State Premiers Conference.

*Drafter's Note: Subsection (3) is a new insertion, providing for the establishment of a National Planning Commission, as requested by the 4<sup>th</sup> Plenary.*

- (4) Each State Government, and each Community Government, must adopt a Development Plan for the economic and social development, and the conservation of resources, of the State or Community.
- (5) The first State Development Plan for each State must be implemented within twelve months after the effective date of the State Constitution.

- (6) Clan and tribal groups, customary land and resource owners, the business community and all other persons of a State are entitled to participate equitably and appropriately in the formulation, implementation, monitoring and evaluation of their State Development Plan.
- (7) State law may regulate the preparation, review, administration and monitoring of State and Community Development Plans.
- (8) The contents of the National Development Plan, and each State and Community Development Plan, must be consistent with this Constitution.

## **89. Economic and Social Reforms and Development**

- (1) This Section applies to any organ of government in any sphere, and to any organization or body that is responsible for—
  - (a) the implementation of the National Development Plan or the implementation of a State or Community Development Plan;
  - (b) economic or social reforms;
  - (c) any international development loan; or
  - (d) exercising oversight of development projects.
- (2) Each government organ contemplated in subsection (1) must—
  - (a) ascertain any democratic and constitutional implications of the activities listed in that subsection;
  - (b) take appropriate measures to be fully informed of the impact of any plan of development, reform, loan or project on the environment;
  - (c) take all appropriate measures to be fully informed of the political, social, cultural and economic impact those activities will have on any affected village and other community; and
  - (d) ensure that any plan of development, reform, loan or project is—

- (i) environmentally sustainable; and
  - (ii) politically, socially, economically and culturally sustainable from the perspective of the affected villages and other communities.
- (3) Affected villages and other communities have the right—
  - (a) to full, fair, adequate and effective participation in any development plan, reform and development project;
  - (b) to be fully informed of—
    - (i) the conditions or policies to be implemented on the acceptance of a development loan or grant; and
    - (ii) all other relevant matters; and
  - (c) to be informed of the findings of any impact assessment carried out with respect to the project.
- (4) The implementation of any development plan, reform, or development project must provide for mechanisms for monitoring its effects on the environment and affected village and other communities.



## CHAPTER 6—THE PRESIDENT

### 90. The President of Solomon Islands

- (1) The President is the Head of State and symbolises the Republic, the unity of the nation, and the sovereignty of the people.
- (2) The President is the custodian of the Constitution for and on behalf of the people and citizens of the Republic.
- (3) The President is the Commander in Chief of all Solomon Islands disciplined and uniformed services, but operational command lies with appointed officers and is subject to the appropriate constitutional and legal oversight of Ministers of the relevant Federal or State Government.
- (4) As Head of State, the President—
  - (a) may represent Solomon Islands to any other nation or in any international forum;
  - (b) signs instruments of consent by Solomon Islands to be bound by international agreements, in accordance with the recommendations of the Cabinet;
  - (c) receives foreign diplomatic and consular representatives;
  - (d) dissolves the Federal Parliament in the circumstances contemplated in Section 126;
  - (e) declares states of emergency in accordance with Section 238;
  - (f) appoints judges in accordance with Section 166;
  - (g) appoints the members of Independent Commissions in accordance with the relevant provisions of this Constitution;
  - (h) appoints individuals to represent Solomon Islands as High Commissioners, Ambassadors or Consuls General, in accordance with the recommendation of the Public Service Commission;

- (i) exercises the power of mercy by pardoning or relieving offenders, in accordance with Section 176; and
  - (j) may confer honours in the name of Solomon Islands, in accordance with legislation.
- (5) The President—
- (a) delivers an annual address to the Federal Parliament each year, describing the state of constitutional democracy in the Republic, and the progress towards realisation of the national goals set out in Chapter 1, and reporting on matters as required by this Constitution; and
  - (b) may address the Federal Parliament at any other time, at the request of the Speaker and the Prime Minister.
- (6) The President may assent to and sign each Act of the Federal Parliament, or refer it back to Parliament, or to the High Court, in accordance with Section 144.
- (7) The President's powers and functions—
- (a) are limited to those expressly provided for in this Constitution or in any Federal or State law;
  - (b) are subject to the Constitution and the law; and
  - (c) are to be exercised or performed—
    - (i) in accordance with any recommendation required by this Constitution;  
or
    - (ii) at the discretion of the President, only to the extent expressly provided for in this Constitution or an Act of Parliament.

*Drafter's Note: Paragraph (c) has been re-structured for better coherence, logic and clarity.*



## **91. Election of President**

- (1) The President is elected by the Federal Parliament, in a session conducted in accordance with Schedule One.
- (2) An election of the President must be conducted by—
  - (a) the Speaker of Parliament, unless the office of Speaker is vacant, or the Speaker has been nominated as a candidate for President; or
  - (b) the Deputy Speaker of Parliament, in the circumstances contemplated in paragraph (a).
- (3) As far as practicable, the office of President is to be held by a person from each State in succession, on the following rotation:
  - (a) State of Central
  - (b) State of Isabel
  - (c) State of Rennell & Bellona
  - (d) State of Guadalcanal
  - (e) State of Western Solomons
  - (f) State of Choiseul
  - (g) State of Temotu
  - (h) State of Makira Ulawa
  - (i) State of Malaita
  - (j) Any additional States admitted to the Republic, in the order they were admitted.
- (4) Whenever it becomes necessary to elect a person to the office of President, the State next in rotation to hold the Office of the President must submit to the Speaker of the Federal Parliament the names of two female and two male candidates selected by the

Electoral College of that State, as comprised and convened in accordance with Part B of Schedule Ten.

- (5) To be eligible to assume office as President, a person must—
- (a) be a citizen of Solomon Islands;
  - (b) be at least 50 years old;
  - (c) have completed a reasonable standard of education and gained wide experience;
  - (d) be of good moral and ethical standing;

*Drafter's Note: Paragraphs (c) and (d) both establish very vague qualifications, that cannot be objectively assessed. It is understandable that these are qualities to be desired in a candidate for this office. But those desirable qualities do not readily transform into clear, objectively measurable, qualifications.*

*The purpose of this subsection is to set clear criteria for evaluating a person's candidacy for the office. To minimize the potential for 'political litigation' and the uncertainty that could result, it would be advisable to use only objectively measurable criteria.*

*This is particularly the case in setting out criteria for the president, who serves as a unifying figure in the Republic.*

- (e) not hold any other public office or be a candidate for election to any other office in the State;
- (f) have never been convicted of a criminal offence, or removed from office on grounds of violation of the Constitution, or for cause relating to a matter of integrity or good conduct; and
- (g) not be—
  - (i) under an oath of allegiance to a foreign state, other than as a dual citizen;
  - (ii) an undischarged bankrupt under any law in the Commonwealth; or

- (iii) medically certified by two or more medical practitioners to be of poor physical or mental health, or adjudged to be of unsound mind.

*Drafter's Note: This note has implications globally for the entire constitution.*

*Subsection (5), paragraphs (e) to (g) set out disqualifying circumstances for Presidential candidates. Another different list of disqualifications is found at s. 108 (2), which applies to candidates for election to legislative bodies. A third, still different list, is found at section 200, applied to candidates for appointment to Independent Commissions and Offices.*

*And there are no disqualifications of any sort applicable to candidates for appointment as Judges.*

*Consider whether it might be advantageous to move all of these disqualification provisions over to a new Part of Schedule Nine (which deals with Leadership, ethics, etc), and harmonize the list, so that the various disqualifications are expressed as common standards, applicable across all these offices.*

- (6) No one may be elected to the office of President more than once, but any service as Acting President does not constitute being elected to the office of President.

## **92. Assumption of office of President**

- (1) Each person elected as President—
  - (a) must immediately swear an oath or affirmation, as set out in Schedule Two, before the Chief Justice, or a judge of the High Court, affirming allegiance to the Federal Democratic Republic of Solomon Islands; and
  - (b) assumes office upon taking the oath.
- (2) The President's term of office begins when the President assumes office, continues for five years, and ends when the person next elected under Section 91 assumes office under this Section.

## **93. Vacancies and acting President**

- (1) The President may resign from office by delivering a written statement of resignation to the Chief Justice.

- (2) The President may be removed from office for incapacity or wrongdoing, but only in accordance with Section 94 or 95.
- (3) The Speaker of Parliament, or in the absence of the Speaker, the Chief Justice, acts in the office of President—
  - (a) at any time during the President’s term when the President is unable to perform the functions of office because of illness or absence; or
  - (b) upon a vacancy arising in the office of the President, until a new President has been elected and assumed office.
- (4) If the President resigns, dies or is removed from office—
  - (a) with more than 6 months remaining in the President’s term, the Federal Parliament must meet within 30 days to elect a successor from the same State to complete the former President’s term of office; or
  - (b) with six months or less remaining in the President’s term, the Acting President under subsection (3) continues to serve until the end of former President’s term of office.

*Drafter’s Note: Subsection (4) has been reformulated to introduce the principles agreed by the 4<sup>th</sup> Plenary.*

#### **94. Removal of the President on grounds of incapacity**

- (1) The Federal Parliament may initiate the procedure to remove the President on the grounds of incapacity by passing a resolution introduced at any sitting, and supported by more than half of all the members of Parliament.
- (2) If the Federal Parliament adopts a resolution contemplated in subsection (1)—
  - (a) the Speaker must appoint a tribunal to investigate the matter, consisting of 3 appropriately qualified medical practitioners—
    - (i) one selected by the President, or a personal representative or family member of the President;

- (ii) one selected by the body regulating the medical profession in Solomon Islands; and
    - (iii) one selected jointly by the other two members of the tribunal;
  - (b) the President may not perform any of the functions or exercise any of the powers of that office, until the final resolution of the matter in accordance with this section; and
  - (c) the Speaker has the authority to perform any function of the President, in the manner contemplated in Section 93.
- (3) A tribunal appointed under this section must inquire into the matter and report to the Speaker of the Federal Parliament.
- (4) If at least 2 of the 3 members of the tribunal concur in their report, the report is conclusive.
- (5) If the report concludes that the President—
  - (a) is able to perform the functions of President, the President may resume exercising the powers of that office upon the report being delivered to the Speaker; or
  - (b) is unable to perform the functions of President, but is more likely than not to recover that capability within 4 months or less, the suspension of the President's powers under subsection (2)(b) continues; or
  - (c) is incapable of performing the functions of President, and is unlikely to recover that capability within 4 months, the President is removed from office upon the report being delivered to the Speaker.
- (6) If subsection (5)(b) applies—
  - (a) the President may immediately resume exercising the powers and functions of that office at any time that 2 of the 3 members of the tribunal jointly certify that the President has sufficiently recovered the capacity to perform those functions; or

- (b) at the end of the time within which the President was expected to recover, the Speaker must request a fresh report from the tribunal and the provisions of this section apply to that fresh report, but in the case of continued incapacity, the President must be removed from office, irrespective of any prospect for recovery at that time.

## 95. Impeachment of President

- (1) The Federal Parliament may initiate the procedure to impeach the President only for violation of this Constitution, or on the grounds of gross misconduct, by passing a resolution calling for impeachment, which may be introduced at any sitting.
- (2) The Speaker of the Federal Parliament must—
  - (a) convene a special meeting of Parliament to consider the motion calling for impeachment within 7 days after receiving a notice of the motion, if Parliament is then sitting or has been summoned to meet; or
  - (b) summon Parliament to meet within 21 days after the date of the notice, to consider the motion.
- (3) If more than half of all the members of the Federal Parliament support the motion calling for impeachment, the Speaker must refer the resolution to the Chief Justice, to be considered by the Court of Appeal in a special sitting conducted in accordance with its Rules.
- (4) The President has the right to appear at the sitting of the Court of Appeal, and to be legally represented.
- (5) If the Court of Appeal determines—
  - (a) that none of the allegations against the President have been substantiated, or that any substantiated allegations do not constitute a violation of this Constitution or gross misconduct, the President remains in office; or

- (b) that any of the allegations against the President have been substantiated and constitute a violation of this Constitution or gross misconduct, the President is immediately removed from office.

*Drafters' Note: Subsection (5) has been revised to address a logical flaw in the text. The underlined words have been inserted.*

## **CHAPTER 7—POLITICAL LIFE, REPRESENTATION AND LEADERSHIP**

### *Part A—Community, Civil Society and Media*

#### **96. Civil society**

- (1) An active civil society, freely and peacefully engaged in the political life of Solomon Islands, is a natural expression of the rights and freedoms recognised in Chapter 3.
- (2) Democratic constitutionalism depends upon—
- (a) civil society being active in raising awareness of the human rights and other values recognised by this Constitution, and in discussion, debate, decision making, and governance; and
- (b) wide participation of the people, including organised civil society, in public affairs.
- (3) Governments in each sphere, and organs of those governments, must—
- (a) recognise, facilitate and not impede the role of the people and civil society in the promotion and protection of constitutional democracy;
- (b) promote the principles of fairness, openness, participation and accountability; and
- (c) comply with the principles set out in Section 97 in any legislation requiring registration of civil society organisations.

#### **97. Regulation of civil society**

- (1) Registration of civil society organisations may be required only if there is good reason for it.

- (2) If legislation requires civil society organisations to register—
  - (a) the legislation must not impose unreasonable criteria or conditions for registration; and
  - (b) registration must not be refused unless the organisation does not satisfy the legislated registration criteria.

## **98. Participation in public decisions**

- (1) Public participation expresses the right of the people to exercise their sovereignty in direct engagement with their representatives, and strengthens democratic culture in the Republic by drawing on the experiences and knowledge of the people.
- (2) Policy and law making bodies must permit and actively promote public participation in their work, in accordance with the following principles:
  - (a) Organs of government in every sphere must ensure that they make information available about their roles, composition, procedures and opportunities for public participation.
  - (b) Adequate notice and information must be given for any opportunity to address specific issues.
  - (c) The participation process must be inclusive, with appropriate opportunities for all interest groups, including women, people speaking different languages, people with disabilities, youth and minorities, to become involved, bearing in mind the diverse ways in which different groups are accustomed to engaging in public discussion.
  - (d) Public input must be given due attention and consideration.
- (3) When reporting to the public, policy and law making bodies must indicate the extent to which they have engaged the public in participation, and summarise any impact public participation has had on their decision making.



## **99. Regulation of public media**

- (1) Free and open discussion and dissemination of ideas is essential in a democratic society.
- (2) Broadcast and other electronic media may be subject to licensing procedures only for the purpose of regulating the airwaves and other forms of signal distribution.
- (3) Other media must not be subject to licensing, but may be required to register with the government in the sphere that has authority over the particular form of media.
- (4) Licensing procedures under subsection (2) must be independent of control by political interests, commercial interests, government in any sphere, or organs of those governments.
- (5) All government-owned media—
  - (a) are free to determine the editorial content of their broadcasts or other communications independent of political or government control;
  - (b) must be impartial; and
  - (c) must afford fair opportunity for the presentation of divergent views and dissenting opinions.

### *Part B— Political Parties*

## **100. The right to form a political party**

- (1) Any group of Solomon Island citizens has the right to form a political party and, if the party satisfies the requirements of this Chapter, to have the party registered.
- (2) A person, group or association must not represent itself to the public as a political party unless it is registered as a political party under this Part.

*Subsection (2) revised by replacing “authority” with “association”. This was a drafting error in the previous text. Replacement is in response to 4<sup>th</sup> Plenary’s request for clarification.*

- (3) If any law provides for an organ of government in any sphere to financially support political parties, that support must be allocated equitably among all registered political parties.
- (4) A political party must not engage in corrupt practices or encourage violence or intimidation of its members, supporters or opponents or any other persons.
- (5) The President of the Republic and public officials must not hold office in a political party.

*Drafter's Note: It may be advisable to consider who is included in the reference to "public officials".*

- (6) The Federal Parliament must enact legislation—
  - (a) providing for the registration and regulation of political parties; and
  - (b) to promote transparency and good government by—
    - (i) prohibiting, in so far as practicable, any use of public resources to promote or advance the interests of a political party; and
    - (ii) regulating any such use of public resources by office holders in any sphere of Government, to the extent that is not practicable to prohibit that use.

*Drafter's Note: Subsection (6) now conflates the former subsection (7) with a new clause to address the problem of use of public resources for partisan interests. The new clause is for consideration, as requested by the 4<sup>th</sup> Plenary.*

### **101. Registration and regulation of political parties**

- (1) All political parties must be registered according to the requirements of the law required by Section 100 (6)(a).
- (2) A political party is entitled to be registered if—
  - (a) its constitution or rules requires it to—
    - (i) have a national scope and character;

- (ii) promote and uphold the Federal Democratic union of the Republic;
  - (iii) practise democracy within the party through regular, fair and free elections;
  - (iv) be transparent and accountable to its members and regulatory authorities; and
  - (v) promote and uphold this Constitution and the rule of law;
- (b) it satisfies any membership standards and registration formalities set out in the the law contemplated in Section 100(6)(b);
- (c) it has the capacity and resources to function nationally, and to satisfy any procedural, administrative and reporting requirements set out in the law contemplated in Section 100(6)(b); and
- (d) it is not disqualified for any reason set out in subsection (3).
- (3) A political party is not entitled to be registered if—
- (a) it is founded purely on a religious, linguistic, racial, ethnic, or corporatist basis; or
  - (b) seeks to engage in propaganda based on any of the matters listed in paragraph (a).
- (4) The Electoral Commission is the Registrar and regulator of political parties and must maintain a register of political parties.
- (5) A political party must—
- (a) keep proper accounts, and proper books and records of account in the form approved by the Auditor General;
  - (b) submit its accounts and books and records of account to the Auditor General for audit in the manner and form, and within the times, prescribed by law; and
  - (c) comply with any request from the Auditor General for further information.

- (6) Within one month after receiving the Auditor General's report, a political party must publish its audited financial report in the Gazette and in the local print media.
- (7) The registration of a political party must be cancelled if the political party—
  - (a) obtained its registration in a fraudulent or corrupt manner;
  - (b) falsifies or misrepresents its records or accounts;
  - (c) fails to comply with a material requirement of this Constitution or the law;
  - (d) instigated, or connived in, the commission of an election offence; or
  - (e) willfully—
    - (i) failed to comply with requests from the Auditor General; or
    - (ii) intimidated, or attempted to intimidate, the Auditor General in carrying out an audit of the party.

## **102. Deregistered Political Parties**

- (1) If a political party has been deregistered, any elected members of that party remain in office until the next election.
- (2) Members of the Federal Parliament, or of a State Parliament, who are members of a deregistered party—
  - (a) may become members of a new party in Parliament resulting from—
    - (i) the partition of their former party into two or more parties; or
    - (ii) the amalgamation of their former party with another party; but
  - (b) must not otherwise join another political party in Parliament within the life of the current Parliament; and
  - (c) in the case of members of the Federal Parliament, are not to be regarded as having left their party for the purposes of applying Section 122 (1)(d).

### **103. Party Discipline**

- (1) The rules of a political party must contain provisions that ensure internal discipline including—
  - (a) rules to vote in any Parliament in accordance with the party position; and
  - (b) the discipline of party members in breach of party rules.
- (2) A political party must not punish a member of the Federal Parliament, or of a State Parliament, who is a member of the party for anything said in Parliament by the member in exercise of the privileges of freedom of speech.

#### *Part C—Representation of the People*

### **104. Representative government**

- (1) The People of Solomon Islands exercise their legislative sovereignty primarily through elected representatives in the Federal Parliament, and in the State Parliaments, and through their appointed and elected representatives in Community Government legislatures.

*Drafter's Note: Subsection (1) reformulated as requested by the 4<sup>th</sup> Plenary.*

- (2) The people's elected representatives must be chosen by secret ballot in free and fair elections administered by the Electoral Commission, in accordance with this Constitution and the Federal electoral law.

*Drafter's Note: the word 'elected' inserted in the first line, as a consequence of the change to subsection (1) requested by the 4<sup>th</sup> Plenary.*

- (3) The Federal electoral law must always—
  - (a) ensure the right of all Solomon Islands citizens to vote and to stand for free and fair elections for Federal, State and Community Governments;
  - (b) promote fair representation of all Solomon Islands communities and both genders;

- (c) ensure that voting is simple and takes into account the needs of persons with disabilities, or other special needs;
- (d) provide for voting by preferential ballot system;

*Drafter's Note: Plenary agreed the Australian form of preferential voting is wanted, and will re-visit after further advice.*

- (e) ensure that voting records remain secret; and
- (f) provide for a timely means of review, recount and contesting disputes arising during, or as a result of, the conduct of an election.

### **105. Voter qualification and registration**

- (1) Every citizen of Solomon Islands over the age of 18 years is entitled to be registered as a voter, in the manner and form prescribed by the Electoral Act.
- (2) The Electoral Commission must maintain a single, national voters register, divided by State, Community and constituency and, as far as practicable, provide for a system of continuous registration.
- (3) Every registered citizen—
  - (a) ordinarily resident in Solomon Islands on an election day is entitled to vote in that election; or
  - (b) not ordinarily resident in Solomon Islands on election day is entitled to vote to the extent provided in the Electoral Act.

*Drafter's Note: 4<sup>th</sup> Plenary noted previous comment and agreed to retain the provision as it is. Unclear whether the intention was for paragraph (b), as previously offered for consideration, is to remain or be deleted.*

- (4) The administrative arrangements for the registration of voters and the conduct of elections must not impede, frustrate or deny a person's right to register, vote or stand for election.
- (5) A citizen is not qualified to be registered as a voter—

- (a) in more than one electoral constituency;
- (b) if medically certified to be of poor mental health or of unsound mind under a federal law, provided that law satisfies the requirements of Section 16; or
- (c) if disqualified from registration as an elector or from voting at elections under a Federal law.

*Drafter's Note: Paragraphs (a) and (c) have each been modified as requested by the 4<sup>th</sup> Plenary.*

## **106. Voting Procedures**

- (1) The Electoral Commission is responsible for ensuring that—
  - (a) the voting procedure is simple;
  - (b) voters are given an opportunity to cast their votes in secret and free from the undue influence of, or intimidation by, any other person;
  - (c) ballot boxes are kept secure and capable of verification;
  - (d) votes are counted precisely, and recorded accurately; and
  - (e) the results of elections are declared as soon as reasonably possible, but in any case, within a period prescribed by applicable laws.
- (2) The right to vote in an election for a State Parliament is restricted to persons resident in that State and entitled to vote in elections for the Federal Parliament.

*Drafter's Note: Subsection (2) has been revised, with the underlined insertion, to correct what would have seemed to be an error.*

- (3) If a State Government does not make provision for any aspect of the conduct of elections for the State Parliament, the law applying to the elections to the Federal Parliament will apply, with any necessary modification.

## **107. National Boundaries Commission**

*Drafter's Note: the section heading and subsections have been revised to reflect the decision of the 4<sup>th</sup> Plenary concerning the name of the Commission.*

- (1) The National Boundaries Commission is established as an Independent Commission under Chapter 12, to serve as occasion requires, and comprising—
  - (a) a Chairperson and two other members appointed by the President, acting in accordance with the recommendation of the Judicial and Legal Services Commission; and
  - (b) the Federal Surveyor General, and the Federal Government Statistician.
  
- (2) The National Boundaries Commission must review the number of seats in the Federal Parliament, and establish the boundaries of constituencies so as to ensure that the boundaries are consistent with this Constitution.
  
- (3) The National Boundaries Commission—
  - (a) must conduct—
    - (i) its first review of boundaries as soon as practicable after the effective date of this Constitution; and
    - (ii) any review required in accordance with section 70 (3) as the result of the addition and allocation of Parliamentary seats by the Conference of the Prime Minister and State Premiers;

*Drafter's Note: Clause (ii) inserted as a consequence of 4<sup>th</sup> Plenary decisions at section 72 and 120*
  - (b) may conduct further reviews whenever it considers it desirable, but at least once every 10 years; and
  - (c) recommend to the Federal Parliament alterations in—
    - (i) the number and allocation of constituencies, for necessary amendment of Section 120; or
    - (ii) the boundaries of the constituencies.
  
- (4) When conducting a review under this section, the National Boundaries Commission—



- (a) must consult with each State and Community Government, Honiara City and other interested parties;
- (b) must ensure that the boundaries of a constituency do not overlap the boundaries of a State;
- (c) that so far as practicable, each constituency comprises an approximately equal number of voters; and
- (d) may depart from the principle in paragraph (c) to the extent they consider expedient in order to take account of—
  - (i) clan/tribal affiliations;
  - (ii) representation of minority ethnic groups;
  - (iii) population density, distribution and movement;
  - (iv) means of communication; and
  - (v) geographical features.
- (5) The Federal Parliament may approve or reject any recommendation of the National Boundaries Commission, but must not vary them.
- (6) If the Federal Parliament approves a recommendation—
  - (a) in the number or allocation of constituencies, the change takes effect only upon enactment of the necessary amendment to Section 120, in accordance with the requirements of Chapter 17; or
  - (b) in the boundaries of constituencies, the changes take effect at the next dismissal of the Federal Parliament.

## **108. Candidates for election**

- (1) A person may be a candidate for election to the Federal Parliament, to a State Parliament, or to a Community Government Legislature, only if the person—

- (a) is a citizen of Solomon Islands who is at least 18 years old;
- (b) is registered on the voters register;
- (c) is ordinarily resident in Solomon Islands when nominated; and
- (d) is not disqualified for any reason set out in subsection (2).

*Drafter's Note: Subsection (1) revised as requested by 4<sup>th</sup> Plenary, and to correct the cross-reference in paragraph (d).*

- (2) A person is disqualified from becoming a candidate for, or continuing to be a Member of, the Federal Parliament, a State Parliament or a Community Government Legislature if that person—
  - (a) is a member of the Electoral Commission, or has been a member of that Commission at any time during the 4 years immediately before being nominated;
  - (b) fails to qualify as a candidate under any Federal Law providing for vetting by the Electoral College in each electoral constituency;
  - (c) is medically certified to be of poor physical health or unsound mind under a federal law;
  - (d) is declared bankrupt under a federal law;
  - (e) has been removed from a public office on grounds of misconduct;
  - (f) is not a fit and proper person;

*Drafter's Note: the expression "fit and proper person" is vague, and provides cover for arbitrary disqualifications. In any case, most of the other disqualifications already cover whatever this would reasonably mean.*

*4<sup>th</sup> Plenary agreed to consider this point further.*

- (g) has been convicted of an offense and sentenced to a term of more than six months imprisonment;

- (h) has been found guilty of a corrupt or illegal practice during an election;
- (i) is not an indigenous person from the electoral constituency; or

*Drafter's Note: paragraph (i) has been revised as instructed by the 4<sup>th</sup> Plenary, but remains inconsistent with several earlier provisions, notably the recognised political rights, which allow any adult citizen to seek public office.*

*Is the intention to restrict candidates to indigenous persons, or to citizens who are resident in the constituency?*

- (j) has not achieved a reasonable standard of education and gained wide experience.

*Drafter's Note: Paragraph (j) has been revised to reflect the decision of the 4<sup>th</sup> Plenary.*

*However, where the previous formulation had a clear objective standard, which was thought to be perhaps too restrictive, this formulation suffers from vagueness and subjectivity.*

*The purpose of the paragraph is to screen out persons who are unfit to hold public office: it would be best to consider a more objective standard.*

- (3) A person who—
  - (a) is elected to a State Parliament, is a candidate for an election, or holds office in a State Parliament;
  - (b) holds any public office other than as a member of Parliament; or
  - (c) has, contrary to law, any allegiance, obedience or adherence to a foreign state or any foreign organizations that may pose a threat to the Republic;

may be a candidate for election but, if elected, may not assume office as a Member of Parliament until that person has either resigned or been granted leave of absence from office.

*Drafter's Note: Should the restriction in subsection (3) apply as well to elected members of Community Governments and, for that matter, also to MPs who might be seeking election in the State or Community sphere?*

- (4) Every candidate, and every party, must comply with any code of election conduct published by the Electoral Commission under the Electoral Act.

### **109. Electoral Commission**

- (1) The Electoral Commission is established as an Independent Commission under Chapter 12 of this Constitution.
- (2) The Electoral Commission consists of the following persons, each appointed by the President in accordance with the advice of the Judicial and Legal Services Commission—
  - (a) a Chairperson, who must be qualified to serve as a judge; and
  - (b) four other appointed members, at least one of whom must be qualified to serve as a judge of the High Court.

*Drafter's Note: Subsection (2) has been revised to delete reference to the Federal Surveyor General and the Statistician, as agreed by the 4<sup>th</sup> Plenary.*

- (3) A person may not be appointed to the Commission, or continue to serve as a member of the Commission, if the person—
  - (a) is a member of the Federal Parliament, a State Parliament or a Community Government Legislature;
  - (b) is a candidate in an election to any public office;
  - (c) is an un-discharged bankrupt;
  - (d) has been convicted or found guilty of any offence involving dishonesty; or
  - (e) has been removed from public or private office for reasons of misconduct.
- (4) The Commission members appointed under subsection (2) each serve for a five year term, and may be re-appointed.

- (5) The Electoral Commission has general oversight responsibility for the registration of voters and the conduct of free and fair elections in accordance with the Electoral Act and any other relevant legislation, and in particular for —
- (a) registering, supervising and de-registering political parties;
  - (b) the registration of citizens as voters, and the regular revision of the voters register;
  - (c) voter education;
  - (d) determining whether a person is qualified to be a candidate for election, and for registering candidates for election;
  - (e) the settlement of electoral disputes, including disputes relating to or arising from nominations, but excluding election petitions and disputes subsequent to the declaration of election results;
  - (f) facilitating the observation, monitoring and evaluation of elections;
  - (g) regulating the amount of money that may be spent by or on behalf of a candidate or party in respect of any election;
  - (h) the code of conduct for candidates and parties contesting elections; and
  - (i) monitoring and enforcing compliance with the Electoral Act.
- (6) The Electoral Commission is also responsible for managing elections of State and Community Governments, unless a State law establishes a body to do so.
- (7) The Electoral Commission has other general powers, as set out in Section 198 including, in particular, the authority to enforce compliance by issuing a notice under 198 (3)(c).

*Part D—Leadership, Transparency and Accountability*

**110. Serving the public**

- (1) The assignment of government office, authority and responsibilities to a person by or under this Constitution—
  - (a) is an expression of public trust and confidence, as recognised in Section 3 (2), and is to be exercised in a manner that—
    - (i) is consistent with the values, principles and goals of this Constitution;
    - (ii) demonstrates respect for the people;
    - (iii) brings honour to the nation and dignity to the office; and
    - (iv) promotes public confidence in the integrity of the office.
- (2) To ensure efficiency in delivery of service to the public, every organ of government in any sphere may—
  - (a) liaise with other organs of government on matters of common interest;
  - (b) exchange information with, and receive information from, other organs of government pertaining to matters of common interest;
  - (c) negotiate appropriate agreements with any organ of government in the same sphere, to co-ordinate and harmonise the exercise of their respective authority;
  - (d) participate in the proceedings of any other organ of government; and
  - (e) advise, or receive advice from, any other organ of government.

**111. Leadership principles**

The guiding principles of democratic leadership are—

- (a) service based solely on the public interest;
- (b) honesty, diligence, commitment and discipline in service to the people;

- (c) integrity, objectivity and impartiality in decision-making without favouritism, nepotism or other improper motives, or corrupt practices;
- (d) avoidance and declaration of any interest that may conflict with public duties; and
- (e) accountability to the public for decisions and actions.

## **112. Personal integrity and conduct**

- (1) Every person appointed to an office under this Constitution must be a person of integrity and good character, in addition to any other qualifications set out elsewhere in any law.
- (2) Every person elected or appointed to office in any sphere of government, authority and responsibilities must—
  - (a) behave, in public life, in private life, and in association with other persons, in a manner that avoids—
    - (i) any conflict between personal interests and public or official duties;
    - (ii) compromising any public or official interest in favour of a personal interest; or
    - (iii) demeaning the office the person holds; and
  - (b) must comply with the Code of Conduct of Officer Holders, set out in Schedule Nine, and with any other applicable Code of Conduct established under this Constitution.
- (3) The Federal Parliament, or any State Parliament, may enact legislation establishing, or providing for the establishment of, Codes of Conduct governing particular offices, or categories of offices established under this Constitution.
- (4) If a State Government has not enacted any legislation under subsection (3), any Federal legislation contemplated in that subsection applies to office holders in the State Government, with the necessary modifications.

### 113. Duties of elected office holders

- (1) Every person elected to office in any sphere of government must—
  - (a) act in accordance with this Constitution, their respective State Constitutions, Community Government Constitutions and any other law;
  - (b) devote their time, skills and talent to the carrying out of their official duties;
  - (c) be transparent and accountable to their electorates, including:
    - (i) representing the interests and views of the constituents and the electorate as a whole, free from nepotism;
    - (ii) having and maintaining their principal place of residence in the constituency;
  - (d) keep in tune with the needs and aspirations of the electorate by working closely with traditional leaders, village and other communities and people of the constituency, and visit them regularly;
  - (e) work closely with other politicians and government organs in enhancing the well being of the people;
  - (f) inform, consult and educate the electorate on political and government issues.
- (2) The primary duty of members to the Federal Parliament is to represent their constituents only in relation to those matters that the Federal sphere of government has authority to exercise in the interests of the Republic.
- (3) Members of the Federal Parliament must not interfere in the affairs of State Government or Community Government, unless the State or Community Governments invite the member to do so.
- (4) Each member of the Federal Parliament must visit other areas of their electoral constituency, outside the member's principal place of residence within the electoral constituency, at least three times a year.



*Drafter's Note: subsection (4) has been re-formulated to reflect the decisions of the 4<sup>th</sup> Plenary.*

#### **114. Further provisions relating to leadership**

The Federal Parliament may enact laws respecting leadership, including—

- (a) the further description of any obligation, and the prescription of any act or omission that will constitute misconduct in office;
- (b) provision for the monitoring of standards of leadership conduct, including the disclosure and verification of any relevant information by a person to whom this Part applies;
- (c) any matter relating to the investigation of any breach of an obligation of leadership, or any suspected breach;
- (d) procedures for the reference of cases of alleged or suspected misconduct in office for determination by a court or independent tribunal;
- (e) powers and procedures of the courts or independent tribunals vested with authority to consider and adjudicate on matters of misconduct in office, including the prescription of penalties; and
- (f) any other matter as may be necessary or expedient for promoting accountability in government.

#### **115. The Ombudsman, Leadership and Anti-Corruption Commission**

- (1) The Ombudsman, Leadership and Anti-Corruption Commission is established as an Independent Commission under Chapter 12, and comprises a Chairperson and two other members appointed by the President, acting on the recommendation of the Judicial and Legal Services Commission.
- (2) The persons appointed to the Ombudsman, Leadership and Anti-Corruption Commission must be persons of integrity, chosen for their knowledge of, and experience in, public administration or the prosecution or investigation of crime.

- (3) A person is not eligible for appointment to the Ombudsman, Leadership and Anti-Corruption Commission if the person—
- (a) is an elected member of the Federal Parliament, or of a State Parliament or a member of a Community Government Legislature;
  - (b) is a public officer in the Federal Government, a State Government, or a Community Government;
  - (c) is an officer of any person or association of a partisan political nature; or
  - (d) has been convicted of a crime of dishonesty.

#### **116. Functions of the Commission**

- (1) The Ombudsman, Leadership and Anti-Corruption Commission is responsible for—
- (a) educating the public, government and public officials on corruption and the ethics of good leadership;
  - (b) investigating whether persons who avail themselves for appointment as public officers or who are prepared to stand for public elections are free of corruption and therefore fit and proper persons for these offices;
  - (c) receiving and retaining declarations in accordance with the Leadership Code or a law relating to the Commission;
  - (d) retaining the declarations and making them available for public inspection on terms and conditions prescribed by the Federal Parliament;.
  - (e) combating corruption, theft, misappropriation and other improprieties in the conduct of public office;
  - (f) establishing measures aimed at the prevention of corruption;
  - (g) promoting a high quality of service in the public administration, by exercising the functions and powers set out in Part B of Chapter 14;
  - (h) receiving and investigating complaints—

- (i) about non-compliance with or breach of the Leadership Code or a law relating to the Commission; or
  - (ii) concerning the quality of service in the public administration, under part B of Chapter 14;
  - (i) enforcing the Leadership Code and laws relating to the Commission, by instituting criminal prosecutions; and
  - (j) performing any additional functions prescribed by law.
- (2) The Ombudsman, Leadership and Anti-Corruption Commission has other general powers, as set out in Section 198 including, in particular, the authority to enforce compliance by issuing a notice under 198 (3)(c).

*Drafter's Note: the 4<sup>th</sup> Plenary requested that provisions concerning the powers and functions of the Ombudsman be merged with this section.*

*Those provisions, found in Chapter 14, are primarily of concern regarding the quality of service within the Public Administration. Although they are exercised by this Commission, the substantive force of the provisions seems better placed in Chapter 14.*

*Plenary is asked to consider whether clauses (1)(g), and (1)(h)(ii), which link and reference the 'public service' functions of this Commission are sufficient notice, at this location, of the "ombudsman" functions to be performed by the Commission under Chapter 14.*

## **117. Standards and procedures for removal from office**

Except as otherwise provided in this Constitution, an office holder referred to in Part Two of Schedule Nine may be removed from office for incapacity or wrongdoing only in accordance with the relevant procedures and standards set out in that Schedule.



## CHAPTER 8—THE FEDERAL PARLIAMENT

### *Part A—Establishment, role, composition and term of Parliament*

#### **118. Establishment of Federal Parliament**

- (1) The legislative authority of the Republic is derived from the people and in the Federal sphere of government is vested in and exercised by the Federal Parliament.
- (2) The Federal Parliament embraces and manifests the diversity and unity of the nation, represents the will of the people, and exercises their sovereignty.

*Drafter’s Note: Subsection (2) revised to include the word “embraces”, as requested by 4<sup>th</sup> Plenary.*

*The word “and’ is proposed for grammatical structure.*

- (3) The Federal Parliament must protect this Constitution and promote the democratic governance of the Republic.

#### **119. Role and authority of Parliament**

- (1) Parliament is elected to represent the people and to ensure government by the people under the Constitution. It does this by providing a national forum for public deliberation and resolution of issues, by passing legislation, by scrutinising and overseeing executive action, including the process of negotiating international agreements, and by ensuring that reports and recommendations from organs of the Federal Government are received, considered, and acted upon.
- (2) The Federal Parliament has the power to make laws for the whole or part of the Republic, on any matter that falls within the authority of the Federal Government.

#### **120. Composition of Parliament**

*This section has been extensively reformulated, as directed by the 4<sup>th</sup> Plenary, and subsequently clarified by PMO memo of 2014 0505.*

*The specific wording of clause (a) is formulated in general terms, so as to avoid referencing specific current legislation which may later be altered or replaced.*

*Clause 4 (1) has been inserted into Schedule 13 (Transitional Arrangments) to give full effect to the intention that the allocation of seats is to be based initially on the*

*existing National Parliament (Electoral Provisions) Cap 87. Please see additional note at that location concerning consequential issues that may need to be addressed.*

- (1) The Federal Parliament comprises—
  - (a) 50 seats, as distributed in accordance with [Federal legislation/ Clause 4 (1) of Schedule 13];
  - (b) additional seats, as may be added only in accordance with subsection (3); and
  - (c) the Speaker of Parliament, elected in accordance with Section 128.
  
- (2) A conference of the Prime Minister and State Premiers, held in accordance with section 70, by unanimous agreement in response to a submission by any State, may create and allocate additional seats in Parliament, as contemplated in subsection (1)(b), only—
  - (a) to provide representation of any—
    - (i) additional State created by amalgamation or partition in accordance with Section 72 (3); or
    - (ii) additional Federal Territory created in accordance with section 72 (4);  
or
  - (b) to provide improved representation of densely populated electoral constituencies.

*Drafter's Note: Paragraph (b) has been inserted to give effect to instructions from the 4<sup>th</sup> Plenary. But it may require further consideration.*

*It is not clear why this problem should arise if the Boundaries Commission is giving proper effect to the principle of proportionality set out in section 107 (4)(c).*

- (3) Every member of Parliament referred to in subsection (1)(a) and (b) must be elected in accordance with Chapter 7.
  
- (4) The Speaker, and every other member of the Federal Parliament, must satisfy the qualifications set out in Section 108.

## 121. Recall of members

- (1) A member of the Federal Parliament may be recalled by the voters of the member's constituency, on the grounds of—
  - (a) misconduct that brings or is likely to bring dishonor, hatred, ridicule, contempt or disrepute or offence to the constituents and home electorate;
  - (b) failure without reasonable cause to fulfill the member's duties, as set out in this Constitution; or
  - (c) any further grounds prescribed by Federal Law.
- (2) Schedule Eleven, and Federal legislation required by that Schedule, provide for the procedures for the recall of a member of the Federal Parliament.

*Drafter's Note: the 4<sup>th</sup> Plenary agreed that a new Schedule is to added to address the details of recall.*

## 122. Vacation of seat

- (1) The seat of a member of the Federal Parliament becomes vacant upon dissolution of the Federal Parliament, or if—
  - (a) the member becomes subject to any disqualification set out in Section 108;
  - (b) the member resigns in writing to the Speaker of the Federal Parliament;
  - (c) the member resigns from the political party that sponsored the member's election, if any, or leaves a political party in Parliament for any reason, subject to subsection (2);
  - (d) the member fails to attend two consecutive meetings of Parliament without the permission of the Speaker;
  - (e) the member is recalled under Section 121; or
  - (f) the member dies.

- (2) Subsection (1)(c) does not apply to a member of Parliament whose party in Parliament divides into two or more other parties, or amalgamates with another party.
- (3) The High Court has exclusive authority to hear and determine any question whether—
  - (a) a person has been validly elected as a member of the Federal Parliament; or
  - (b) the seat of a member of the Federal Parliament has become vacant.
- (4) A question contemplated in subsection (3) must be heard and determined within 6 months after the petition or application was filed with the High Court, and is not subject to any appeal.
- (5) The Federal Parliament must enact legislation to give full effect to subsections (3) and (4).

### **123. Privileges and entitlements of Parliament and its members**

- (1) A law or standing orders may prescribe the privileges, immunities and powers of the Federal Parliament and its members.
- (2) The freedom of speech and debates or proceedings in the Federal Parliament cannot be impeached or questioned in any court or place outside Parliament, other than by the person presiding over Parliament in accordance with the standing orders.
- (3) The entitlements of Members of the Federal Parliament are to be determined in accordance with Schedule Three, by the National Remuneration Commission established by Section 214.

### **124. Date of elections for Parliament**

- (1) A general election for the Federal Parliament must be held on a date determined by the President, acting on the advice of the Prime Minister, within four months after the dissolution of Parliament.



- (2) If the seat of a Member of the Federal Parliament falls vacant for any reason other than by the dissolution of Parliament, a by-election must be held to fill the vacancy within ninety days.

## **125. Term of Parliament**

A Federal Parliament may sit for a term of no more than four years from the first day of its first meeting, but may be dissolved by the President before that date, only in accordance with Section 126.

## **126. Dissolution of Parliament**

- (1) The President must dissolve the Federal Parliament if—
- (a) a Prime Minister is not appointed after a general election, within the time contemplated in Section 154;
  - (b) more than half of all of the members vote in favour of a resolution to dissolve; or
  - (c) the term of that Parliament under section 125 has expired;

*Drafter's Note: Paragraph (c) has been inserted for completeness. The paragraphs have been re-organised into chronological order*

- (2) If a matter of urgent national importance arises after the dissolution of the Federal Parliament, but before the general election—
- (a) the President may summon the dissolved Parliament to meet before the date of the general election;
  - (b) the persons who were members of the dissolved Parliament immediately before dissolution may be regarded to still be members of Parliament; and
  - (c) Parliament may debate and, if necessary vote, only on the particular matter for which Parliament was summoned.

*Drafter's Note: Consider whether subsection (2) should clarify whether the President is to act independently or on the recommendation of Cabinet, when recalling a dissolved Parliament.*

*Part B—Parliament’s officers, committees, and sittings*

**127. Speaker and Deputy Speaker of Parliament**

- (1) The Federal Parliament has 2 presiding officers, namely, a Speaker, and a Deputy Speaker.
- (2) The Speaker has an official status within the Republic equivalent to that of the Chief Justice.
- (3) The Speaker, Deputy Speaker, or any other person presiding at any time, in the performance of the functions of Speaker—
  - (a) is independent and subject only to the Constitution and the law;
  - (b) serves to secure the honour and dignity of the Federal Parliament;
  - (c) is responsible for ensuring—
    - (i) the rights and privileges of all members; and
    - (ii) public access to the proceedings of Parliament and its committees;
  - (d) has authority to maintain order, decorum and discipline in the Federal Parliament, in accordance with its Standing Orders and parliamentary tradition; and
  - (e) must act impartially, and without fear, favour or prejudice.
- (4) Ordinarily, the Speaker presides over every sitting of the Federal Parliament.
- (5) If the Speaker of the Federal Parliament is unavailable, or temporarily absent—
  - (a) the Deputy Speaker presides; or
  - (b) in the absence of the Deputy Speaker, another member of the Federal Parliament presides, who has been elected by the members either—
    - (i) to serve in that capacity whenever there is an absence; or

- (ii) specifically to preside during a particular absence.
- (6) The Federal Parliament may elect other presiding officers to assist the Speaker and Deputy Speaker.

### **128. Election of Speaker and Deputy Speaker**

- (1) At its first sitting after an election, and whenever required to fill a vacancy, the Federal Parliament must elect, by majority vote—
- (a) a Speaker from among persons who are qualified to be elected as members of the Federal Parliament, but are not members; and
  - (b) a Deputy Speaker from among the members of the Federal Parliament.
- (2) A member of the Federal Cabinet, or the leader of a political party, is not eligible to be the Speaker or Deputy Speaker of the Federal Parliament, or to preside at any of its meetings.
- (3) A vacancy will exist in the office of Speaker or Deputy Speaker of the Federal Parliament if the office holder —
- (a) resigns from office, in a letter addressed to the Federal Parliament and delivered to the Clerk;
  - (b) no longer qualifies to be a member of the Federal Parliament;
  - (c) becomes a member of the Federal Cabinet or the leader of a political party, or becomes a holder of another public office;
  - (d) in the case of the office of Deputy Speaker, the incumbent—
    - (i) is elected Speaker; or
    - (ii) ceases to be a member of the Federal Parliament;
  - (e) is dismissed by the members, on a motion supported by at least two-thirds of all of the members;

- (f) is removed from office for incapacity or wrongdoing, in accordance with Part Two of Schedule Nine; or
  - (g) dies in office.
- (4) If the office of Speaker and Deputy Speaker of the Federal Parliament are both vacant—
- (a) Parliament must elect a new Speaker and Deputy Speaker before conducting any other business; and
  - (b) for the purpose of paragraph (a), may elect one of its members to preside over the election of the Speaker and Deputy Speaker.

### **129. Leader of the Alternative Government**

- (1) At the first sitting of a Federal Parliament after its election, and whenever required to fill a vacancy, the President, acting in accordance with the advice of the Speaker, may appoint as Leader of the Alternative Government a member of the Federal Parliament who is best able to command the support of—
- (a) the largest political party or coalition in Parliament that does not support the Government; or
  - (b) the largest single group of members who do not support the government and are prepared to support one leader, if no person meets the requirements of paragraph (a).
- (2) The office of the Leader of the Alternative Government becomes vacant if the incumbent—
- (a) resigns from office by giving written notice to the Speaker;
  - (b) becomes a member of the Federal Cabinet;
  - (c) is removed from office, or becomes disqualified from holding the office of a Member of the Federal Parliament; or
  - (d) is elected as the Speaker or Deputy Speaker of the Federal Parliament.

- (3) The Leader of the Alternative Government has—
  - (a) official status within the Republic immediately following the President and the Prime Minister; and
  - (b) the right of participation at all official functions within the Federal sphere of the Republic.
- (4) The Standing Orders must provide for the effective participation of the Leader of the Alternative Government in the Federal Parliament.

### **130. Clerk and Parliamentary Service**

- (1) There is to be a Clerk in Parliament, to be appointed in accordance with the Standing Orders, and with the approval of the House.
- (2) The Clerk is the administrative head of the Parliamentary Service and is independent of the Public Service.
- (3) A Federal law must make provision for the establishment and administration of the Federal Parliamentary Service.

### **131. Committees**

- (1) The Federal Parliament may establish committees to enhance the accountability and transparency of public administration and to extend democratic governance within the Federal sphere of Republic.
- (2) The Federal Parliament must balance the composition of each of its committees, as far as possible to be consistent with the proportionate representation of parties and independent members in Parliament, and to reflect the social, cultural and gender diversity of Parliament.
- (3) Among other matters, committees may be established to consider—
  - (a) administrative review reform, and constitutional, electoral and legal reform;
  - (b) ethical conduct of members and parliamentary powers, rights and immunities;

- (c) petitions received by the Federal Parliament raising public policy issues within the legislative competency of Parliament;
- (d) the integrity, economy, efficiency and effectiveness of governmental financial management;
- (e) certain works undertaken by or for the government; and
- (f) Parliamentary standing orders.

### **132. Sittings of Parliament**

- (1) Each session of the Federal Parliament must commence at a place and time determined by the President.
- (2) After any general election of a Federal Parliament, that Parliament must meet within 4 weeks after the last day of polling, with the incumbent Speaker presiding until a new Speaker has been elected in accordance with Section 128.
- (3) The Federal Parliament must meet at least three times a year.
- (4) Sessions of the Federal Parliament must be held so that a period of twelve months does not intervene between the end of one session and the first sitting of that Parliament in its next session.

### **133. Proceedings to be held in public**

- (1) The Federal Parliament must—
  - (a) promote public involvement in the legislative process and other processes of Parliament and its Committees; and
  - (b) conduct its business in an open manner, and hold its sittings and those of its Committees in public, including access of the media to Parliament and its Committees.
- (2) The Federal Parliament may not exclude the public, including media, from a sitting of a committee of Parliament unless it is reasonable and justifiable to do so in an open and democratic society.

*Part C—Parliament's Procedures, Powers and Standing Orders*

**134. Quorum**

- (1) A sitting of the Federal Parliament may not begin, or continue, unless more than half of all of its members are present.
- (2) The Speaker of the Federal Parliament must adjourn a sitting if a quorum is not present.
- (3) When determining whether a quorum of members are present, any member presiding must not be counted.

**135. Voting**

- (1) Except as otherwise provided in this Constitution, any question proposed for decision in the Federal Parliament must be determined by a majority of the members present and voting.
- (2) On a question proposed for decision in the Federal Parliament—
  - (a) the Speaker has no vote; and
  - (b) in the case of a tie, the Deputy Speaker or other member presiding has a casting vote to determine the question.
- (3) A member of the Federal Parliament must not vote on any question on which the member, to the exclusion of other members of Parliament, or the public generally, has a pecuniary interest.

**136. Procedures of Parliament**

- (1) The Federal Parliament, and each of its committees, may—
  - (a) regulate its own procedure with due regard to participatory democracy, accountability, transparency;
  - (b) establish committees or sub-committees for any purpose;

- (c) receive petitions, representations or submissions from any interested persons or institution; and
  - (d) seek the advice and recommendation of the National Finance Council, Congress of States, or any State on any bill, petition or other matter before Parliament.
- (2) The proceedings of the Federal Parliament are valid despite—
- (a) any vacancy in its membership; or
  - (b) the presence or participation of any person who is not entitled to be present, or to participate in the proceedings of Parliament.

### **137. Petitions, public access and participation**

Everyone has the right to petition the Federal Parliament, requesting it to consider any matter within its authority, or to enact, amend or repeal any legislation.

### **138. Powers, privileges, immunities and discipline**

Every member of the Federal Parliament, and any one else speaking in Parliament, has—

- (a) freedom of speech and debate in Parliament or its committees, subject to the standing orders; and
- (b) parliamentary privilege in respect of anything said in Parliament or its committees.

### **139. Power to call for evidence**

- (1) The Federal Parliament, and each of its committees, has the power to summon any person to appear before it for the purpose of giving evidence or providing information.
- (2) For the purposes of subsection (1), the Federal Parliament and each of its committees has the same powers as the High Court to—



- (a) enforce the attendance of witnesses and examine them on oath, affirmation or otherwise;
- (b) compel the production of documents; and
- (c) issue a commission or request to examine witnesses abroad.

#### **140. Standing orders**

- (1) The Federal Parliament may make standing orders for the orderly conduct of the proceedings of Parliament, and of its committees, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
- (2) The standing orders must establish procedures for the Federal Parliament and its committees that—
  - (a) reflect and promote the nation's values;
  - (b) are consistent with the Bill of Rights;
  - (c) secure the rights of—
    - (i) minority parties and independent members to participate in a manner consistent with democracy; and
    - (ii) all members to participate fully and effectively;
  - (d) provide for financial and administrative assistance to each party and independent member to enable them to perform their functions effectively;
  - (e) require explanatory materials to accompany any legislation that is introduced, or any international agreement that is submitted to Parliament, which materials must outline the anticipated constitutional, human rights, regulatory and financial implications of any such draft legislation or agreement; and
  - (f) secure the rights of public access to the proceedings of Parliament and its committees.

- (3) A standing order becomes binding and of force when it has been adopted by the Federal Parliament.

*Part D—Parliament’s Legislative Authority*

**141. Legislative role of Parliament**

- (1) The authority of the Federal Parliament to make laws is exercised through the enactment of Bills passed by Parliament and assented to by the President.
- (2) No person or body other than the Federal Parliament has authority to make any Federal law in Solomon Islands, except under authority conferred by this Constitution or by an Act of Parliament.

**142. Exercise of legislative powers**

- (1) Any member of the Federal Parliament, Cabinet Member, or committee of Parliament may introduce a Bill in Parliament, but only the Cabinet member responsible for finance, or another minister authorised by Cabinet, may introduce an Appropriation Bill, as described in Section 143.
- (2) A Bill must not deal with more than one general topic.
- (3) The Federal Parliament may proceed to consider any Bill in accordance with its standing orders, which must provide—
  - (a) a structured process for introduction, deliberation, amendment and enactment of Bills; and
  - (b) sufficient time to elapse between the steps in the process for members and committees to give due consideration to each Bill.
- (4) A Bill may proceed more quickly than permitted by the standing orders if—
  - (a) when the Bill was introduced, the mover requested that Parliament approve consideration of the Bill without delay; and
  - (b) at least two-thirds of the members voted in support of that request.

### **143. Appropriation Bills**

- (1) An Appropriation Bill is any Bill that—
  - (a) imposes, alters, grants exemptions from, reduces or abolishes taxes;
  - (b) imposes charges on a public fund or varies or repeals any of those charges;
  - (c) appropriates public money;
  - (d) raises or guarantees any loan, or its repayment;
  - (e) deals with the receipt, custody, investment, issue or audit of money; or
  - (f) deals with anything incidental to those matters.
- (2) An Appropriation Bill may not deal with any matter other than those listed in subsection (1).

### **144. Presidential assent and referral**

- (1) When a Bill has been passed by the Federal Parliament, the Speaker must send it to the President for assent.
- (2) Within 14 days after receiving a Bill, the President must either—
  - (a) assent to the Bill; or
  - (b) if the President has reservations about the constitutionality of the Bill, refer the Bill back to the Federal Parliament for reconsideration, noting the President's reservations.
- (3) If the President refers a Bill back for reconsideration, the Federal Parliament may either—
  - (a) amend the Bill in light of the President's reservations;
  - (b) pass the Bill a second time with or without amendment; or
  - (c) abandon the Bill.

- (4) If, after considering the President's reservations, the Federal Parliament has passed the Bill a second time, the Speaker must re-submit the Bill to the President for assent, and —
- (a) if Parliament has accommodated those reservations, the President must assent to the Bill within 7 days; or
  - (b) if Parliament has not accommodated those reservations, the President must either—
    - (i) assent to the Bill within 30 days; or
    - (ii) refer the Bill to the Court of Appeal for an advisory opinion on the constitutionality of the Bill.
- (5) If the Court of Appeal determines that a Bill is constitutional, the President must assent to the Bill.

*Drafter's Note: Subsection (4) has be revised, consistent with other directions from the 4<sup>th</sup> Plenary, to substitute the Court of Appeal for the Constitutional Court.*

- (6) If the President does not assent to a Bill or refer it back within the relevant period set out in this section, the Bill will be taken to have been assented to on the expiry of that period.

#### **145. Coming into force and publishing of laws**

- (1) Within 7 days after a Bill has been assented to, the Speaker of the Federal Parliament must cause a copy of the Bill to be published in the *Gazette* as an Act of the Federal Parliament.
- (2) Subject to subsection (3), an Act of the Federal Parliament comes into force—
  - (a) on a date determined by or in accordance with the Act, which may determine that a law has retrospective effect; or
  - (b) on the 14<sup>th</sup> day after its publication in the *Gazette*, if the Act does not determine a date or provide for a date to be determined.

*Drafter's Note: The previous subsection (3) has been deleted as decided by the 4<sup>th</sup> Plenary*

- (3) As soon as practicable, each law enacted by Parliament and assented to must be distributed to every State Government and every Community Government.

#### **146. Regulations and similar laws**

- (1) No person or organ of government in any sphere may make any Federal regulation, or issue any other instrument having the force of Federal law, except as expressly authorised by this Constitution or an Act of the Federal Parliament.
- (2) An Act of the Federal Parliament that authorises any organ of government, officer, or other person to make regulations or issue any instrument having the force of Federal law—
  - (a) must specify—
    - (i) the purpose and objectives for which that authority is conferred, which must be within the purpose and objectives of the authorising Act of the Federal Parliament itself;
    - (ii) the limits of the authority being given; and
    - (iii) the nature and scope of the law that may be made;
  - (b) must not authorise anyone to make any law that—
    - (i) amends the Act of the Federal Parliament itself, or any other Act; or
    - (ii) authorises another person or organ of government to make regulations or issue any instrument having the force of law; and
  - (c) may impose conditions on the authority to make laws, including referral of the law to the Federal Parliament for approval before it is made.
- (3) A person or organ of government making any regulations or issuing any instrument having the force of Federal law—

- (a) must be guided by the values of this Constitution;
  - (b) so far as practicable, must provide reasonable opportunity for public participation in the development and review of the law before it is made; and
  - (c) must not make any law that—
    - (i) falls beyond the scope, purpose or limits contemplated in subsection (2)(a);
    - (ii) is within the categories contemplated in subsection (2)(b); or
    - (iii) conflicts with an Act of the Federal Parliament.
- (4) Any regulation or other instrument having the force of Federal law must be submitted to the Speaker of the Federal Parliament for Parliamentary review, and the Speaker must refer the law to the appropriate committee as soon as practicable.
- (5) Within 90 days, the committee to which a law is referred may—
- (a) approve the law without amendment;
  - (b) require the authorised law maker to review and revise the law, in accordance with the committee's written reservations; or
  - (c) refer the law to the whole of the Federal Parliament, with a motion that Parliament negate the law, supported by written reasons for the motion.
- (6) If the committee does not act within the time specified in subsection (5), or the Federal Parliament does not vote within 60 days to negate the law under subsection (5)(c), the law must be regarded as having been approved.
- (7) Any revision or negation of a law, as contemplated in subsection (5), does not affect anything done under that law while it was in force.

#### **147. Parliamentary authority over international agreements**

- (1) An international agreement binds the Republic only after it has been acceded to by the Federal Cabinet.

- (2) An international agreement that has been acceded to under subsection (1) binds the public only after the Federal Parliament has adopted it is a domestic law.

*Drafter's Note: This section has been re-cast as instructed by the 4<sup>th</sup> Plenary.*

## CHAPTER 9—THE NATIONAL EXECUTIVE

### *Part A—Principles and Structure of the National Executive*

#### **148. Federal executive authority**

- (1) The executive authority of the Federal government extends to all subject matters within the authority of the Federal Sphere of Government.
- (2) A Federal law may—
  - (a) provide that the administration of any specified provisions of federal law fall within the executive authority of the States or any particular State; and
  - (b) confer powers and impose duties on any authority of a State Government to carry out the administration of provisions contemplated in paragraph (a).
- (3) If the administration of any Federal law is assigned to any State, the Federal Government must make a financial payment to the State Government to pay the costs of that administration.

*Drafter's Note: Consider whether subsections (2) and (3), which deal with delegation of administration to other spheres of government would be better placed in section 78, which contains parallel provisions respecting delegation.*

#### **149. The Cabinet**

- (1) The Federal executive authority is exercised by a Cabinet comprising—
  - (a) the Prime Minister; and
  - (b) a number of Ministers, as determined by the Prime Minister in accordance with Section 157, one of whom must be designated as Deputy Prime Minister.

*Drafter's Note: Subsection (1) re-formulated to remove the reference to the Attorney General, as instructed by the 4<sup>th</sup> Plenary*

*The office of Attorney General is now established at section 159.*

- (2) The Cabinet—



- (a) develops, implements and co-ordinates national development plans, and other policy;

*Drafter's Note: the refernce to 'national development plans' in paragraph (a) is not consistent with the more extensive treatment of that subject , now found in section 88.*

*Consider deleting the words "development plans and other", so that the clause would read "develops, implements and co-ordinates national policy".*

- (b) prepares the annual budget of the Federal Government for consideration by the Federal Parliament;
  - (c) prepares and initiates Federal legislation;
  - (d) implements legislation enacted by the Federal Parliament;
  - (e) negotiates treaties, free trade agreements, aid arrangements, and other international instruments on behalf of the Republic;
  - (f) directs and co-ordinates the functions of Federal Government ministries, departments and the Federal or national security services; and
  - (g) performs any other executive function provided for in this Constitution or in legislation.
- (3) In the exercise of its executive authority, the Federal Cabinet is not subject to direction or control by government caucus.

*Drafter's Note: Subsection (3) has been re-formulated as instructed by the 4<sup>th</sup> Plenary.*

*Drafter's Note: the previous Subsections (4) and (5) have been deleted as agreed by the 4<sup>th</sup> Plenary.*

- (4) Cabinet members are accountable individually and collectively to Parliament, for the exercise of their powers and the performance of their functions.
- (5) A member of the Federal Cabinet must appear before the Federal Parliament, or a committee of Parliament, when required, and answer any question concerning a matter for which the Minister is responsible.

- (6) Federal Cabinet members must provide the Federal Parliament with full and regular reports concerning matters for which they are responsible.
- (7) The Federal Cabinet may seek an opinion from the High Court on any matter concerning the interpretation or application of the Constitution, in accordance with Section 160 (4).

*Drafter's Note: Subsection (7) is not consistent with section 161 (4), which does not include Cabinet in the list of entities that may seek such an advisory opinion. Instructions needed whether to insert Cabinet at s 161 (4), or delete subsection (7) here.*

- (8) The Prime Minister, Deputy Prime Minister and other members of the Federal Cabinet may leave Solomon Islands only with the prior approval of the Cabinet.

## **150. Cabinet meetings**

- (1) Meetings of the Federal Cabinet are chaired by the Prime Minister, or –
  - (a) the Deputy Prime Minister, if the Prime Minister is absent; or
  - (b) another Minister nominated by the Prime Minister, if both the Prime Minister and the Deputy Prime Minister are absent.

- (2) A quorum for meetings of the Federal Cabinet is a majority of the Cabinet members.
- (3) The Federal Cabinet is responsible for regulating its own procedures, including discipline.

*Drafter's Note: The previous subsection (4) has been deleted, as agreed by the 4<sup>th</sup> Plenary*

- (4) The Federal Cabinet must ensure that—
  - (a) a record is kept of its proceedings and decisions;
  - (b) a written note of each decision is provided to each member of Cabinet as soon as practicable after it is made; and

- (c) appropriate arrangements are made for the relevant Ministry to implement, and monitor the implementation of, Cabinet decisions;

*Drafter's Note: the previous subsection (6) has been deleted, as agreed by the 4<sup>th</sup> Plenary.*

### **151. Cabinet Committees**

- (1) The Federal Cabinet may establish committees to allow for detailed consideration and discussion of issues.
- (2) The Prime Minister has discretion to determine the structure of Cabinet committees and membership, and terms of reference of each Cabinet committee.

### **152. Federal Cabinet Secretary**

- (1) The Federal Cabinet Secretary is the head of the Federal Cabinet Office, which is a public office.
- (2) The Federal Cabinet Secretary is responsible for the Federal Cabinet Office and for providing continuity and impartial support for operations of the executive government, including—
  - (a) conducting and maintaining the central decision making process of executive government;
  - (b) providing secretariat services to Cabinet;
  - (c) attending all Cabinet meetings to record the decisions taken;
  - (d) maintaining and preserving the records of successive Cabinets;
  - (e) managing transitions between administrations, and supporting continuity of government;
  - (f) providing impartial advice to the Federal Government on policy and administrative issues;
  - (g) coordinating the policy and administrative aspects of the legislation programme of the Federal Government; and

- (h) ensuring that all Cabinet decisions are duly implemented through the relevant Ministries.

*Part B—The Prime Minister*

**153. Office of Prime Minister**

- (1) The Prime Minister is the head of the Federal Government and Chair of the Federal Cabinet.
- (2) Once each year, the Prime Minister must present to the Federal Parliament a speech outlining the policies and programmes of the Federal Government for the following year.
- (3) The Prime Minister is responsible for—
  - (a) maintaining and coordinating the Federal Government, by overseeing the Federal Cabinet’s general policy directions;
  - (b) informing the President, and the Congress of States, about the affairs of the Federal Government and matters affecting the interests of the Republic;
  - (c) informing State Governments of proposed Federal legislation and matters affecting the interests of States.
- (4) The Prime Minister—
  - (a) recommends to the President each person to be appointed as a member of the Federal Cabinet;
  - (b) may dismiss any member of the Federal Cabinet;
  - (c) designates a minister to be Deputy Prime Minister; and
  - (d) by notice published in the *Gazette*, assigns responsibility for the implementation and administration of each Act of the Federal Parliament to any member of the Federal Cabinet.

## 154. Appointment of Prime Minister

- (1) Following each general election for the Federal Parliament, and whenever necessary to fill a vacancy arising other than after a vote of no confidence or a party leadership change, the President must appoint as Prime Minister—
  - (a) the leader of whichever party, or coalition of parties, in Parliament holds more than half of the seats; or
  - (b) the member of the Federal Parliament who appears best able to command the loyalty of a majority of the members of Parliament, if no party or coalition of parties holds more than half of the seats.

*Drafter's Note: It is clear from the notes that what is intended is that the Executive have the support of more than half of the MPs. Subsection (1) has been re-formulated to give effect to that intention.*

*However, from the instructions received after the 4<sup>th</sup> Plenary, it is clear that some ambiguity and confusion surrounds the use of the word "majority". Older dictionaries, as well as some newer legal authorities (the Oxford English Dictionary, Webster's 3<sup>rd</sup> International Dictionary, Black's Law Dictionary, and Garner's Dictionary of Modern Legal Usage) are all uniform and clear: majority means **more than half** of a whole. Those authorities distinguish a "simple majority" (more than half of those voting) from an "absolute majority" (more than half of all the members, whether or not they vote).*

*Some newer dictionaries (Encarta World English Dictionary, Cambridge Dictionary of International English) define "majority" as the larger number or part of something. In the case of a "for or against" vote in Parliament, that definition would always lead to the same result as the older authorities: to be the larger part of only two options means it must be more than half, since if it is only half, it is not larger. On the other hand, when measuring the relative sizes of a party caucus, where there might well be more than two parties, the newer definition, and the older definition yield very different results: the older definition finds a majority only when more than half the members are of one party or group, the newer definition finds a "majority" in the largest group, even if it is less than half the membership.*

*But the Plenary notes seem to be using the word "majority" in a different sense entirely, suggesting that 'a simple majority' means exactly half, while 'an absolute majority' means more than half.*

*The draft needs to clarify the intended meaning of the word, and it would be advisable to follow the same meaning throughout the text. It would also be advisable*

*to follow the more settled usage and meaning of the words, as expressed in the OED and Black's Law Dictionary.*

*To put the matter beyond doubt, this draft avoids the word "majority" where possible, by using instead the expression "more than half of".*

*And the word "majority" is now defined at Section 246 to mean "more than half" .*

*The terms 'simple majority' and 'absolute majority' are then not needed, either in the sense that the OED defines them, or that they have been uniquely used in the notes.*

- (2) If no party or coalition of parties holds more than half of the seats in the Federal Parliament and, within 14 days after the election or vacancy, it appears to the President that no member is able to command the loyalty of a majority of the members, the President must immediately dissolve Parliament.
- (3) The Prime Minister is appointed to serve for the full term of the Federal Parliament, unless the Prime Minister—
  - (a) resigns, by written notice to the President;
  - (b) ceases to be, or ceases to qualify to be, a member of Parliament;
  - (c) is dismissed in a no confidence vote, under Section 155;
  - (d) is replaced as leader of a party in Parliament, under Section 156; or
  - (e) is removed for incapacity or wrongdoing under Part Two of Schedule Nine; or
  - (f) dies in office.
- (4) The Prime Minister assumes office by taking the oath or affirmation of office in the manner and form set out in Schedule Two.
- (5) Whenever the Federal Parliament has been dissolved, the incumbent Prime Minister continues as caretaker Prime Minister until a new Prime Minister has been appointed.
- (6) When a vacancy arises in the office of Prime Minister, the Deputy Prime Minister must act as Prime Minister until the President appoints a new Prime Minister under subsection (1).

### **155. No confidence in the Prime Minister**

- (1) The Federal Parliament may dismiss the Prime Minister by a motion of no confidence, which must also propose the name of the leader of another party in Parliament to be Prime Minister.
- (2) At least 7 week days must elapse between the date on which a motion of no confidence is introduced, and the date on which it is called for a vote.
- (3) A motion of no confidence passes if it is supported by more than half of all the members of Parliament.
- (4) If a motion of no confidence fails—
  - (a) in the case of a Prime Minister who leads a party that holds more than half of the seats in the Federal Parliament, no further motion of no confidence may be introduced for at least twelve months; or
  - (b) in any other case, a further motion of no confidence may be introduced at any time, in accordance with subsections (1) to (3), if it appears to the Speaker that the Prime Minister is unable to command the loyalty of a majority of the members of Parliament.
- (5) The Speaker of the Federal Parliament has absolute prerogative to convene a special sitting of Parliament to consider and vote on a motion of no confidence referred to in subsection (4)(b).
- (6) If any motion of no confidence referred to in this section passes—
  - (a) the incumbent Prime Minister immediately ceases to hold office;
  - (b) every other member of the Cabinet is deemed to have resigned; and
  - (c) the person proposed, in the motion, to be Prime Minister assumes that office immediately upon being sworn in by the President.

*Drafter's Note: Subsection (4) has been re-formulated and subsection (4) added to give effect to instructions received from the 4<sup>th</sup> Plenary, as clarified by PMO memo 2014 0505.*

## 156. Change in party leadership

If the Prime Minister is the leader of a party or a coalition of parties in Parliament, and if the members of that party or coalition have voted to change their leadership—

- (a) the Prime Minister must resign; and
- (b) the President must appoint the new leader of that party or coalition as Prime Minister.

*Drafter's Note: This section has been re-formulated to apply to coalitions, as requested by the 4<sup>th</sup> Plenary.*

### *Part C—Ministers*

## 157. Appointment of Ministers

- (1) The President, acting in accordance with the recommendations of the Prime Minister, appoints members of the Federal Parliament to be Ministers.
- (2) The number of Ministers, in addition to the Prime Minister, must not exceed one-third of the total number of seats in Parliament.

*Drafter's Note: Subsection (2) has been revised as instructed by the 4<sup>th</sup> Plenary.*

- (3) When choosing Ministers, the Prime Minister must endeavour to select a Cabinet which, taken as a whole, reflects the ethnic, cultural, gender and geographical diversity of Solomon Islands.
- (4) Each member of the Federal Cabinet assumes office by taking the oath or affirmation of office set out in Schedule Two, as administered by the President.
- (5) The Prime Minister—
  - (a) may re-assign or dismiss a member of the Federal Cabinet at any time; and
  - (b) may designate a different Minister to be Deputy Prime Minister at any time.
- (6) Each member of the Federal Cabinet—



- (a) must disclose any situation involving a risk of conflict between the member's private interests and official responsibilities;
- (b) must keep other members of Cabinet informed of activities within their respective portfolios;
- (c) must preserve the political neutrality of the public service;
- (d) is individually responsible to the Federal Parliament for their own activities and the activities of public officers in administering their respective portfolios; and
- (e) is responsible for—
  - (i) protecting the Republic's interest in the departments within their respective portfolios, and in any Federal Government owned enterprise or company within their respective portfolios;
  - (ii) deciding both the direction and the priorities for their respective departments; and
  - (iii) for ensuring that their respective departments carry out their functions properly and efficiently.

### **158. Ministers term of office**

Each Federal Cabinet Minister continues in office until —

- (a) the Prime Minister is removed by a vote of no-confidence;
- (b) the Minister—
  - (i) is elected to another public office;
  - (ii) resigns by delivering a written statement of resignation to the Prime Minister;
  - (iii) is dismissed by the Prime Minister;

- (iv) is removed from office under Part two of Schedule Nine; or
- (v) ceases to be, or qualify to be, a member of the Federal Parliament.

### **159. The Attorney General**

- (1) There is established a public office within the Federal Government executive, headed by an Attorney-General who is the principal Federal law officer and legal adviser to the Federal Government.
- (2) The President must appoint the Attorney General on the recommendation of the Judicial and Legal Services Commission.
- (3) The Judicial and Legal Services Commission must make its recommendation strictly on the basis of merit from among candidates who—
  - (a) are qualified to hold the office of judge in accordance with section 168 (2); and
  - (b) have been nominated by the Prime Minister in consultation with Cabinet, from among legal practitioners in either private practice or public service in any sphere of government.
- (4) The Attorney-General may attend and speak, but may not vote, at any meeting of the Federal Parliament or any of its committees, or of the Federal Cabinet or any of its committees.

*Drafter's Note: This section is a new insertion following the instruction from the 4<sup>th</sup> Plenary to capture the essential points of [2013: 115]*



## CHAPTER 10—JUSTICE AND THE RULE OF LAW

### *Part A—Principles of Justice*

#### **160. Justice under law**

- (1) The rule of law assures that the authority entrusted to government in any sphere is never exercised arbitrarily or impulsively.
- (2) Justice under the rule of law dictates that laws must —
  - (a) be coherent and understandable, not only to lawgivers and judges, but to the ordinary people who have to govern their own lives according to law;
  - (b) apply to all persons equally, impartially and without regard to status or identity;
  - (c) be sufficiently certain to allow people to predict how the law may affect or will judge their actions, and so enable them to govern their own conduct;
  - (d) be reasonable and not impose demands beyond the ability of the people whose lives are affected by those laws; and
  - (e) be respectful of the liberty of the people.
- (3) In applying the rule of law—
  - (a) officers of the court must act fairly and with integrity;
  - (b) prosecutorial discretion is to be exercised fairly and reasonably;
  - (c) justice is not to be delayed or hindered by undue regard to procedural technicalities;
  - (d) access to the courts must not be frustrated by geographic, procedural or financial impediments;
  - (e) courts must hold regular sessions at predictable and convenient times;

- (f) alternative forms of dispute resolution, including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms may be applied in appropriate circumstances, in accordance with any applicable legislation;
- (g) the views of victims of crimes must be received and considered by the court in rendering judgments; and
- (h) the prevailing general views of the public at large must be taken into account by the Courts in imposing appropriate sentences after conviction.

*Drafter's Note: Paragraph (h) added as instructed by the 4<sup>th</sup> Plenary.*

*However, it is unclear how a court, considering the question of sentencing, is to ascertain the 'prevailing general views of the public at large', and how they are to distinguish between the views of the 'silent or quiet majority' and those of the impassioned, noisy, or articulate, minority.*

- (4) Parliament may make provision for the application of customary laws, subject to this Constitution.

### **161. Authority of courts to enforce the Constitution**

- (1) Everyone has the right to institute court proceedings alleging that any law, act or omission is contrary to this Constitution.
- (2) In addition to a person acting in their own interest, court proceedings under subsection (1) may be instituted by—
  - (a) a person acting on behalf of another person who cannot act in their own name;
  - (b) a person acting as a member of, or in the interest of, a group or class of persons;
  - (c) a person acting in the public interest; or
  - (d) an association acting in the interest of one or more of its members.
- (3) In addition to matters initiated under subsection (2), in any other matter before any court any party, or the court on its own initiative, may raise a constitutional issue respecting any law, act or omission.

- (4) The President, the Governor of a State, the Speaker of the Federal Parliament or of a State Parliament, the Prime Minister, the Leader of the Alternative Government in the Federal sphere, the Attorney General, the Premier of a State, or any Independent Commission or Independent Office, may apply to the High Court to give an advisory opinion on any constitutional matter.
- (5) When deciding a matter contemplated in this Section, whether instituted under subsection (2), or raised under subsection (3), a court—
  - (a) must declare that any law or conduct that is inconsistent with this Constitution is invalid to the extent of the inconsistency; and
  - (b) may make any order that is just and equitable.
- (6) A court that has declared any law invalid may make a further order—
  - (a) limiting the retrospective effect of the declaration of invalidity; or
  - (b) suspending the declaration of invalidity for any period and on any conditions, necessary to allow the competent authority to correct the defect in the law.

*Part B—The Courts*

**162. Judicial authority and independence**

- (1) The judicial authority of the Republic is vested in the courts and tribunals established by or under this Constitution.
- (2) The courts, the judges and all other judicial officers are independent, and subject only to the Constitution and the law, which they must apply without fear, favour or prejudice.
- (3) No person or government organ in any sphere may interfere with the judicial functioning of the courts, or unreasonably interfere with the administrative functioning of the courts.

- (4) Organs of government in every sphere, through legislative and other measures, must assist and protect the courts to ensure their independence, impartiality, accessibility and effectiveness.
- (5) The Federal Parliament must ensure that the judiciary has adequate financial and other resources to perform its functions and exercise its powers properly.
- (6) The judiciary has control of its own budget and finances, as approved by the Federal Parliament.
- (7) An order or decision issued by a court binds all persons to whom, and organs of government to which, it applies.

### **163. The superior court system**

- (1) The superior courts of Solomon Islands are—
  - (a) the Court of Appeal; and
  - (b) the High Court.
- (2) The Court of Appeal and the High Court have the authority, including inherent authority, conferred on them by this Constitution or by any legislation.
- (3) The superior courts have inherent power to protect and regulate their own process, in accordance with their Rules.

### **164. The Court of Appeal**

*Drafter's Note: The former section 163 has been deleted, following the instructions of the 4<sup>th</sup> Plenary.*

*This section has been revised, to include certain provisions formerly in the deleted section 163.*

*Consider now whether the name is perhaps confusing, since this court has both original and appellate authority. Might it rather be called the Supreme Court?*

- (1) The Court of Appeal comprises—

- (a) a judge, other than the Chief Justice, who is appointed as President of the Court of Appeal; and
  - (b) the number of judges determined by an Act of Parliament, appointed to serve as Justices of Appeal.
- (2) The President of the Court of Appeal and the other Justices of Appeal are appointed by the President, acting in accordance with the advice of the Judicial and Legal Services Commission.
- (3) The Court of Appeal is properly constituted to hear a matter when 3 judges are sitting, at least 2 of whom must be Justices of Appeal.
- (4) The Court of Appeal has authority to hear and determine—
- (a) Appeals as described in subsections (5) and (6); and
  - (b) Original matters, as described in subsection (7).
- (5) The Court of Appeal must hear any appeal from a final judgment of the High Court in a matter —
- (a) heard at first instance in the High Court; or
  - (b) arising under this Constitution or involving its interpretation, including—
    - (i) the constitutionality of any bill of the Federal Parliament or State legislature;
    - (ii) the constitutionality of any amendment to this Constitution or any State Constitution;
    - (iii) any dispute between organs of government in the federal or state sphere concerning the constitutional status, powers or functions of any of those organs; and
    - (iv) any dispute or matter concerning the obligations of the President or the Governor of a State.



- (6) The Court of Appeal may also hear appeals—
- (i) from any other judgment of the High Court; or
  - (ii) in any other matter assigned to it by legislation.
- (7) The Court of Appeal has original authority in the following matters:
- (a) referrals of legislation by the President, contemplated in Section 144;
  - (b) constitutional questions referred in accordance with Section 161 (4);
  - (c) certification of State and Community constitutions and constitutional amendments under Chapter 11;
- Paragraph (c) has been inserted to fill a gap, and bring this section into harmony with Chapter 11*
- (d) applications to disallow or terminate a declaration of a state of emergency under Section 238; and
  - (e) any other matter contemplated in subsection (8)(a);
- (8) When it is in the interests of justice, the Court of Appeal may give permission to any person to—
- (a) bring a matter directly before it; or
  - (b) appeal directly to it from any court.
- (9) In the exercise of its appellate authority, the Court of Appeal may—
- (a) vary, set aside or affirm any decision or order of any court; and
  - (b) make any other order necessary for the administration of justice, including an order for a new trial or an order awarding costs.
- (10) The Court of Appeal may review any judgment, pronouncement or order made by it.
- (11) Decisions of the Court of Appeal are binding on all other courts of Solomon Islands.

**165. The High Court**

- (1) The High Court comprises—
  - (a) the Chief Justice; and
  - (b) the number of judges determined by an Act of the Federal Parliament.
- (2) The Chief Justice and the other Judges of the High Court are appointed by the President, acting in accordance with the advice of the Judicial and Legal Service Commission.
- (3) The High Court has—
  - (a) original authority to hear and determine—
    - (i) any civil or criminal proceeding; and
    - (ii) any matter arising under this Constitution or involving its interpretation, except to the extent that the Court of Appeal has original jurisdiction;
    - (iii) any other original authority conferred on it by legislation;
  - (b) authority to hear and determine appeals from all judgments of subordinate courts, or tribunals; and
  - (c) authority to supervise any proceedings before a subordinate court or tribunal.
- (4) On an application made to the High Court under subsection (3)(b), the court may make any order, issue any writ or give any direction that it considers appropriate to ensure that justice is duly administered by the subordinate court or tribunal.
- (5) If, in any proceedings in a subordinate court or tribunal, a question arises as to the interpretation or application of this Constitution, the court or tribunal may either—
  - (a) decide the matter, in which case that decision may be appealed as of right to the High Court; or

- (b) adjourn its proceedings and refer the question to the High Court, in which case, when the High Court has given its decision the subordinate Court or tribunal must dispose of the case in accordance with the decision of the High Court, or any further decision on the matter by the Court of Appeal.
- (6) The Federal Parliament may make provision for the appointment of Registrars or Commissioners of the High Court and may prescribe their jurisdiction and powers.

### **166. Court rules and procedures**

- (1) The Court of Appeal and the High Court each have the authority to protect and regulate its practice and procedures, in accordance with legislation and the rules contemplated in subsection (2).
- (2) Rules regulating the procedures and practice of the superior courts must be—
  - (a) consistent with this Constitution and the law; and
  - (b) made by a Rules Committee, comprising—
    - (i) the Chief Justice;
    - (ii) the President of the Court of Appeal;
    - (iii) the Attorney General;
    - (iv) the President of Solomon Islands Bar Association; and
    - (v) another legal practitioner, appointed by the President, acting after consultation with the Chief Justice.

*Subsection (2)(b)(v) has been revised, and the former subsection (3) has been deleted, as directed by the 4<sup>th</sup> Plenary.*

### *Part C—Judges*

### **167. Independence of judges**

- (1) The office of a judge of a superior court must not be abolished while a person holds that office.

- (2) The salaries and benefits payable to, or in respect of, a judge or retired judge must not be varied to the disadvantage of that judge, except as part of an overall austerity reduction permitted by Section 214 (4).
- (3) The remuneration and benefits payable to or in respect of judges are a charge on the Consolidated Fund.
- (4) A member of the judiciary is protected from civil or criminal action for anything said or done, or omitted to be done, in the performance of a judicial function.

### **168. Criteria and qualifications for appointment**

- (1) When recommending persons for appointment to judicial office, the Judicial and Legal Services Commission must be guided by the principles—
  - (a) first, that judges should be of the highest competence and integrity; and
  - (b) second, that the composition of the judiciary should, as far as practicable, reflect the ethnic, cultural and gender diversity of Solomon Islands.
- (2) A person is qualified for appointment as a judge only if the person—
  - (a) holds, or has held, high judicial office in Solomon Islands or in another country prescribed by Federal law; or
  - (b) has at least 5 years experience as a legal practitioner or legal academic in Solomon Islands, or in another country prescribed by Federal law.

### **169. Oath of office**

Before taking office, a judge or other judicial officer must take the oath of office set out in Schedule 3.

### **170. Tenure of office**

- (1) Each person appointed as a judge of a superior court is entitled to serve for a term that ends when the person attains age 70, unless the person is removed for cause before attaining that age.

- (2) A retired judge may be appointed as an acting judge for a fixed term, despite having attained age 70.
- (3) Nothing done by a judge is invalid by reason only that the judge has attained age 70.

### **171. Acting Judges**

If any judicial office in a superior court is vacant, or if the person holding such an office is for any reason unable to perform the functions of office, the President, acting in accordance with the advice of the Judicial and Legal Services Commission, may appoint—

- (a) another Judge, or any person qualified to be a Judge, to act as Chief Justice; or
- (b) a person qualified to be a Judge, under section 168, to act as a judge of the High Court.

### **172. Removal of judges or judicial officers for cause**

A judge or other judicial officer may be removed from office for incapacity or wrongdoing, only in accordance with the provisions of Part B of Schedule Nine.

#### *Part D—Independent Justice Institutions*

### **173. Judicial and Legal Services Commission**

- (1) The Judicial and Legal Services Commission is established as an Independent Commission under Chapter 12 of this Constitution.
- (2) The Judicial and Legal Services Commission comprises—
  - (a) the Chief Justice, who is the Chairperson of the Commission;
  - (b) the Federal Attorney General;
  - (c) the Chairperson of the Federal Public Services Commission;
  - (d) the President of the Solomon Islands Bar Association; and
  - (e) two other persons appointed by the President, acting in accordance with the recommendation of the Federal Public Services Commission.

- (3) The Judicial and Legal Services Commission promotes and facilitates the independence and accountability of the judiciary and the efficient, effective and transparent administration of justice.
- (4) In addition to any other powers assigned by this Constitution or other laws, the Judicial and Legal Services Commission is responsible for—
  - (a) recommending persons for appointment as judges of the superior courts;
  - (b) appointing, receiving complaints against, investigating and removing from office or otherwise disciplining registrars, magistrates and judges of subordinate courts, and all persons to be appointed to any public office for which a legal qualification is required, except—
    - (i) the Federal Attorney General, Public Solicitor, and Director of Public Prosecution;
    - (ii) the judges of superior courts; and
    - (iii) the Chairperson of the Human Rights Commission, the Federal Electoral Commission, and the Ombudsman, Leadership and Anti-Corruption Commission;
  - (c) promoting programmes for the continuing education and training of judges and judicial officers; and
  - (d) advising the member of the Federal Cabinet responsible for justice on any matter relating to the judiciary or the administration of justice.

#### **174. Director of Public Prosecutions**

- (1) The Office of Director of Public Prosecutions is established as an Independent Office under Chapter 12 of this Constitution.
- (2) Only the Director of Public Prosecutions has authority to institute and conduct criminal proceedings in any Federal or State Court or, through the State Police, in any Community Court.

- (3) The Director of Public Prosecutions may take over and continue criminal proceedings that have been instituted by another person or authority, either with the consent of that person or Authority, or with the approval of the court.
- (4) At any time before a plea is entered, the Director of Public Prosecutions may discontinue particular criminal proceedings —
  - (a) instituted by the Director; or
  - (b) taken over by the Director, but only with the consent of the person who, or authority that, initiated those proceedings, or with the approval of the court.
- (5) In exercising the powers conferred by this section, the Director of Public Prosecutions—
  - (a) must have regard to the public interest, the interests of the administration of justice and the need to prevent and avoid abuse of the legal process; and
  - (b) in any case involving the defence, security or international relations of the Republic, must advise the Prime Minister, and have regard to any views officially communicated by the Prime Minister.
- (6) The Director of Public Prosecutions must be a person who is qualified to be a judge of the High Court.
- (7) The Director of Public Prosecutions is eligible to serve for a term that ends on the attainment of age 70, subject to subsection (8).
- (8) The President, acting in accordance with the advice of the Judicial and Legal Services Commission, may permit the Director of Public Prosecutions to continue in office beyond age 70.
- (9) The powers of the Director of Public Prosecutions may be exercised by the Director personally, or through other persons acting on the Director's instructions.
- (10) Nothing in this section limits the authority of a State Government to make arrangements for the prosecution of offences in State courts, but any such

arrangements must not derogate from the right of the Director of Public Prosecutions to exercise the functions of office under this Constitution.

- (11) The Federal Parliament may enact laws respecting the functions of the Office of Director of Public Prosecutions.

### **175. The Office of the Public Solicitor**

- (1) The Office of Public Solicitor is established as an Independent Office under Chapter 12 of this Constitution.
- (2) The Public Solicitor—
- (a) must be a person who is qualified to be a judge of the High Court; and
  - (b) is appointed by the President, acting on the recommendation of the Judicial and Legal Services Commission.
- (3) The Office of Public Solicitor must provide legal aid, advice and assistance to persons in need and, in particular, to any person—
- (a) charged with a criminal offence;
  - (b) facing or instituting a civil suit;
  - (c) when directed to do so by a superior court; or
  - (d) in relation to the rights of customary land or resource owners.
- (4) The Federal Parliament must provide adequate financial resources to enable the Office of Public Solicitor to perform its functions.
- (5) The Public Solicitor is eligible to serve for a term that ends on the attainment of age 70, subject to subsection (6).
- (6) The President, acting in accordance with the advice of the Judicial and Legal Services Commission, may permit the Public Solicitor to continue in office beyond age 70.



- (7) The Federal Parliament may enact laws—
  - (a) prescribing conditions to be met before legal aid may be provided, and may make provision in relation to a right of appeal if an application for legal aid is refused; and
  - (b) providing for the Public Solicitor to make a reasonable charge for services if a person is able to make a contribution toward the cost of the services provided.
- (8) The Office of Public Solicitor must—
  - (a) be accessible to all persons and communities in the Republic; and
  - (b) establish offices in all State Capitals.
- (9) Nothing in this section limits the authority of a State Government to make arrangements for the provision of legal aid and assistance to any person.

#### **176. Mercy Commission**

- (1) The Mercy Commission is established as an Independent Commission under Chapter 12 of this Constitution, and comprises—
  - (a) a Chairperson and two other persons, one of whom must be a qualified medical practitioner, and the other a social worker, each of whom—
    - (i) is appointed by the President, acting without recommendation; and
    - (ii) serves without a term limit or tenure, at the pleasure of the President;
  - (b) the Commissioner of the Federal Correctional Service; and
  - (c) one person representing each State—
    - (i) chosen from a list of nominees submitted by their State Government;
    - (ii) who each participate in the committee only when it is considering a matter involving an ordinary resident of the member's State;

- (d) one representative from the Solomon Islands Christian Association (SICA);  
and
- (e) one representative from traditional leaders.

*Drafter's Note: Paragraphs (d) and (e) inserted to reflect decisions by the 4<sup>th</sup> Plenary.*

*It was uncertain whether the intention was for these representatives to be one from each State, as per paragraph (3), or one from SICA, and one from traditional leaders.*

- (2) On the petition of any convicted person, the Mercy Commission may recommend that the President, or the State Governor in the case of a petition contemplated in subsection (5), exercise the power of mercy by—
  - (a) granting a free or conditional pardon to a person convicted of an offence;
  - (b) postponing the carrying out of a punishment, either for a specific or indeterminate period;
  - (c) substituting a less severe form of punishment; or
  - (d) remitting all or a part of a punishment.
- (3) The Mercy Commission—
  - (a) must refuse a petition in respect of any offense arising from the circumstances contemplated in Section 2 (3); and
  - (b) may dismiss any petition that it reasonably considers to be frivolous, vexatious or entirely without merit.
- (4) Unless a petition has been refused or dismissed in accordance with subsection (3), the Mercy Commission—
  - (a) must consider a report on the case prepared by—
    - (i) the judge who presided at the trial; or

- (ii) the Chief Justice, if a report cannot be obtained from the presiding judge;
- (b) must consider any other information derived from the record of the case or elsewhere that is available to the Commission;
- (c) may consider the views of the victims of the offence; and
- (d) after considering the Petition on its merits, must either—
  - (i) dismiss the petition; or
  - (ii) make a recommendation to President, or to the State Governor in the case of a petition contemplated in subsection (5).
- (5) The Mercy Commission must make a recommendation under subsection (4)(d)(ii) to a State Governor if the petition concerns a person convicted in the State Court of an offence committed in that State, unless the State Constitution provides otherwise.
- (6) The President, or the State Governor in the case of a petition contemplated in subsection (5), must act in accordance with the recommendations of the Commission.
- (7) The powers of the President, or of a State Governor, under this section must not be exercised by any other person or authority.

*Drafter's Note: This section has been revised to accommodate the decisions, requests and instructions of the 4<sup>th</sup> Plenary.*

### **177. The legal profession**

- (1) The independence and integrity of the justice system requires an independent legal profession, whose members fearlessly protect the rule of law while serving the court and the interests of their clients in all things, including in bringing, presenting and arguing matters before the courts.
- (2) The practice of law may be regulated by legislation, but organs of government in any sphere must not—
  - (a) harass or intimidate lawyers or their clients, or interfere in their relationship;

- (b) infringe upon lawyer-client privilege; or
- (c) undermine the independent governance of the legal profession.

*Part E—Fair Trial and Treatment of Detained Persons*

**178. Elements of a fair trial of accused persons**

- (1) With the coming into force of the Federal Constitution, all criminal prosecutions against accused persons shall be instituted in the name of the Federal Democratic Republic of Solomon Islands.
- (2) The right to a fair trial, guaranteed by Section 40, means that every accused person has the right—
  - (a) to be informed of the charge with sufficient detail to answer it;
  - (b) to have adequate time and facilities to prepare a defence;
  - (c) to choose, and to be represented by, a legal practitioner, and to be informed promptly of this right;
  - (d) to have a legal practitioner assigned by the Public Solicitor, and at public expense, if injustice would otherwise result, and to be informed promptly of this right;
  - (e) to be informed in advance of the evidence on which the prosecution intends to rely, and to have reasonable access to that evidence;
  - (f) to a public trial before an ordinary court;
  - (g) to have the trial begin and conclude without unreasonable delay;
  - (h) to be present when being tried, unless—
    - (i) the court is satisfied that the person has been served with a summons or similar process requiring attendance at the trial, and has chosen not to attend; or

- (ii) the conduct of the person makes it impracticable to conduct the trial;
  - (i) to be tried in a language that the person understands or, if that is not practicable, to have the proceedings interpreted in such a language without cost to the person;
  - (j) to be presumed innocent, to remain silent, not to testify during the proceedings, and not to be compelled to give self-incriminating evidence, and to have no adverse inference drawn from the exercise of any of these rights;
  - (k) to call witnesses and present evidence, and to challenge evidence presented against the accused person;
  - (l) to a copy of the record of proceedings within a reasonable period and on payment of a reasonable prescribed fee;
  - (m) to the benefit of the least severe of the prescribed punishments if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
  - (n) of appeal to, or review by, a higher court.
- (3) Whenever this section requires information to be given to a person, that information must be given simply and clearly, in a language that the person understands.

### **179. Procedural rights of accused and detained persons**

- (1) Every prisoner, and any person detained for any other reason, has the right—
- (a) to be informed promptly of the reason for being detained;
  - (b) to choose, and to consult, a legal practitioner, and to be informed promptly of this right;
  - (c) to have a legal practitioner assigned to the detained person by the Public Solicitor and at public expense, if injustice would otherwise result, and to be informed promptly of this right;

- (d) to challenge the lawfulness of the detention in person before a court and, if the detention is unlawful, to be released;
  - (e) to conditions of detention that are consistent with human dignity, including at least the opportunity to exercise regularly and the provision, at public expense, of adequate accommodation, nutrition, reading material and medical treatment; and
  - (f) to communicate with, and be visited by, the person's—
    - (i) spouse or *de facto* spouse, or next of kin;
    - (ii) chosen social worker;
    - (iii) chosen religious counsellor; and
    - (iv) chosen medical practitioner.
- (2) Whenever this section requires information to be given to a person, that information must be given simply and clearly in a language that the person understands.



## CHAPTER 11—STATE AND COMMUNITY GOVERNMENTS

### *Part A—State Constitutions and Government*

#### **180. State Constitutions**

- (1) Each State may adopt a State constitution to—
  - (a) provide for and structure the government and administration of that State;
  - (b) determine the number of Community Governments within the State; and
  - (c) determine the criteria for qualification as a Community Government within the State.

*Drafter's Note: Paragraph (b) revised as requested by the 4<sup>th</sup> Plenary*

- (2) The constitution of each State—
  - (a) must be consistent with this Constitution;
  - (b) is the paramount law of the State, subject only to this Constitution.
- (3) The first constitution of a State must—
  - (a) be adopted in accordance with Schedule Eight; and

*Drafter's Note: Paragraph (a) revised as requested by 4<sup>th</sup> Plenary*

- (b) set out the process by which the State Constitution may later be amended by the State.
- (4) A State Constitution, or amendment to a State Constitution, becomes law only when the Court of Appeal has certified that in every respect the State Constitution or constitutional amendment is consistent with this Constitution, and —
  - (a) it was adopted in accordance with Schedule Eight, if it is the first constitution of the State;
  - (b) it was adopted in accordance with the State Constitution, if it is an amendment to the State Constitution; or



- (c) if the text is made pursuant to an arrangement under Section 187, it was adopted in accordance with the terms of that arrangement.

*Drafter's Note: opening clause of subsection (4) revised as requested by 4<sup>th</sup> Plenary.*

- (5) A State constitution, or amendment to a State constitution, comes into operation in accordance with its provisions.

### **181. State Government**

- (1) Each State must have—
- (a) a State Parliament;
  - (b) a State Governor;
  - (c) a State Premier and Ministers of the State; and
  - (d) a State Public Service.

*Drafter's Note: Paragraph (a) revised as requested by 4<sup>th</sup> Plenary*

- (2) State Government institutions and procedures are to be similar in principle and pattern to comparable institutions and procedures in the Federal sphere, but adapted as necessary to the particular circumstances and local conditions of the State.

### **182. State Parliament**

A State Parliament has the power to make laws for the whole or part of the State, in relation to any matter within the jurisdiction of the State.

*Drafter's Note: [2013: 150] This is a duplication and could be deleted.*

*4<sup>th</sup> Plenary decided to retain this for further consideration.*

### **183. State executive and administration**

- (1) The executive authority of the State Government extends to all matters within the jurisdiction of the State.

- (2) State Governments and their administrations must operate as locally as circumstances allow and, in particular, must—
- (a) enable the coordination of services and resources with Community Governments and for those services and resources to be delivered in a reliable, fair and equitable manner;
  - (b) ensure the timely and fair distribution of resources and revenues to those beneficially entitled; and
  - (c) ensure the participation of women and youths in the structure and administration of the State government.

#### **184. State Justice System**

- (1) A State may establish State courts in accordance with the provisions of its State Constitution.
- (2) If a State establishes any State court, the State Government must make arrangements satisfactory to the Chief Justice, for—
  - (a) the establishment of a registry of the High Court in that State; and
  - (b) for the administration of that registry to be merged with the registry of a State Court.

*Drafter's Note: the relationship of High Court to State Courts requires further consideration.*

*The 4<sup>th</sup> Plenary agreed to review this further, and requested further advice from Prof. Ghai*

#### **185. Traditional justice**

- (1) To the extent compatible with this Constitution, clan or tribal communities or any section of those communities may exercise authority to administer their own system of justice according to their distinctive juridical customs, traditions and procedures.
- (2) Traditional justice of the locality where an incident occurs applies to resolve a matter or punish in accordance with methods customarily practiced by the people concerned

for dealing with offences, taking into account the traditions, customs and norms of the parties to the conflict except to the extent that doing so would be—

- (a) inconsistent with this Constitution or any legislative enactment;
  - (b) harsh or repugnant to general humanity; or
  - (c) not acceptable in any democratic society.
- (3) If compensation is imposed as a penalty, it must be just, fair and reasonable.
- (4) Each State Parliament and Community Government Legislature may enact laws to give effect to this section.
- (5) Within the Federal Territory of Honiara City, the Federal law to provide for full measure of self administration of Honiara City must provide—
- (a) for conflict resolution within the Honiara City boundaries in the manner contemplated in subsections (1), (2) and (3); and
  - (b) for adjudication of those conflicts by persons knowledgeable in customary laws and practices.
- (6) Each State Parliament must enact State laws, comparable to those required by subsection (5), to provide for conflict resolution within the respective State Capital Territories, which may extend as well to other urban centers outside the State Capital Territories.

#### **186. State revenue**

- (1) A State Government may not—
- (a) levy a tax;
  - (b) raise a loan or receive money as a loan from any person; or
  - (c) spend any public money of the State,
- except to the extent authorized by State law.

- (2) Subject to Section 87, a State Government may raise a loan, receive any money as a loan or give a guarantee following consultations between the Reserve Bank, the National Finance Council and the State Government concerned.

*Drafter's Note: Subsection (2) revised as requested by 4<sup>th</sup> Plenary*

- (3) A State Government must not raise a loan to finance recurrent expenditures or raise a loan from banks or related financial institutions or enterprises that it either owns or in which it has a controlling interest.
- (4) In accordance with a State Law, a State Government may establish a Sinking Fund or any other similar funds.
- (5) After consulting the Reserve Bank, a State Government may establish or participate in establishing commercial banks or other related financial institutions, which may extend their operations beyond the boundaries of the State.
- (6) Any state bank or financial institution established by a State Government must comply with the requirements of Federal Law applying to such an institution.
- (7) Each State Government and each Community Government must maintain a separate account to be called a "State Government Account", "Community Government Account" and "Resource Owners Account" respectively into which the Reserve Bank must pay all revenue allocated to the State, Community and Resource Owners from the "National Revenue Sharing Account".

*Drafter's Note: subsection (7) revised as requested by 4<sup>th</sup> Plenary*

### **187. State Maritime Boundaries**

- (1) The Federal Government, and each State Government, share joint control, management and responsibility over any State's Maritime Boundaries that overlap or extend into maritime waters or areas that are the subject of international laws, rules, agreements, treaties or obligations, including security surveillance measures, and exploitation of resources in those waters, areas, or on their sea beds.

- (2) This subsection, and subsection (3) and (4), apply only to the extent that there are competing claims of customary ownership and usage, by customary land owning groups from more than one State, over any of the following special areas:
  - (a) Oema atoll and Nunungari Islands between Western State and Choiseul State;
  - (b) Arnavon Island between Choiseul State and Isabel State;
  - (c) Mborokua or Mary Island between Western State and Central State;
  - (d) Ramos Island or Anogou between Isabel State and Malaita State.
- (3) The harvesting of marine resources from, and the utilization, usage, control or management of the special area, and the sharing of benefits derived from that special area must be governed or regulated by—
  - (a) an existing arrangement between the competing customary land owning groups, if there is an existing arrangement; or
  - (b) by an arrangement to be mutually agreed upon by the competing customary land owning groups.
- (4) If any competing customary land owning groups are unable to reach agreement within 10 years after the effective date of this Constitution, the matter may be resolved by the High Court, on application by either competing customary group.

*Part B—Community Constitutions and Government*

**188. Principles of Community Governments**

- (1) Democracy begins with the People. It is first expressed locally as people participate in local affairs, and first experienced locally as people choose to provide services for their community through their local government.
- (2) Community Governments are the collective expression of the authority traditionally vested in the tribes, clans, lineages, families or any customary groups that have existed and functioned autonomously through chiefs and other traditional leaders

since time immemorial, and which have evolved and been modified as necessary to meet changing circumstances.

- (3) A strong system of Community government, with structures tailored to the distinctive needs of each locality, strengthens national unity by—
  - (a) recognising the right of the people in their communities to manage their own affairs and further their development in a manner that is responsive to local interests and needs;
  - (b) integrating all the residents within a locality under the same local government bodies, so that issues are resolved, and services are provided without discrimination;
  - (c) engaging the people in the decisions that most affect their daily lives;
  - (d) promoting social and economic development, and the provision of easily accessible public services throughout Solomon Islands; and
  - (e) promoting democratic and accountable exercise of authority.
- (4) As an expression of national unity, Community Governments must be democratic, non-discriminatory, and inclusive, reflecting all the values recognised in Chapter 1.
- (5) Each Community Government Legislature must be chosen by the citizens resident within its area—
  - (a) in elections administered by the Electoral Commission; or
  - (b) appointed, in the case of traditional leaders.

*Drafter's Note: subsection (5) has been re-formulated to accommodate the appointment of traditional leaders to community legislatures, as requested by 4<sup>th</sup> Plenary.*

### **189. System of Community Government**

- (1) The Parliament of each State must enact legislation to establish the system and structures of Community government in that State.

- (2) The legislation required by subsection (1)—
  - (a) must provide for Community government for all the territory of the State;
  - (b) must structure Community government to achieve the realisation of each provision of Section 188 (3);
  - (c) must provide for each Community Government to have sufficient autonomy to carry out its responsibilities, and to be responsive to the needs of the residents of the Community;
  - (d) may establish different categories of Community Government in different localities, and may establish multiple levels of Community Government in particular localities;
  - (e) may assign different roles, functions and powers to different categories of Community Governments;

*Drafter's Note: 4<sup>th</sup> Plenary resolved to re-consider paragraphs (d) and (e) after further explanation*

- (f) must establish standards for Community government transparency and the accountability of all Community Government organs to the residents of the locality; and
    - (g) must set out the process by which each Community may adopt its Community Government Constitution.
- (3) In assigning roles, functions and powers to Community Governments, the State Parliament must be guided by the principle that responsibility should be assigned to Community Government unless there is good reason to conclude that a Community Government cannot effectively perform the required role or function, or exercise the required powers.

## **190. Community Government responsibility and accountability**

- (1) Each Community Government has authority, within its Community —
  - (a) over the matters set out in List V of Schedule Five; and

- (b) to raise revenue from the sources listed in Part Three of Schedule Six.
- (2) Each Community Government is accountable to its residents and, in particular, must—
- =
- (a) promote the rights of its residents to actively participate in local decision making procedures;
- (b) ensure that the needs of the entire community, including youth, women, minorities, the elderly and the disabled are considered in Community Government decisions;
- (c) give priority to the basic needs of the community;
- (d) ensure that the community is adequately informed about its activities;
- (e) ensure its by-laws are accessible to the public
- (f) deliver services in a manner that recognises the diverse needs of its residents; and
- (g) account to the residents of the Community through regular reports and other methods that enable the residents to provide proper oversight of the Community Government.
- (3) The elected and appointed members of Community Government Legislatures, and the senior office holders within each Community Government, are subject to, and must comply with, the Code of Conduct set out in Schedule Nine.

*Subsection (3) has been re-formulated as requested by 4<sup>th</sup> Plenary, and to remove reference to “officers of the State”*

### **191. Government co-operation**

- (1) The Federal Government, and the State Government within each State, must adequately support all Community Governments, and contribute to building their capacity to fulfill their responsibilities.



- (2) The State Government may supervise or intervene in the management of a Community Government, only—
- (a) for remedial purposes;
  - (b) when necessary to ensure that the roles, functions and powers assigned to it are properly fulfilled and exercised; and
  - (c) in accordance with the principles of this Constitution, and following clearly defined procedures set out in State legislation.

*Drafter's Note: Subsection (2) has been re-formulated to give effect to decision of the 4<sup>th</sup> Plenary.*

*Part C— Honiara City*

**192. Status of Honiara City**

- (1) The territory of Honiara City, as designated in Section 194, is a Federal Territory.
- (2) The Federal Parliament may enact legislation that—
  - (a) alters the status of Honiara City;
  - (b) alter the boundaries of Honiara City, subject to the approval, by ratification, of the of Guadalcanal State Parliament; or
  - (c) provides for the governance of Honiara City, subject to the principles set out in section 188.
- (3) The councillors and the residents of Honiara City must be consulted by the Federal Government in the promulgation of any Federal Law for Honiara City.

*Drafter's Note; the former subsection (4) has been deleted as requested by 4<sup>th</sup> Plenary.*

**193. Governance of Honiara City**

- (1) A Federal law must structure the government of Honiara City providing for —
  - (a) a City Council comprising—
    - (i) Twelve elected councillors from wards;
    - (ii) One appointed councillor from each of the States, to be chosen by an electoral college of persons from each State residing in Honiara; and
    - (iii) Three councillors, selected one each by the people of Gaubata, Malango and Tandai; and
  - (b) the powers of the elected and appointed councillors.
- (2) Within its resources, Honiara City is expected to—
  - (a) promote social and economic development;

- (b) provide services in a sustainable manner;
  - (c) exercise prudent stewardship and use its resources efficiently and effectively in the interests of the community;
  - (d) promote a safe and healthy environment; and
  - (e) conduct its business in an open, transparent and democratically accountable manner.
- (3) The provisions of Section 189 (3) apply to Honiara City and, in addition, the City must—
- (a) ensure that the role of representative democratic governance of the community, and the expected conduct of elected members, is clear and understood by elected members and the community;
  - (b) ensure that the governance structures and processes are effective, open and transparent;
  - (c) ensure that as far as practicable, responsibility and processes for decision making in relation to regulatory responsibilities is separated from the responsibility and processes for decision making for non regulatory responsibilities;
  - (d) ensure that the relationship between elected members and management is effective and understood;
  - (e) be a responsible and fair employer;
  - (f) regulate urban drift into Honiara City; and
  - (g) maintain links between Honiara City and State Governments and communities through consultations.

**194. Boundaries of Federal Capital Territory**

- (1) The land and sea boundaries of Honiara City are as contained in the official records kept by the Federal Surveyor General, except to the extent that those boundaries are varied, and incorporated into a Federal Law, in accordance with this section.
- (2) The Federal Government must—
  - (a) negotiate with the Guadalcanal State Government and Honiara City Council in an attempt to agree the boundaries of Honiara City by mutual consent within a period of 5 years from the commencement of this Constitution; and
  - (b) provide the necessary funds to enable the three parties to negotiate for a mutual settlement of the land and sea boundaries of Honiara City.
- (3) If no mutual agreement is reached under subsection (2), then litigation to ascertain the correct land and sea boundaries of Honiara City must be commenced and completed with the period of another 5 years.



## CHAPTER 12—INDEPENDENT COMMISSIONS AND OFFICES

### 195. Establishment and objects of Independent Commissions and Offices

- (1) In order to secure and protect constitutional democracy in Solomon Islands, this Constitution recognises or establishes the following organs as Independent Commissions or Independent Offices of the Republic:

#### **Independent Commissions**

Land Commission

Human Rights Commission

National Finance Commission

National Planning Commission

National Boundaries Commission

Electoral Commission

Ombudsman, Leadership and Anti-Corruption Commission

Judicial and Legal Services Commission

Mercy Commission

National Remuneration Commission

Federal Public Service Commission

Federal Implementation Commission

#### **Independent Offices**

Director of Public Prosecutions

Public Solicitor

Auditor General

Governor of the Reserve Bank of Solomon Islands

Commissioner of Police

Commissioner of Corrections

*Drafter's Note: Subsection (1) has been revised as requested by 4<sup>th</sup> Plenary.*

*It is not clear from the instructions, or from [2013:115] whether the office of Attorney General is to be an Independent Office under this Chapter.*

*The 4<sup>th</sup> Plenary requested a further Commission to be added: the Federalism Implementation Commission. The substance of that request is addressed in new Schedule 12.*

*Careful consideration needs to be given to whether that Commission is to be included under Chapter 12, since it is contemplated that it would serve only a transitional function for only 10 years. Please see Schedule 12 for further discussion and recommendations.*

- (2) Each Independent Commission or Office is established to—
  - (a) protect the sovereignty of the people and the public interest;
  - (b) uphold the rule of law, and promote the observance of democratic principles and values by all organs of government in every sphere; and
  - (c) maintain constitutionality and integrity by insulating essential democratic functions from improper influence, manipulation or interference.

#### **196. Independence of Commissions and Offices**

- (1) Each Independent Commission or Office is a legal person, which is independent and subject only to the Constitution and the law.
- (2) Each Independent Commission, and each Independent Office, must be impartial, and perform its functions without fear, favour or prejudice.
- (3) Other organs of government in every sphere, through legislative and other measures, must assist and protect the Independent Commissions and Offices to ensure their independence, dignity, impartiality, and effectiveness.
- (4) The Federal Parliament must ensure that each Independent Commission and each Independent Office has adequate financial and other resources to perform its functions and exercise its powers properly.
- (5) No organ of government in any sphere may interfere with the functioning of any Independent Commission or Independent Office.
- (6) Staff of each Independent Commission or Independent Office—
  - (a) must be appointed by the Federal Public Service Commission, with the agreement of the Commission or Office; or

- (b) may be seconded from other organs of government in any sphere.
- (7) Each Independent Commission or Independent Office has complete, independent authority to—
- (a) retain contractors or consultants to supplement any staff appointed or seconded as contemplated in subsection (6);
  - (b) control its own budget and finances;
  - (c) raise funds in addition to those appropriated by the Federal Parliament;
  - (d) engage directly with the public, including through public media; and
  - (e) direct its own activities.

#### **197. Independence of members and officers**

- (1) Each member of an Independent Commission, and each Independent Officer, in performing the functions of that Commission or Office—
- (a) is independent and subject only to this Constitution and the law;
  - (b) must act impartially, and without fear, favour or prejudice;
  - (c) must withdraw from deliberation of any matter in which the person could reasonably be perceived as having a conflicting personal interest; and
  - (d) has no civil, criminal or administrative liability for anything said or done by the person in good faith.
- (2) The salaries and benefits of the members of each Independent Commission, or of each Independent Officer—
- (a) are determined in accordance with a framework established by the National Remuneration Commission under Schedule Three;
  - (b) must not be reduced, except as part of an overall austerity reduction permitted under Section 213 (4); and



- (c) are a charge on the Federal Consolidated Fund.

### **198. Authority of Independent Commissions and Offices**

- (1) In addition to the functions conferred on it by this Constitution, each Independent Commission or Office has any other powers and other functions that are assigned to it in Acts of the Federal Parliament.
- (2) If an Independent Commission has authority to initiate complaints, it also has authority on its own initiative, or in response to a complaint, to initiate and carry out public inquiries into any matter generally within its mandate.
- (3) If an Independent Commission has authority to receive and investigate complaints or petitions, it also has the discretion—
  - (a) to dismiss any complaint that it reasonably regards as being frivolous or vexatious, or without merit;
  - (b) to facilitate the resolution of complaints by mediation or conciliation;
  - (c) following an investigation, to issue a notice requiring an organ of government in any sphere, or any person, to take any particular action, or cease any particular practice;
  - (d) to apply to the High Court to have a notice under paragraph (c) endorsed as an order of the court, if it has not been complied with in a reasonable time; and
  - (e) to refer a matter to the Director of Public Prosecutions if it appears to involve an offence under any law.
- (4) The Auditor General, and each Independent Commission, has the same powers as the High Court in respect of—
  - (a) the attendance and examination of witnesses, including witnesses abroad;
  - (b) the administration of oaths or affirmations; and
  - (c) the production of documents.

- (5) Each Independent Commission or Independent Office has the authority to—
- (a) accept from a member of the public any complaint, application or submission that should properly be directed to another Independent Commission or Independent Office; and
  - (b) with proper written notice to the member of the public, re-direct that complaint, application or submission to the appropriate Independent Commission or Independent Office.

### **199. Business and accountability of Independent Commissions and Offices**

- (1) Each Independent Commission or Independent Office may make regulations respecting its own procedures and functions.
- (2) An Independent Commission—
- (a) may act despite the absence of one or more of its members, provided a quorum of more than half of its members are present; and
  - (b) must reach decisions by consensus or, if it is unable to do so, by majority decision of its members present, with the Chairperson having a casting vote in the case of a tie.
- Drafter's Note: Paragraphs (a) and (b) have been re-formulated to give effect to the decision of the 4<sup>th</sup> Plenary, though with slight variation in wording.*
- (3) The validity of the transaction of business of a Independent Commission is not affected if someone who was not entitled to do so took part in its proceedings.
- (4) Each Independent Commission or Independent Office must observe the principles that it is charged to uphold, in particular—
- (a) accessibility and approachability;
  - (b) simplicity and clarity of all procedures and documentation; and
  - (c) speed, efficiency and responsiveness.

- (5) Where appropriate, each Independent Commission or Independent Office must establish branches across Solomon Islands as necessary to provide reasonably accessible service to the people.
- (6) Two or more Independent Commissions or Independent Offices may agree to combine resources to establish a joint secretariat, or joint branch offices, to serve their administrative requirements.
- (7) Each Independent Commission or Independent Office is accountable to the people through the Federal Parliament, and must deliver to Parliament annual reports concerning its functions.
- (8) Every report published by an Independent Commission or Independent Office regarding its functions, or serious investigations it has conducted, must be submitted to the Federal Parliament.
- (9) Every annual report of an Independent Commission or Independent Office must disclose the source, amount and purpose of any money received by that Commission or Office from sources other than the government in any sphere.
- (10) Reports issued by an Independent Commission or Independent Office must be—
  - (a) as informative as reasonably possible, bearing in mind the need for individual privacy, national security, commercial confidentiality and other relevant factors, including economy on the part of the Commission or Office; and
  - (b) publicised and made readily available to the public.

## **200. Appointments to Independent Commissions and Offices**

- (1) Every Independent Officer, and every member of any Independent Commission, is appointed by the President, in accordance with a recommendation made as required by this Constitution.
- (2) To qualify for appointment as a member of an Independent Commission, or as an Independent Officer, a person must—
  - (a) be a Solomon Islands citizen;

- (b) possess the requisite knowledge, experience, temperament and reputation as appropriate for the respective Commission or Office; and
  - (c) satisfy any requirements for a particular Independent Commission or Independent Office, as set out elsewhere in this Constitution or in Federal law.
- (3) A person must not be appointed or re-appointed to an Independent Commission or Independent Office if the person—
- (a) is a member of any other Independent Commission or holder of another Independent Office;
  - (b) is a member of the Federal Parliament, a State Parliament, a Community Government Legislature, or holds any other elected office established by or under this Constitution;
  - (c) is a candidate for election to an office contemplated in paragraph (b);
- Drafter's Note: Paragraph (b) has been revised for clarity to name the State Parliaments and Community Government Legislatures, and paragraph (c) has been revised to harmonize with that.*
- (d) is an office bearer in a political party;
  - (e) holds a public office, including a local government office, if an Act of the Federal Parliament restricts holders of that office from being appointed to an Independent Commission or Independent Office;
  - (f) fell into any category mentioned in paragraphs (b) to (e) at any time during the immediately preceding 4 years, or 8 years in the case of an appointment to the Electoral Commission;
  - (g) is subject to a sentence of imprisonment when appointed;
  - (h) has been subject to a sentence of imprisonment in excess of 6 months at any time during the 5 years immediately before being appointed; and
  - (i) is disqualified from holding an office under Schedule Nine.

- (4) When selecting women or men to serve Solomon Islands, the need for the ethnic, cultural, gender and geographic diversity of Solomon Islands to be reflected in the broad composition and chairing of the Independent Commissions and filling of Independent Offices must be considered.

#### **201. Term of office and vacancies**

- (1) A member of an Independent Commission is appointed to serve part-time, unless otherwise stated in this Constitution or in Federal legislation.
- (2) Each member of an Independent Commission, and each person appointed to hold an Independent Office—
  - (a) serves for a term of 5 years from the date of appointment; and
  - (b) may be appointed to serve a second consecutive term in that Independent Commission or Independent Office.

*Drafter's Note: 4<sup>th</sup> Plenary requested the word "officer" in opening clause to be changed to "office". The provision is setting the term for the person appointed to hold the office: that is, the Officer. To avoid any misunderstanding, I have reformulated the clause.*

- (3) If the office of Chair of an Independent Commission is vacant, or the Chair is absent from duty or from the Republic, the remaining members may elect one of their number to serve as acting Chair.

## CHAPTER 13—PUBLIC FINANCE

*Drafter's Note: This chapter has been re-organised and divided into 3 Parts, to separate matters that are generally applicable in all spheres of the Republic from those matters that are specific to the Federal Government. The National Finance institutions are placed within the third Part of the Chapter.*

*The provisions have not been altered in any substantive way, but have been revised for consistency and to correct textual errors*

### *Part A—National Public Finance*

#### **202. Principles of public finance in the Republic**

*Drafter's Note: this section has been expanded, by bringing forward provisions that perviously were in section 203, but which are generally applicable to government in all spheres.*

- (1) The following principles apply to public finance in the Republic—
    - (a) all organs of government in every sphere must promote public participation, transparency and accountability in public financial decision making and reporting;
    - (b) the public finance system must promote a just society, and in particular—
      - (i) the burden of taxation must be shared fairly;
      - (ii) expenditures must promote the fair and balanced development of the country, including by making special provision for local government and remote areas; and
    - (c) the burdens and benefits of the use of public resources and public borrowing must be shared equitably between present and future generations;
- Drafter's Note: Paragraph (c) revised by insertion of "public" before "resources" in the first line.*
- (d) public money must be used in a prudent and responsible way and accounted for in accordance with law and accounting principles that are generally accepted in the public sector; and

- (e) financial management must be responsible, and fiscal reporting must be clear.
- (2) The Federal Government, State Governments and Community Governments must not impose double taxation on revenue generating sources that they are permitted to levy and collect taxes on under this Constitution.

*Drafter's Note: Consider the following possible re-formulation of subsection (2), offered for improved clarity:*

- (5) *“If this Constitution permits governments in more than one sphere to levy and collect taxes on the same revenue generating sources, those governments must not exercise that authority in a manner that imposes double taxation on those sources.”*
- (3) No tax or fee may be imposed, waived or varied by any organ of government in any sphere, except as provided by legislation.
- (4) If any legislation contemplated in subsection (2) permits the waiver or variation of any tax or fee—
  - (a) a public record of each waiver or variation must be maintained together with the reason for it; and
  - (b) each waiver or variation, and the reason for it, must be reported to the Auditor General.
- (5) No law may exempt, or authorise the exemption of, a public officer from payment of any tax or fee by reason of—
  - (a) the office held by that public officer; or
  - (b) the nature of the work of the public officer.

### **203. National Revenue Sharing Account**

- (1) All Federal Government revenue that is shareable among the spheres of government in accordance with Chapter 5 and Schedule Seven must be divided when received, and—
  - (a) the share allocated to the Federal Government must be paid into the Federal Consolidated Revenue Fund; and

- (b) the share allocated to the States, Communities or Resource owners must be paid into an account to be created for that purpose in the Reserve Bank, to be known as the National Revenue Sharing Account.
- (2) No revenue may be withdrawn from the National Revenue Sharing Account other than to make payments to State Governments, Community Governments or Resource Owners, according to the agreed share of the Federal revenues.
- (3) The Reserve Bank is responsible for making payments to State Governments, Community Governments and Resource Owners and, so far as is practicable, must make those payments to the Consolidated Fund Accounts of the State Governments, Community Governments and Resource Owners on a weekly basis.
- (4) All revenue derived from royalties, land lease and those customary in nature will be paid directly to the resource owners.

*Drafter's Note: this section has been revised as requested by 4<sup>th</sup> Plenary.*

#### **204. Control of public money and procurement**

- (1) The Federal Parliament must enact legislation to ensure expenditure control, transparency and independent internal audit mechanisms for organs of government in every sphere.
- (2) When an organ of government in any sphere contracts for goods or services, it must do so in accordance with a system that is fair, transparent, competitive and cost-effective.
- (3) An Act of the Federal Parliament must prescribe a framework within which policies relating to procurement and asset disposal are to be implemented.

#### **205. Remuneration of persons holding public office**

- (1) The salaries and benefits for the following office holders, as determined by the National Remuneration Commission, are a charge on the Federal Consolidated Fund:
  - (a) The President
  - (b) The Superior Court Judges



- (c) the Speaker of the Federal Parliament
  - (d) The members of Independent Commissions, and Independent Officers
- (2) When determining the framework of salaries and benefits, the National Remuneration Commission must not reduce the overall value of the salaries and benefits of judges, other judicial officers, members of Independent Commissions or Independent Officers, except—
- (a) for reasons of national economic austerity; and
  - (b) as part of a general reduction in the framework applicable to all office holders, and under which all office holders are similarly affected.

*Drafter's Note: subsection (20 has been brought forward from its previous location in section 214. This change is offered for consideration in the interests of improved coherence.*

#### *Part B—Federal Government Public Finance*

### **206. Federal Revenue**

*Drafter's Note: This section has been re-structured by moving to section 202 those subsections that were generally applicable to all governments, and by bringing forward from section 204 provisions that concerned Federal revenue rather than Federal debt.*

- (1) The Federal Government may not—
- (a) levy a tax;
  - (b) raise a loan or receive money as a loan from any person; or
  - (c) spend any public money,
- except to the extent authorized by Federal law.
- (2) All money raised or received by or on behalf of the Federal Government must be paid into—
- (a) the Federal Consolidated Fund;

- (b) the National Revenue Sharing Account; or
  - (c) a fund established by Federal law, to be used only for a specific purpose expressed in the Act.
- (3) Money may be withdrawn from a public fund contemplated in subsection (2)(c) only in accordance with an Act of the Federal Parliament.

## **207. Borrowing and guarantees**

*Drafter's Note: This section has been re-structured by moving to section 203 provisions that concerned Federal revenue rather than Federal debt.*

- (1) An Act of the Federal Parliament may—
- (a) prescribe the terms on which the Federal Government may borrow money or guarantee the liability of any person; and
  - (b) impose reporting requirements in respect of any borrowing or guarantees.
- (2) The Federal Government must not borrow money, or guarantee the financial liability of any person, except in accordance with conditions imposed by Federal legislation.
- (3) The Federal Parliament, by resolution, may require the member of the Federal Cabinet responsible for finance matters to present to the relevant committee, within 7 days after the resolution, information concerning any particular loan or guarantee, including all information necessary to show—
- (a) the extent of the total indebtedness by way of principal and accumulated interest;
  - (b) the use made or to be made of the proceeds of the loan or the purpose of the guarantee;
  - (c) the provision made for servicing or repayment of the loan; and
  - (d) the progress made in the repayment of the loan.

## **208. Federal Consolidated Fund**

- (1) Money may be withdrawn from the Federal Consolidated Fund only on the authority of a Ministerial warrant, which may be issued only in accordance with—
  - (a) an appropriation by Federal legislation; or
  - (b) a charge against the Consolidated Fund under this Constitution, or provided for in an Act of the Federal Parliament.
- (2) The costs and expenses incurred in collecting and managing the Federal Consolidated Fund are the first standing charge on the fund.
- (3) All debt charges, and all pension benefits, for which the Federal Government is liable are a standing charge payable out of the Federal Consolidated Fund.
- (4) Subsection (3) does not apply to the extent that a particular debt or benefit is a charge on another fund and has been paid out of that fund to the person or authority to whom payment is due.
- (5) For the purposes of this section, “debt charges” include interest, sinking fund charges, the repayment or amortisation of debt, and all expenditure in connection with the raising of loans on the security of the Federal Government or the Federal Consolidated Fund, and the service and redemption of debt thereby created.

## **209. Annual presentation of the Federal budget**

- (1) Each year, the member of the Federal Cabinet responsible for finance matters must present to the Federal Parliament a budget for the next financial year, with sufficient time before the beginning of the next financial year for Parliament to adequately consider and adopt the Federal Government’s budget.
- (2) Each budget must contain—
  - (a) estimates of revenue and expenditure for each organ of the Federal Government;

- (b) a statement of the sources of revenue and the way in which proposed expenditure will comply with legislation;
  - (c) proposals for financing any anticipated annual budget deficit, or using any annual budget surplus;
  - (d) an indication of intentions regarding borrowing and other forms of public liability that will increase public debt during the ensuing year; and
  - (e) multi-year projections or objectives for total revenue and spending, budget balance, Federal Government borrowing and public debt.
- (3) Federal legislation must prescribe—
- (a) the form of Federal budgets; and
  - (b) the manner in which annual estimates for each organ of the Federal Government are to be prepared, including appropriate mechanisms for preparing the estimates of the judiciary and Independent Commissions and Independent Offices in a manner that promotes their independence.

## **210. Appropriations**

- (1) When the Federal Parliament has approved a Federal budget for a financial year, the member of the Federal Cabinet responsible for finance matters must introduce an Appropriation Bill into Parliament, which Bill must—
- (a) provide for money to be issued from the Federal Consolidated Fund to meet the approved budget expenditures; and
  - (b) appropriate the money to the purposes specified in the estimates under special votes for the different heads of expenditure that have been approved.
- (2) In any financial year, Supplementary Appropriation Bills may make provision for additional expenditure if the original estimates were insufficient, or if authorization is needed for any expenditure not previously included in the estimates.

- (3) If the Federal Parliament approves additional or supplementary estimates, an additional or supplementary Appropriation Bill must be introduced into Parliament.
- (4) If it is found that more money has been expended on a purpose than was appropriated for that purpose, or that money has been expended on a purpose for which no money was appropriated, the member of the Federal Cabinet responsible for finance matters must introduce a bill into the Federal Parliament as soon as practicable, condoning the unauthorised expenditure.
- (5) The Federal Parliament Public Accounts Committee must be given reasonable time to study any proposed Appropriation Bill, Supplementary Appropriation Bill, or Condonation Bill before the Bill is presented to Parliament.

#### **211. Warrants for unforeseen expenditure**

- (1) The member of the Federal Cabinet responsible for finance matters, by special warrant, may authorise the issue of money from the Federal Consolidated Fund if—
  - (a) there is an urgent and unforeseen need to incur expenditure;
  - (b) no provision exists for that expenditure in any appropriation law or other law;
  - (c) the expenditure is consistent with an applicable law;
  - (d) the Federal Parliament has made a prior determination of the maximum amount of expenditure that may be approved in this manner, and the amount to be authorised is consistent with that determination; and
  - (e) the expenditure has been approved by Cabinet.
- (2) If any amount is issued under a warrant in accordance with this section, the member of the Federal Cabinet responsible for finance matters must include that amount in a Supplementary Appropriation Bill at the first sitting of Parliament following the date on which the warrant was issued.

**212. Expenditure before appropriation**

- (1) If the Appropriation Act for a particular financial year has not been passed by the beginning of that financial year, the Federal Parliament may authorise the withdrawal of money from the Federal Consolidated Fund for the services of the Federal Government for which funds were appropriated in the previous financial year, subject to any limits or conditions prescribed by legislation.
- (2) The amount authorised for withdrawal each month under subsection (1) must not exceed 1/12 of the total annual appropriations approved for the immediately preceding financial year.
- (3) The Federal Parliament must not authorise the withdrawal of money under subsection (1) for any period that extends more than 3 months beyond the beginning of the financial year.

**213. Delay in appropriation due to dissolution of Parliament**

- (1) If the Federal Parliament has been dissolved before any provision, or sufficient provision, is made for funding the services of the Federal Government, the member of the Federal Cabinet responsible for finance matters may issue warrants for the payment out of the Federal Consolidated Fund of sufficient money for those services.
- (2) An authorisation under this section ceases to have effect 3 months after the first sitting of the Federal Parliament after the dissolution.
- (3) As soon as practicable after the Federal Parliament resumes, the member of the Federal Cabinet responsible for finance matters must—
  - (a) table a statement of the amounts authorised in accordance with this section;  
and
  - (b) include authorization for those amounts in an Appropriation Bill under separate votes for the different heads of expenditure.

*Part C—National Public Finance Institutions*

**214. National Remuneration Commission**

- (1) The National Remuneration Commission is established as an Independent Commission under Chapter 12 of this Constitution, to serve as occasion requires.
- (2) The National Remuneration Commission consists of—
  - (a) The Chairperson and two other members, each appointed by the President, acting on the recommendation of the Public Service Commission—
    - (i) none of whom may be current or former members of the Federal Parliament, a State Parliament, or a Community Government Legislature; and

*Drafter's Note: Clause (i) revised by inserting refernces to the State Parliaments and Community Legislatures.*

*It may be advisable to re-consider the words "former members" in this clause.*

- (ii) each of whom is entitled to serve for a term of three years;
  - (b) the Governor of the Reserve Bank;
  - (c) the Chairperson of the Association of Institute of Solomon Islands Chartered Accountants;
  - (d) Chairperson of Economic Association of Solomon Islands;
  - (e) General Secretary of the Development Services Exchange; and
  - (f) Chief Executive Officer of the Solomon Island Chamber of Commerce and Industries.
- (3) The National Remuneration Commission must—
  - (a) convene once every 4 years to review and determine the framework and upper limits of the salaries, allowances and benefits applicable to the offices listed in Schedule Three; and

- (b) conduct its functions in accordance with Schedule Three.
- (4) For the purpose of conducting a review, the Commission may consider submissions made to it and other relevant material.
- (5) The Federal remuneration Commission must perform its functions in accordance with the requirements set out in Schedule Three.

## **215. Auditor General**

- (1) The Auditor General is established as an Independent Office under Chapter 12 of this Constitution.
- (2) The Auditor General must have specialized knowledge of, or experience in, auditing, public finances and public administration.
- (3) The Auditor General provides independent assurances to the Federal Parliament, State Parliaments, and Community Government Legislatures that organs of government in each sphere are properly accounting for their operations and management, and—

*Drafter's Note: the opening clause of subsection (3) has been revised by insertion of references to the State Parliaments and Community Legislatures.*

- (a) has the general responsibility to investigate and report on any aspect of public financial management in the Republic; and
- (b) may independently initiate and conduct inquiries into the management of public resources.
- (4) At least once in every year, the Auditor General must inspect and audit, and report to the Federal Parliament, State Parliaments, and Community Government Legislatures, as applicable, on—

*Drafter's Note: the opening clause of subsection (4) has been revised by insertion of references to the State Parliaments and Community Legislatures.*

- (a) the public accounts, financial statements and financial management of—



- (i) all organs of government within their respective spheres, unless exempted by an Act of the Federal Parliament contemplated in subsection (8)(b);
    - (ii) any institution funded from the Federal Consolidated Fund or a State Consolidated Revenue Fund, or a Community Government Fund;
    - (iii) any institution that is authorised in terms of any law to receive money for a public purpose;
    - (iv) political parties; and
    - (v) any other institution or accountable entity required by Federal or State legislation to be audited by the Auditor General; and
  - (b) budget implementation, including internal control and internal audit, and how it complies with the budget adopted by the applicable Parliament or Legislature.
- (5) The Auditor General has the authority to access all records, books, vouchers, stores or other government property in the possession or control of any person or organ of government in any sphere that is being audited.
- (6) every organ of government in any sphere, and any other entity being audited in accordance with this section, must provide their annual financial statements to the Auditor General within 3 months after the end of the financial year, or such longer period as the Auditor General may allow.
- (7) The Auditor General must—
- (a) promptly complete the annual audit of each entity, as required by this section;
  - (b) deliver a copy of each report to—
    - (i) the member of the Federal Cabinet responsible for finance matters; and
    - (ii) the Federal or State Minister responsible for the relevant government organ; and

*Drafter's Note: Should there be a clause (iii) added to include reports to Community Governments?*

- (c) report any findings of impropriety as to the management and use of public funds to—
  - (i) the Federal Director of Public Prosecution for criminal prosecution; and
  - (ii) the Ombudsman, Leadership and Anti-Corruption Commission for laying of misconduct charges.
- (8) The Federal Parliament must enact legislation, which—
  - (a) must specify the manner, form and timing for organs of government in any sphere to provide periodic financial reports to the Auditor General;
  - (b) may provide that the accounts of a specified corporate body are to be audited other than by the Auditor General, as prescribed in that law; and

*Drafter's Note: Paragraph (b) has been revised for improved clarity, by insertion of the words "other than by the Auditor General".*

  - (c) may confer further functions and powers on the Auditor General, or make further provision in relation to the office of the Auditor General.
- (9) The Auditor General has the authority to review any audit performed as contemplated in subsection (8)(b), and to report the results of such a review.
- (10) The Auditor General is eligible to serve for a term that ends on the attainment of age 70, subject to subsection (11).
- (11) The President, acting in accordance with the advice of the National Finance Commission, may permit the Auditor General to continue in the office beyond age 70.

## **216. Reserve Bank of Solomon Islands**

- (1) The Reserve Bank of Solomon Islands is the central bank of the Republic, whose primary objects are—

- (a) to protect the value of the currency in the interest of balanced and sustainable economic growth in the republic;
  - (b) to formulate monetary policy;
  - (c) to promote price stability;
  - (d) to issue currency; and
  - (e) to perform other functions conferred on it by Acts of the Federal Parliament.
- (2) The powers and functions of the Reserve Bank of Solomon Islands are those customarily exercised and performed by central banks.
- (3) In pursuing its primary object, the Reserve Bank of Solomon Islands must perform its functions—
  - (a) in accordance with any Federal law setting out its functions; and
  - (b) independently and without fear, favour or prejudice, but with regular consultation between the Bank and the member of the Federal Cabinet responsible for finance matters.
- (4) An Act of the Federal Parliament must provide for the composition, powers, functions and operations of the Reserve Bank of Solomon Islands.
- (5) There shall be a single national currency for Solomon Islands, which must be approved, issued, regulated and managed by the Reserve Bank.
- (6) The Governor of the Reserve Bank—
  - (a) must report regularly to the National Finance Commission in regard to the management of the National Revenue Sharing Account;
  - (b) may inform the National Finance Commission of macroeconomic and financial issues that may affect the account; and
  - (c) may make recommendations to the National Finance Commission regarding the operation of the account.

- (7) Any recommendation made under subsection (6) must be done so as to—
- (a) enable State Governments and Community Governments to operate effectively, and manage their finances in a responsible manner; and
  - (b) assist State Governments and Community Governments to provide an optimum level and standard of social and economic services to their populations.
- (8) The Reserve Bank is accountable to the people through the Federal Parliament, and, through the member of the Federal Cabinet responsible for finance matters, who must deliver—
- (a) quarterly and annual reports to Parliament; and
  - (b) any other reports when required by Federal legislation, or requested by resolution of Parliament.
- (9) Every report delivered by the Reserve Bank to the Federal Parliament, must be publicised and made readily available to the general public.



## CHAPTER 14—PUBLIC ADMINISTRATION

*Drafter's Note: This chapter has been re-organised and divided into 2 Parts, to separate matters of principle and the structure of the Public Services in Part A, from the matter of Quality and evaluation of the performance of the Public administration through the Ombudsman, leadership and Anti-Corruption Commission, in Part B. This is offered as a partial response to the request from the 4<sup>th</sup> Plenary concerning sections 225 to 227.*

*The provisions have not been altered in any substantive way, but have been revised for consistency and to correct textual errors*

### *Part A—Principles and Structure*

#### **217. Values and principles of public service**

- (1) The people of Solomon Islands require the public service in every sphere of government, and in all government organs, to—
  - (a) be loyal to the people;
  - (b) faithfully carry out the policies of the government and administer the law;
  - (c) be free from corruption; and
  - (d) function in accordance with the values and principles set out in this section.
- (2) The values and principles of public service include—
  - (a) high standards of professionalism, including professional ethics and integrity;
  - (b) prompt implementation of government policy and administration of laws;
  - (c) efficient, effective and economic use of public resources;
  - (d) involvement of the people in the process of policy making;
  - (e) prompt response to requests and questions from the public, and delivery of service to the public, in a manner that is respectful, effective, impartial, fair, and equitable;

- (f) accountability for administrative conduct;
  - (g) transparency, including—
    - (i) timely, accurate disclosure of information to the public; and
    - (ii) prompt, complete and candid reporting to Parliament, as required by law;
  - (h) cultivation of good human resource management and fair career development practices, to maximise human potential;
  - (i) recruitment and promotion based on—
    - (i) objectivity, impartiality, merit and fair competition;
    - (ii) ability, education, experience and other characteristics of merit; and
    - (iii) the need to broadly represent the gender and geographic diversity of Solomon Islands, with fair, equal and adequate opportunities for appointment, training and promotion.
- (3) The values and principles of public service apply in all organs of government in every sphere, and to government owned enterprises.
- (4) The duties of a public officer include bringing contraventions of this Constitution or the law to the attention of the appropriate authorities.
- (5) A public officer must not be dismissed or removed from office or demoted in rank or otherwise punished without due process of the law.
- (6) A public officer must not be victimized or discriminated against for having performed the officer's duties in accordance with this Constitution or the law.
- (7) The Federal Parliament must enact legislation to give full effect to this section.

## **218. Federal public service**

- (1) The Federal public service—

- (a) is part of the executive branch of the Federal Government;
  - (b) must impartially implement the decisions of the Federal Government by providing frank, honest and comprehensive advice to members of the Federal Cabinet; and
  - (c) must function and be structured in accordance with a Federal law.
- (2) The law referred to in subsection (1)(c) must provide for—
- (a) the neutrality of the public service, and non-engagement of political appointees in the public service;
  - (b) public service ethics and best practice;
  - (c) training and human resource development;
  - (d) security of tenure in office;
  - (e) certainty of remuneration;
  - (f) postings, transfers, promotions and demotions;
  - (g) retirement in the public interest;
- (3) Employees within the Federal public service must—
- (a) fulfill their lawful obligations to the Federal Government with professionalism and integrity;
  - (b) serve the aims and objectives of the responsible Federal Cabinet member and ensure that their personal interests or activities do not interfere with this obligation;
  - (c) cooperate timely with requests for information from the responsible Federal Cabinet member; and
  - (d) act in such a way that their department maintains the confidence of the responsible Federal Cabinet member.



*Drafter's Note: paragraphs (c) and (d) have been re-ordered for improved coherence.*

## **219. Federal Public Service Appointments**

- (1) Ambassadors, High Commissioners and Consuls General must be appointed by the President, acting in accordance with the recommendation of the Federal Public Service Commission, which may make such a recommendation only after consulting the member of the Federal Cabinet responsible for foreign affairs.
- (2) Federal Permanent Secretaries, and any officer of equivalent status, must be appointed directly by the Federal Public Service Commission.
- (3) Other public officers must be appointed as provided in this Constitution or legislation.

## **220. Permanent Secretaries**

- (1) There is established, within each Federal Government ministry, the office of Permanent Secretary, which is an office in the Federal public service.
- (2) Each Federal Government ministry is to be under the administration of a Permanent Secretary.
- (3) The Permanent Secretary of a ministry is responsible to the Cabinet member concerned for the efficient, effective and economical management of the department.
- (4) The Prime Minister may at any time re-assign one or more Federal Permanent Secretaries among the various departments of the Federal Government.

*Drafter's Note: Subsection (4) has been revised as requested by 4<sup>th</sup> Plenary.*

- (5) A Federal Permanent Secretary may resign from office by giving notice to the Prime Minister.

## **221. Federal Public Service Commission**

- (1) The Federal Public Service Commission is established as an Independent Commission under Chapter 12 of this Constitution

- (2) The Federal Public Service Commission consists of a Chairperson and 3 other members to be appointed by the President, acting in accordance with the recommendation of a nominating committee made up of the Auditor General, The Chairperson of the Ombudsman, Leadership and Anti-corruption Commission, and the Public Solicitor.

*Drafter's Note: Subsection (2) has been revised as requested by the 4<sup>th</sup> Plenary*

- (3) Each member of the Federal Public Service Commission—
- (a) must be a person with knowledge of, and experience in the administration and management of public services;
  - (b) is entitled to serve for a term of five years, unless removed from office in accordance with Part Two of Schedule Nine; and
  - (c) may be reappointed upon the expiry of the member's first term.
- (4) The functions and powers of the Federal Public Service Commission are—
- (a) to promote the values and principles set out in this Chapter through the public service in all spheres of government;
  - (b) to propose measures to ensure efficiency and effectiveness in the public service in all spheres of government;
  - (c) to provide public service educational opportunities for all spheres of government, on its own initiative or in conjunction with other training institutions;
  - (d) to ensure an independent and professional Federal public service by—
    - (i) establishing norms and standards for recruitment and human resource management to ensure fairness and procedural uniformity across all Federal government organs;
    - (ii) establishing terms and conditions of employment and remuneration within the Federal public service;

- (iii) monitoring the recruitment, promotion and disciplining of public officers by those departments to whom that authority has been delegated under subsection (5); and
  - (e) to make direct appointments to, and promotions within, the Federal public service;
  - (f) to take disciplinary action against holders of Federal public service offices; and
  - (g) to remove persons from Federal public service offices.
- (5) The Federal Public Service Commission may delegate to any Federal Government organ all or part of its authority to recruit, appoint, promote, discipline and dismiss public officers within that organ.
- (6) The functions of the Federal Public Service Commission do not extend to the direct appointment, promotion, disciplining or dismissal of any person in respect of an office in the Federal Parliament, or in respect of which this Constitution or an Act of Parliament makes other provision.
- (7) The powers of the Federal Public Service Commission must be exercised directly by the Commission, and not delegated, when exercised in respect of a Federal Permanent Secretary, or any equivalent office.

## **222. Appeals from the Public Service Commission.**

The Federal Parliament must make laws—

- (a) providing for appeals against specified decisions of the Federal Public Service Commission;
- (b) constituting the body to hear the appeals; and
- (c) making any other provision that is necessary or desirable in connection with the operation of the appeals system.

**223. State and Community Public Service Commissions**

- (1) Each State must establish a State Public Service Commission and a State public service in accordance with its State Constitution.
- (2) Each State Public Service Commission has authority to appoint, dismiss and discipline State Government employees, and is responsible for the—
  - (a) employment of persons in the public service of the State Government;
  - (b) management and control of State Government employees;
  - (c) conditions of employment and the entitlements of State Government employees; and
  - (d) any other related matter assigned by State law.
- (3) State laws relating to the State Public Service must be consistent with the uniform principles and standards of employment applying to the Federal public service in this Chapter.
- (4) Each Community Government Constitution must provide for a Community Government Public Service.
- (5) In each Community, a Community Government law must provide for—
  - (a) the employment of persons in the public service of the Community Government;
  - (b) the management and control of Community Government employees;
  - (c) the terms and conditions of employment and the entitlements of Community Government employees; and
  - (d) assign to a Public Service Commission responsibility to appoint, dismiss and discipline Community Government employees.

*Drafter's Note: should there be a further subsection (6), governing Community PS laws, parallel to subsection (3), which applies to State laws?*

*Part B—Service quality and evaluation of public administration*

**224. Service quality**

All organs of Government in every sphere, and all public officers, have the duty to seek to understand and respond to the needs of vulnerable groups within society, including women, the elderly, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities, and to address those needs with empathy.

*Drafter's Note: Sections 225 to 227 have been renamed and extensively re-structured and re-formulated as a proposed means of giving effect to the direction of the 4<sup>th</sup> Plenary.*

*The new structure retains separate locations for the major different functions of the Ombudsman, Leadership and Anti-Corruption Commission, which the drafter recommends for improved coherence.*

**225. Promotion of good public service practices**

The Ombudsman, Leadership and Anti-Corruption Commission is responsible for—

- (a) promoting the protection and observance of, and respect for—
  - (i) the principle of respectful, effective, impartial, fair and equitable service;
  - (ii) the right to executive and administrative justice recognised in Section 37; and
  - (iii) the Constitution and the law in the context of public service, including the principle of service quality set out in Section 224;
- (b) consulting with and educating the public, including civil society, about the nature and content of the principles of public service and the right to administrative justice;

- (c) making recommendations to any organ of government in any sphere concerning the matters within its scope, including recommendations concerning existing or proposed legislation;
- (d) advising any organ of government in any sphere on improving its practices and procedures;
- (e) investigating or researching, on its own initiative or on the basis of a complaint, any matter within its scope, and making recommendations to improve the functioning of public entities; and
- (f) preparing reports and recommendations for the public service generally for the improvement of procedures to enhance compliance with this Constitution and the law.

## **226. Complaints concerning public service practices**

- (1) Complaints concerning any matter within the limits set out in subsections (3) to (5) may be made to the Ombudsman, Leadership and Anti-Corruption Commission in any form, by any person.
- (2) The Ombudsman, Leadership and Anti-Corruption Commission—
  - (a) must provide an accessible forum for resolving complaints about failings in administration by organs of government in any sphere and, in particular, is responsible for—
    - (i) receiving and investigating complaints within the limits set out in subsections (2) to (4), and taking steps to secure appropriate responses from the relevant organ of government; and
    - (ii) instituting civil suits on behalf of the public in cases of mal-administration; and
  - (b) may conduct an investigation on its own initiative, or in response to—
    - (i) a complaint that has been made to it under subsection (1); or

- (ii) a request by a member or committee of the Federal Parliament.
- (3) The Ombudsman, Leadership and Anti-Corruption Commission may investigate any complaint—
  - (a) about any act or omission in public administration in any organ of government in any sphere, that is alleged to be prejudicial, or improper; or
  - (b) of abuse of power, unfair treatment, manifest injustice, or unlawful, oppressive, unfair or unresponsive official conduct in any organ of government in any sphere.
- (4) The authority of the Commission under subsection (2) extends to any matter—
  - (a) arising from circumstances that occurred either before or after the commencement of this Constitution;
  - (b) arising from the conduct of an Independent Commission or Independent Office; or
  - (c) relating to accessibility to, and service delivery by, the courts.
- (5) Despite subsections (2) to (4), the Ombudsman, Leadership and Anti-Corruption Commission must not investigate any complaint relating to—
  - (a) the President, or the President's personal staff;
  - (b) the judicial process or substance of any decision made by a courts, or any matter that is before a court;
  - (c) the substance of any decision made by an Independent Commission or Independent Office, or any matter that is being considered by such a Commission or Office;
  - (d) a matter, if the investigation of that matter would not be in the interests of the national security of the Republic; or
  - (e) operational decisions of the security services.

**227. Investigation of public service complaints**

- (1) The Ombudsman, Leadership and Anti-Corruption Commission has discretion—
  - (a) to decide whether or not to investigate any action in response to a complaint;
  - (b) to attempt to resolve a complaint through informal procedures; or
  - (c) to discontinue an investigation after starting it.
- (2) If a court, tribunal or other body could hear a particular complaint, the The Ombudsman, Leadership and Anti-Corruption Commission may advise the complainant to proceed with the matter in that forum, unless the complainant could not reasonably exercise, or could not have reasonably exercised, that right.
- (3) After completing an investigation, the Ombudsman, Leadership and Anti-Corruption Commission—
  - (a) must report to—
    - (i) the complainant;
    - (ii) the organ of government concerned; and
    - (iii) any responsible member of the Federal Cabinet or of a State or Community Government; and
  - (b) may ask the organ of government concerned to give it, within a specified time, particulars of the action proposed to be taken with respect to the conclusions and recommendations in the report.
- (4) If the Ombudsman, Leadership and Anti-Corruption Commission believes that the organ of government concerned has not taken adequate and appropriate action within a reasonable time, the Commission may give a further report on the matter to the relevant Federal of State Parliament, or Community Government Legislature.
- (5) The Ombudsman, Leadership and Anti-Corruption Commission—
  - (a) must keep complainants informed about—



- (i) the progress of their complaints and any investigations; and
    - (ii) their right to reasons for decision;
  - (b) must report fully to the organ of government concerned, including any recommendations for action in regard to the particular complaint and to changes in future procedures.
- (6) The Federal Parliament may enact legislation relating to the conduct of investigations under this section.



## CHAPTER 15—NATIONAL SECURITY

*Drafter's Note: This chapter has been re-organised and is now divided into 4 rather than 3 Parts, to separate and more clearly delineate the Federal and State security services.*

*In part, this is offered in response to the request from the 4<sup>th</sup> Plenary concerning sections 235 to 237, though additional revisions have been made to those sections to further the request.*

*Apart from the former sections 235 to 237, the provisions of the Chapter have not been altered in any substantive way, but have been extensively revised for consistency, consequential changes and to correct textual errors.*

### *Part A – National Security Policy*

#### **228. National security**

- (1) The institutions of national security are established to give effect to the principles of the Constitution, and in particular to pursue our goals—
  - (a) to live in unity, peace and harmony among ourselves;
  - (b) to be free from fear; and
  - (c) to live peaceably with all other nations.
- (2) National security must be pursued in compliance with the Constitution, and with international law regulating the use of force.
- (3) All national security matters are subject to oversight by Parliament, and are under the authority of the Cabinet. A member or members of the Cabinet other than the Prime Minister must be assigned responsibility for matters of internal security.
- (4) Our resolve to live in peace precludes any citizen from participating in armed conflict, nationally or internationally, except as provided for by this Constitution or an Act of Parliament.
- (5) A member of any security service must not obey a manifestly illegal order, and is justified in refusing to obey such an order.

- (6) Neither the security services, nor any of their members, in the performance of their functions, may—
- (a) prejudice a political party interest that is legitimate under the Constitution or any legislation; or
  - (b) further any interest of any political party or candidate in a partisan manner.
- (7) The Cabinet must approve in advance any deployment of any uniformed police or security services of another country within the territory of Solomon Islands, but any such approval may be granted only in accordance with Federal legislation required by subsection (8).
- (8) The Federal Parliament must enact legislation regulating the circumstances and procedures for approval of the deployment of any uniformed police or security services of another country within the Republic, but any such legislation may be enacted only if resolutions supporting the legislation have been approved by the Parliaments of at least two-thirds of the States.

*Drafter's Note: To give effect to the decisions of the 4<sup>th</sup> Plenary, Subsection (7) has been reformulated, and subsection (8) has been added.*

- (9) Foreign personnel who are in the Republic on a peace keeping mission—
- (a) may be granted amnesty or immunity from criminal prosecutions if the offences committed in the Republic in the course of official duties are misdemeanors; but
  - (b) may not be granted amnesty or immunity for any felony.

*Subsection (9) has been brought over from the former section 240 (5), as requested by the 4<sup>th</sup> Plenary.*

## **229. Military Forces**

- (1) No military organization, paramilitary force or militia may be created, formed or operated within the Republic except as provided for in subsection (2).

- (2) The Federal Parliament may enact law establishing or regulating the operation of any force contemplated in subsection (1), only—
- (a) to the extent necessary to promote, preserve and maintain the unity, peace, reconciliation and security of Solomon Islands; and
  - (b) if the law has the support of—
    - (i) two-thirds of all the State Parliaments; and
    - (ii) two-thirds of all the Community Governments in each State.

### **230. Institutions of national security**

- (1) The security services of the Republic comprise—
- (a) The Solomon Islands Federal Police;
  - (b) the Police Service of each State;
  - (c) the Solomon Islands Correctional Service;
  - (d) the Corrections Service of each State;
  - (e) National Intelligence Service; and
  - (f) any military, para-military or militia service established by legislation under section 229.

*Drafter's Note: Subsection (1) revised as requested by the 4<sup>th</sup> Plenary*

- (2) The security services must be structured and regulated by legislation and must—
- (a) strive for the highest standards of professionalism and discipline among their members;
  - (b) promote and practise transparency and accountability;
  - (c) comply with constitutional and international standards of democracy and human rights and freedoms;

- (d) train staff at all ranks—
  - (i) to the highest possible standards of competence and integrity and to respect human rights and freedoms and dignity;
  - (ii) to resolve conflicts peacefully; and
  - (iii) to act, in accordance with this Constitution and the law, including customary international law and international agreements binding on the Republic.
- (3) The recruitment, composition and command structure of each security service must broadly reflect the ethnic, cultural, and gender diversity of the Republic, and promotion within the services must be based on merit and competence.

### **231. National Policing and Corrections Policy**

- (1) The Federal, State and Community Governments must jointly determine a Solomon Islands general policing policy, which must make provision for different policies in respect of States and Community Governments after taking into account their policing needs and priorities.
- (2) Each State and Community Government is entitled to—
  - (a) monitor police operations within its State or Community according to their needs and priorities under the Solomon Islands general policing policy;
  - (b) generally oversee the effectiveness and efficiency of the Federal Police Force in the State;
  - (c) monitor federal police conduct;
  - (d) promote good relations between the federal police and the communities;
- (3) Each State Government may—
  - (a) investigate or conduct an inquiry into any complaints of Federal police inefficiency or a breakdown in relations between the federal police and any community;

- (b) give the Federal Commissioner of Police—
  - (i) directions of policy regarding the implementation of the Solomon Islands general policing policy as it applies to the State; and
  - (ii) general directions of policy with regard to the maintenance of public safety and public order.
- (4) The Federal Commissioner of Police must comply with any directions, or cause them to be complied with, in a timely manner.
- (5) Each State Government must assist the Federal Government where the functions and responsibilities within a state relating to matters or issues concerning the national security of the Republic on:
  - (a) command;
  - (b) control;
  - (c) intelligence;
  - (d) logistics; or
  - (e) operation.
  - (f) ensure effective policing co-ordination and cooperation among the three spheres of government;

*Drafter's Note: Subsection (5) is carried over from [2013:221 (3)], but its purpose is unclear. Further instructions are needed in order to resolve a final formulation of this subsection.*

- (6) If a policing problem becomes too complex or difficult for—
  - (a) the Solomon Islands Police to handle or resolve, the Federal Government may request the assistance of the State Police; or
  - (b) a particular State Police Force to handle or resolve, that State may request the assistance of the Solomon Islands Police or of another State Police Force.

- (7) The Federal and States' Correctional Services may mutually agree to the transfer and rehabilitation of Federal and State Prisoners between them.
- (8) The Federal Parliament must enact a Federal Law to provide for the details of the matters in the subsections (6) and (7), but no such law may be introduced in Parliament unless the Federal Government has first consulted the States.

*Part B – Federal Police and Correctional Services*

**232. Solomon Islands Federal Police**

- (1) The existing Police Force of Solomon Islands, as established and administered under the former Constitution, continues as the Solomon Islands Police, under the command of the Federal Commissioner of Police, appointed in accordance with subsection (5).
- (2) The Solomon Islands Police are responsible for the enforcement of Federal laws within any part or the whole of the Republic, and its primary focus is to—
  - (a) prevent, combat and investigate crime in a timely manner;
  - (b) maintain public order;
  - (c) protect and secure Solomon Islands citizens and their property;

*Drafter's Note: In paragraph (c), consider changing "Solomon Islands citizens" to "the public". The function of policing is not normally limited by citizenship.*

  - (d) uphold and enforce the law and this Constitution; and
  - (e) advocate for crime prevention in the communities.
- (3) The Solomon Islands Police must be administered and operated in accordance with the provisions of this Constitution and any applicable Federal law, which may make provision for any matter related to the—
  - (a) appointment of Federal police officers of any ranks;



- (b) employment of other staff;
  - (c) removal and discipline of Federal police officers;
  - (d) right of Federal police officers to appeal against decisions to remove or discipline them, and the procedures for such appeals;
  - (e) establishment of an independent Federal police complaints body to investigate any alleged misconduct of, or offence committed by, a member of the Solomon Islands Police, Federal police inefficiency or a breakdown in relations between the Solomon Islands Police and the communities; and
  - (f) any other related matter.
- (4) The Solomon Islands Police must be structured by law in a manner that—
- (a) enables it to discharge its responsibilities effectively, taking into account the requirements of State and Community Governments; and
  - (b) promote and maintain its integrity as a police service.
- Drafter's Note: Subsection (4) has been revised by moving some of its provisions to Part A of the Chapter, because those provisions primarily concerned inter-governmental cooperation in policing.*
- It is not clear whether the remaining provisions of this subsection are required here.*
- (5) The President appoints the Federal Commissioner of Police from appropriate qualified and experienced officers on the advice of the Federal Cabinet given after the Federal Cabinet has consulted with the Federal Public Service Commission.
- (6) The Federal Commissioner of Police must exercise control over and manage the Solomon Islands in accordance with—
- (a) the policing policy set out in this Chapter; and
  - (b) any directions of policy from the Federal government.

- (7) Except as provided in the subsection (6), the Federal Commissioner of Police is responsible for controlling the operations of the Federal Police Force and in doing so is not subject to the direction or control of any person or authority.

### **233. Federal Correctional Services**

- (1) The Correctional Service established and administered under the former Constitution are continued under this Constitution as the Federal Correctional Services, under the command of the Commissioner of Correctional Services, appointed under subsection (5).
- (2) The primary focus of the Federal Correctional Service is to –
- (a) provide a safe community;
  - (b) ensure sentences and orders of courts are administered appropriately;
  - (c) ensure that offenders are managed safely, securely and humanely and in a culturally appropriate manner; and
  - (d) reduce re-offending through rehabilitative and re-integrative interventions.
- (3) The Federal Correctional Services must be structured and regulated as a professional and disciplined service so as to—
- (a) achieve its primary focus in subsection (2);
  - (b) achieve the highest standards of professionalism among its staff;
  - (c) train its staff to the highest possible standards of competence; and
  - (d) uphold the law.
- (4) The Federal Correctional Services must have in their rank and file at least an equitable representation of indigenous persons and citizens of the Republic.

*Drafter's Note: Subsection (4) seems to duplicate a requirement already stated at section 230 (3). Consider deleting this subsection.*

- (5) The President must appoint a Commissioner of the Federal Correctional Services on the advice of the Cabinet, which advice may be given only after the Cabinet has consulted with the Federal Public Services Commission.
- (6) The Federal Parliament must enact legislation providing for the structure, organization and administration of the Federal Correctional Services.
- (7) The legislation required by subsection (6) must—
  - (a) ensure effective co-ordination of the Correctional Service and effective cooperation among the spheres of government, and
  - (b) enable the Correctional Service to discharge its responsibilities effectively, taking into account the requirements of States.
- (8) All personnel of the establishment referred to in the preceding provision shall obtain authentic police and health clearance documentation and the required authentic minimum academic documents.

*Drafter's Note: subsection (8) seems like the sort of provision that might be better addressed in the legislation required by subsection (6). Consider deleting it here.*

#### *Part C – State Police and Correctional Services*

### **234. States policing policy and jurisdiction**

- (1) Each State has authority within the territory of the State to attend to all its State law enforcement matters.
- (2) Each State Government, and the Community Governments within the State—
  - (a) must jointly determine a general state policing policy, after taking into account their policing needs and priorities; and
  - (b) are entitled to—
    - (i) monitor their state police operations according to their needs and priorities under each state general policing policy;

- (ii) generally oversee the effectiveness and efficiency of the State Police Force;
  - (iii) monitor state police conduct; and
  - (iv) promote good relations between its state police and their communities.
- (3) In order to perform the functions set out in the subsection (1)(b), each State Government may—
- (a) investigate or conduct an inquiry into any complaints of state police inefficiency or a breakdown in relations between the state police and any community;
  - (b) give the State Commissioner of Police—
    - (i) policy directions regarding the implementation of the State’s general policing policy; and
    - (ii) general directions of policy with regard to the maintenance of public safety and public order.
- (4) The State Commissioner of Police must comply in a timely manner with any directions given under subsection (2), or cause them to be complied with in a timely manner.

### **235. Establishment and functions of State Police Force**

- (1) Each State Government may establish a State Police Force, under the command of a State Commissioner of Police.

*Drafter’s Note: In subsection (1), should this be discretionary or required?*

- (2) Each State Police Force must be structured by law to—
- (a) function within its State and Community territories;
  - (b) ensure effective co-ordination of the State Police Force and effective cooperation among the three spheres of government; and

- (c) enable the State Police Force to discharge its responsibilities effectively, taking into account the requirements of the State and its Community Governments.
  - (d) promote and maintain the integrity of each State Police force to enable it to discharge its responsibilities effectively and efficiently.
- (3) Each State Police Force is responsible for the enforcement of state laws within the State, and its primary focus is to—
- (a) prevent, combat and investigate crime within the State territory in a timely manner;
  - (b) be accountable to its public;
  - (c) maintain public order, and protect and secure Solomon Islands citizens safety and their property;
- Drafter's Note: In paragraph (c), should it read "the public"?*
- (d) uphold and enforce the law and this Constitution; and
  - (e) advocate for crime prevention in the communities.

### **236. State Police Force Command and Administration**

- (1) Each State Governor must appoint a State Commissioner of Police from appropriate qualified and experienced officers on the advice of the State Cabinet after consultation with the State's Public Service Commission;
- (2) Each State Commissioner of Police must exercise control over and manage the State Police Force in accordance with—
  - (a) the State's Policing Policy;
  - (b) any directions or policy from its State Government.
- (3) Except as provided in the subsection (2)(b), each State Commissioner of Police—

- (a) is responsible for controlling the operations of the State Police Force; and
  - (b) in doing so, is not subject to the direction or control of any person or authority.
- (4) Each State Police Force must be administered and operated in accordance with the provisions of this Constitution, the State Constitution and any applicable federal and state law, which may make provision for any matter related to the—

*Drafter's Note: it is not clear why Federal law would be able to govern the matters listed below concerning the State police.*

- (a) appointment of its State police officers of any ranks;
  - (b) employment of other staff;
  - (c) removal and discipline of its State police officers;
  - (d) right of its State police officers to appeal against decisions to remove or discipline them, and the procedures for such appeals;
  - (e) establishment of an independent state police complaints body to investigate any alleged misconduct of, or offence committed by, a member of the State Police Force, State police ineffectiveness and inefficiency or a breakdown in relations between its State police and their communities; and
  - (f) any other related matter.
- (5) Fair and balanced representation of the State's population must be considered when recruiting, appointing or promoting officers in the State Police Force.

*Drafter's Note: Subsection (5) seems to duplicate a requirement already stated at section 230 (3). Consider deleting this subsection.*

- (6) All personnel of the establishment referred to in the preceding provision shall obtain authentic police and health clearance documentation and the required authentic minimum academic documents.

*Drafter's Note: subsection (6) seems like the sort of provision that might be better addressed in the legislation required by subsection (4). Consider deleting it here.*

### **237. State Correctional Services**

- (1) Each State must establish—
  - (a) correctional facilities for incarceration of its State prisoners; and
  - (b) a State Correctional Service.
- (2) Each State is entitled to:
  - (a) monitor the operations of the Federal Correctional Service within the State, according to the policies of the State; and
  - (b) generally oversee the effectiveness and efficiency of the Federal Correctional Service in the State.
- (3) The primary focus of each State Correctional Service is to –
  - (a) provide a safe community;
  - (b) ensure sentences and orders of courts are administered appropriately;
  - (c) ensure that offenders are managed safely, securely and humanely and in a culturally appropriate manner; and
  - (d) reduce re-offending through rehabilitative and re-integrative interventions.
- (4) Each State’s Correctional Services must be structured and regulated as a professional and disciplined service so as to—
  - (a) achieve its primary focus in subsection (3);
  - (b) achieve the highest standards of professionalism among its staff;
  - (c) train its staff to the highest possible standards of competence; and
  - (d) uphold the law.

- (5) The Governor of each State must appoint a Commissioner of the State Correctional Services on the advice of the State Cabinet, which advice may be given only after the Cabinet has consulted with the State Public Services Commission.
- (6) Each State Parliament must enact legislation providing for the structure, organization and administration of the State Correctional Service.
- (7) The legislation required by subsection (6) must—
  - (a) ensure effective co-ordination of the Correctional Service and effective cooperation among the spheres of government; and
  - (b) enable the State Correctional Service to discharge its responsibilities effectively, taking into account the requirements of its Communities.

*Part D - Public Emergencies*

**238. States of emergency**

- (1) The President, acting in accordance with the recommendation of the Federal Cabinet, may declare that a state of public emergency exists and, as soon as practicable after doing so, must publish a proclamation of the State of Emergency in the Gazette.
- (2) The Federal Cabinet may recommend that the President declare a state of emergency in Solomon Islands, or in a part of Solomon Islands, and may make, or bring into force, regulations relating to a state of emergency, if there are reasonable grounds to believe that—
  - (a) the security and safety of all or part of the Republic is threatened; and
  - (b) it is necessary to declare a state of emergency to deal effectively with the threatening circumstances.
- (3) Upon declaring a state of emergency—
  - (a) the President must immediately call upon the Speaker of the Federal Parliament to convene a sitting of Parliament; and



- (b) the Prime Minister must refer the declaration of a state of emergency to Parliament for confirmation within—
- (i) 7 days, if Parliament is then in session; or
  - (ii) 14 days if Parliament is not in session and has to be summoned,
- unless the declaration has been revoked by the President during that time.
- (4) The state of emergency ends immediately after the vote in Parliament, unless Parliament confirms it by a resolution supported by at least two-thirds of all of its members.
- (5) A state of emergency confirmed or renewed by Parliament remains in force for no longer than 4 months, unless it has been renewed by a further vote in Parliament, supported by at least two-thirds of all of its members.
- Drafter's Note: Subsection (5) has been revised, by inserting the 2/3 majority rule.*
- (6) A declaration of a state of emergency, and any regulation made, or brought into force, under such a declaration, that is inconsistent with the obligations of the Republic under an international convention or covenant are invalid to the extent of the inconsistency.
- (7) Regulations made or brought into force pursuant to the declaration of a state of emergency remain in force only so long as the state of emergency remains in force.
- (8) At any time—
- (a) The Federal Parliament may—
    - (i) disallow or revoke the declaration of a state of emergency; or
    - (ii) amend or disallow regulations relating to the state of emergency; and
  - (b) the Court of Appeal, on application by any person, may—

- (i) disallow or terminate the declaration of a state of emergency, if the circumstances did not, or no longer, justify the declaration, in terms of subsection (2); or
- (ii) make any other order required in the circumstances to restore government under the constitution.

*Drafter's Note: Paragraph (b) has been revised as requested by the 4<sup>th</sup> Plenary*



## CHAPTER 16—TRADE AND INTERNATIONAL AFFAIRS

### 239. Free Trade Arrangements

- (1) Before agreeing to accede to any free trade arrangement, the Federal Government must undertake an empirically based study of the economic, social, cultural, environmental, democratic and constitutional implications of the proposed agreement.
- (2) A study under subsection (1) must—
  - (a) be conducted locally;
  - (b) examine all relevant matters, including the impact of the proposed agreement on the Constitution, State and Community Constitutions, subsistence and local economies, rural and other communities particularly rural women, food, manufacturing, natural resources, services, labor markets, investment and cultural knowledge; and
  - (c) be published for public comment.

*Drafter's Note: Subsection (2) has been revised as requested by the 4<sup>th</sup> Plenary*

- (3) Any accession to any free trade agreement by the Federal Government must be with the concurrence of more than half of the State and Community Governments.

*Drafter's Note: subsection (3) has been revised as requested by the 4<sup>th</sup> Plenary.*

*But further consideration may be needed to refine what is intended by a majority of the State and Community Governments.*

### 240. International Agreements

- (1) The negotiating and signing of all international agreements and participation in all international forums is the responsibility of the Federal Government.
- (2) Subject to Section 239 relating to the accession of free trade agreements, any international agreement, including any self-executing provision, becomes law in the Republic when the Federal Parliament enacts it into law.

*Drafter's Note: Subsection (2) revised as requested by the 4<sup>th</sup> Plenary.*

- (3) The Republic is bound by all international agreements that had been made into domestic law before this Constitution took effect.

*Drafter's Note: Subsection (3) has been revised as requested by the 4<sup>th</sup> Plenary.*

*But it may need further review to ensure that the re-formulation does not inadvertently or unintentionally repudiate an agreement that would otherwise have bound Solomon Islands.*

- (4) No State Government may enter into any diplomatic relations with any foreign Government but, for purposes of trade, commerce and development of the State Government, it may enter into sister relationships that are non-diplomatic in nature with—

- (a) part or all of a foreign country; or
- (b) any international organization.

*Drafter's Note: the former subsection (5) has been moved to section 228 (7), as requested by the 4<sup>th</sup> Plenary*

**CHAPTER 17—AMENDMENT OF THE CONSTITUTION****241. General procedure to amend the Constitution**

- (1) Except as provided in Section 242 or 243, this Constitution may be amended only by a Bill that has been—
  - (a) introduced and passed by the Federal Parliament in accordance with subsections (2) to (5);
  - (b) endorsed by the State Parliaments, but only to the extent required by subsection (6); and

*Drafter's Note: Paragraph (b) has been revised to give partial effect to the 4<sup>th</sup> Plenary request. But the instruction to insert "two-thirds" is inconsistent with the provisions of subsection (6) in certain cases. Instead, the "two-thirds" standard has been inserted in subsection (6) as appropriate.*

  - (c) assented to by the President in accordance with subsection (7).
- (2) Any member of the Federal Parliament may initiate a proposal to amend this Constitution by giving notice of a resolution to be introduced in Parliament, which notice must—
  - (a) include a copy of the proposed Bill to amend the Constitution; and
  - (b) be delivered to—
    - (i) the Speaker of the Federal Parliament;
    - (ii) the Chairperson of the Congress of States; and
    - (iii) the Speaker of each State Parliament.
- (3) A bill to amend the Constitution—
  - (a) must be clearly expressed as a bill to alter the Constitution; and
  - (b) may not include any provision other than the proposed constitutional amendment.

- (4) The Speaker of the Federal Parliament may call for—
- (a) the introduction of the resolution in Parliament any time at least 8 weeks after the notice was delivered in accordance with subsection (2)(b); and
  - (b) second reading of the Bill at any time at least 90 days after the Bill was introduced.
- (5) A Bill to amend this Constitution will have been passed by the Federal Parliament if it is supported on Third Reading by at least —
- (a) three-quarters of all of the members of Parliament, in the case of a Bill that amends any provision of Chapters One, Two, Three, or Four, or Section 88, 89 or 239; or

*Drafter's Note: The 4<sup>th</sup> Plenary requested that the references to specific sections in paragraph (a) should read "sections 239 to 241", perhaps assuming that the intention was to protect this Chapter.*

*But this Chapter is protected in section 242, by the requirement for a referendum.*

*In the 2013 DFC, the referenced sections to be protected were 179 to 181. Those sections correspond to sections 64(2), 88 and 89, and 239, respectively, of this draft.*

*Section 64 (2) falls inside Chapter 4, and is thus already protected.*

*Paragraph (a) has been revised to protect the remaining clauses that were intended to be protected by 2013 DFC.*

- (b) two-thirds of the members of Parliament, in any other case.
- (6) After it has been passed by the Federal Parliament, a Bill to amend the Constitution may be submitted to the President for assent only if the Bill has subsequently been endorsed by—
- (a) Two-thirds of the State Parliaments, in the case of a Bill referred to in—
    - (i) Subsection (5)(a); or
    - (ii) Subsection (5)(b), only if the Bill amends provisions of the Constitution affecting all the State or Community Governments, or concerns a matter

within the legislative competence of the States or Community Governments; or

*Drafter's Note: Clause (ii) revised as requested by the 4<sup>th</sup> Plenary*

- (b) the Parliament of each State concerned, in the case of a Bill referred to in Subsection (5)(b), only if the Bill amends provisions of the Constitution affecting only those particular State or Community Governments.
- (7) Each State Parliament's procedures for considering and endorsing, or rejecting, an amendment may be provided for in the State Constitution, or if no such provision is made, may be determined by the State Parliament.
- (8) The President must assent to a Bill to amend this Constitution if—
- (a) the Speaker has certified that it was passed by Parliament in accordance with subsection (5); and
  - (b) the Speakers of sufficient State Parliaments have certified that it was endorsed by their State Parliament to the extent required by Subsection (6).
- (9) In this Section, and in Section 242, the use of the word “*amend*” or “*amendment*” is intended to be understood broadly, so that the sections apply to any proposal to repeal, replace, revise, or alter any provision or provisions of this Constitution, or the whole of it.

## **242. Amendments requiring a referendum**

- (1) In addition to satisfying the requirements of Section 241, after a Bill to amend the Constitution has been passed by the Federal Parliament and been endorsed by the required number of State Parliaments, if any, the Bill must be referred to the people to be further endorsed by a referendum, if the Bill would amend any provision of—
- (a) sections 1 to 5 in Chapter 1;
  - (b) sections 7 to 10 in Chapter 2;
  - (c) Chapter 3;



- (d) Part A of Chapter 5; or
  - (e) this Chapter.
- (2) An amendment will have been endorsed by the people if it has the support of more than half of the votes cast in the referendum.

**243. Exceptional alterations to the Constitution**

Despite Sections 241 and 242, this Constitution may be altered in accordance with—

- (a) Sections 77, or 80; or
- (b) any other provision of this Constitution that expressly authorises an alteration to one or more specific provisions.



## CHAPTER 18—INTERPRETATION AND COMMENCEMENT

### 244. Laws of the Republic

- (1) The laws of the Federal Democratic Republic of Solomon Islands comprise:
  - (a) This Constitution;
  - (b) The State Constitutions;
  - (c) The Community Government Constitutions;
  - (d) Acts of the Federal Parliament, and subsidiary legislation under any such laws;
  - (e) Acts of the State Parliaments, or any other legislative body in accordance with the Constitution, and subsidiary legislation under any such laws;
  - (f) Laws of Community Government Legislatures, and subsidiary legislation under any such laws;
  - (g) Customary law and practice;
  - (h) Acts of the Parliament of the United Kingdom of general application as at 7 July 1978;
  - (i) the principles and rules of common law and equity, as they may be applied by the Courts of Solomon Islands; and
  - (j) customary international law, international conventions, treaties and agreements applicable to Solomon Islands so far as they are incorporated into domestic law.

*Drafter's Note: Subsection (1) has been revised as requested by the 4<sup>th</sup> Plenary.*

- (2) The validity, legality or procedure of enactment or promulgation of this Constitution may not be challenged in any court by any person, institution or official organs of the Federal Democratic Republic of Solomon Islands.

*Drafter's Note: Subsection (2) has been revised as requested by the 4<sup>th</sup> Plenary*

**245. Principles of Constitutional interpretation**

- (1) Any person interpreting or applying this Constitution must promote the spirit, purport and objects of this Constitution, and the values that underlie an open and democratic society based on human dignity, equality, and freedom.
- (2) This Constitution must be interpreted so as to –
  - (a) give effect to the Preamble and Foundation Principles;
  - (b) promote the Rights and Freedoms of the individuals;
  - (c) permit the creative development of a body of law relevant to Solomon Islands jurisprudence;
  - (d) avoid technicalities which defeat the purpose of the Constitution; and
  - (e) have regard to the spiritual, religious, traditional, ethnic, cultural and linguistic diversity of the Federal Democratic Republic of Solomon Islands.
- (3) The court, person or authority interpreting this Constitution—
  - (a) may, in cases of ambiguity, refer to the Constitutional Reform Reports and any other relevant matter or materials that will assist in the purposive interpretation of the Constitution; and
  - (b) must take into account the still-developing constitutional framework of the Federal Democratic Republic of Solomon Islands.
- (4) When interpreting any legislation, or when developing the common law and equity or customary law, every court, tribunal or other authority must promote the spirit, purport and objects of this Constitution.  
  
*Subsection (4) has been revised as requested by the 4<sup>th</sup> Plenary*
- (5) If a law appears to be inconsistent with a provision of this Constitution, the court must prefer any reasonable interpretation of that law that is consistent with the provisions of this Constitution over an interpretation that is inconsistent with them.

## 246. Definitions

In this Constitution, unless the context indicates otherwise—

“adult” means an individual who has reached age 18;

“child” means an individual who has not reached age 18;

“civil society” means the collectivity of persons and associations or other organised groups of persons, other than public officers and State organs, actively engaged in the development of the society;

“constitutional matter” means any question involving the interpretation, protection or enforcement of this Constitution or any State Constitution or Community Constitution;

“customary practice” means the rules of customary practice prevailing in and applying to an area of Solomon Islands;

“*de facto* relationship” means a stable conjugal partnership between a man and a woman who are not married to each other;

*Drafter’s Note: This definition of “de facto relationship” has ben revised for certainty and clarity*

“department” in relation to the Federal Government, includes any Department of the Federal Government under the supervision of a Permanent Secretary and under the general direction of a member of the Federal Cabinet;

“disability” includes any physical, sensory, mental, psychological or other condition, or illness that –

- (a) has, or is perceived by significant sectors of the community to have, a significant adverse effect on an individual’s ability to participate fully and effectively in society on an equal basis with others; or
- (b) forms the basis of unfair discrimination;

“effective date” means the date on which this Constitution, or a particular provision of it, came into force;

“financial year” means the 12 months ending on the 31 December in any year, or on any other date prescribed by law;

“fixed term estate” in relation to any land, means any right or interest in respect of that land that will expire after the passing of a specified period of time, or upon the happening of a specified event;

*Drafter’s Note: Definition of “fixed term estate” is proposed as requested by 4<sup>th</sup> Plenary, and needs to be considered.*

“former Constitution” means the Constitution set out in the Schedule to The Solomon Islands Independence Order 1978;

“functions” includes rights, duties and powers;

“Gazette” means the Solomon Islands Gazette published by authority of the government, or a supplement to the Solomon Islands Gazette;

“Government”

*Drafter’s Note: 4<sup>th</sup> Plenary requested a new definition for this word. However, consistency revisions should have eliminated all uses except those clearly preceeded by “Federal”, “State” or “Community”. When the consistency is verified and complete, the definition should no longer be needed.*

“Independent Officer” means the holder of an Independent Office established under Chapter 13;

“indigenous Solomon Islander” means any person who is or one of whose parents is of a group, tribe or line aboriginal or native to Solomon Islands;

“judicial officer” means a statutory officer of a court;

“lawyer” means a person entitled by law to practise as a barrister and solicitor in Solomon Islands;

“lease”, in respect of any land, means a legal interest in the land, granted by the owner of that land to another person, which gives the second person rights to occupy and use the land, usually in exchange for periodic payments of rent, or for some other valuable consideration;

*Drafter’s Note: Definition of “lease” is proposed as requested by 4<sup>th</sup> Plenary, and needs to be considered.*

"leasehold interest" means the interest of a tenant arising by virtue of a lease of land;

“legislation” means an Act of Parliament, or any law made under such an Act;

“majority” means at least one-half of a group or number;

*Drafter’s Note: Definition of “majority” is proposed as requested by 4<sup>th</sup> Plenary, and needs to be considered. Please also see extended note at section 154.*

“organ of government” means any department, government enterprise, administration or any other functionary or institution exercising a power emanating from this Constitution;

“perpetual estate”, in respect of any land, means a permanent right of ownership of the land, which continues indefinitely and without termination, passing from one owner to another in perpetual succession only when each successive owner dies or disposes of all rights to the land;

*Drafter’s Note: Definition of “perpetual estate” is proposed as requested by 4<sup>th</sup> Plenary, and needs to be considered.*

“person” includes a company, association or other body of persons whether incorporated or unincorporated;

“political party” means an organized group or association of people striving for participation in the political life or government of the Republic, that has been registered under legislation regulating the organization of political parties;

“property” includes any vested or contingent right to, or interest in or arising from—

- (a) land, or permanent fixtures on, or improvements to, land;
- (b) goods or personal property;

- (c) intellectual property; or
- (d) money, choses in action or negotiable instruments;

“public office” includes—

- (a) any office under this Constitution, a State Constitution Community or a Government Constitutions; and
- (b) any office for reward in the service of the Federal, State, and Community Governments under any Federal, State or Community law;

“public officer” means a person who holds a public office;

*Drafter’s Note: Definition of “public officer” is proposed as requested by 4<sup>th</sup> Plenary, and needs to be considered.*

“public service” means the service in a civil capacity of the Federal, State or Community Governments;

“sentence of imprisonment” means a court order for the immediate incarceration in prison of a convicted person, but does not include a suspended sentence or a sentence of imprisonment with the option of a fine;

“territory of Solomon Islands” means all the land and sea within the area recognised in international law, and in particular since 7 July 1978, as being the territory of Solomon Islands; and

“youth” means the collectivity of all individuals in the Republic who have reached age 14, but not reached age 29.

*Drafter’s Note: the 4<sup>th</sup> Plenary requested additional definitions of “officer of the state” and “state organ”. But, following consistency revisions, those terms are no longer used in the draft, so no definition is needed.*

## **247. Guides to understanding the constitution**

- (1) Every provision of this Constitution is to be construed according to the doctrine of interpretation that the law is always speaking. Therefore, among other things—



- (a) a function or power conferred by this Constitution on an office may be performed or exercised as occasion requires, by the person holding the office;
  - (b) any reference in this Constitution to a public office or officer, includes a reference to the person acting in or otherwise performing the functions of the office at any particular time; and
  - (c) a reference in this Constitution to an office, organ of the Government, or a locality named in this Constitution is to be read with any formal alteration necessary to make it applicable in the circumstances.
- (2) In this Constitution, unless the context otherwise requires—
- (a) if a word or expression is defined in this Constitution, any grammatical variation or cognate expression of the word or expression has a corresponding meaning, read with the necessary modifications; and
  - (b) the word “includes” means “includes, but is not limited to”.
- (3) In calculating time between two events for any purpose under this Constitution, if the time is expressed—
- (a) as days, the day on which the first event occurs is to be excluded, and the day by which the last event may occur is to be included;
  - (b) as months, the time period ends at the beginning of the day in the relevant month—
    - (i) that has the same number as the date on which the period began, if that month has a corresponding date; or
    - (ii) that is the last day of that month, in any other case; or
  - (c) as years, the period of time ends at the beginning of the date of the relevant year that corresponds to the date on which the period began.
- (4) If a period of time prescribed by this Constitution for any purpose is six days or less, Sundays and public holidays are not to be counted when calculating the time.

- (5) If, in any particular circumstances, the period of time prescribed by this Constitution ends on a Sunday or a public holiday, the period extends to the first subsequent day that is not a Sunday or public holiday.
- (6) If a particular time is not prescribed by this Constitution for performing a required act, the act must be done without unreasonable delay, and as often as occasion requires.
- (7) If any person or Government organ has authority under this Constitution to extend a period of time prescribed by this Constitution, the authority may be exercised either before or after the end of the period, unless a contrary intention is expressly mentioned in the provision conferring the authority.
- (8) Except to the extent that this Constitution provides otherwise, if a person has vacated an office established under this Constitution, the person may, if qualified, again be appointed, elected or otherwise selected to hold the office in accordance with this Constitution.
- (9) A reference in this Constitution to a power to make appointments to a public office includes a reference to —
  - (a) a power to make appointments on promotion and transfer to the office; and
  - (b) a power to appoint a person to act in the office while it is vacant or its holder is unable to perform the functions of the office.
- (10) Except to the extent that this Constitution provides otherwise, a person who has been appointed to an office established by this Constitution may resign from the office by a signed notice in writing addressed to the person or authority who made the appointment. A resignation takes effect at the later of—
  - (a) the time and date specified in the notice; or
  - (b) the time and date at which the notice is received by the person or authority to whom it is addressed.

- (11) The Schedules are a part of this Constitution, and every use of the expression “*this Constitution*” includes the Schedules.
- (12) Any person required under any law to take an oath or affirmation of allegiance or of office must take the appropriate oath or affirmation set out in Schedule Two.

**248. Transitional arrangements, repeal and consequential amendments**

- (1) Schedule Thirteen applies to govern the transition to the new constitutional order established by this Constitution, and any matter incidental to that transition.
- (2) The laws mentioned in Schedule Fourteen are repealed to the extent indicated.

**249. Commencement and title**

- (1) This Constitution comes into effect after the President has proclaimed it publicly, in the manner, and subject to the provisions, set out in Schedule 10.

*Drafter’s Note: Subsection (1) needs to be harmonized with the provisions of the Draft Bill for ratification of the constitution.*

- (2) This Constitution shall be called The Constitution of the Federal Democratic Republic of Solomon Islands.

## **SCHEDULE ONE—ELECTION OF THE PRESIDENT** *[Section 91]*

### **1. Calling an Election Meeting**

Whenever there is a permanent vacancy in the office of President of the Republic, the Speaker must convene a meeting of Parliament for the purpose of electing a President, by issuing to each member a notice stating—

- (a) the date, place and time of the election meeting; and
- (b) the place, date and time by which the nominations, of no more than four candidates nominated by the the State whose turn it is to fill the office of President, are to be delivered to the Speaker, which time may not be later than four days before the date of the election meeting.

*Drafter's Note: Paragraph (b) has been revised to reflect decisions of the 4<sup>th</sup> Plenary.*

### **2. Candidates**

- (1) All nominations from the State whose turn it is to fill the office of President must be accompanied by a declaration, sworn by the candidate, affirming that the candidate satisfies all the qualification requirements set out in Section 91(5) of this Constitution, and is eligible to hold office as President.
- (2) The Speaker of the Federal Parliament must circulate a list, specifying all candidates nominated, to each member of Parliament before the election meeting.
- (3) Any candidate may withdraw at any time before the conclusion of the election, but the State whose turn it is to fill the office of President may not nominate another candidate to replace the one who has withdrawn.

*Drafter's Note: Section 2 has been revised to address the requests from the 4<sup>th</sup> Plenary.*

### **3. Election may be countermanded or suspended**

- (1) The Speaker of the Federal Parliament may countermand or suspend an election, at any stage of the election, if—
  - (a) a candidate dies;
  - (b) a candidate is not eligible or there are issues regarding the nomination or eligibility of a candidate; or
  - (c) the Speaker reasonably believes that—
    - (i) a candidate is seriously incapacitated; or
    - (ii) the election cannot be, or is unlikely to be, successfully completed.
- (2) If an election is countermanded, the election procedure must be started afresh from its beginning.
- (3) If an election is suspended, the election proceedings must be undertaken at a later time determined by the Speaker.

### **4. Conduct of the meeting**

- (1) The election meeting shall be presided over, and the election shall be conducted, by the Speaker of the Federal Parliament.
- (2) The Speaker of the Federal Parliament may enlist the assistance of any officer that may be necessary for the purpose of counting votes, and for any other purpose related to the conduct of the election.

### **5. Method of voting**

- (1) The Speaker must conduct the election by secret ballot.
- (2) Each member of Parliament has only one vote at—
  - (a) the first ballot; and
  - (b) at each subsequent ballot, if any, held in accordance with paragraph 7.

- (3) At least six hours must elapse between each successive ballot.

## **6. Voting procedure**

- (1) If any candidate receives more than half of the votes at any ballot, the Speaker must declare that person elected as President.
- (2) If no candidate receives more than half of the votes at the first ballot—
  - (a) the candidate who received the fewest votes is eliminated; and
  - (b) a further ballot must be held for election of the President from among the remaining candidates.
- (3) If there is a tie between two or more candidates for the fewest number of votes received at the first ballot, the Speaker of the Federal Parliament must decide by lot which of the candidates is to be eliminated.
- (4) If, in the second ballot, no candidate receives more than half of the votes—
  - (a) further ballots must be held until one candidate receives more than half of the votes; and
  - (b) The procedure specified in sub-paragraphs (2) and (3) apply to the second and all subsequent ballots.
- (5) If a ballot between the final two candidates results in a tie, one further ballot must be conducted to decide the election.
- (6) If the ballot conducted in accordance with sub-paragraph (5) again results in a tie, the Speaker of the Federal Parliament must countermand the election and the election process must be commenced afresh from the beginning.

## **7. Announcement of results**

- (1) When the count has been completed in any ballot, the Speaker of the Federal Parliament must immediately—
  - (a) announce to the meeting the number of votes received by each candidate; and

- (b) declare a candidate to have been elected President if that candidate has received more than half of the votes.
- (2) Upon the election of a President, the Speaker of the Federal Parliament must cause the fact and the identity of the President to be—
  - (a) made known to the public in an appropriate manner; and
  - (b) published as soon as possible in the Gazette.

## **8. Resolution of disputes**

Any dispute arising out of or in connection with the calling or conduct of any election meeting or the election of the President under this Schedule may be determined by the Speaker of the Federal Parliament, whose determination of the matter in dispute is final and conclusive, subject only to review by the High Court.

## **9. Functions of the Speaker of the Federal Parliament**

The functions conferred upon the Speaker of the Federal Parliament by this Schedule shall be exercised in the deliberate judgment of the Speaker of the Federal Parliament.

## SCHEDULE TWO—OATHS OR AFFIRMATIONS

### *Part A—Allegiance*

#### **OATH OR AFFIRMATION OF ALLEGIANCE**

I, A.B..... swear/solemnly affirm that I will be faithful and bear true allegiance to the Federal Democratic Republic of Solomon Islands, and uphold, obey and protect the Constitution of Solomon Islands.

(In the case of an Oath) So help me, God!

### *Part B—For Taking Office*

#### **OATH OR AFFIRMATION FOR PRESIDENT or ACTING PRESIDENT**

I, A.B..... aware of the high calling I assume as President /Acting President of Solomon Islands, swear/solemnly affirm that I will truly serve the Federal Democratic Republic of Solomon Islands in the office of President, and will obey, observe, uphold and protect the Constitution and all other law of the Republic.

(In the case of an Oath) So help me, God!

#### **OATH OR AFFIRMATION FOR CABINET MEMBERS**

I, A.B..... being appointed Prime Minister/Minister of the Federal Government of Solomon Islands, swear/solemnly affirm that I will obey, observe, uphold and protect the Constitution and all other law of the Republic, and to the best of my ability and judgement, I will give my advice to the President of Solomon Islands when required; and I solemnly and sincerely promise to hold my office with honour, dignity and integrity, to be a true and faithful counsellor, not to divulge any secret matter entrusted to me, and to perform the functions of my office conscientiously and to the best of my ability.

(In the case of an Oath) So help me, God!

#### **OATH OR AFFIRMATION FOR JUDICIAL OFFICE**

I, A.B.....swear/solemnly affirm that, as a judge within the courts of the Federal Democratic Republic of Solomon Islands, I will be faithful and bear true allegiance to the Republic of Solomon Islands, and that I will obey, observe, uphold and protect the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, and will do justice to all persons without fear, favour or prejudice, in accordance with the Constitution and the law.

(In the case of an Oath) So help me, God!

#### **OATH OR AFFIRMATION FOR MEMBERS OF PARLIAMENT**

I, A.B.....swear/solemnly affirm that, as a member of the Federal Parliament of Solomon Islands, I will be faithful and bear true allegiance to the Republic of Solomon Islands, and that I will obey, observe, uphold and protect the Constitution and all other law of the Republic; and I solemnly and sincerely promise that I will defend the rule of law and the rights of the people, and will act with integrity and diligently carry out my responsibilities, in accordance with the Constitution and the law.

(In the case of an Oath) So help me, God!

#### **OATH OR AFFIRMATION FOR SPEAKER OF PARLIAMENT**

I, A.B.....swear/solemnly affirm that, as Speaker of the Parliament of Solomon Islands, I will be faithful and bear true allegiance to the Republic of Solomon Islands, and that I will obey, observe, uphold and protect the Constitution and all other law of the Republic; and I solemnly



and sincerely promise that I will defend the rule of law and the rights of the people, maintain the dignity and honour of Parliament to the best of my ability, and act without fear, favour or prejudice, in accordance with the Constitution and the law.

(In the case of an Oath) So help me, God!

**OATH OR AFFIRMATION FOR SECURITY SERVICES**

I, A.B.....swear/solemnly affirm that, as a member of the [Federal Police / Federal Correctional Service / National Intelligence Service / Military, Paramilitary or Malitia] of the Federal Democratic Republic of Solomon Islands, I will be faithful and bear true allegiance to the Republic of Solomon Islands, and that I will obey, observe, uphold and protect the Constitution and all other law of the Republic, and I will discharge my duty in accordance with the Constitution and the law.

(In the case of an Oath) So help me, God!

### **SCHEDULE THREE—NATIONAL REMUNERATION COMMISSION FUNCTIONS**

*[Section 213 and 214]*

#### **1. Offices within the Commission's Mandate**

- (1) The National Remuneration Commission determines the remuneration and entitlements for the following office holders:
  - (a) The President
  - (b) The Speaker and members of the Federal Parliament
  - (c) The Prime Minister and Ministers
  - (d) The Permanent Secretaries, Clerk to Parliament and Secretary to the Cabinet
  - (e) Superior Court judges, Magistrates, Court registrars, Commissioners and other judicial officers
  - (f) Members of Independent Commissions, and persons holding Independent Offices listed in Section 195
  - (g) Federal Commissioners of Police and Correctional Services
  - (h) Commissioners of State Police and Correctional Services
  - (i) Head of the National Intelligence Services
  - (j) Head of any Military, Paramilitary or Malitia established under section 229
  - (k) The State Governors
  - (l) The Speaker and members of State Parliaments
  - (m) The Premier and members of State Cabinets
  - (n) The Permanent Secretaries, Clerks to State Parliaments and Secretary to State Cabinets

- (o) Judges, Registrars and Judicial officers of State Courts
  - (p) Office holders of the Community Governments within each State, as designated by their State Constitution.
- (2) Federal or State legislation may require the National Remuneration Commission to determine the framework of remuneration for other offices and office holders.

*Drafter's Note: Subsection (2) revised slightly differently than requested. The word "add" in the previous draft was an error and has been deleted.*

- (3) No salary or entitlement is payable in relation to an office listed in this Schedule, and no exemption from any obligation is applicable to such an office, except as determined by the National Remuneration Commission.

## **2. Exercise of Functions**

- (1) The National Remuneration Commission may determine—
- (a) the scales, terms, conditions and manner of payment of salaries and other entitlements payable to office holders;
  - (b) the terms and conditions applicable to any loans or advances of salaries;
  - (c) the terms and conditions of entitlements, if any related to—
    - (i) housing
    - (ii) medical care;
    - (iii) appointment and terminal grants;
    - (iv) retirement and death benefits;
    - (v) life insurance; and
    - (vi) additional payment for service in committees, or beyond the ordinary responsibilities of any particular office; and
  - (d) any other matters relating to the remuneration of office holders.

- (2) When determining frameworks and standards of remuneration for any officials whose duties require travelling or living away from home, the National Remuneration Commission must also consider and establish terms and conditions relating to the cost, for those officials and their families, of—
  - (a) accommodation while away from home; and
  - (b) internal and external transport.
- (3) The National Remuneration Commission must consider —
  - (a) information supplied to the Commission by the Government in any sphere, the Federal Parliament, or any other organisation;
  - (b) any representation it receives from any person, within the prescribed time;
  - (c) the state of the national economy and the financial position of the Government based on an assessment report of the state of the economy to be made public;
  - (d) movements in the level of pay and other entitlements of other employed persons; and
  - (e) changes in the retail price index, and other relevant indicators, showing the cost of maintaining living standards.
- (4) Every determination made or amended by the National Remuneration Commission must be published in the Gazette, and takes effect on—
  - (a) a date determined by the Commission, and stated in the Gazette; or
  - (b) the 1<sup>st</sup> day of April next following the date on which it is published, if no date was otherwise specified.
- (5) When determining an effective date as contemplated in subparagraph (4)(a), the National Remuneration Commission may specify a date earlier or later than the date on which the determination is published.



**SCHEDULE FOUR—STATE BOUNDARIES**  
*[Section 72]*

<b>Column A – Name</b>	<b>Column B – Description and Limits of Boundaries</b>
Central	The area bounded by a line commencing at a point Latitude 8 degrees 32' 35" South and Longitude 158 degrees 47' 50" East, thence along the common borders with Western, Guadalcanal, Malaita and Isabel States, thence to the point of commencement".
Choiseul	"The area bounded by a line commencing at a point on the boundary between Solomon Islands and Papua New Guinea in Longitude 156 degrees 14' 46" East, thence along the common borders of Western, Isabel and Malaita States, thence continue along the line due north to a point of intersection on the Solomon Islands and Papua New Guinea boundary, and thence along that boundary to the point of commencement."
Guadalcanal	The area bounded by a line commencing at a point Latitude 9 degrees 14' 20" South and Longitude 160 degrees 38' 25" East, thence by a line bearing due south-west westerly to a point Latitude 9 degrees 17' 30" South and Longitude 160 degrees 30' East, thence by a line bearing due south-west westerly to a point latitude 9 degrees 18' South and Longitude 160 degrees 20' East, thence by a line bearing due south-west westerly to a point Latitude 9 degrees 13' South and Longitude 160 degrees east, thence by a line bearing due west to a point Latitude 9 degrees 13' South and Longitude 159 degrees 28' East, thence by a line bearing due south-west to a point Latitude 9 degrees 25' South and Longitude 159 degrees 08' 30" East, thence by a line bearing northwest-northerly to a point Latitude 9 degrees 20' South and Longitude 158 degrees 53' East, thence by a line Latitude 9 degrees 20' south due west along the common border with the Western Solomons State to a point on the SI-PNG int. Boundary, thence due southeast along the same boundary to a point of intersection at Latitude 10 degrees 30' East, thence by a line due east to a point Latitude 10 degrees 30' East and Longitude 158 degrees 53, East, thence along the common boarders with Rennell and Bellona, Makira/Ulawa and Malaita States, and thence to the point of commencement.
Isabel	The area bounded by a line commencing at a point Latitude 8 degrees 33' 35" South and Longitude 158 degrees 57' 05" East, thence along the common borders with Central islands, Malaita, Choiseul and Western States, and thence to the point of commencement.
Makira/Ulawa	The area bounded by a line commencing at a point Latitude 13 degrees 45 South and Longitude 163 degrees 40' East, thence by a line bearing due north-east northerly to a point Latitude 13 degrees South and Longitude 164 degrees East, thence along the common border with Temotu, Malaita, Guadalcanal and Rennell/Bellona States, and thence to the point of commencement.
Malaita	The Area bounded by a line commencing at a point Latitude 9 degrees South and Longitude 164 degrees East, thence along the common border with Temotu northerly to a point Latitude 8 degrees South and Longitude 164 degrees East, thence by a line bearing due north to a point Latitude 4 degrees 46' South and Longitude 164 degrees East, thence by a line bearing due west to a point Latitude 4 degrees 52' 18" South and Longitude 158 degrees 14' 07' East, thence by a line bearing due south-west to a point Latitude 5 degrees 03' South and Longitude 157 degrees 55' East, thence along the common borders with Choiseul, Isabel, Central Islands, Guadalcanal and Makira/Ulawa States, thence to the point of commencement.

Rennell and Bellona	The Area bounded by a line commencing at a point Latitude 10 degrees 30' South and Longitude 158 degrees 53' East, thence by a line bearing due east to a point Latitude 10 degrees 30' 50" South and Longitude 159 degrees 48' East, thence by a line bearing due east to a point Latitude 10 degrees 46' South and Longitude 160 degrees 32' East, thence by a line bearing due south-east to a point Latitude 10 degrees 52' 20" South and Longitude 160 degrees 41' 10" East, thence by a line bearing due south-east to a point Latitude 11 degrees 50' South and Longitude 161 degrees 50' East, thence by a line bearing due south to a point Latitude 13 degrees 45' South and Longitude 161 degrees 50' East, thence by a line due west along the line in Latitude 13 degrees 45' East to a point of intersection with the SI-PNG international boundary, thence along the same international boundary due north-west to a point of intersection at Latitude 10 degrees 30' East, thence by a line due east along the common border with Guadalcanal State to a point Latitude 10 degrees 30' East and Longitude 158 degrees 53' East, thence to the point of commencement.
Temotu	The area bounded by a line commencing at a point Latitude 8 degrees South and Longitude 164 degrees East, thence by a line bearing due east to a point Latitude 8 degrees South and Longitude 171 degrees East, thence by a line bearing due south to a point Latitude 13 degrees South and Longitude 171 degrees East, thence by a line bearing due west to a point Latitude 13 degrees South and Longitude 168 degrees 26' East, thence by a line bearing due north-west to a point Latitude 12 degrees 30' South and Longitude 167 degrees 58' East, thence by a line bearing due west to a point Latitude 12 degrees 30' South and Longitude 167 degrees 15' East, thence by a line bearing due north-west westerly to a point Latitude 12 degrees 12' South and Longitude 165 degrees 12' East, thence by a line bearing due south-west westerly to a point Latitude 12 degrees 36' South and Longitude 164 degrees 10' East, thence by a line bearing due south-west southerly to a point Latitude 13 degrees South and Longitude 164 degrees East, thence along the common borders with Makira/Ulawa and Malaita States to the point of commencement.
Western	The area bounded by a line commencing at a point on the boundary between Solomon Islands and Papua New Guinea on Latitude 6 degrees 23' 59" South and Longitude 156 degrees 14' 46" East, thence by a line due south to a point Latitude 6 degrees 42' 50" South and Longitude 156 degrees 15' 14" East, thence by a line due south-east southerly to a point 6 degrees 57' 28" South and Longitude 156 degrees 21' 58" East, thence by a line south-east to a point Latitude 7 degrees 17' 25" South and Longitude 156 degrees 38' 20" East, thence by a line due south-east easterly to a point Latitude 7 degrees 35' 30" South and Longitude 157 degrees 00' 00" East, thence by a line due south-east easterly to a point Latitude 7 degrees 42' 47" South and Longitude 157 degrees 30' 00" East, thence by a line due south-west easterly to a point Latitude 7 degrees 52' 37" South and Longitude 157 degrees 58' 07" East, thence by a line due south-east easterly to a point Latitude 8 degrees 10' 28" South and Longitude 158 degrees 27' 00" East, thence by a line due south-east to a point Latitude 8 degrees 32' 35" South and Longitude 158 degrees 47' 50" East, thence by a line due south-west southerly to a point Latitude 8 degrees 42' 50" South and Longitude 158 degrees 53' 10" East, thence by a line due south-west southerly to a point Latitude 8 degrees 56' 50" South and Longitude 158 degrees 53' 12" East, thence by a line due south-east southerly to a point latitude 9 degrees 05' 25" South and Longitude 158 degrees 52' 50" East, thence by a line due south-west to a point Latitude 9 degrees 11' 05" South and Longitude 158 degrees 51' 50" East, thence by a line due south to a point 9 degrees 20' 00" South and Longitude 158 degrees 53' 00" East, thence by a line due westerly to a point Latitude 9 degrees 20' 00" South and Longitude 155

	degrees 32' 21" East on the Solomon Islands and Papua New Guinea international boundary, and thence along that boundary to the point of commencement.
Honiara City	The area bounded by a line commencing at a point on high water mark being the intersection of the western boundary of the Honiara city with high water mark, thence in a general southerly and easterly direction along the city boundary to a point of approximately UTM grid coordinates 603 060m east and 8956 940m north, thence in a general easterly direction along the city boundary to a point of approximately UTM grid coordinates 603 950m east and 8956 820m north, thence in a general easterly direction along the city boundary to a point being the intersection of the centre line of Mataniko River, thence along the centre line of the said river in a generally southerly direction to its intersection with the boundary of the Honiara City, thence along the said city boundary to a point approximately UTM grid coordinates 605 200m east and 8955 370m north, thence along the said city boundary in a general easterly direction to the corner point GUX1 with UTM grid coordinates 607 092.57 east and 8 855 073.08 in north, thence along the said city boundary to a point of approximately UTM grid coordinates 607 940 in east and 8 955 430m north, thence in a generally north easterly direction along the city boundary to Burns Creek and downstream to high water mark, thence by a line due north to a point approximately UTM grid coordinates 611 360m east and 8 961 140m north, thence by a line due west to a point of approximately UTM grid coordinates 600 680m east and 8960 080m north, thence by a line due south to the point of commencement.

**Note:**

***The coordinates that appear in Schedule Four column B in the 2011 draft Federal Constitution are now replaced with the coordinates that appear in the 2011 technical report by CC member/ Technical Adviser Mr. Patt R. Loe) on the proposed States Maritime Boundaries. Note, however that Mr. Loe must need to get further work done as required, on those new proposals by Guadalcanal and Rennell and Bellona although the new coordinates are already in place and must be assisted by CRU Secretariat, as he will be doing extra duties outside of Plenary. Special areas or Hot Spots that have been agreed upon will stand as confirmed and those that are still to be decided upon will continue to be deliberated upon internally.***

*Drafter's Note: 4<sup>th</sup> Plenary noted the need to establish a Hydrographic Commission, and requested expert assistance.*

*Further instructions will be needed, and this matter will need to be further considered at the next Plenary.*





## SCHEDULE FIVE—DISTRIBUTION OF POWERS

### *List I—Exclusive Federal Powers*

In addition to matters prescribed by this Constitution, the Federal Government has exclusive authority in relation to the following subjects:

#### 1. Federal Institutions and Services

Federal institutions and services

Constitutional institutions

Federal Government enterprises, organs and authorities

Official secrets

Use of coats of arms, armorial bearings, flags, uniforms, orders and decorations (other than those of a State)

Any other matter primarily relating to the maintenance and administration of the Federal Government.

#### 2. External Affairs

Treaties, agreements and conventions, subject to Section 73 (3), 228 (7), (8) and (9), 239, 240 and 244

*Drafter's Note: revised as requested by 4<sup>th</sup> Plenary. Reference to s. 228 added as some provisions from the former s 240 have been moved to 228.*

*It is unclear why s 244 is included here.*

Diplomatic, consular representation

Participation in and membership of International Organisations, subject to Section 73 (5)

*Drafter's Note: 4<sup>th</sup> Plenary flagged the above line for further explanation and discussion.*

Customs;

Immigration and emigration

Quarantine

Human organ trades

Extra-territorial jurisdiction;

International fishing and enforcement obligations

Regulating and prohibiting illicit drugs, narcotics, human trafficking, and similar cross-border criminal activity

Extradition

Reciprocal enforcement of judgments

Any other matters primarily of an external or international nature.

**3. Citizenship**

Citizenship

Naturalisation

Registration of all citizens

Deportation of foreign citizens

**4. Justice**

Courts, administration of justice, interpretation of laws and limitation of actions

The legal profession and the practice of the law

Property law, equity, trusts, partnership and agency

Bankruptcy and insolvency, administration of estates, succession

Civil law and procedure, including age of majority, contracts and actionable wrongs

Criminal law and procedure

Law of evidence, statutory declarations, oaths and affirmations,

Mutual assistance in criminal matters with foreign States

*Drafter's Note: 4<sup>th</sup> Plenary requested a check of the list against 2013 DFC.*

*Some items from this heading in 2013 DFC have been included in headings 2 or 10 of this List.*

*The general heading allows for other items to be included without being specified, as no list will ever be complete. And some items fall within the general wording of items on this list. For example "Civil law" must surely cover "contracts", etc.*

*Nevertheless, all specific items that were included in 2013 DFC have now been inserted above for re-assurance.*

**5. Internal Security**

Control of fire-arms and offensive weapons

Intelligence services

**6. Defense**

Defense co-operation with foreign States

Maintenance of national security

Military Services

**7. Public Finance**

Currency and foreign exchange

Regulation of banks, insurance, and other financial institutions

Financial management of the Federal Government and its organs

**8. Education**

Teacher training and certification

**9. Health and Medical Care**

Regulation and registration of medical and health practitioners

Health professional training and certification

Poisons and drug control

Pharmaceuticals

Food and Drug administration

International health matters and clearance requirements with World Health Organization.

**10. Trade, Commerce and Industry**

Regulation of local and foreign companies, businesses and business names

Securities, Shares and stocks

Negotiable instruments

Registration of foreign investment

Regulation of Professions

Imports and Exports

Quality and standards

Anti-monopolistic practices and trade practices

Patents, trademarks, copyright and other intellectual property

Weights and measures

Hazardous substances

**11. Shipping, navigation, aviation and transport**

Maritime zones and territorial waters

Shipping, navigation, ports, wharves, jetties and related maritime matters

Vessel standards and registration

Wrecks and salvage

Hydrographic and Charting, Oceanographic and Meteorological Services

Civil aviation, including Air Navigation, Airport Security, Airspace Management, Aircraft Accident investigation, Quality Assurance – Service Management

Regulation of inter-state transport

Carriage of passengers and cargo

Motor Vehicle standards, certification, registration and licensing

Regulation and importation of vehicles

Regulation of road and highway traffic

*List II—Exclusive State Jurisdiction*

In addition to the matters prescribed by this Constitution, State Governments have exclusive authority in relation to the following subjects:

**1. State Government matters**

State government and State judicial institutions and services

State financial management and investment

State business and commercial enterprises

Civil list and State pensions

Any other matter primarily relating to the maintenance and administration of the State Government.

**2. Community government**

Establishment of Community areas

Community government, administration and management

**3. Custom**

Application of customary laws, practices and traditions.

Codification of customary laws and practices;

Dispute resolution

Clan, tribal or village community governance and justice

**4. State Police and Security**

**5. Education**

Early childhood and primary education

Secondary education

**6. Businesses and trade**

Hotels and rest houses

Markets and trade stores

Public entertainment including eating establishments

Gambling, gaming and lotteries

**7. Construction and maintenance of pathways, roads, and highways**

**8. Registration of Births, Marriages and Deaths**

*LIST III – Concurrent Jurisdiction with Federal Paramountcy*

- 1. Civil defense**
- 2. Public order**
- 3. Police Services**
- 4. Correctional Services**
- 5. Public borrowing**
- 6. Public debt management**
- 7. Education**
  - Primary and secondary core curriculum, and examinations
  - Tertiary education
  - Vocational education and training
  - Scholarships
- 8. Postal services**
- 9. Information Technology**
  - Internet Services
  - Television, Radio and Broadcasting
  - Communication Services

*List IV—Concurrent Jurisdiction with State Paramountcy***1. Governance**

Public service  
Public holidays  
Commissions of inquiry  
Civil emergency measures

**2. Justice**

Establishment and administration of State Courts, and tribunals

**3. Provision of services**

Water supply and sanitation  
Sewage and waste disposal  
Electricity and power generation, from any energy source  
Fire services and fire prevention  
Public works

**4. Public Information**

Archives and government records  
Libraries and museums

**5. Health**

Public health and primary health care  
Medical and hospital services  
Epidemic and disease control

**6. Land and water**

Land tenure and dealings  
Land registration  
Land planning, use, management and development  
Water and protection of water  
Regulation of waterways on navigable inland waters

**7. Minerals and Petroleum**

Prospecting for, and mining, minerals  
Exploration for, and extraction of, hydrocarbons and natural gases

**8. Agriculture, Fisheries and Forestry**

Forests and forest resources  
Agriculture, apiaries and livestock  
Animal welfare



Fisheries, subject to Section 187 (2)

**9. Trade, Commerce and Industry**

Price control

Consumer protection and fair trading

Alcohol and tobacco

Regulation of trade practices

State Tourism

**10. Social Security and Trade Organisations**

Employment, welfare of labour and trade unions

Compensation and superannuation schemes

Employment benefits and pensions

**11. Environment and Conservation**

Environment protection and regulation

Conservation of natural resources and regulation of invasive species

Wild life protection and preservation of biological diversity

Genetic resources and genetically modified resources

**12. Buildings and construction**

Regulation of building and construction

Preservation and protection of historical sites and cultural heritage

**13. State Police and Security**

**14. Primary and Secondary non-core curriculum**

**15. International Seaports and Airports**

**16. Sports and Recreation**

*List V—State and Community Jurisdiction*

**1. Customary values and traditions**

Values of traditional governance, leadership, and customary arbitration methods  
 Traditional human rights, education, Christian and religious principles  
 Customary laws, norms and systems  
 Cultural norms, customs, customary land  
 Sea resources and other customary ownership rights  
 customary justice on crimes and civil wrongs  
 ‘tabu’ sites  
 folklore, chants, custom stories, dance and related intellectual property

**2. Environment, Resource Use and Development**

Protect and conserve natural environment  
 Protection of rivers, streams, catchment areas and water sources  
 Birds and other wildlife sanctuaries  
 Marine protected areas  
 Control and manage the boundaries and ownership of customary land and other resources  
 Development plans and resource use  
 Roads and Road traffic in the Community  
 Toll payments and access by the public

**3. Health, Education, Recreation and Welfare**

Community and human security, including food, shelter, water, sanitation, and cemeteries  
 General health and hygiene  
 Inspect and audit clinics within a community  
 Traditional knowledge on herbal medicine traditional medicines and cures  
 Customary systems to provide care to persons with disability, the aged and the destitute  
 Schools within the community  
 Museums, libraries and archives  
 Sports and recreation facilities and children’s parks

**4. Social harmony and public order**

Promote cordial inter-communal and intra-communal and tribal relationships and harmony  
 Moral standards and values

Squatters and itinerants

Public disorder

Domestic violence and community policing

Dispute resolution

Correctional community service (summary offenders)

Enforcement of community laws

**5. Economic Activity and Licenses**

Labour, and economic activities

Liquor sales, hawkers and street vendors, hotels, logging, fishing

logging, milling, mining camps and other industries within their areas to prevent the abuse of young, vulnerable, desperate, mentally disabled and people

maintain and regulate communal work in the community

Reviewing and monitoring of community projects to ensure that they meet community expectations

Animal and wild bird licences

Business licenses

**6. Registries and records**

Registry of Land boundaries, ownership and lease agreements

Registry of customary wills and agreements

Records of births, deaths and marriages certificates

Records of chiefs and court decisions

Recording of customary sea tenure systems



## **SCHEDULE SIX—REVENUE SOURCES**

### *Part I - Federal Government Revenue*

1. Company tax
2. Goods tax
3. Licence fees and charges
4. Personal tax, including PAYE
5. Sales tax
6. Stamp duties and tariff tax
7. Withholding tax
8. Excise, export and import taxes
9. Taxes and rates in Federal Territories
10. Airspace tax and aircraft landing fees
11. Boarding and departure fees
12. Passport and visa fees
13. Carbon trading tax
14. Intellectual property tax
15. Royalties
16. Research fees
17. Penalties and Fines under Federal laws

*Part II - State Governments Revenue*

1. Mining and prospecting fees
2. Land rents and premiums
3. Property fees and transfer taxes
4. Gaming and Lotteries tax
5. Liquor Licence fees
6. FIB application and approval fees
7. Entrance, Anchorage, Harbour and Berthing fees
8. Bed tax
9. Residence and work permit fees
10. Research fees
11. Penalties and Fines under State laws.

*Part III - Community Governments Revenue*

1. Local Business tax
2. Basic Rates
3. Terrestrial and Marine resources fees
4. Conservation fees, and Heritage area fees
5. Land Lease fees
6. Excursion fees
7. Filming fees
8. Court fees
9. Fuel depot fees
10. Livestock and animal licence fees
11. Access fees
12. Research fees
13. Penalties and Fines under Community laws





## SCHEDULE SEVEN—REVENUE SHARING FORMULA

### *PART I - Federal Tax Revenue*

#### **1. Tax sharing ratio**

- (1) Unless otherwise provided in this Part, the sharing ratio of revenue referred to in Section 81(1) of this Constitution is—
  - (a) 50% to the Federal Government; and
  - (b) 50% to be shared by the State Governments in accordance with the formula set out in paragraph 2.
- (2) The sharing ratio of revenue referred to in Section 81(1) and derived from personal income tax, including PAYE, is—
  - (a) 45% to the Federal Government; and
  - (b) 55% to be shared by the State and Community Governments in accordance with the formula set out in subsection (4).
- (3) The sharing ratio of revenue referred to in Section 81(1) and derived from sale taxes, is—
  - (a) 45% to the Federal Government; and
  - (b) 55% to be shared by the State and Community Governments in accordance with the formula set out in subsection (4).
- (4) The State and Community share of revenue is to be apportioned according to the following formula—
  - (a) 20% of the available funds are to be distributed on an equal basis to each State;
  - (b) 50% of the available funds are to be distributed on the basis of the population of each State, as taken from the most recent census; and

- (c) 30% of the available funds are to be distributed on the basis of the land (using the archipelagic baselines principle) and sea area of each State.

## *PART II - Natural Resource Revenues*

### **2. Natural resource revenue sharing**

- (1) The sharing ratios revenue derived from exploitation of natural resources as required by Section 81 (3) of this Constitution, are as follows—
  - (a) For revenue derived from royalties, 100% to the Community Governments and Resource Owners, to be apportioned in accordance with a sharing ratio to be stipulated in each State Constitution; and
  - (b) For all other such revenue:
    - (i) Federal Government – 40%;
    - (ii) State and Community Governments and Resource Owners – 60%, to be apportioned in accordance with a sharing ratio to be stipulated in each State Constitution.
- (2) A portion of the share of the Resource Owners is to be set aside for social, economic, educational, environmental and rehabilitation needs to be administered in accordance with the State and Community Governments legislation.
- (3) No remission of export duties may be granted in respect of any logs harvested unless the relevant State legislature (in consultation with the Community Government) and the Federal Parliament have previously endorsed the granting of the remission.
- (4) All current remissions of export duties on log exports shall cease 6 months after the effective date of this Constitution, unless they have been ratified by the Federal Parliament and the relevant State legislature.
- (5) The sharing ratio for Federal revenue derived from duties paid in relation to the export of migratory fish, and any fees paid for fishing rights to migratory fish, is to

be determined by a calculation based on the respective areas of sea within the boundaries of a State as defined in Schedule **Four**.

*PART III - Review and Amendment*

**3. Review and amendment of the sharing ratio**

Despite Sections 241 and 242, the percentage figures set out in Parts 1 and 2 of this Schedule may be altered at any time, on the recommendation of the National Finance Commission, either—

- (a) by unanimous agreement of a Prime Minister and State Premiers Conference;  
or
- (b) By amending the Constitution in accordance with Section 241.



**SCHEDULE EIGHT—STATE AND COMMUNITY CONSTITUTIONS**  
*[Chapter 11]*

*Drafter’s Note: 4<sup>th</sup> Plenary requested that the ratification process should be made parallel to that for the National Constitution. This requires further discussion and instructions, as the procedure for ratification of the National constitution contemplates a national conference.*

*The parallel procedure at the State level would be the State convention provided for in Paragraph 1 (1)(c), and at the Community level to be determined by State law.*

*Further instructions are requested as to which additional elements of the parallel process are to be set out in the schedule.*

*Part 1—State Constitutions*

**1. Preparation of first Constitution for the States**

- (1) Provincial Assemblies established under the Provincial Government Act 1997, in place immediately before the effective date of this Constitution must—
  - (a) each appoint a body within their state to prepare a first Constitution for the State; and
  - (b) oversee that body, and ensure that it follows the process set out in this Schedule; and
  - (c) convene a State Convention to consider and vote whether to ratify the draft as a Constitution for the State.
- (2) Clans, tribes, village and church communities and all persons of the State have a right to participate in the creation of a State Constitution and to be consulted.
- (3) Community consultations must be undertaken in good faith with the objective of achieving, through procedures determined by them, substantial agreement or consent to a draft constitution.

- (4) When a State Convention votes to ratify a State Constitution, the Speaker of the Provincial Assembly of that State must submit the document to the Court of Appeal for certification in accordance with Section 180 of this Constitution.

## **2. Content**

- (1) A State Constitution must provide for—
- (a) The offices and institutions listed in section 181;
  - (b) voting by preferential voting system;
  - (c) A State Electoral College

*Drafter's Note: what is the role of this body?*

- (d) financial management within the State governments, consistent with the federal revenue arrangements;
- (e) provisions for resource revenue sharing between the State, Communities and resource owners;
- (f) provisions for a public service to serve the State and the Communities within the State;
- (g) for any additional matters relating to the administration of State governments.

## **3. Adoption or amendment of a State Constitution**

- (1) A State Parliament may adopt or amend a State Constitution with the support of at least three quarters of its members.
- (2) A Bill to adopt or amend a State Constitution must not be introduced into the State Parliament unless the Speaker of the State Parliament is satisfied that the constitution making process—
- (a) involved adequate public participation of the people of the State, and that consultations were genuine;
  - (b) engaged clan and tribal communities; and

- (c) that the views of women and youth were independently sought in that process.
- (3) When the State Parliament adopts or amends the State Constitution, the Speaker of the State Parliament must submit the document to the Court of Appeal for certification in accordance with Section 180 of this Constitution.

### *Part 2—Community Constitutions*

#### **4. Preparation of first Constitution for the Communities**

- (1) The first constitution for each Community Government must be prepared in accordance with the State laws required by section 189.
- (2) Clans, tribes, village and church communities and all persons of the Community have a right to participate in the creation of a Community Constitution and to be consulted.
- (3) Community consultations must be undertaken in good faith with the objective of achieving, through procedures determined by them, substantial agreement or consent to a draft constitution.
- (4) When a Community adopts a Community Constitution, the Executive of the Community must submit the document to the Court of Appeal for certification in accordance with Section 180 of this Constitution, with the necessary modifications.

#### **5. Content**

- (1) A Community Constitution must provide for—
  - (a) A Community Government Legislature;
  - (b) A Community Government Executive;
  - (c) A Community Government Public Service

- (d) Appointment, or election by preferential voting system, of members of the Legislature;
- (e) Election of the Executive by preferential voting system;

*Drafter's Note: Paragraphs (c) and (d) have been separated to allow for the alternative election or appointment of members of the legislature, but retain only election of the Executive*

- (f) financial management within the Community governments, consistent with the Federal and State revenue arrangements;
  - (g) for any additional matters relating to the administration of Community governments.
- (2) Community Government institutions and procedures are to be similar in principle and pattern to comparable institutions and procedures in the Federal and State spheres of Government, but adapted as necessary to the particular circumstances and local conditions of the Community.

## **6. Adoption or amendment of a Community Constitution**

- (1) A Community Government Legislature may adopt or amend a Community Constitution with the support of at least three quarters of its members.
- (2) A Bill to adopt or amend a Community Constitution must not be introduced into the Community Government Legislature unless the Chair of the Legislature is satisfied that the constitution making process—
  - (a) involved adequate public participation of the people of the Community, and that consultations were genuine;
  - (b) engaged clan and tribal communities; and
  - (c) that the views of women and youth were independently sought in that process.
- (3) When the Community Government Legislature adopts or amends the Community Constitution, the Chair of the Legislature must submit the document to the Court of



Appeal for certification in accordance with Section 180 of this Constitution, with the necessary modifications.

**SCHEDULE NINE—CODE OF CONDUCT FOR OFFICE HOLDERS**  
*(Chapter 7, Part D)*

*Part A – Conduct of Office Holders*

**1. Application and interpretation of this Code**

- (1) The provisions of this Schedule apply to—
- (a) Any person holding an office listed in Paragraph 1 of Schedule Three;
  - (b) The heads of Solomon Islands diplomatic missions, and mission staff;
  - (c) The Chief Executive Officers and all senior officers of State Owned Enterprises (SOEs);
  - (d) The Mayor and Councillors of Honiara City Council and its senior officers;
  - (e) The Members and senior employees of Community Governments;
  - (f) The Chiefs and Leaders in Community Government; and
  - (g) any other office holder as provided by a Federal law or State Constitution.

*Drafter’s Note: Paragraph 1 has been revised to reflect instructions from the 4<sup>th</sup> Plenary.*

*Further consideration may need to be given to the meaning of “senior”, as used in subparagraphs (c), (d) and (e).*

- (2) The Ombudsman, Leadership and Anti-Corruption Commission—
- (a) must prescribe disclosure forms for the purpose of Part A of this Schedule;
  - (b) may prescribe minimum values below which disclosure is exempt; and
  - (c) may prescribe additional Codes of Conduct to ensure integrity, transparency and freedom from corrupt practices in specific Government organs.
- (3) In this Schedule—

- (a) “*asset*” includes any real or personal property, and any interest in real or personal property;
- (b) “*decision*” includes—
  - (i) the determination of the use, disposition or acquisition of an asset;
  - (ii) the making of a contract or agreement;
  - (iii) the development or enactment of a law; or
  - (iv) the development or implementation of a policy;
- (c) “*employment*” does not include the performance of the functions of the office to which an office holder was elected or appointed;
- (d) “*office holder*” means the person holding an office referred to in subsection (1);
- (e) “*presiding officer*” means the person presiding over a meeting;
- (f) “*Rule*” means a Rule set out in this Code;
- (g) “*spouse*” means a person who—
  - (i) is married to another person of the opposite sex, or
  - (ii) is, and has been for a period of at least one year, living in a *de facto* relationship with another person, and recognised by relatives in custom.

*Drafter’s Note: the change requested by 4<sup>th</sup> Pleanry has been made.*

*However, this is an awkward matter that may require further consideration. The purpose of this definition is to extend the burdens and obligations of reporting and conduct and avoidance of conflict of interest to the life partners of the office holders who are bound by it. That being the purpose, it is best to use a broad definition, sufficient to capture all such partners.*

*By adding the words as instructed, the definition is narrowed. The paradox is that while you bind and burden properly married partners, you will free any same sex or unacknowledged partners from the application of the conduct and conflict rules.*

*While it is well understood and acknowledged that Plenary does not wish to give constitutional status to same sex and informal arrangements, it is nevertheless prudent in this case, to at least acknowledge that, however much such arrangements are discouraged, they do sometimes exist, and need to be brought within the obligations of the law.*

## **2. General duties of office holders**

- (1) Office holders—
  - (a) must treat citizens and other members of the public fairly, honestly, and impartially.
  - (b) must treat each employee or contractor of the Government in a respectful manner; and
  - (c) must respect the responsibility of the Permanent Secretaries to direct and instruct other public officers and contractors.
- (2) Elected office holders must—
  - (a) make themselves readily available and accessible to hear their constituents' opinions and questions on matters of public interest;
  - (b) be prompt and responsive to requests and contacts from constituents; and
  - (c) represent their constituents in a manner that recognises the diverse needs of the people.
- (3) If a constituent consults an elected office holder in an official capacity, the office holder must—
  - (a) endeavour to direct the constituent to the Government organ or the representative of a Government organ best able to respond to the constituent, if it is appropriate to do so given the nature of the constituent's concern;
  - (b) avoid giving advice beyond the office holder's knowledge, or making a commitment that the office holder may be unable to fulfill; and

- (c) avoid making any commitment that exceeds the office holder's authority.

### **3. Confidentiality and discretion**

- (1) If, in the course of official duties, an office holder acquires information about a person that is of a type that would ordinarily be regarded as private and confidential, the office holder must not use or disclose that information except in accordance with law, and—
  - (a) with the consent of that person, or
  - (b) in so far as is necessary to carry out the office holder's official duties.
- (2) If, during a meeting, a body holds a closed discussion of any matter, an office holder present at that discussion must not reveal the details of that discussion, except—
  - (a) in so far as is reasonably necessary to carry out a course of action arising from that discussion, in accordance with a decision of that body; or
  - (b) as specifically authorised by a decision adopted by that body.
- (3) An office holder who receives a document that is confidential must comply with any prescribed requirements for handling or destruction of that document.

### **4. Finances, public property and employment**

- (1) An office holder must not knowingly claim any payment or financial benefit to which the office holder is not entitled.
- (2) An office holder must promptly pay any money that the office holder owes to the Republic, or to any organ of Government.
- (3) An office holder who has in their possession or custody any Government funds or other Government property must—
  - (a) safeguard Government funds and ensure that they are spent only on legally authorized purposes and in legally authorized amounts;

- (b) handle and safeguard Government property with the same degree of care as would a prudent owner, and ensure that it is not lost, destroyed, damaged, misapplied or misused;
- (c) use that property only for purposes associated with the office holder's official duties;
- (d) not allow any other person to use that property, except for purposes associated with the office holder's duties; and

*Drafter's Note: Sub-paragraphs (c) and (d) have been revised as requested by 4<sup>th</sup> Plenary.*

*But it may be useful to consider them further, to provide some allowance for the impracticality of making absolute separation between personal and public duty use of property.*

- (e) voluntarily return that property to the relevant authority, as and when required.

*Drafter's Note: Subparagraph (e) has been revised as requested by 4<sup>th</sup> Plenary, but with additional words suggested at the end for clarification.*

- (4) A full time office holder must not engage in any other employment, professional practice or active management of a business—
  - (a) during ordinary official working hours; or
  - (b) at any other time, if doing so conflicts with the office holder's official duties.

*Drafter's Note: Paragraph (4) revised to give effect to 4<sup>th</sup> Plenary instructions, but with slightly different formulation, which will need to be considered.*

## **5. Gifts**

- (1) An office holder who receives a gift as a representative of, or on behalf of, the Republic or any Government organ, must deliver the gift to the relevant authority.
- (2) An office holder who receives a personal gift when acting in an official capacity, having an apparent value of more than Fifty Dollars, must disclose the gift in accordance with Item 10.

*Drafter's Note: Subparagraph (b) revised as requested by 4<sup>th</sup> Plenary.*

*However, further consideration may be useful. It is difficult to amend the Constitution, and over time, inflation will erode the meaning of any specific dollar figure set out here.*

## **6. Corrupt practices**

- (1) An office holder must not, directly or indirectly, engage in any corrupt practice.
- (2) Without limiting the scope of subsection (1), an office holder must not accept, demand, or request from another person any private monetary or other economic favour, advantage or benefit for the office holder, or for any other person, in exchange for—
  - (a) using their office to make, participate in the making of, influence, or attempt to influence a decision on a matter;
  - (b) influencing or attempting to influence a vote or decision of another office holder; or
  - (c) influencing any public officer administering a service or programme provided by any Government organ.
- (3) An office holder must not—
  - (a) maintain or operate a bank account in a country outside Solomon Islands;

*Drafter's Note: 4<sup>th</sup> Plenary flagged Paragraph (a) for further discussion and expert advice.*

- (b) accept any loan, or loan guarantee, except from—
  - (i) a government of the Federal Democratic Republic or an organ of government; or
  - (ii) a bank, building society, mortgage institution or any other financial institution recognized by law; or

*Drafter's Note: Subparagraph (b) may need further consideration, given the wide range of office holders governed by the Code.*

*Should an employee of a Community Government really be barred from accepting a loan from a parent or sibling to deal with a personal health emergency, or some similar thing that does not involve any risk of corruption?*

*Perhaps there ought to be a further clause (iii) allowing for personal loans or guarantees from close family members, at least in circumstances that the Leadership Commission may set out in a more detailed code.*

- (c) ask for or accept any benefit or property of whatever nature from any person in return for anything to be done or omitted to be done in the performance of the office holder's official functions.

## **7. Use of inside information for private purposes**

- (1) An office holder must not, directly or indirectly—
  - (a) make use of inside information for personal economic advantage or benefit, or
  - (b) reveal inside information to any person if that information could be used for private monetary or other economic advantage or benefit.
- (2) For the purpose of subsection (1), “*inside information*” is information that—
  - (a) the office holder receives or discovers in the course of their work; and
  - (b) is not generally available to the public at the time the office holder makes use of the information, or reveals it to another person.

## **8. Conflicts of interest**

- (1) An office holder must not—
  - (a) be in a position where their personal interest conflicts with the duties and responsibilities of office; or
  - (b) compromise the honesty, impartiality and integrity of their office;
  - (c) compromise the fair exercise of their public duties;
  - (d) use their office for private gain; or



- (e) conduct themselves in any manner that would reasonably—
  - (i) call into question their integrity; or
  - (ii) cause respect for, or confidence in the integrity of, the governance of Solomon Islands to be diminished.
- (2) An office holder must not use their office to make, participate in the making of, influence or attempt to influence a decision on a matter in respect of which the office holder has a conflict of interest.
- (3) If an office holder considers that they have a conflict of interest in respect of a matter to be discussed or voted on at a meeting, the office holder—
  - (a) must declare the conflict of interest and its general nature at the meeting;
  - (b) must immediately leave the meeting or that part of the meeting during which the matter is to be discussed or voted on;
  - (c) must not take part in the discussion or vote on the matter or attempt to influence the discussion or vote on the matter before, during or after the meeting; and
  - (d) must not execute any document in relation to the matter unless specifically directed to do so by the Government organ concerned.
- (4) A person responsible for recording the proceedings of a meeting referred to in subsection (3) must record any office holder's declaration of a conflict of interest and the time when the office holder was absent from the meeting.
- (5) On request of a person at a meeting, the presiding officer may invite any office holder to consider whether they have a conflict of interest in respect of a matter to be discussed or voted on at the meeting.
- (6) For the purposes of this Item, an office holder—
  - (a) has a conflict of interest in respect of a matter if

- (i) their direct or indirect private interest would be, or could reasonably be expected to be, affected by a decision on that matter; and
    - (ii) the Officer has the opportunity to use their office to make, participate in the making of, influence or attempt to influence that decision; but
  - (b) does not have a conflict of interest in respect of a matter if the office holder's direct or indirect private interest in the matter—
    - (i) is the same interest as that of a broad class of citizens or members of the public;
    - (ii) relates to the office holder's compensation or payment of expenses while acting in an official capacity; or
    - (iii) is so remote or insignificant that it cannot reasonably be regarded as likely to influence the office holder in relation to the matter.
- (7) In this Section—
  - (a) “*private interest*” means a monetary or economic interest or an interest to which a monetary value may be attributed; and
  - (b) an office holder's indirect private interest includes any private interest of—
    - (i) the office holder's spouse;
    - (ii) a minor in respect of whom the office holder is a parent, acts in a parental capacity or is a guardian;
    - (iii) an individual, other than an employee of the officer holder, who is financially dependent upon the office holder or upon whom the office holder is financially dependent; and
    - (iv) an entity in which the office holder, alone or in combination with a person described in paragraph (a), (b) or (c), has a direct or indirect controlling interest, or other significant interest.

## **9. Actions of related persons**

- (1) An office holder must—
  - (a) ensure, as far as is within their lawful power, that their spouse and children, and any person for whom they are responsible by custom, including wantok obligations, do not conduct themselves so as to compromise, or be seen to compromise, the office holder's obligations under this Code; and
  - (b) publicly disassociate themselves from any activity or enterprise of any person specified in paragraph (a), and any other associate, that might be expected to give rise to a doubt as to whether an obligation has been compromised.
- (2) An office holder who engages in an act prohibited by Items 6, 7 or 8 through a nominee, trustee, or other agent must be deemed to have engaged in that act personally.

## **10. Declaration of financial interests**

- (1) Each office holder must complete and file the prescribed disclosure form—
  - (a) upon election or appointment to office;
  - (b) at intervals of two years after election or appointment to office;
  - (c) whenever a change occurs in the information most recently reported by the office holder under this Item; and
  - (d) upon leaving office.
- (2) The prescribed disclosure form must require disclosure of at least the following information and may require disclosure of any other information relevant to the issues addressed in this Code—
  - (a) any paid employment held by the office holder and the office holder's spouse at the time of disclosure, and the income from that employment;
  - (b) interests in land or businesses owned by the office holder and the office holder's spouse at the time of disclosure;

- (c) significant investments, contracts or other financial interests of the office holder or office holder's spouse at the time of disclosure;
- (d) any gift described in Item 5 (2) received by the office holder or the office holder's spouse during the office holder's term of office; and
- (e) any loan owed by the office holder or the office holder's spouse, or loan guarantee protecting the office holder or the office holder's spouse, including the identity of the person to whom the money is owed, or by whom the guarantee was given.

*Drafter's Note: paragraph (e) has been revised as requested by the 4<sup>th</sup> Plenary*

- (3) The Ombudsman, Leadership and Anti-Corruption Commission must establish and maintain a Register of declarations made under this Paragraph.

## **11. Complaints**

The Ombudsman, Leadership and Anti-Corruption Commission has authority to receive and investigate complaints alleging that an office holder has failed to comply with this Code of Conduct, or any Code of Conduct contemplated in Item 1 (2)(c).

*Part 2—Removal of Office Holders from office*

**12. Application of this Part**

- (1) This part applies to every office holder except the President.
- (2) An office holder may be removed from office only—
  - (a) on the grounds of incapacity in accordance with Item 13; or
  - (b) for misbehavior, in accordance with Item 14 or 15.
- (3) The provisions of this Schedule are in addition to —
  - (a) any other provisions of this Constitution governing vacancies that occur automatically on the happening of specific events; and
  - (b) any authority set out in this Constitution of a person to dismiss or re-assign an office holder.
- (4) An office holder subject to proceedings under this Part—
  - (a) has the right—
    - (i) to appear and be represented before any investigating or adjudicating body considering removal; and
    - (ii) to adduce evidence, cross examine witnesses, and make submissions; but
  - (b) must not participate in any vote on a motion or other decision.
- (5) The procedure to remove an office holder may be initiated only by—
  - (a) The Ombudsman, Leadership and Anti-Corruption Commission; or
  - (b) The Speaker of the Federal Parliament, in the case of the removal of a member of the Ombudsman, Leadership and Anti-Corruption Commission.

### 13. Removal for incapacity

- (1) Removal of an office holder on the grounds of incapacity is initiated by the appointment of a tribunal to investigate the matter consisting of 3 appropriately qualified medical practitioners—
  - (i) one selected by the office holder, or a personal representative of family member of the office holder;
  - (ii) one selected by the body regulating the medical profession in Solomon Islands; and
  - (iii) one selected by the Solomon Islands Bar Association.

*Drafter's Note: Clause (iii) has been revised as requested by 4<sup>th</sup> Plenary.*

*However, further consideration may be advisable. Why is it best for a medical practitioner to be selected by the Bar Association?*

- (2) When a tribunal has been appointed, the office holder may not perform any official functions until the final resolution of the matter in accordance with this Paragraph.
- (3) A tribunal appointed under this Paragraph must inquire into the matter and report to the Commission, or the Speaker of Parliament, in the case of proceedings initiated by the Speaker.
- (4) If at least 2 of the 3 members of the tribunal concur in their report, the report is conclusive.
- (5) If the report concludes that the office holder—
  - (a) is able to perform their official functions, the office holder may resume exercising the powers of that office upon the report being delivered to the Commission or Speaker, as the case may be;
  - (b) is unable to perform their official functions, but is more likely than not to recover that capability within 4 months or less, the suspension of the office holder's functions under subparagraph (2) continues; or

- (c) is incapable of performing their official functions, and is unlikely to recover that capability within 4 months, the office holder is removed from office upon the report being delivered to the Commission or the Speaker, as the case may be.

*Drafter's Note: 4th Plenary notes seek an explanation of the use of the pronoun "their" in apparent reference to the office holder concerned. Purist grammarians often suggest this is a mistake in number. But many authorities on usage disagree, pointing out that it is quite natural and logical in English to use "they" or "their" in reference to a person who is a member of a named class of people, but whose particular identity is hypothetical, and therefore unknown.*

*For example, on hearing a knock at the door, what do we naturally say?—"Someone is at the door, I wonder who it is and what they want".*

*Or, leaving instructions with someone: I'm going to a meeting. If anyone comes to see me, tell them I'll be back in an hour."*

*No one has ever been heard to say, "Someone is at the door, I wonder what he, she or it wants?" Or, "Tell him or her, I'll be back in an hour".*

*That just isn't natural English.*

*Technically, this is called the "epicene", "indeterminate" or "variable" pronoun and has been recognised as commonly used by Burchfield (The New Fowler's Modern English Usage, 3rd), by Garner (Dictionary of Modern Legal Usage, 2<sup>nd</sup>), and has been endorsed and eloquently explained by Pinker (The Language Instinct).*

*Not only is it a natural English usage, it frees us from the sexist generic masculine "he", or from the awkward (and equally sexist) "he or she", "his or her" "himself or herself".*

- (6) If subparagraph (5)(b) applies—

*Drafter's Note: the 4<sup>th</sup> Plenary instructions called for a different cross-reference, but (5)(b) is the correct reference.*

- (a) the office holder may immediately resume exercising their official functions at any time that 2 of the 3 members of the Tribunal jointly certify that the office holder has sufficiently recovered the capacity to perform those functions; or
- (b) at the end of the time within which the office holder was expected to recover, the Commission or the Speaker, as the case may be, must request a fresh report

from the tribunal and the provisions of this Paragraph apply to that fresh report, but in the case of continued incapacity, the office holder must be removed from office, irrespective of any prospect for recovery at that time.

#### **14. Automatic Removal on conviction and imprisonment**

- (1) If an office holder has been finally convicted of an offence in Solomon Islands and sentenced to a term of imprisonment, that office holder automatically loses that office.
- (2) If a judge or judicial officer, or a member of the Ombudsman, Leadership and Anti-Corruption Commission, has been convicted as specified in subsection (1), the Judicial and Legal Services Commission must declare the office holder removed from office.
- (3) If a member of Parliament, other than the Speaker, has been convicted as specified in subsection (1), the Speaker must declare the office holder removed from office.
- (4) If any other office holder has been convicted as specified in subsection (1), the Ombudsman, Leadership and Anti-Corruption Commission must declare the office holder removed from office.
- (5) A declaration required by this Item must be published in the Gazette.

#### **15. Inquiry and removal from office for other wrongdoing**

- (1) If an office holder has been finally convicted in Solomon Islands or elsewhere of an offence involving dishonesty, abuse of office, physical violence, or rape or other sexual assault, but has not been automatically removed under Paragraph 14, the relevant initiating body under Paragraph 12 (5) must refer a proposal for the removal from office of that office holder under subsection (5).
- (2) If an office holder has been finally convicted in Solomon Islands or elsewhere of any other offence, but has not been automatically removed under Paragraph 14, the relevant initiating body must hold an inquiry under subsection (4) with a view to deciding whether to institute proceedings for removal of that person from office.



- (3) If an office holder is alleged to have been guilty of other conduct that amounts to a significant violation of this Constitution, to gross misconduct, or to conduct that makes that person unfit to hold the office, the relevant initiating body may either—
  - (a) dismiss any report or allegations that it concludes are frivolous, vexatious or otherwise without merit; or
  - (b) hold an inquiry with a view to deciding whether to institute proceedings for removal of that person from office.
- (4) When a procedure under this section has been initiated, the initiating body—
  - (a) must inquire into the allegations against the office holder;
  - (b) must publish a report on the matter; and
  - (c) may attach to its report a proposal that the office holder be removed for misconduct or wrongdoing, including in the proposal the particulars of the grounds for the motion.
- (5) A proposal that an office holder be removed for misconduct or wrongdoing must be referred to the Chief Justice, to be considered by the High Court in a special sitting conducted in accordance with its Rules.
- (6) If the High Court determines—
  - (a) that none of the allegations against an office holder have been substantiated, the office holder remains in office; or
  - (b) that any of the allegations against the office holder have been substantiated, the office holder is immediately removed from office.
- (7) The Chief Justice may establish rules of procedure for the conduct of the High Court proceedings under this Paragraph, but in the absence of any such rules the Court must proceed with the consideration of the proposal for removal, applying normal principles of a fair hearing.

## **16. Supplementary provisions**

- (1) A court that convicts an office holder of any offence must report that fact to the Ombudsman, Leadership and Anti-Corruption Commission, or to the Speaker, as the case may be.
- (2) An office holder who is removed from office under Paragraph 14 of this Schedule is permanently disqualified from holding an office in any sphere of government in the Republic.
- (3) The Court that decides the question of removal of an office holder under Paragraph 15 may disqualify that person from holding any Government office, or particular Government offices, for any length of time the Court decides appropriate, provided that any disqualification under this subsection from all offices must not exceed 10 years.

**SCHEDULE TEN—ELECTORAL COLLEGES**  
(Section 91)

*Drafter's Note: the 4<sup>th</sup> Plenary requested a draft Schedule to set out the framework for State Electoral Colleges, and elsewhere requested a further Schedule for Community Government Electoral Colleges*

*At a minimum, these could be conflated into a single Schedule with two Parts, as illustrated here.*

*Part A: State Electoral Colleges*

*Drafter's Note: The sole function of the State Electoral College appears to be to nominate candidates for President, once every 45 years, when it is the turn of the State to hold the office of President.*

*Prof. Watts suggests that Plenary consider assigning that function to the State Parliament, thus dispensing with the need for a separate State Electoral College.*

*Prof. Ghai suggests allowing each State, through its Constitution, to provide for its own State Electoral College. To give effect to this suggestion would require only a slight insertion of a clause at section 181 (1), and would dispense with the need for this Schedule.*

*In the alternative, Prof. Ghai has set out further, more detailed suggestions below.*

*It is recommended that Plenary considers these options further before drafting any specific proposed provisions.*

***Prof Ghai's note reads:***

***1. General***

*Since the Plenary and consequently the Draft Constitution give high priority to sub-state entities (clans, tribes, communities, etc.), some role should be found for them. So an SEC which represents both the State and Communities would make sense.*

*It could also be prescribed that the SEC should represent key economic and social interests, such as farmers, traders, religious leaders.*

*Since two out of four nominations must be women, there should be ample representation of women in the SEC.*

*It would be useful to prescribe the size of the SEC. Since the States will vary in their population and geography, it may be useful to specify a range—minimum and maximum. As four nominations are to be made, a maximum of 12 and minimum of 8 might be suitable.*

## **2. Mode of appointment**

*It would be simple and reasonable if the legislatures of the State and Communities appointed the SEC. Since the proportion between the State and Communities is likely to vary from State to State, it may not be possible to prescribe the number of members to be appointed by each level of authority. Again, a range (maximum and minimum for each) could be provided. The appointing authorities would have to observe the criteria for membership suggested above.*

*The chair and vice-chair (one a male and the other a female) should be appointed by the State legislature.*

*The Plenary may want to consider a rule that no member of the State or Community legislatures can be a member of the SEC.*

## **3. Powers and Function**

*The primary function is obvious; it is to appoint the SEC. It should be emphasised that the SEC should consider carefully the criteria for nomination specified in the Constitution. It is also clear that the candidates for the Presidency must be long time residents of the State.*

*The SEC should be appointed at least six months before the nominations have to be sent to the Federal Parliament.*

*It would be necessary to instruct the SEC on the precise functions of the President.*

*It is for the Plenary to discuss whether the SEC should be required to advertise the presidential vacancy and invite applications.*

*The nominations by the SEC would go directly to the Speaker of the Federal Parliament.*

*It may be necessary to provide for some procedure to deal with complaints that a nominee is not qualified under the provisions of the Constitution. Another matter for the Plenary to resolve.*

*Members of the SEC would not be full time, but would be entitled to modest allowance for their time.*

*SEC would need some resources, such as transport, etc. which should be provided for by the Federal Government.*

### *Part B: Community Electoral Colleges*

*Drafter's Note: Community electoral Colleges are contemplated at Section 108(2)(b) for the purpose of vetting candidates for election. It is not clear what vetting criteria are intended to be applied. Until the role and function of the CECs is clarified, it is difficult to propose any particular design as being appropriate for them.*

*Unlike State electoral Colleges, the CECs would have a frequent role to play, at every election. Still, it would not seem that they would need to be a permanent body.*

*Unlike State electoral colleges, the CEC's role would have primary local, rather than national implications. In terms of Prof Ghai's analysis, this suggests a simpler approach to composition.*

*Because they perform primarily a local role, there is perhaps a strong argument for leaving their composition to be determined by State Constitutions.*

*It is recommended that Plenary considers these issues further before drafting any specific proposed provisions.*



**SCHEDULE ELEVEN—RECALL OF MEMBERS OF PARLIAMENT**  
*(Section 121)*

*Drafter's Note: the 4<sup>th</sup> Plenary requested a draft Schedule to set out the framework for recall of Members of Parliament.*

*The following is loosely based on a precedent from existing Canadian recall legislation, and is offered for consideration.*

**1. Application for recall petition**

- (1) A registered voter in a Federal Parliament constituency may apply under subsection (2) for a petition for the recall of the Member of the Federal Parliament for that constituency, for any reason set out in section 121.
- (2) An application for a recall petition must be made to the Electoral Commission and contain the following information—
  - (a) the name of the Member of the Federal Parliament;
  - (b) the name and residential address of the applicant;
  - (c) a statement, not exceeding 200 words, setting out the alleged conduct or omission of the Member, and the provision of section 121 that allows for recall for that conduct or omission;
  - (d) the applicant's oath or affirmation, stating that the applicant is not disqualified under the Electoral Act from making the application; and
  - (e) any other information that may be required under the Electoral Act.
- (3) An application for a recall petition may not be made during the 18 months immediately following the date of the most recent election of the Member of the Federal Parliament.

**2. Issue of recall petition**

- (1) If satisfied that the requirements of Paragraph 1 have been met, and that the application alleges facts that fall within the grounds for recall allowed under section 121, the Electoral Commission must—

- (a) notify the applicant, the Member of the Federal in relation to whom the petition is to be issued, and the Speaker of the Federal Parliament, that the application has been approved in principle, and
  - (b) issue the petition in the form required by the Electoral Act, within 7 days after giving the notice required by sub-paragraph (a).
- (2) At any time before the electoral Commission makes a final determination under Paragraph 5 (1), the Member of the Federal Parliament may apply to the High Court for an order cancelling the issue of a petition by the Electoral Commission, only on the grounds that—
- (a) the facts alleged in the application are untrue; or
  - (b) the alleged facts, if true, do not fall within the grounds for recall set out in Section 121.
- (3) A recall petition takes effect only if—
- (a) it is signed by the required number of registered voters within the period of 60 days immediately following the date on which it is issued by the Electoral Commission;
  - (b) it has been returned to the Electoral Commission within the time required by sub-paragraph (a); and
  - (c) the Electoral Commission confirms that all of the requirements of this Schedule and the Electoral Act have been satisfied.

*Drafter's Note: an alternative approach is to have the Electoral Commission consider the petition on its substantive merits once it has been returned with the required number of signatures.*

*In that case, Clause (2) would be unnecessary, and Clause (3) would have further provisions concerning the substantive review by the EC.*

*The advantage to the approach set out in the draft above is that the substantive factual and legal merits become an issue only if the MP contests the allegations, and if the issues are contested, they will be tried and resolved in a court at first instance.*



### **3. Signing a recall petition**

- (1) A recall petition may be signed only during the period set out in Paragraph 2 (2)(a).
- (2) To take effect, a recall petition must be signed by more than 40% of the total number of individuals who are entitled to sign the recall petition under subparagraph (3).

*Drafter's Note: instead of using a fixed percentage as the standard for a successful petition, Subsection (6) could require that the percentage of eligible voters signing is higher than the percentage of the vote that the Member received in the most recent election.*

- (3) In order to sign a recall petition, a person—
  - (a) must be a registered voter on the date of signing the petition; and
  - (b) must have been a registered voter for the constituency for which the Member of the Federal Parliament was most recently elected, at the time of that election.
- (4) An person may sign any one recall petition only once.
- (5) Every signature on a recall petition must be accompanied by the residential address of the individual who signed, and must be witnessed by the individual who canvassed the signature.
- (6) A person must not, directly or indirectly, demand, offer give or accept any inducement for—
  - (a) signing a recall petition; or
  - (b) canvassing for signatures on a recall petition.

### **4. Time limit for determination**

When a recall petition is submitted to the Electoral Commission, the Commission must determine within 42 days, and in accordance with any requirements of the Electoral Act, whether the petition meets the requirements of the Schedule.

## **5. Result of successful recall petition**

- (1) If the Electoral Commission determines that the recall petition satisfies all the requirements of this Schedule, the Member of the Federal Parliament ceases to hold office and the seat of the Member becomes vacant.
- (2) The Electoral Commission must report to the Member of Parliament, and to the Speaker of the Federal Parliament, as soon as possible after making a determination under subparagraph (1).

## **SCHEDULE TWELVE—FEDERALISM IMPLEMENTATION COMMISSION**

*Drafter’s Note: The Plenary Decisions Paper in relation to Section 195, proposes the establishment of a Federalism Implementation Commission to oversee the implementation of the Federal System of Government in terms of the Federal Constitution during the 10 years transitional period.*

*It requests the appropriate provisions for such a commission with respect to its establishment, composition, powers and functions and other matters to make this institution workable be drafted.*

*To avoid the further proliferation of commissions, we propose instead that this function be assigned to the Prime Minister and Premiers Conference, either alone, or in an annual joint meeting with the Congress of States.*

*If the PM and Premiers Conference were to take on the task alone, this could be achieved by the addition of the following paragraph (j) to Section 70(1):*

“(j) oversight of the implementation of the Federal System of Government during the 10 year transitional period immediately after the Constitution comes into force, including the issuing of an annual public report on this subject during that period.”

*Alternatively, since this is a transitional matter, it could be catered for in a new Part of the Transitional Arrangements in Schedule 14.*

*This could be easily achieved, without requiring either a new Commission under Chapter 12, or a new Schedule.*

*A simple precedent for the composition, functions and responsibilities can be found in the transitional Schedule of the Kenya constitution, which provides something along the following lines. I have modified the precedent to adapt it to this Constitution*

### **1. Establishment of Commission**

- (1) There is established the Commission for Implementation of Federalism, which comprises 11 persons, each to be appointed by the President as follows:—
  - (a) a Chairperson, to be appointed on the recommendation of the Federal Cabinet;

- (b) one person from each State, to be appointed on the recommendation of the State Cabinet; and
  - (c) one person from Honiara City, to be appointed on the recommendation of the Mayor of Honiara City.
- (2) Each member of the Commission for Implementation of Federalism must be a citizen of Solomon Islands, with experience in government, public administration, economics, law or human rights.
  - (3) Sections 196, 197, 199 (1), (2), (3), (9) and (10), 200 and 201 each applies to the Commission for Implementation of Federalism as it would if the Commission were an Independent Commission under Chapter 12.
  - (4) The Federal Government must ensure that the Commission for Implementation of Federalism has adequate funds and resources to perform its functions.

## **2. Commission functions and accountability**

- (1) The Commission for Implementation of Federalism serves to ensure the development of federalism in the Republic in accord with the letter and spirit of this Constitution.
- (2) Specifically, the Commission for Implementation of Federalism is responsible for—
  - (a) monitoring the implementation of this Constitution, the progress of transition and the establishment of State and Community Governments;
  - (b) facilitating and overseeing the development of legislation and administrative procedures required to implement this Constitution;
  - (c) co-ordinating with the responsible Federal Cabinet member in preparing the Federal legislation required to implement this Constitution;
  - (d) at the request of any State Cabinet, facilitating the preparation of State or Community constitutions and legislation required to implement this Constitution;

- (e) at the request of any Independent Commission or Independent Office, facilitating the establishment and implementation of that Commission or Office;
  - (f) identifying, analysing and reporting on any impediment to the development of federalism in the Republic or to the implementation of this Constitution, and making any recommendations the Commission considers appropriate; and
  - (g) so far as practicable, facilitating the conciliation of any disputes between or among organs of government in any sphere arising from the implementation of this Constitution.
- (3) The Commission for Implementation of Federalism is accountable to the The Prime Minister and Premiers Conference convened under section 70, and—
- (a) must issue an annual report on the implementation of federalism to—
    - (i) The Prime Minister and Premiers Conference convened under section 70; and
    - (ii) The Congress of States;
    - (iii) the Federal Parliament;
    - (iv) each State Parliament; and
    - (v) each Community Government Legislature.

### **3. Tenure of the Commission**

- (1) The Commission for Implementation of Federalism shall stand dissolved on the 10<sup>th</sup> anniversary of the adoption of this Constitution unless extended under subsection (2).
- (2) A unanimous resolution of the Prime Minister and Premiers Conference may extend the tenure of the Commission for Implementation of Federalism for no more than 5 years at a time.

**SCHEDULE THIRTEEN—TRANSITIONAL ARRANGEMENTS**  
*(Section 248)*

*Part A—General Provisions*

**1. Interpretation**

In this Schedule—

“*former Constitution*” means the Constitution set out in the Schedule to The Solomon Islands Independence Order 1978;

“*effective date*” means the date on which this Constitution took effect.

**2. Transition Principles**

- (1) Governemnts within each sphere, and all organs of those governments, and persons involved in effecting a transition under this Constitution must—
  - (a) act diligently and in good faith;
  - (b) as far as is practicable ensure that the process is seamless and undertaken with minimal disruption; and
  - (c) ensure that the transition process is at a pace according to each State’s needs, capacities and preferred timetable.
- (2) Each State has the right to structure its own transition process within a preferred timetable, within 10 years after the effective date, according to its needs and capacities.
- (3) The assignment of jurisdiction and power under this Constitution to each State Government must be carried out in accordance with a transitional arrangement agreed to between the State and the Federal Government.
- (4) The Federal Government and each State Government must continue to perform their functions and exercise jurisdiction as they did under the laws of the former Constitution until—
  - (a) the coming into effect of a State Constitution; and

- (b) the assignment of powers in accordance with subsection (3).
- (5) Any legislation devolved by Devolution Order to Provincial Governments by legislation under the previous Constitution or law, including any amendment or repeal and re-enactment of that legislation and any action taken under any Devolution Order, is regarded as having been done under this clause.

*Part B— President and Parliament*

**3. The President**

- (1) The Governor General of Solomon Islands in office immediately before the effective date becomes the President under this Constitution as from that date, and is entitled to serve until the date on which the first person elected President under Section 89 assumes office.
- (2) The Speaker of the Federal Parliament must determine the date of the first election of a President under section 89, which date must be as close as reasonably practicable to the date on which the Governor General's term would have expired under the former Constitution.
- (3) The authority of the President holding office under this section must be exercised in compliance with this Constitution and the law, and in a spirit and manner consistent with the principles of democracy and other values of this Constitution.

**4. Parliament**

- (1) The 50 seats in the Federal Parliament referred to in section 120(1)(a) are to be allocated in accordance with the distribution set out, immediately before the Effective Date, in section 3 of the National Parliament (Electoral Provisions) Act Cap 87.

*Drafter's Note: Consideration and instructions needed on the question whether section 3 of Cap 87 may later be amended by ordinary federal legislation, or whether the distribution is constitutionally frozen as per that Act at the Effective Date.*

- (2) The National Parliament, as constituted under the former Constitution immediately before the Effective date continues as the Federal Parliament under this Constitution,

for the unexpired portion of its maximum term under the former Constitution, unless dissolved earlier in accordance with Chapter 8.

- (3) Anyone who was a member or office-bearer of the National Parliament under the former Constitution immediately before the effective date continues to hold office as a member or office bearer of the Federal Parliament under this Constitution.
- (4) The standing orders of the National Parliament in force immediately before the effective date continue to apply to the Federal Parliament until Parliament amends or replaces them, but must be applied with any necessary modifications to bring them into conformity, and to be consistent, with this Constitution.
- (5) The Standing Committees of Parliament, as constituted at the effective date continue as committees of the Federal Parliament under this Constitution until Parliament resolves to change or replace them.
- (6) Any unfinished business before the National Parliament when this Constitution took effect must be proceeded with in terms of this Constitution.

*Part C—Continuation of Office Holders*

**5. The Executive**

- (1) The Prime Minister and each other Minister holding office immediately before the Effective date continue to hold their respective offices as from that date, subject to this Constitution.
- (2) The authority of the Prime Minister and each other Minister holding office under this section must be exercised in compliance with this Constitution and the law, and in a spirit and manner consistent with the principles of democracy and other values of this Constitution.

**6. The Judiciary**

- (1) Every court existing when this Constitution took effect continues to function and to exercise jurisdiction in terms of the legislation applicable to it.



- (2) All of the judges, magistrates and other judicial officers holding office in Solomon Islands immediately before the effective date continue to hold their respective offices as from that date, subject to any rationalization of the courts required to give full effect to this Constitution.
- (3) The Rules of Court applying to the proceedings of the High Court and the Court of Appeal and any other court immediately before the effective date continue to apply to those courts subject to—
  - (a) any amendment or repeal; and
  - (b) any modifications necessary to bring them into conformity and consistency with this Constitution.
- (4) As soon as is practical after this Constitution takes effect all courts, including their structure, composition, functioning and jurisdiction and all relevant legislation must be rationalised with a view to establishing a judicial system suited to the requirements of this Constitution.
- (5) The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial and Legal Services Commission, is responsible for managing and carrying out the rationalisation envisaged in subsection (4).
- (6) The authority of judges, magistrates and other judicial officers holding office under this section must be exercised in compliance with this Constitution and the law, and in a spirit and manner consistent with the principles of democracy and other values of this Constitution.

## **7. State Governments**

- (1) Anyone who was a member or office bearer of a Provincial Assembly immediately before the effective date continues as a member or office bearer of the State Parliament under this Constitution, which must operate and remain subject to the Provincial Government Act 1997 and relevant laws until a State Constitution comes into effect.

- (2) Anyone who was Premier, or a member of the Executive of a Province, immediately before the effective date continues to hold the parallel office under this Constitution, and must function in terms of the Provincial Government Act 1997 and relevant laws until a State Constitution comes into effect.
- (3) All rights, duties or obligations of a Provincial Government subsisting immediately before the effective date continue as rights, duties and obligations of the State Government under this Constitution.

## **8. Community Governments**

- (1) Any local government in existence immediately before the effective date continues under this Constitution and any relevant law, until re-structured in terms of the applicable State Constitution and State laws.
- (2) The authority of local government structures continued under this section must be exercised in compliance with this Constitution and the law, and in a spirit and manner consistent with the principles of democracy and other values of this Constitution.

## **9. The public service**

- (1) Unless this Schedule provides otherwise, a person who held or was acting in an office within the public service immediately before the effective date continues to hold or act in that office under this Constitution for the unexpired period, if any, of the term of that office.
- (2) The provisions of this section do not affect the powers conferred on any person or authority under this Constitution to abolish offices or remove persons from an office contemplated in subsection (1).
- (3) If, before the effective date, a person had vacated an office, and that office is retained or established under this Constitution, the person may, if qualified, again be appointed, elected, or otherwise selected to hold that office in accordance with the provisions of this Constitution, except to the extent that this Constitution expressly provides otherwise.

- (4) The provisions of this Constitution prevail to the extent of any conflict between—
- (a) a law that was in effect immediately before the effective date that assigns responsibility for that matter to a particular Government organ or public officer; and
  - (b) a provision of this Constitution that assigns responsibility for that matter to a different Government organ or public officer.
- (5) When any department, public office or an employee of the Federal Public Service becomes transferred or seconded to a State, the employee becomes an employee of the State Public Service.

*Subparagraph (5) has been revised as requested by the 4<sup>th</sup> Plenary*

- (6) Any employee of the Federal Public Service who is not retained in the Federal Public Service, or transferred or seconded to some other office of equal employment in the public service of the Republic, is entitled to receive redundancy compensation from the Federal Government under a federal law.
- (7) Any employee of the Federal Public Service who is retained in the Federal Public Service continues to have all existing and accruing rights and is entitled to retire from office at the time, and on the pension or retiring allowance which would be permitted if the transfer or secondment was a continuation of the employee's service.
- (8) The Federal Government must pay any existing accrued right on the secondment of an employee of the Federal Public Service to a State.
- (9) The State Government must pay the Federal Government a contribution of any such accrued right contemplated in subsection (8), to be calculated on the proportion, which the seconded employee's term of service with the State bears to that employee's whole term of service.
- (10) For the purpose of calculation of salary under subsection (9) the salary paid is the salary of the public employee as at the date of transfer or secondment.

- (11) The administration of the Public Service, Police Force and Correctional Service referred to in Chapter XIII of the former Constitution must continue to function in terms of that Chapter and the legislation applicable to it, subject to –
  - (a) any amendment or repeal of that legislation; and
  - (b) such modifications as are necessary to bring them into conformity and to be consistent with this Constitution.
- (12) Any investigation, referral or proceeding instituted in accordance with the provisions of Chapter VIII of the former Constitution and current immediately before the effective date must be disposed of as if this Constitution had not been enacted, unless the interests of justice requires otherwise.
- (13) As soon as is practicable after the effective date, the Police Force and Correctional Service, including their structure, composition, functioning and jurisdiction and all relevant legislation shall be rationalised with a view to establishing a Police Force and Correctional Service suited the requirements of this Constitution.

#### **10. Succession of institutions, offices, assets and liabilities**

- (1) An office or institution established under this Constitution is the legal successor of the corresponding office or institution, existing immediately before the effective date, whether known by the same or a new name.
- (2) All assets owned by the Federal Government within a State that fall within a functional area in List 2, 4 or 5 of Schedule 5 remain in the ownership and control of the Federal Government and its relevant organs to be held by the Federal Government on behalf of a State Government pending their establishment and subsequent assignment.
- (3) On the effective date, the Federal Government must transfer to the States the public ownership held under custodianship of the National Government in all—
  - (a) public properties and institutions that promote and provide health services, education, law enforcement and public works; and

- (b) Land Titles held by the Commissioner of Lands in the States, in accordance with Chapter 4.

*Drafter's Note: Subsection (3)(a) should be re-considered and revised to allow for division of assets in a manner that recognises the concurrent Federal and State responsibilities.*

*The 4<sup>th</sup> Plenary agreed with this in principle, but flagged it for detailed consideration later.*

- (4) A Constitutional Institution established in terms of the former Constitution continues to function in terms of the former Constitution and any legislation applicable to it, and anyone holding office as a commission member, the Auditor-General, the Public-Solicitor, the Attorney-General, Director of Public Prosecutions, Ombudsman and any constitutional officer appointed by the Governor-General when this Constitution takes effect continues to hold office in terms of the former Constitution and legislation applicable to that office, subject to—
- (a) any amendment or repeal of that legislation or office; and
- (b) such modifications as are necessary to bring them into conformity and consistency with this Constitution.

## **11. Pensions, gratuities and other benefits**

The law applicable to pensions in respect of holders of public offices immediately before the effective date is either the law that was in force at the date on which those benefits were granted, or any law in force at a later date that is not less favourable to the person.

### *Part D—Rights, laws and judicial proceedings*

## **12. Preservations of rights and obligations**

- (1) Except to the extent that this Constitution expressly provides otherwise, all rights and obligations, however arising, of the Republic and subsisting immediately before the effective date continue as rights and obligations of the Republic under this Constitution.

- (2) Any permits, licences, rights or similar undertakings of the Republic issued to any person, and in force immediately before the effective date, continue in the same terms from that date.

### **13. Preservation of laws**

- (1) All law in force immediately before the effective date continues in force as from that date, subject to subsection (2), unless repealed in Schedule 11.
- (2) All law continuing in force as from the effective date is subject to—
  - (a) this Constitution, and must be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution; and
  - (b) any later amendment or repeal.

### **14. Judicial proceedings and other pending matters**

- (1) Unless otherwise provided under this Constitution, all judicial proceedings pending before any court immediately before the effective date must continue to be heard and determined by the same court, as if this Constitution had not been adopted, except to the extent that the interests of justice require otherwise.
- (2) Any judgment or order of a court given or made before the effective date, in so far as it has not been fully executed or enforced, may be executed or enforced on or after that date.
- (3) Any court rules in force immediately before the effective date remain in force under this Constitution, subject to any later variation made by the authority that issued those rules, but any such rules may be replaced by the relevant Rules Committee established under Section 166.
- (4) All proceedings pending before any tribunal or commission immediately before the effective date must continue to be heard and determined by the same tribunal or commission.

- (5) Any decision of a tribunal or commission issued before the effective date in so far as it has not been fully executed or enforced, may be executed or enforced on or after that date as if it had been made under this Constitution.

*Part F- Oaths of Allegiance*

**15. Oath of allegiance to this Constitution**

On the Effective date, the President and any Officer of the Republic or other person who had previously taken and subscribed an oath or affirmation of office under any former Constitution or law, and who holds that office on that date, is not required to take and subscribe the comparable oath or affirmation under this Constitution, as set out in Schedule 2.

**SCHEDULE FOURTEEN—REPEAL OF LAWS**  
*(Section 187)*

**1. Repeal of all former constitutions**

Any law, under whatever style or title, previously in force as a national constitution within the territory of Solomon Islands is repealed.

**2. Repeal of specific laws**

The following laws are repealed, subject to Schedule Ten:

No. 783 of 1978 The Solomon Islands Independence Order 1978

No. 2 of 2001 the Constitutional (Amendment) Act 2001)

No. 8 of 2000 the Amnesty Act 2000

The Facilitation of International Assistance Act 2003