



**SOLOMON ISLANDS
GOVERNMENT**

The cover features the national flag of the Solomon Islands, which consists of a blue upper triangle with five white stars and a green lower triangle separated by a yellow diagonal band. The text is overlaid on this background.

**1ST 2009 DRAFT
FEDERAL CONSTITUTION
OF
SOLOMON ISLANDS**

26 June 2009

Amended and Produced By:

**The Solomon Islands National Constitutional
Congress**

&

**The Eminent Persons Advisory Council
Honiara, Solomon Islands**

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Office of the Prime Minister and Cabinet**

**1st 2009 DRAFT FEDERAL CONSTITUTION OF
SOLOMON ISLANDS**

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PREAMBLE

God Creator, Sovereign, Supreme and Almighty, accepting your grand design for these archipelagic isles and existence in social human habitation of tradition, clans and tribes;

We the people of Solomon Islands, Realising the existing federalism of our original social order;

Experiencing the incompatibility of our autonomous federalism within the colonial gift of unitary system of government for political independence;

Departing from that Independence Order;

Searching for our original roots to formulate our home grown order for a federation of nations;

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

Mindful of our diversity but conscious of our common destiny and solidarity;

Proud in the maintenance of our identity, enabling us to renew our freedom, autonomy and customs;

We the citizens of Solomon Island, now with the guidance and blessings of the Creator and our worthy traditional heritage, commit this Federation for Solomon Islands and by the Divine help;

- (a) **To uphold Christian and similar moral** and spiritual principles, our worthy customs and tradition;
- (b) **To provide autonomous** arrangements for the governance of the people;
- (c) **To recognize the sovereignty** of the people;
- (d) **To recognize the autonomy** and interdependence of lineages, clans, tribes or communities;
- (e) **To govern through democracy,** accountability, equality and social justice
- (f) **To be mindful that Solomon Islands** will evolve to reflect a changing world and local

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

- (g) **To protect land**, environment and our cultural identity for the present and future generations
- (h) **To strive to eliminate** universal problems of poverty, illiteracy, corruption, pollution, unemployment, overpopulation and other social ills
- (i) **To meet the obligations** of citizens under this Constitution with dignity and integrity

We the people and citizens of Solomon Islands - Acting under the authority of our traditional clan and tribal system and leadership,

Do now therefore declare,

That we having resolved to enact a Constitution for the Federal Republic of Solomon Islands;

And acting with the guidance of Almighty God, through the decision of our Members of National Parliament on this _____ day of _____ 2009/2010,

Following consultation with the people through our Constitutional Congress, the Eminent Persons Advisory Committee, Provincial Feedback and National Convention,

Hereby establish, adopt and give to ourselves this Constitution—

To come into effect in the following manner:-

- (a) On the day following the day on which this Constitution is endorsed by the Head of State, acting with and in accordance with the advice of Cabinet, shall come into operation, together with such other provisions as are necessary to enable the first general election of the President and members of the Federal Parliament take place;
- (b) On the fixed for the return of the writs in the first general election of the President and members of the Federal Parliament, the remainder of this Constitution shall come into operation

GOD BLESS SOLOMON ISLANDS

CHAPTER 1

FOUNDATION PROVISIONS

1. **Foundation of the Republic-** Solomon Islands is a **Democratic Federal** Republic based upon the principles of:
 - (a) **Supremacy and sovereignty of Almighty God**
 - (b) Union of States and our communities.
Federation of States and our Communities
 - (c) Strength of our worthy customs and traditions.
 - (d) Principle that government should operate as locally and autonomously as circumstances allow. **Government operating as locally as circumstances allow.**
 - (e) Supremacy of the constitution and the rule of law; and
 - (f) Advancement of **fundamental** rights, freedoms **and other rights.**
 - (g) **The promotion of unity, peace and security.**
 - (h) **Adversarial and consensual democracy.**
 - (i) **The promotion of unity, peace and security.**

2. **The promotion of **unity, peace and security**** – No military organization may be created or operate within the Republic including the formation and operation of paramilitary forces and militia except in accordance with laws made for the purpose of preserving the peace and security of Solomon Islands.

3A. Security of the Republic –

- (a) **Except in accordance with laws made for the purpose of preserving the unity, peace and security of Solomon Islands, the Republic may when necessary and with the concurrence of the majority of the States establish appropriate security organizations.**

- (c) **Such security organizations shall comprise disciplined security forces, police and law enforcement agencies or agents as enacted by federal law, specifying the formation of complementary security establishments and the equal representation of Solomon Islanders in such organisations.**

3. Sovereignty of the Republic

The sovereignty of the Republic is subject only to those international obligations **and agreements** applying to Solomon Islands as at the commencement of this Constitution, or which are later freely accepted by the Federal Government in accordance with this Constitution and international practice.

4. Capital of the Republic

Until determined otherwise, Honiara City **on Guadalcanal** is the Capital and seat of the Federal Government **the boundaries of which are specified in Schedule 4.**

5. Languages - (1) The official language of Solomon Islands is English, but it is recognized that Pijin is in common national usage. / (1) English shall be the official language of the Republic. Pijin and other languages will be used where appropriate.

(2) All indigenous languages of Solomon Islands are equally respected. / **(2) All languages of Solomon Islands shall be equally respected.**

6. Supremacy of the Constitution - (1) This Constitution is the supreme law of Solomon Islands. (Endorsed)

(2) Any law inconsistent with this Constitution is void and of no effect to the extent of the inconsistency. **(Endorsed)**

(3) The validity, legality or procedure of enactment or promulgation of this Constitution is not subject to challenge by any court or official organ of the Republic. **(Endorsed)**

7. Interpretation of the Constitution

(1) This Constitution shall be interpreted so as to –

(a) have due regard to the preamble and foundation principles;

(b) promote the Rights and Freedoms and the rule of the law; (endorsed)

(c) permit the creative development of a body of law relevant to Solomon Islands; (endorsed)

(d) avoid technicalities which defeat the purpose of the Constitution; and (endorsed)

(e) have regard to the ethnic, cultural and linguistic diversity of Solomon Islands. **(endorsed)**

(2) The court, person or authority interpreting this Constitution may refer to any relevant matter or materials that will assist in the purposive interpretation of the Constitution, and shall take into account the still-developing constitutional framework of the Republic.

8. Defence of the Constitution – (1) Any person **or group of persons** who –

(a) by violence, threats, or other unlawful means :

(i) suspends or abrogates this Constitution or who purports or attempts to do any such act; or

(ii) attempts to establish a system of government contrary to this Constitution; or

(iii) interferes in the conduct of any lawful government or organ of the Republic; or

(iv) organises violence against persons or properties which may cause fear to the general public; or

(v) promotes feelings of hostility between different ethnic groups or classes of citizens; or

(b) organises or otherwise partakes in any informal armed group **or unofficial militia force** contrary to law; or

(c) aids and abets any person in conduct prescribed in this sub-section, - commits an offence under the Constitution that may be punishable by **applicable** law.

(2) No law may grant persons amnesty or immunity from prosecution in regard to any offence committed under subsection (1).

(3) A person convicted of an offence under this section shall not be eligible for election or appointment to any public office.

9. Laws of Solomon Islands – (1) The laws of Solomon Islands comprise –

(a) this Constitution

(b) State Constitutions;

(c) Acts and subsidiary legislation of the Federal Parliament;

- (d) Acts and subsidiary legislation of the State legislatures and any other legislative body in accordance with the Constitution;
 - (e) Acts of the Parliament of the United Kingdom of general application as at 7 July 1978;
 - (f) Customary law;
 - (g) the principles and rules of law known as the common law and equity, and the rules of law as they may be applied by the Courts of Solomon Islands; and
 - (h) customary international law, international conventions, treaties and agreements applicable to Solomon Islands so far as they are incorporated into domestic law after this constitution has come into effect;
- (2) Customary law shall not apply to the extent that it is inconsistent with this Constitution or any legislative enactment;
- (3) Customary law shall be applied where appropriate to the circumstances, unless a Court determines that it is in the interests of substantive fairness and justice that the common law and equity shall prevail.
- (4) No Act of the Parliament of the United Kingdom of general application passed after 7 July 1978 shall extend to Solomon Islands as part of its law.

CHAPTER TWO THE SOCIAL CHARTER BETWEEN THE REPUBLIC AND THE PEOPLE

10. Duties of the Republic – The Republic should create the conditions for unity, peace, order and good governance and in particular should:

- (a) uphold the Constitution and foster a strong and sustainable federation and sense of nationhood;
- (b) support governance carried out at the most appropriate level including clan and tribal village communities, church and other local communities;
- (c) protect the customs of the clan and tribal communities, including rights of customary ownership of land and natural resources and their customary and intellectual properties;
- (d) recognise its responsibility to future generations in safeguarding the environment and the

biodiversity of Solomon Islands, and encouraging sustainable resource utilisation and management;

- (e) foster conditions for stability, peace, and the orderly conduct of daily life and relations between Solomon Islands communities;
- (f) promote equitable education, health and economic development;
- (g) uphold fundamental Rights and Freedoms;
- (h) promote the culture of democracy and an appreciation of the spirit of citizenship;
- (i) ensure open and transparent government at all levels and the accountability of all government officials and public authorities and prevent corruption in all its forms;
- (j) ensure ready access for all people to formal and traditional institutions of justice;
- (k) promote participation in public affairs, with particular emphasis on the involvement of women, youth and disabled persons in the life of the Republic; and
- (l) remove unauthorised firearms from Solomon Islands.

11. Duties of Citizens of Solomon Islands - As part of democratic participation and reciprocity the people and residents of Solomon Islands should:

- (a) respect the Constitution and its values;
- (b) uphold the laws of Solomon Islands including the fundamental Rights and Freedoms(**and other rights**) for all;
- (c) **respect and** uphold the **genuine and worthy** local customs and cultures;
- (d) respect and live in harmony with others;
- (e) promote **and protect natural** family life;
- (f) protect public property from waste and misuse;
- (g) **respect and** protect the environment and conserve natural resources;
- (h) co-operate with public agencies for the maintenance of law and order;
- (i) refrain from conducting, assisting or condoning acts of corruption;

(j) hold public officials and authorities to appropriately account for the fair and lawful conduct of government.

(k) uphold and respect Christian ethics, principles and values

12. Non-justiciability – (1) The provisions of this Chapter are non-justiciable, except to the extent that they are the subject of other provisions in this Constitution or other law.

CHAPTER THREE

CUSTOMARY LAND, RESOURCES AND PROPERTY RIGHTS *(Date discussed: 13/05/09)*

13. General protection of rights and guarantee of fair process - The customary rights protected in this Chapter may only be abrogated by free and informed consent, by valid customary processes, or according to a law passed for this purpose that provides for compensation or other protection and fair process according to this Chapter.

14. Rights of ownership and control of customary land and resources

(1) The rights of indigenous tribal/clan in Solomon Island to own, develop, control and use their customary lands including the total environment of their lands, air, waters, coastal areas, minerals and other resources which they customarily own or otherwise occupy or use may in accordance with valid customary practices not be abrogated without their consent or by other lawful process specifically authorised by statute and subject to this Constitution.

(2) This right includes an obligation on the Republic and States to protect through laws and other measures the prevention of any unauthorised intrusion upon or the use of customary land or resources of customary land or any other interference with, alienation of or encroachment upon these rights.

15. Right to control development of customary lands and resources

(1) Indigenous Solomon Islanders have the right to decide their own priorities for the development, use or exploitation of their customary lands and resources as it affects their lives, beliefs, institutions and spiritual well-being.

(2) Every development of customary land or exploitation of resources must have the customary land and resource owners free and informed consent prior to the approval or implementation of any project affecting their lands and other resources, particularly in connection with the development, utilisation or exploitation of forests, minerals, water and other natural resources.

(3) Any public authority, body or person seeking to develop customary land or resources must ensure that, whenever appropriate, studies are carried out, in cooperation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact of the planned development or exploitative activity and the findings of an impact study must be taken into account in considering a scheme of development or exploitative activity and if approved must be criteria in the implementation of the development or activity.

(4) The improvement of the conditions of life, work, levels of health and education of the customary owners concerned, with their participation and co-operation, must be a matter of priority in plans or as a condition precedent on the giving of consent for the overall economic development of their customary lands and the exploitation of resources.

(5) Customary land and resource owners are entitled to receive a just and fair return from the financial and economic benefits of the development, utilisation or exploitation of their resources and fair compensation for measures taken to mitigate adverse environmental, economic, social, cultural and spiritual impacts.

16. Right to restitution – Indigenous Solomon Islanders have the right by due legal process to the restitution of lands and resources, which they have customarily owned or otherwise occupied or used, and which have been unjustly confiscated, occupied, used or damaged. Where this is not possible they have the right to just and fair compensation.

17. Right to the conservation and protection of customary lands and resources –

Indigenous Solomon Islanders have the right to the conservation, restoration and protection of the total environment and the productive capacity of their customary lands and resources.

18. Retention of ownership, control and protection of cultural and intellectual property - Indigenous Solomon Islanders retain the full ownership, possession, control and

protection of their cultural and intellectual property subject to law.

19. Preservation of custom laws and traditions - The legal effect is retained of custom laws, traditions, land tenure systems and institutions for the regulation of clan and tribal village societies, the development and management of customary land and resources and the right for owners to maintain and strengthen their distinctive spiritual and material relationship, and in particular the collective aspect of that relationship with their customary lands and resources, until changed according to the relevant customary law and practice, or by other lawful means.

20. Right against enforced removal from customary land

- (1) No customary landowner may be removed from their lands without consent, unless under provisions authorised by law and subject to full compensation or appropriate relocation and by fair process.
- (2) If the grounds of removal cease to exist, the previous customary landowners have the first right of refusal in any disposal of their former lands, subject to law.

CHAPTER FOUR
FUNDAMENTAL RIGHTS, FREEDOMS AND OTHER
RIGHTS *(Date discussed 10/06/09)*

Part 1
General Provisions

21. Rights and Freedoms are affirmed

- (1) The Rights and Freedoms of people and communities are affirmed and protected by this Constitution, and
 - (a) apply to all laws and bind -
 - (i) all branches and levels of government; and
 - (ii) all persons performing the functions of any public authority or government office; and
 - (iii) all other persons and bodies if, and to the extent that it is applicable taking into account the nature of the right and the nature of the duty imposed by the right; and
 - (b) include the rights of clans and tribal village communities to maintain and develop laws or customary practices whereby they –

- (i) determine the **behavior, conduct and responsibilities** of individuals within their communities;
- (ii) promote, develop and maintain their institutional structures and their distinctive customs, traditions, procedures and practices;
- (iii) determine the methods customarily practised by clan or tribal communities for dealing with offences or breaches of custom.

(2) The Rights and Freedoms in this Constitution shall be subject only to such reasonable limitations found in law or custom as may be demonstrably justifiable in a free and democratic society, taking account of the objectives of this Constitution, the cultures in Solomon Islands society and the state of development of the country.

(3) Any law and any action taken pursuant to a law may interpret the application of a Right and Freedom having regard to the collective right and responsibilities of an individual in his or her traditional community.

(4) **The fundamental rights, freedom and other rights affirmed in this Constitution shall also be affirmed in all State Constitutions.**

Part II

Civil and Political Rights and Freedoms

22. Right to Life – No **person** shall be arbitrarily deprived of life except on such grounds as are established by law and are consistent with the fundamental principles of justice.

23. Equality – Every person is equal before the law and has the right to equal protection of law.

24. Freedom from Slavery, servitude and forced labour

- (1) No person may be held in slavery or servitude.
- (2) No person may be required to perform forced labour.
- (3) For the purposes of subsection (2), “forced labour” does not include –
 - (a) labour required in consequence of the sentence or order of a court;
 - (b) labour reasonably required of a person serving a term of imprisonment, whether or not required for the hygiene or maintenance of the prison; and
 - (c) labour reasonably required as part of normal communal or civic obligations.

25. Freedom from Cruel or degrading treatment

- (1) Every person has the right to freedom and security of the person, which includes the right-
 - (a) not to be deprived of freedom arbitrarily or without just cause;
 - (b) to be free from all forms of violence;
 - (c) not to be tortured in any manner; and
 - (d) not to be treated or punished in a cruel, inhuman or degrading manner.
- (2) Every person has the right to bodily and psychological integrity, which includes the right not to be subject to medical or other experiments without informed consent.

26. Right to Human dignity – Every person has an inherent dignity and the right to have their dignity respected and protected.

27. Freedom from Discrimination

- (1) Every person has the right not to be unfairly discriminated against whether directly or indirectly on the grounds of actual or supposed characteristics or circumstances, including race, religion, clan or tribal origins, ethnic origin, colour, place of origin, island or region, **sexual orientation**, pregnancy, birth, language, **marital status**, **employment status**, economic status, age, disability or illness, opinions and beliefs.
- (2) Discrimination on one or more of the grounds in subsection (1) is unfair unless it is established to be fair.
- (3) A law, or any administrative action taken under a law is not inconsistent with these rights on the ground that it -
 - (a) provides for the exercise or protection of any right or the undertaking of any action or programme permitted by this Constitution;
 - (b) imposes on persons who are not citizens a disability or restriction, or confers on them a privilege or advantage not imposed or conferred on citizens; or
 - (c) makes provision of some interests over others in government or organs of government in order to address inequalities or to preserve public order and to facilitate peace.

28. Right to Personal liberty – Every person has the right to personal liberty.

29. Right of Access to justice

- (1) Every person charged with an offence has the right to a fair trial before a court of law within a reasonable time.
- (2) Every party to a civil dispute has the right to have the matter determined within a reasonable time by an independent and impartial tribunal.

30. Rights on Arrest – Every person who is arrested for allegedly committing an offence has the right–

- (a) to be informed promptly in a language that he or she understands of –
 - (i) the right to remain silent; and
 - (ii) the consequences of not remaining silent.
- (b) not to be compelled to make any confession or admission that could be used in evidence against that person, and where any such person freely chooses to make any confession, such confession shall be made in circumstances where it can be established that it was made voluntarily;
- (c) to be held separately from persons who are serving sentence;
- (d) to be brought before a court as soon as reasonably possible;
- (e) at the first court appearance after being arrested, to be charged or to be informed of the reason for the detention to continue, or to be released; and
- (f) to be released from detention if the interests of justice permit, subject to reasonable conditions.

31. Rights on Detention - Every person who is detained has the right to–

- (a) be informed promptly of the reason for being detained;
- (b) choose and to consult a lawyer and to be promptly informed of this right;
- (c) access the services of the Public Solicitor, and to be promptly informed of this right;
- (d) be brought before a court as speedily as possible to challenge the lawfulness of the detention and, if the detention is unlawful to be released;
- (e) be given an immediate opportunity to communicate with and to be visited by -
 - (i) his or her spouse, partner or next of kin
 - (ii) a religious counsellor or social worker; and

(iii) a medical practitioner if necessary.

32. Rights when in Custody – A person held in custody has the right–

- (a) to be treated in a way that respects their human dignity, and not be subject to discrimination;
- (b) not to be exploited or abused by staff or fellow prisoners, and the responsible authorities shall take adequate steps to ensure their protection;
- (c) to accommodation and facilities that satisfy the standards of decent clothing, housing, food, health and sanitation;
- (d) to reasonable health care at public expense, and to pay for their own health care by their own doctor if necessary;
- (e) to exercise, education and to work in return for reasonable remuneration;
- (f) to observe their religion and not to be subject to treatment that violates their religious practices and convictions;
- (g) to communicate with their lawyers, any other person whose assistance is necessary, religious advisors and close family, such visits to be of reasonable frequency and duration;
- (h) to privacy, including the separation of women and men to the extent compatible with the preservation of law order and prison discipline;
- (i) to separate young offenders, 18 years and younger, from adults and accord them treatment appropriate to their age and legal status;
- (j) to be informed of the rules and decisions that affect them;
- (k) to a fair hearing in relation to the imposition of any prison discipline;
- (l) to fair consideration for parole or remission of sentence and for other rehabilitative measures;
- (m) to complain to the prison authorities, the Human Rights Commission or any similar institution, and to communicate with the press.

33. Rights to a Fair trial – Every accused person has the right to a fair trial.

34. Freedom of Movement

- (1) Every **person** has the right of freedom of movement within Solomon Islands.

(2) A **Federal or State** law, or anything done under the authority of **such** law, does not contravene this section, if the law or act imposes restrictions on residence or occupation in the interests of **customary law**, security, public safety, public order, **public morality, public health, criminal rehabilitation, civic obligation, lack of lawful means of support and tax obligations.**

35. Right to Privacy – Every person has the right to privacy concerning personal matters and the right not to have personal details kept on databases without consent.

36. Freedom of Religion and belief – Every person and community has the right to freedom of conscience, religion, belief and practice.

37. Freedom of Expression

(1) Every person has the right to freedom of expression, which includes **the right**–

- (a) **of** the press and other media;
- (b) to publish, impart or receive information or ideas;
- (c) of artistic creativity; and
- (d) **of** academic teaching and research

(2) The rights provided for in subsection (1) do not affect the validity of any law or official action that reasonably protects the freedoms and rights of others or the maintenance of peace, order and good government in a free and **democratic** society.

38. Right to Access Government Information

(1) Every person has the right **to** access official information held by government or an official unless there are good grounds **in law** for withholding that information.

(2) Every person has the right to demand the correction or deletion of untrue or misleading information, which affects the person.

39. Right to Just and fair administrative service – Every person has the right to administrative **service** that is lawful and fair.

40. Political rights

(1) Every person has a right to make political choices, which include the right to take part in the conduct of public affairs, directly or through freely chosen representatives;

- (2) Every person has the right to free, fair and regular elections for any legislative body established in terms of this Constitution.
- (3) Every adult person has the right to vote and to stand for public office, and if elected to hold office
- (4) A law or practice does not contravene this section, if the law or practice is in regard to the right of clan and tribal communities to –
- (a) determine their own structures and to select the membership of their institutions in accordance with their own procedures;
 - (b) participate fully in all levels of decision making and political institutions of the Republic through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own decision making institutions. In the communities the assembly of the community may take the place of an elected body.

Part III Economic, Social and Cultural Rights

41. Right to Pursue Development

- (1) **All citizens of Solomon Islands** as communities have the right to pursue their economic, social and cultural development in association with others.
- (2) Clan and tribal village communities have the right to determine priorities, strategies and programmes affecting them and, as far as practicable, to administer programmes through their institutions.

42. Freedom of Association – Every person has the right to freedom of association.

43. Freedom of Assembly - Every person has the right of peaceful assembly, including the right of peaceful protest or petition.

44. Right to Trade, occupation and profession – Every person has the right to choose their trade, occupation or profession freely.

45. Right to Just and Fair labour practices – Every person has the right to **just and** fair labour practices.

46. Right to Basic necessities of life – Every person has the right of access to the basic necessities of life, including water, food, shelter and security.

47. Right to Health care

(1) Every person has the right of fair access to reasonable **modern** health care.

(2) All persons have the right to their custom medicines and health practices, including the right to the protection **and secrecy of** vital medicinal plants and mineral.

(3) Laws may be made to regulate the exercise of rights in subsection (2).

48. Right to Housing

(1) Every person has the right of fair access to reasonable housing.

(2) **Except by law, there shall be no** arbitrary demolition of a home or eviction from a place of residence.

49. Right to Quality Education

(1) Every person has the right of fair access to **quality** education.

(2) Every **State and or** community **has** the right, at its own expense, to establish and maintain educational institutions.

(3) Clan and tribal communities have the **right to have the dignity** of their cultures, traditions and stories appropriately reflected in all forms of education and public information.

(4) Clan, tribal, **faith-based, private** and local communities shall have the right to establish their educational systems in a manner appropriate to their cultural methods of teaching and learning.

50. Right of Cultural and linguistic communities – All clans and tribal groups and persons have the right to practise and maintain their cultural traditions, languages and customs.

51. Protection of Family – The family is the natural unit of Solomon Islands society and the basis of social order and all persons have the right to the protection of the family and family life.

52. Rights and Obligation of Children

- (1) Every child has the right to **firm discipline**, a secure and safe environment of nurturing and respect.
- (2) **Every child has the right to the protection and provision of basic necessities of life from the father and mother** whether married to each other or not.
- (3) Every child has a right to –
 - (a) a name and a nationality from birth;
 - (b) parental, family or other appropriate alternative care;
 - (c) adequate nutrition, shelter and health care;
 - (d) protection from discrimination, harmful rites and practices, maltreatment, neglect, or **all forms of abuse** ;
 - (e) protection from labour exploitation and any work that is inappropriate for a person of that child’s age or hazardous or adverse to the child’s welfare;
 - (f) be free of violence, cruel and inhumane treatment in homes, schools and other institutions responsible for the care of children;
 - (g) schooling;
 - (h) not to be detained except as a measure of last resort, and when detained they shall have the additional right to be -
 - (i) kept separately from detained persons who are over the age of 18 years; and
 - (ii) treated in a manner and kept in conditions that take into account of the child’s age and gender;
 - (i) not to take part in hostilities or to be recruited into conflict involving any weapons, and to be protected from situations of hostile conflict; and
 - (j) to the protections and rights provided for in the United Nations Convention on the Rights of the Child in so far as not covered in this section.
- (4) In this section “child” means a person under the age of 18 years.
- (5) **Every child has an obligation to:**
 - (a) **respect parents, elders and others.**
 - (b) **participation in family chores.**
 - (c) **participation in community activities.**
 - (d) **participation in the observation of cultural and religious activities.**
 - (e) **reasonable chastisement by parents or guardians.**

53. Progressive realisation of economic, social and cultural rights – All governments shall undertake reasonable legislative, policy and other measures, within available resources, to progressively realise the economic, social and cultural rights set out in this Part.

Part IV Women

54. Women

- (1) Women have the right to full equality, including the right of equal opportunities in political, economic and social activities.
- (2) The **Federal** Republic affirms its commitment to the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* **and to any amendments thereto.**

Part V Other Persons

55. Rights of Elderly Persons– Elderly people are entitled to–

- (a) participate fully **where appropriate** in the affairs of society;
- (b) pursue their personal development **where appropriate**;
- (c) be free from all forms of **discrimination**, exploitation or abuse;
- (d) live **and die** with dignity and respect.

56. Rights of Persons with disabilities (*Check if there is a convention for the elderly and disabled*)

- (1) Persons with disabilities have the right to participate as fully in society as they are able.
- (2) For the purpose of this section, the term “disability” includes any physical, sensory, mental or other impairment, condition or illness that has, or is perceived by significant sectors of the community to have a substantial or long term adverse effect on a person’s ability to carry out normal day to day activities.

Part VI Enforcement of Rights and Freedoms

57. Enforcement –

- (1) Anyone with an appropriate interest has the right to approach a competent court or **Human Rights**

Commission for the protection of Rights and Freedoms under this Constitution.

(2) Formalities for hearing applications for the protection or enforcement of Rights and Freedoms must be minimal and any competent court or other body may start proceedings on the basis of informal documentation;

(3) Any person whose rights of freedoms under this chapter has been contravened shall be entitled to compensation or such other redress as the court deems appropriate for the contravention thereof from the person or authority which contravened it.

58. Social justice and affirmative action – Special measures **through Legislation** taken to relieve inequality of **all forms** shall not of themselves constitute **unlawful** discrimination provided such measures are for a lawful purpose and are reasonable and proportional temporary measures to relieve an established inequality.

Part VII States of Emergency

59. States of emergency

(1) In this Constitution “state of emergency” means any period during which a declaration is made under this section in response to a threat of conflict, general insurrection, disorder, natural disaster or other public emergency.

(2) The President may declare a state of emergency at any time or for any purpose specified in subsection (1), and any such declaration shall be broadcast and published as far as is practicable throughout Solomon Islands.

(3) No declaration shall be made in respect of a state of emergency within the boundaries of a State, unless the **President and State Governor have** agreed to the making of the declaration.

(4) Every declaration shall lapse–

(a) in the case of a declaration when Federal Parliament is sitting, at the expiration of a period of seven days beginning with the date of the declaration; or

(b) in the case of a declaration when Federal Parliament is not sitting, at the expiration of seven days after the day that the Parliament

meets, which shall not be more than two weeks after the date of the declaration, unless it has in the meantime been approved by resolution of Parliament.

(5) A declaration that has been approved of by resolution of Parliament under subsection (4) shall subject to subsection (6) of this section, remain in force so long as the resolution remains in force and no longer.

(6) A resolution of Parliament passed for the purposes of this section shall remain in force for two months or such shorter period as the resolution may specify. Provided that any such resolution may be extended from time to time by further such resolution each extension not exceeding two months from the date of the resolution affecting the extension and any such resolution may be revoked at any time by a resolution of Parliament.

(7) A resolution of Parliament for the purposes of subsection (2) of this section shall not be passed unless it is supported by the votes of a majority of all members of Parliament and any subsequent extension shall be adopted with a supporting vote of two-thirds of all members of Parliament.

(8) Where the emergency relates to a matter that has arisen within the boundaries of only one State, the extension shall be ratified by the State legislature by two-thirds majority vote within 7 days of the vote in Parliament, and in the absence of such ratification the state of emergency shall lapse.

(9) The President may summon Parliament to meet for the purposes of subsection (2) of this section notwithstanding that Parliament stands dissolved, and the persons who were members of Parliament immediately before the dissolution shall be deemed, for those purposes, still to be members of Parliament, but, subject to section 105 (the election of the Speaker) a Parliament shall not, when summoned transact any business other than debating and voting upon a resolution for the purposes of subsection (2).

60. Right of derogation

- (1) Any legislation enacted in consequence of a declaration of a state of emergency may suspend or limit Rights and Freedoms only to the extent that—
- (a) the suspension or limitation is strictly required by the emergency; and
 - (b) the legislation –

- (i) is consistent with the obligations Solomon Islands has under international law;
 - (ii) is consistent with the provisions of section 59(1); and
 - (iii) is notified by broadcast and where practicable by print media throughout Solomon Islands as soon as reasonably practicable after being enacted.
- (2) No law that authorises a declaration of a state of emergency, and no legislation enacted or other action taken pursuant to a declaration may permit or authorize—
- (a) any action or thing that is inconsistent with this section;
 - (b) the granting of any indemnity to government or any person in respect of any unlawful act.
- (3) The Federal Government shall immediately inform the Secretary-General of the United Nations of any derogation of Rights and Freedoms and the reasons that actuated such derogation and shall further notify the Secretary-General as soon as the derogation is terminated.

CHAPTER FIVE CITIZENSHIP

61. General principles concerning citizenship

- (1) Subject to this Chapter, all citizens of Solomon Islands are -
- (a) entitled to the same rights, privileges and benefits of citizenship;
 - (b) subject to the same duties and responsibilities applying to all citizens; and
 - (c) equally entitled to hold and use a Solomon Islands passport, and to any other document of identification issued by any government or government agency to citizens.
- (2) Citizenship is a concept that applies only to Solomon Islands and not to any State of the Republic.

62. Retention of existing citizenship - Every person who immediately before the coming into force of the Constitution was a citizen of Solomon Islands shall continue to be a citizen of Solomon Islands.

63. Acquisition of citizenship - Citizenship may be acquired in accordance with this Constitution or under a federal law -

- (a) at birth;
- (b) by naturalization.

64. Citizenship by birth-right

- (1) Every person born after the coming into force of the Constitution, is a citizen of Solomon Islands if, at the date of the person's birth at least one parent is a citizen, or would have been but for his or her death.
- (2) A person who is a citizen of Solomon Islands under this section cannot be deprived of that citizenship.

65. Application for citizenship

- (1) Any person who wishes to acquire citizenship by naturalization shall –
 - (a) be at least 18 years of age;
 - (b) have resided in Solomon Islands for a continuous period of not less than 5 years.
 - (c) **provide evidence of intent** to maintain a permanent residence in the Solomon Islands
 - (d) be of good character;
 - (e) have knowledge of a Solomon Islands language other than English;
 - (f) have knowledge **and respect** of customs of the place of intended residence; and
 - (g) have knowledge of the Constitution, and demonstrate a willingness to observe the duties of **citizens** set out in section.
- (2) Each application for citizenship shall -
 - (a) state the intended place of residence within Solomon Islands;
 - (b) prove that the applicant has sufficient means of support; and
 - (c) be accompanied by any fee prescribed by law.

66. Dual citizenship

- (1) Citizens of Solomon Islands may acquire or retain citizenship of another country **in accordance with any laws the federal parliament may pass.**
- (2) Any person, who as a result of acquiring the citizenship of another country lost the citizenship of

Solomon Islands **may** upon application, to be **re-**registered as a citizen of Solomon Islands.

67. Termination of citizenship

(1) A person may only be deprived of citizenship of Solomon Islands if that person –

- (a) renounces citizenship of Solomon Islands;
- (b) acquires citizenship of another country where dual citizenship is not permissible by a law of that country; or
- (c) has acquired citizenship of Solomon Islands by fraud, false representation, concealment of any material fact, or by any other unlawful means.

(2) **A citizen of Solomon Islands** may regain citizenship after renunciation without complying with the requirements of section **65**.

68. Additional provisions

(1) A federal law may –

- (a) prescribe any other conditions for a person to acquire citizenship of Solomon Islands;
- (b) make additional provisions in relation to the termination, deprivation and renunciation of citizenship;
- (c) impose requirements or prescribe procedures for the making of applications for citizenship by naturalisation;
- (d) provide for the review of any purported grant of citizenship;
- (e) providing for the acquisition of citizenship of Solomon Islands by persons who are not eligible or who are no longer eligible to become citizens under this Chapter; and
- (f) otherwise generally giving effect to the provisions of this Chapter.

(2) **A federal law may also prescribe the conditions for other persons or groups that may wish to reside in Solomon Islands.**

CHAPTER SIX
GOVERNMENT OF SOLOMON ISLANDS (*Date discussed: 14/05/09*)

Part I

Structure of Government

69. Composition of Government in the Republic-

- (1) In the Republic, government is comprised of -
 - (a) Federal Government;
 - (b) State Governments; and
 - (c) Community Governments
- (2) All spheres of government shall observe and adhere to the principles in this Chapter and shall conduct their activities within the parameters that the Chapter provides.

Part II

Principles of co-operative government (*Date discussed: 15/05/09*)

70. Principles of co-operative government

- (1) All governments and organs of government shall-
 - (a) be loyal to this Constitution;
 - (b) preserve the union of States and communities in Solomon Islands;
 - (c) secure the well being of the people;
 - (d) provide effective, transparent, accountable and coherent government;
 - (e) respect the constitutional status, institutions, powers and functions of government in all spheres;
 - (f) not assume any powers or functions except those conferred on them in terms of this Constitution;
 - (g) exercise their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in 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) Disputes between governments or organs of government shall, to the extent possible, be addressed through mediation before the commencement of legal Proceedings.

Part III

Roles and duties of members of government

71. Duties of members generally – Members of government, whether elected or otherwise, shall in the performance of their duties in office;

- (a) act in accordance with this Constitution and State Constitution the law;
- (b) devote their time and talent exclusively to the carrying out of their official duties;
- (c) be accountable to the people of their electorates, including-
 - (i) represent the interests and views of the constituents and the electorate as a whole free from nepotism and other social constraints;
 - (ii) having and maintain the principal place of residence in the electorate;
 - (iii) 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 electorate and to visit them regularly;
 - (iv) working closely with other politicians and government institutions in enhancing the well being of the people;
 - (v) informing and educating the electorate on political and government issues.

72. Primary duty of federal members

(1) The primary duty of members to the Federal Parliament is to represent their constituents only in relation to those matters, which the federal sphere of government has authority to exercise in the interests of the Republic.

(2) Members of the Federal Parliament shall not interfere in the affairs of State Government and community Governments unless the State and Community governments invite the member to do so.

**CHAPTER SEVEN
THE PRESIDENT OF SOLOMON ISLANDS**

73. Office of President

(1) The President is the Head of State and the symbol of national unity in Solomon Islands. [Apolitical]

74. Powers and functions of the President

(1) The powers and functions of the President shall be limited to those expressly provided for in this Constitution.

(2) In carrying out **those** powers and functions the President shall:

- (a) Act in accordance with the advice of the Federal Cabinet;
- (b) Act in accordance with his or her own deliberate judgment as provided for under the Constitution;
- (c) Act in accordance with other provisions of the Constitution or other laws;
- (d) Act as the Chairperson of the Congress of States.

(3) The President is the Commander in Chief of all Solomon Islands **discipline** uniformed forces but operational command lies with duly appointed Officers and is subject to the appropriate constitutional and legal oversight of Ministers of the Government.

(4) The functions of the President include –

- (a) reporting annually to the Federal Parliament on matters provided for in this Constitution;
- (b) referring a bill to the High Court for its opinion on the bills constitutionality;
- (c) referring a bill back to the Federal Parliament for reconsideration of the bill's constitutionality;
- (d) assenting to and signing bills;
- (e) dissolving the Federal Parliament only in the circumstances contemplated in section **103**;
- (f) declaring a state of emergency.
- (g) making Presidential appointments required by this Constitution or any law;
- (h) receiving and recognising foreign diplomatic and consular representatives;
- (i) pardoning or relieving offenders;
- (j) conferring honours; and
- (k) such other powers and functions as conferred by law.

75. Qualifications for election as President

(1) The President must be an **educated** indigenous Solomon Islander of good **health**, character and **moral** standing and not less than **fifty** years of age.

(2) No person may hold the Office of President if that person –

- (a) is under an oath of allegiance to a foreign state;
- (b) holds or is acting in any office in the public service, or any judicial office;
- (c) is an elected member of any legislature or governmental position;
- (d) is a candidate in an election for any legislative or governmental position, other than the Office of President;
- (e) has been removed from any public office on grounds of any violation of the Constitution, or for cause relating to a matter of integrity or good conduct;
- (f) has been convicted of a criminal offence; or
- (g) is certified to be insane or otherwise adjudged to be of unsound mind under any law for the time being in Solomon Islands
- (h) is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law for the time being in force in any part of the Commonwealth;
- (i) is otherwise disqualified from holding office of President under this Constitution.

(3) A person who is disqualified in terms of subsection (2) other than for matters relating to character and integrity may be nominated as a candidate for election as President, but if elected may not assume office until that person no longer holds that office or is otherwise not disqualified.

76. Election of the President

- (1) The Federal Parliament elects the President in accordance with this section.
- (2) The Chief Justice or a judge designated by the Chief Justice presides over the election of the President.
- (3) The President is elected in accordance with the procedure set out in Schedule **One**.
- (4) As far as practicable, the office of President shall be held on a rotational basis by a person from each of the States. **The agreed rotational basis which is to be repeated when it is completed shall be as follows:**
 - (a) State of Central Islands
 - (b) State of Isabel
 - (c) State of Malaita
 - (d) State of Rennell & Bellona

- (e) State of Choiseul
- (f) State of Guadalcanal
- (g) State of Makira Ulawa
- (h) State of Temotu
- (i) State of Western Solomons

(5) A State whose turn is to hold the Office of the President shall submit to the Federal Parliament two female and two male candidates selected from a pool of candidates by the Electoral College of that State.

77. Assumption of office of the President

(1) The person elected as President shall assume office by taking an oath affirming allegiance to Solomon Islands and the due execution of the functions of the office.

(2) The oath shall be as set out in Schedule **Two** and shall be taken before the Chief Justice, or a judge of the High Court, immediately upon election to the office.

78. Term of office of the President - Subject to this Constitution, the President shall hold office **only** for a term of 5 years.

79. Impeachment of the President

(1) If two-thirds of the members of the Federal Parliament support a motion for the impeachment of the President for violation of this Constitution or on the grounds of gross misconduct, the Speaker shall convene a special meeting of the Federal Parliament to consider and determine the charges made against the President.

(2) The Speaker shall –

- (a) if the Federal Parliament is then sitting or has been summoned to meet, bring the motion to the notice of the Federal Parliament for its consideration within 7 days; or
- (b) if the Federal Parliament is not then sitting, summon it to meet within 21 days of the date of the notice, to consider the motion.

(3) Upon the motion of the Federal Parliament passed by a majority of **all the** members, the Speaker shall **appoint and** convene a special **select** committee comprising of-

- (a) the Chief Justice, who shall be Chairperson;

- (b) **Three** members appointed **by the Speaker of the Federal Parliament** in accordance with the standing orders of Parliament; and
- (c) the Head of each State.

(4) The special **select** committee shall investigate the matter and shall, within 14 days, report to the Federal Parliament on its findings in relation to the matters under inquiry.

(5) The President shall have the right to appear at meetings of the special **select** committee, and to be legally represented.

(6) If the special **select** committee reports that the particulars of any allegation against the President have not been substantiated, no further proceedings shall be taken in respect of that allegation.

(7) If the special **select** committee reports that the particulars of any allegation against the President have been substantiated, the Federal Parliament shall vote on impeachment charges, and the President shall be removed if two-thirds of **all** the members vote to uphold the impeachment charges.

(8) The preceding provisions shall apply if the President refuses to resign voluntarily.

80. Vacancy in the office of President - If there is a vacancy in the Office of the President **before the five-year term expires**, Parliament **shall** elect a President **from the same state** within 30 days **to complete the term of office** as provided for in this Part.

81. The Administrator of the Government

(1) Whenever the President is absent from Solomon Islands, or for any other reason unable to perform the functions conferred by this Constitution, or if there is a vacancy in the Office, the full functions of the Office are performed by the Administrator of the Government.

(2) The Office of the Administrator of the Government **shall be** held by the **Governor of the same State**.

**CHAPTER EIGHT
THE FEDERAL PARLIAMENT**

Part I

Parliament

82. Establishment of the Federal Parliament –There shall be a Federal legislature for Solomon Islands, which shall consist of a single chamber and shall be known as the Federal Parliament of Solomon Islands.

83. Powers of the Federal Parliament

(1) The Federal Parliament shall have exclusive legislative powers in the subject matters prescribed in List 1 of Schedule 5.

(2) All legislative powers not expressly conferred on the Federal Parliament shall be reserved to the State Parliaments and Community governments in accordance with this Constitution

(3) Legislation in relation to a matter that is reasonably necessary for or incidental so as to enable the exercise of a power concerning any matter in List I (federal Powers) is for all purposes, legislation in relation to a matter in that List.

Powers of the State Parliaments and Community governments (to be discussed when appropriate)

84. Exercise of a concurrent power by the Federal government

(1) The exercise of concurrent powers shall be done with prior consultation between a State and Federal government. In the event that the Federal government is in the position to assume any of the powers under List III of Schedule 5, the State government as the case maybe shall not unreasonably withhold the divestment of such power.

85. Executive authority

(1) The executive authority of the Federal government shall extend to all subject matters in List I of Schedule 5.

(2) The executive authority of the Federal government shall not extend to any matter in List II (State powers), and to any matter in List III (concurrent powers) except as may be provided by Federal or State law.

(3) A federal law may provide that the executive authority of a State shall extend to the administration of any specified provisions of federal law and may for that purpose confer powers and impose duties on any authority of the State.

(4) Where, pursuant to subsection (3) any functions are conferred by Federal law on any authority of a State, the Federal government shall make financial payments to the state government as may be mutually agreed upon for carrying out such functions on behalf of the other.

86. Arrangements between Federal and State governments – Subject to any provisions of federal or state law, arrangements may be made between the Federal government and a State government for the performance of any functions by the authorities of the one on behalf of the authorities of the other and such arrangements may provide for the making of payments in respect of any costs incurred under the arrangements.

Part II

Composition of Parliament and qualification of members

87. Composition of Parliament

- (1) Parliament shall consist of -
 - (a) not more than 50 elected members.
- (2) The entitlements of members of Parliament are fixed in accordance with the provisions of Schedule **Three**.

88. Participation of women in Parliament – Upon coming into effect of the Federal Constitution there shall be ten elected women members out of the fifty in the Federal Parliament.

89. Oath of office – No Member of Parliament may take part in the proceedings of Parliament (other than proceedings for the purposes of this section) until he or she has–

- (a) taken an oath of allegiance in the form set out in Schedule **Two** of this Constitution; and
- (b) has completed all requirements of the Leadership Code.

90. Qualification for membership – A member of Parliament must be–

- (a) a citizen of Solomon Islands; and
- (b) at least 21 years of age.

91. Disqualification from membership

(1) A person is disqualified from becoming or continuing to hold his or her seat in Parliament if that person –

- (a) fails to qualify as a member under section 90;
- (b) fails to qualify as a candidate through a Federal Law providing for vetting by electoral college at community level;
- (c) holds any office under any law relating to federal or state elections;
- (d) is elected to a State legislature or candidate for such an election, or holds office in a State legislature;
- (e) holds any public office other than as a member of Parliament;
- (f) 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;
- (g) is declared to be of unsound mind by a federal law;
- (h) is declared bankrupt by a federal law;
- (i) is disqualified from membership of a State legislature or other government body;
- (j) has been removed from a public office on grounds of misconduct, or is not a fit and proper person in terms of section 258 or
- (k) is serving a sentence of imprisonment of 6 months or more, including a suspended sentence for the commission of a crime.

(2) A person who is disqualified in terms of subsection (1) (b) (c) and (d) may become a candidate for election as a member of Parliament, but if elected may not assume office as a member of Parliament until that person has-

- (a) resigned from that office; or
- (b) been granted leave of absence from office.

92. Vacation of seat *(Discussion Monday 25/05/09)*

(1) The seat of a member in Parliament shall become vacant if-

- (a) the member becomes subject to any disqualification in the last preceding section;

- (b) the member resigns his or her seat in writing to the Speaker;
 - (c) subject to this Constitution, upon dissolution of Parliament;
 - (d) the member fails to attend three consecutive meetings of Parliament without the permission of the Speaker;
 - (e) the member is recalled under section 93;
 - (f) the member's seat is vacated under section 114.
 - (g) the member dies
- (2) The High Court has jurisdiction to hear and determine any question relating to -
- (a) the validity of the election of any person as a member of Parliament; or
 - (b) the qualification or cessation of membership of Parliament.
- (3) No appeal lies from any decision of the High Court made under subsection (2).

93. Recall

- (1) A person elected to Parliament may be recalled by his or her **home State**.
- (2) A member may be recalled on any of the following grounds—
- (a) **certified** physical or mental incapacity rendering the member incapable of performing the functions of office;
 - (b) misconduct likely to bring **dishonor**, hatred, ridicule, contempt or disrepute to the **constituents and home State**;
 - (c) violation without reasonable cause of a member's duties in section 72;
 - (d) such further grounds prescribed by law.
- (3) A federal law shall provide for the details of recall.

Part III Rules and **P**rocedures of Parliament

94. Standing Orders

- (1) Parliament may prepare and adopt standing orders that appear to Parliament best adapted to conduct its business and proceedings.

(2) Without limiting subsection (1), the standing orders may provide for the following–

- (a) the way Parliament must be presided over in the absence of the Speaker or Deputy Speaker;
- (b) declaration of interests by members in relation to any matter under consideration by Parliament;
- (c) the appointment of committees and the delegation of functions to them;
- (d) the appointment of members to committees ;
- (e) reconsideration of a bill in terms of section 99;
- (f) the orderly conduct of Parliament;
- (g) the introduction and passing of bills;
- (h) the way its powers, privileges and immunities of members may be exercised and upheld; and
- (i) compulsory attendance at all sittings unless leave of absence is granted by the Office of the Speaker
- (j) reprimand of members for conduct falling short of contempt of parliament
- (k) invite non-members of parliament to participate in parliamentary or non-parliamentary proceedings in the public interest
- (l) other matters Parliament deem appropriate.

(3) A standing order becomes binding and of force on adoption by Parliament.

95. Presiding in Parliament

- (1) There shall preside at a sitting of Parliament a–
- (a) Speaker;
 - (b) Deputy Speaker; and
 - (c) in the absence of Speaker and Deputy Speaker such other member of Parliament it may elect for that purpose.
- (2) The Speaker, Deputy Speaker or member elected for that purpose shall enforce standing orders and maintain the discipline of members of Parliament.

96. Committees of Parliament

- (1) Committees of Parliament are to be established with the objective to enhance the accountability and

transparency of public administration and to extend democratic governance in the Republic.

(2) The functions and areas of responsibility of Committees of Parliament include:

- (a) administrative review reform, and constitutional, electoral and legal reform; and
- (b) the ethical conduct of members and parliamentary powers, rights and immunities; and
- (c) petitions received by Parliament raising public policy issues within the legislative competency of Parliament; and
- (d) the integrity, economy, efficiency and effectiveness of governmental financial management; and
- (e) certain works undertaken by or for the government; and
- (f) Parliamentary standing orders.

(3) The main role of a Committee is–

- (a) to deal with issues within its area of responsibility;
- (b) to deal with an issue referred to it by Parliament or under some Act, whether or not the issue is within its area of responsibility; and

(4) A Committee may deal with an issue by –

- (i) considering it; and
- (ii) reporting on it, and making recommendations about it, to Parliament.

(5) A Committee may resolve to –

- (a) call any Minister or any other person holding public office, and private individuals to submit a report on any matter, or to appear before the Committee and give evidence; and
- (b) co-opt any member of Parliament or employ qualified persons to assist the Committee in the discharge of its functions; and
- (c) has the same powers of the High Court to-
 - (i) enforce the attendance of witnesses and examining them on oath, affirmation or otherwise;
 - (ii) compel the production of documents; and
 - (iii) issue a commission or request to examine witnesses abroad.

97. Procedure of Parliament

(1) Parliament, and any of its Committees is permitted to-

- (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 States on any bill, petition or other matter before Parliament.

(2) The proceedings of Parliament are not invalid by reason only-

- (a) that there is a vacancy in its membership; or
- (b) of the presence or participation of any person not entitled to be present at or to participate in the proceedings of Parliament.

98. Exercise of legislative power

(1) The power of Parliament to make laws is to be exercised by bills passed by Parliament with the assent of the President.

(2) Only a Cabinet member or a member or Committee of Parliament may introduce a bill in Parliament; but only the Cabinet member responsible for federal financial matters may introduce an Appropriation Bill.

(3) State Governments are to be notified of any proposed law in relation to a matter in List III (concurrent powers). *(Subject for further discussion)*

(4) Laws come into operation in accordance with their terms, and laws may apply retrospectively if the law is stated to have such effect.

99. Assent of bills

(1) The President may either assent to and sign a bill in terms of this section or if the President has reservations about the constitutionality of a bill, refer it back to Parliament for reconsideration.

- (2) If, after reconsideration, a bill accommodates the President's reservation, the President shall assent and sign the bill; if not the President shall either-
 - (a) assent to and sign the bill **within 30 days of passage by parliament**; or
 - (b) refer to the **Constitutional** Court for an advisory opinion on the constitutionality of the bill.
- (3) If the **Constitutional** Court determines that the bill is constitutional, the President shall assent to and sign it.
- (4) All law passed by Parliament shall as soon as practicable on assent be distributed to State Governments.

100. Quorum at meetings of Parliament

- (1) The quorum for Parliament is one-half of the total number of members of Parliament.
- (2) In the absence of a quorum in the Parliament the person presiding in Parliament shall, in accordance with the standing orders, adjourn the sitting of the Parliament at his or her own motion, or upon the motion of any member.

101. Voting in Parliament

- (1) Unless otherwise provided in this Constitution, any question proposed for decision in Parliament is to be determined by a majority of the votes of the members present and voting in Parliament.
- (2) On a question proposed for decision, the **Deputy Speaker or any other member of parliament** presiding in Parliament **in accordance with section 95 (2) shall have a casting vote in the event of a tie of votes .**

Part IV

Term, sessions and sittings of Parliament

102. Term of Parliament

- (1) Every Parliament shall be for a term of four years from the first **day of the first** meeting of Parliament and no longer, but may be sooner dissolved by the President.
- (2) After any general election of Parliament, Parliament shall meet within 4 weeks after the last day of polling.

(3) Each session of Parliament shall commence at such place and time as the President may appoint.

(4) Parliament shall meet not less frequently than three times in each period of 12 months.

103. Dissolution of Parliament

(1) The President shall dissolve Parliament if –

(a) by an absolute majority Parliament so decides; or

(b) a Government is not formed having the confidence of Parliament in the circumstances contemplated in section **111** or

(c) an alternative Prime Minister fails to get the confidence of Parliament in the circumstances contemplated in section **116 (4)**.

(2) If, after dissolution of Parliament and before holding of the general election, some matter of urgent national importance arises that necessitates to recall Parliament, the President shall summon the Parliament that has been dissolved to meet prior to holding of the general election.

(3) For the purposes of subsection (2), the persons who were members of Parliament immediately before the dissolution shall be deemed still members of Parliament, but, subject to section **105**, of this Constitution (which relates to the election of the Speaker) Parliament shall not, when summoned transact any business other than debating and if need be to vote upon a resolution in relation to the matter for which Parliament was summoned.

104. General elections

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

(2) Where the seat of a member of Parliament falls vacant otherwise than by reason of dissolution of Parliament, a by-election shall be held to fill the vacancy within ninety days of the occurrence of the vacancy, unless Parliament is sooner dissolved.

Part V

The Speaker and other officers of Parliament

105. Speaker and Deputy Speaker

- (1) When Parliament first meets after any general election and before it considers any other business, it shall elect;
 - (a) a Speaker from members of the public who are eligible under sections 90 and 91; and
 - (b) Deputy Speaker from among its members
- (2) At the first meeting of the Parliament after each general election, the **incumbent Speaker** shall preside over the meeting of the Parliament until a **new Speaker** is elected in accordance with this section
- (3) No business shall be transacted in Parliament (other than the election of a Speaker **or Deputy Speaker**) at any time when the office of the Speaker or Deputy Speaker is vacant.
- (4) In terms of standing orders, Parliament may elect from among its members other presiding officers to assist the Speaker and the Deputy Speaker.
- (5) No Minister or leader of a political party may be Speaker or Deputy Speaker.
- (6) The office of the Speaker and Deputy Speaker shall become vacant-
 - (a) when Parliament first meets after any dissolution; or
 - (b) if any circumstances arise that would cause him or her to be disqualified from election as a member of Parliament; or
 - (c) upon becoming a Minister; or
 - (d) upon becoming a leader of a political party; or
 - (e) by resigning from office by written notice to that effect addressed to **the Parliament and received by the Clerk ; or**
 - (f) if Parliament resolves by a resolution supported by the votes of not less than two-thirds of all its members to remove the Speaker or Deputy Speaker from office; or
 - (g) in the case of the Deputy Speaker, upon election as Speaker.
- (7) Unless otherwise provided in this Constitution or any other law, the Speaker and the Deputy Speaker shall not hold any other public office.

106. Leader of the Opposition

- (1) At the first meeting of Parliament after each election, and as otherwise required when a vacancy arises, the President, acting in accordance with the advice of the Speaker, may appoint as Leader of the Opposition -
 - (a) a member of Parliament who is best able to command the support of the largest political party or coalition of parties in Parliament who do not support the Government; or
 - (b) if there is no such person, the member of Parliament, who commands the support of the largest single group of such members who are prepared to support one leader.

- (2) The office of the Leader of the Opposition shall become vacant if –
 - (a) he or she resigns from office by giving written notice to that effect to the Speaker;
 - (b) removed from office, or becomes disqualified from holding the office of a member of Parliament in accordance with this Constitution;
 - (c) he or she becomes the Speaker or Deputy Speaker.

- (3) The Leader of the Opposition shall have-
 - (a) official status immediately following the President and the Prime Minister; and
 - (b) the right of participation at all official state functions.

- (4) Standing Orders shall make provision for the effective participation in Parliament of the Leader of the Opposition.

107. Clerk of Parliament

- (1) There shall be a Clerk of Parliament.

- (2) The Clerk shall be the administrative head of the Parliamentary Service and shall be independent of the Public Service.

- (3) A law shall make provision for the establishment and administration of the Parliamentary Service.

Part VI
General matters

108. Privileges of Parliament and its members – A law or standing orders may prescribe the privileges, immunities and powers of Parliament and its members.

109. Freedom of speech and debate – The freedom of speech and debates or proceedings in 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.

110. Proceedings to be held in public

- (1) Parliament shall-
 - (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) 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.

CHAPTER NINE
THE EXECUTIVE GOVERNMENT

Part I
Government Formation and Political Allegiance

111. Political Power

- (1) A political party or a coalition of political parties obtaining the highest number of seats in Parliament shall have the power to form and lead the executive branch of the Government.
- (2) If following a general election no party has an absolute majority of seats in Parliament, the leader of the political party with a relative majority of seats shall ascertain the possibility of forming a coalition government having the confidence of Parliament.

(3) If a Government is not formed having the confidence of Parliament after 30 days from the first meeting of Parliament, the President, acting on his or her own **deliberate** judgment, **shall advise** the Speaker **of** the dissolution of the Parliament.

112. Political allegiance

(1) A member of Parliament shall vacate his or her seat if –

- (a) having been a candidate of a political party and elected to Parliament, he or she resigns from that party;
- (b) elected as an independent member joins a political party;
- (c) elected as an independent member, and joins or supports a coalition government, as an independent member, and fails to support the Government in the areas of -
 - (i) confidence;
 - (ii) supply; and
 - (iii) amendment to the Constitution.

(2) A federal law may regulate a process for the resignation of a member under this section.

Part II The Prime Minister

113. Prime Minister

(1) There shall be a Prime Minister of Solomon Islands who is the head of the executive Government.

- (2) The Prime Minister in exercising the duties of executive government is responsible to-
- (a) maintain and coordinate the Government, by overseeing the Government's general policy direction;
 - (b) keep the President fully informed as to the affairs of Government and matters affecting the interests of the Republic.
 - (c) keep State Governments fully informed of proposed legislation and matters affecting the interests of States;
 - (d) keep the Congress of States fully informed as to the affairs of Government and matters of government affecting the interests of the federation and States.

- (3) In exercising the duties of executive government, the Prime Minister shall –
- (a) furnish the President with such information he or she may request with respect to any particular matter relating to the Government or the Republic;
 - (b) take significant decisions and determine Government policy collectively through the Cabinet decision process; and
 - (c) actively manage the performance and discipline of Ministers.

114. Appointment of Prime Minister

- (1) At the first meeting of Parliament after each election, and as otherwise required when a vacancy arises, the President shall appoint as Prime Minister a member of Parliament who is the –
- (a) leader of the political party **with an absolute majority** in Parliament; or
 - (b) if no party has an absolute majority, the **preferred leader with an absolute majority support** of the political parties and or independent members in Parliament **intending to form a coalition government.**
- (2) Where Parliament has been dissolved pursuant to section **111 (3)** or section **116(4)**, the **incumbent Prime Minister shall continue as caretaker Prime Minister until a new Prime Minister is appointed.**
- (3) **Where there is no caretaker Prime Minister under the preceding provision, the President shall appoint the incumbent Deputy Prime Minister as the caretaker Prime Minister until a new Prime Minister is appointed.**

115. Term of office

- (1) The Prime Minister shall take an oath in accordance with Schedule **Two** and shall be taken before the President and in the presence of members of Parliament and subject to subsection (2) continues in office until the next person assumes the office of Prime Minister.
- (2) The appointment of the Prime Minister terminates if he or she –
- (a) ceases to be a member of Parliament for any reason other than the dissolution of Parliament;
 - or
 - (b) dies, resigns; or
 - (c) **is recognized by the President as having lost, in accordance with the party rules or coalition**

partners agreements confidence of the party or coalition partners in his or her leadership.

116. Dismissal

- (1) If Parliament, by vote supported by an absolute majority of its members, passes a motion of no confidence in the Prime Minister, the Prime Minister shall vacate office.
- (2) A motion for a resolution of no confidence in the Prime Minister shall not be considered by Parliament unless -
 - (a) a period of twelve months has expired since the last motion of no confidence was introduced before Parliament; and
 - (b) notice of the motion has been given to the Speaker at least seven week days before it is introduced;
- (3) Upon the Prime Minister vacating office the President shall invite the members of Parliament to form a new Government.
- (4) If a Government is not formed having the confidence of Parliament after 30 days from the vote of no confidence in the defeated Prime Minister, the President, acting on his or her own judgement, may request the Speaker to advise on the dissolution of the Parliament.

117. Resignation

- (1) The Prime Minister may resign from office by delivering a written statement of resignation to the President.
- (2) The resignation of the Prime Minister shall take effect—
 - (a) on the date and at the time specified in the resignation, if any; or
 - (b) at noon on the day after it is delivered, in any other case.

118. Absence or illness

- (1) Whenever by reason of illness or absence from Solomon Islands the Prime Minister is temporarily prevented from performing, in Solomon Islands, the functions of his or her office, those functions shall be performed by the Deputy Prime Minister.
- (2) If the Deputy Prime Minister is unable to act as provided for by sub-section (1) the President, acting in

accordance with the advice of the Prime Minister, shall appoint another Minister to act as Prime Minister until such time as the Prime Minister is capable again of performing them or vacated office.

(3) If the President considers, in his or her own deliberate judgment, that it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's illness or absence, the President may on the advice of Cabinet appoint a Minister to perform the functions of Prime Minister until such time as the Prime Minister is capable of again performing them or has vacated office.

Part III Ministers

119. Appointment

(1) There shall be such number of Ministers as the Prime Minister may from time to time determine and may designate one of them as Deputy Prime Minister.

(2) The President on the advice of the Prime Minister appoints the Ministers.

(3) The Ministers (including the Prime Minister) have such portfolios and responsibilities for the conduct of government as are determined by the Prime Minister.

(4) Each person appointed as a Minister -

(a) shall take an oath before the President and in the presence of members of Parliament, affirming faithfulness to the people of Solomon Islands and obedience to this Constitution, in accordance with Schedule **Two**;

(b) may resign by delivering a written statement of resignation to the Prime Minister.

120. Term of office

(1) The office of a Minister (other than the Prime Minister) becomes vacant –

- (a) if the President, acting in accordance with the advice of the Prime Minister, so determines;
- (b) upon the dismissal **by the Prime Minister with the concurrence of the party or coalition partners**
- (c) upon ceasing to be a member of Parliament for any reason other than the dissolution of Parliament;
- (d) upon resignation given in writing to the Prime Minister;
- (e) upon being elected as President of Solomon Islands; or
- (f) upon being elected as Speaker.

(2) If a Minister ceases to be a member because of the expiry or dissolution of Parliament, he or she continues in office as a Minister until the next appointment of a Prime Minister.

121. Accountability to Parliament - A Minister shall attend before Parliament, or a Committee of Parliament, when required to do so, and answer any question concerning a responsibility of that Minister, or the management of the portfolio for which he or she is responsible.

122. Approval to leave Solomon Islands – The Deputy Prime Minister and a Minister shall not leave Solomon Islands except with leave of the Prime Minister.

Part IV Cabinet

123. Cabinet

- (1) There shall be a Cabinet, which consists of the Prime Minister and Ministers. **The total membership in the Federal Cabinet shall not exceed half of the total membership of the Federal Parliament.**
- (2) The Attorney-General **who is public officer** shall be *ex officio* member of Cabinet.

124. Cabinet committees

- (1) There shall be Cabinet Committees, appointed by Cabinet, as a forum for detailed consideration and discussion of issues **pertaining to federal subject matters** before reference to Cabinet.

(2) The Cabinet shall determine the structure of Cabinet Committees and membership, terms of reference of each Cabinet Committee, taking into account practical and political considerations.

(3) Cabinet Committees derive their power from Cabinet. All Committee decisions are reported to Cabinet for confirmation before acted upon and Cabinet retains the ultimate power of decision.

125. Cabinet responsibilities

(1) Cabinet is responsible for making decisions in relation to:

- (a) significant issues relating to **the Federal Government and the Republic as a whole**;
- (b) proposals that will affect **Federal Government's** financial position and other financial matters as provided by law;
- (c) proposals involving new **federal** legislation or regulations affecting federal laws;
- (d) the response of **Federal Government** to recommendations made by Committees of **the Federal Parliament**;
- (e) controversial matters; and
- (f) all matters concerning –
 - (i) arrangements with international donors and international financial organisations;
 - (ii) arrangements or agreements with another country for international assistance for public purposes;
 - (iii) obligations under international treaties and agreements; and
 - (iv) free trade agreements.

(2) All decisions made in relation to matters referred to in section 125 (1) (f) (ii), (iii) and (iv) must be enacted into domestic laws to bring them into effect.

(3) The Prime Minister or any Minister shall not make any final decision on any matter listed in subsection (1) until the matter is referred through the Cabinet process.

(4) The Prime Minister and Ministers in Cabinet shall promptly inform each other on any discussions outside Cabinet in relation to any matter in subsection (1).

126. Exercise of executive authority of Federal Cabinet

(1) Ministers in Cabinet exercise executive authority by

—

- (a) developing and implementing national **development plans**, budgets and policy;
- (b) preparing and initiating **federal** government legislation for consideration by **Federal** Parliament;
- (c) implementing and administering Acts of **Federal** Parliament;
- (d) coordinating the functions of **federal** ministries and departments; and
- (e) performing other executive functions provided for by this Constitution and any federal law.

(2) **The Federal Cabinet in the exercise of its executive authority shall not be subjected to direction or control by any party or government caucus.**

(3) **The terms and conditions of a party or government caucus personnel shall not be paid out of public funds.**

127. Proceedings of Cabinet

(1) Cabinet is responsible for regulating its own procedures including discipline.

(2) Ministers in Cabinet shall attend every meeting of Cabinet, unless the Prime Minister has granted prior written **and or verbal** approval for the Minister to be absent **as the case may be**.

(3) Meetings of the Cabinet are to be 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.

(4) A quorum for Cabinet meetings is an absolute majority of Cabinet members.

(5) In the event of a pressing matter including a state of emergency and there is no quorum, the meeting can proceed with simple majority of the Cabinet Ministers present.

128. Decisions and accountability

- (1) The Cabinet must ensure that –
 - (a) a record is kept of **Cabinet 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 decisions** made by the Cabinet, and for monitoring the status of their implementation.
- (2) Cabinet papers and decisions are to be regarded as confidential, but Cabinet may endorse the notification and publication of any items under consideration, or any decision made by Cabinet, as it sees fit.

129. Conduct of members of Cabinet – Ministers in Cabinet shall –

- (a) disclose any situation involving a risk of conflict between the Minister's private interests and official Ministerial responsibilities;
- (b) be collectively responsible for the decisions of the Cabinet, and for the general administration of Government; and
- (c) be responsible for protecting the Republic's interest in the departments within their portfolios;
- (d) be responsible for deciding both the direction and the priorities for their departments;
- (e) be responsible to Parliament for ensuring that those departments carry out their functions properly and efficiently;
- (f) preserve the political neutrality of the public service;
- (g) be responsible for any Republic's interest in Government owned enterprises or companies within their portfolios;
- (h) be individually responsible to Parliament for their own activities and the activities of public officers in administering their ministerial portfolios; and

- (i) keep each other informed of activities within their portfolios.

130. Secretary to Cabinet

(1) There shall be a Cabinet Office, which shall be a public office and headed by the Secretary to Cabinet.

(2) The Secretary to Cabinet is responsible for the Cabinet Office and 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 government on policy and administrative issues;
- (g) coordinating the policy and administrative aspects of the legislation programme for Government; and
- (h) ensuring that all Cabinet decisions are duly implemented through the relevant Ministries.

(3) Where the Minister has been charged with responsibility for the administration of any department of the Government, he shall exercise general directions and control over that department and subject to directions and control, any department in the charge of a Minister (including the office of the Prime Minister or any other Ministers) shall be under the supervision of a Permanent Secretary or some other supervising officer whose office shall be a public office; provided that –

- (a) any such department that may be under the joint supervision of two or more supervising officers; and
- (b) different parts of any such department may respectively be under the supervision of different supervising officers.

Part V

Attorney-General

131. The office of Attorney-General

(1) There shall be a Federal Law Officer, whose office shall be a public office and he aided by an Attorney-General who shall be the principal legal adviser to the Federal Government.

(2) The candidates for the Office of the Attorney-General shall be recommended by the Prime Minister in consultation with Cabinet from serving lawyers in government employment but the final choice of the incumbent shall be in the absolute discretion of the Judicial and Legal Services Commission according to merit.

(3) The Attorney-General shall not be entitled to a vote in Parliament or Cabinet.

(4) No person shall be qualified to hold or act in the office of Attorney-General unless he or she is qualified to hold the office of judge in accordance with this Constitution.

CHAPTER TEN FEDERAL REVENUE ARRANGEMENTS

Part I Federal Revenues

132. Federal taxing powers

(1) The Federal Government may impose any form of taxation other than state taxes.

(2) It shall not be lawful for Federal Government except by law to;

- (a) levy a tax;
- (b) raise a loan or to receive any money as a loan from any juridical person;
- (c) spend any public money.

(3) The Federal Parliament may assign to the States the whole or any portion of the proceeds of any tax or fee levied or imposed by Federal Government.

(4) The Federal Government may by an agreement with State Government, collect and account for any State tax. A State Government may by agreement with the Federal

Government collect specific federal taxes, excise, duties or fees on behalf of the **Federal** Government.

(5) The Federal Government may enter into any taxation arrangement with State Governments in accordance with fiscal decentralization plan.

133. Federal Government Tax Revenue Sources – The Federal Tax Revenue sources shall be: Corporate income, Personal income, International trade, Natural resources, Value-added tax, User charges and Sin taxes

Part II

The Federal Consolidated Fund (*Date discussed 24/06/09*)

134. Federal Consolidated Fund

- (1) There shall be a Federal Consolidated Fund, and such other funds or accounts as law may provide.
- (2) All federal revenues, (not being revenues or other moneys that are payable, by or under any law, into some other fund of Government established for a specific purpose) shall be paid in to the Consolidated Fund.

135. Withdrawals from the Consolidated Fund and other public funds

- (1) No money shall be withdrawn from the Federal Consolidated Fund, or any other federal fund, except upon the authority of a warrant under the hand of the Minister of Finance.
- (2) No warrant shall be issued under subsection (1) except –
 - (a) where the issue of those moneys has been authorised by an appropriation law of Parliament;
 - (b) to meet expenditure that is charged upon the Consolidated Fund by this Constitution or by a law of Parliament; or
 - (c) where it is statutory expenditure.
- (3) Statutory expenditure shall not be voted on by Parliament. Such monies are to be paid out of the Consolidated Fund by warrant under the hand of the Minister for Finance

136. Debts and other expenses charged upon the Consolidated Fund

- (1) All debt charges for which Government is liable will constitute a charge on the Consolidated Fund.
- (2) The costs and expenses incurred in collecting and managing the Consolidated Fund form the first charge on the fund.

(3) Government shall not borrow money or enter into any guarantee involving financial liability except in accordance with such provisions as may be prescribed by law.

(4) 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 Government or the Consolidated Fund, and the service and redemption of debt thereby created.

137. Remuneration of persons holding public office

(1) There shall be paid to the holders of the offices to which this section applies such salaries or other remuneration, and such allowances as may be prescribed by Parliament.

(2) The salaries and allowances prescribed under subsection (1) shall be charged and paid out of the Consolidated Fund

(3) This section applies to the offices of President, any judge of the Constitutional Court, the Court of Appeal or High Court, the Speaker of the Federal Parliament, the Ombudsman, the Director of Public Prosecutions, the Public Solicitor, the Auditor-General, the Commissioner of the Police Force, the Superintendent of the Prisons Service and a member of any Commission established by this Constitution.

(4) *(Sub section deleted)*

Part III

Authorisation of expenditure from the Federal Consolidated Fund

138. Estimates of revenues and expenditure

(1) At least two months before the end of each financial year, the Minister for Finance shall lay before Parliament estimates of the revenues and of capital and current expenditure of Parliament for that year.

(2) If Parliament is dissolved and it is impossible to lay estimates before Parliament before the end of the financial year, the estimates shall be laid before Parliament within thirty days after the Parliament first meets following the dissolution.

(3) The Public Accounts Committee shall be given reasonable time to study estimates of revenue before such estimates is presented to Parliament.

139. Appropriation Bills

(1) When Parliament has approved expenditure for any financial year, other than expenditure that is specifically charged on the Consolidated Fund by this Constitution or law, a bill to be known as an Appropriation Bill shall be introduced into Parliament, and that bill shall –

- (a) provide for money to be issued from the Consolidated Fund to meet the approved expenditure; 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) The Public Accounts Committee shall be given reasonable time to study any proposed Appropriation Bill before such a bill is presented to Parliament.

140. Additional or supplementary appropriation

(1) In any financial year, Supplementary Appropriation Bills may make provision for additional expenditure where the original estimates were insufficient, or if authorisation is needed for any expenditure not previously included in the estimates.

(2) If Parliament approves additional or supplementary estimates, an additional or supplementary Appropriation Bill shall be introduced into Parliament, providing for the necessary money to be issued from the Consolidated Fund to meet the expenditure concerned and appropriating the money to the purposes specified in the estimates, under separate votes for the different heads of expenditure that have been approved.

(3) The Public Accounts Committee shall be given reasonable time to study any proposed Supplementary Appropriation Bill before such a bill is presented to Parliament.

141. Authorisation in advance of appropriation

(1) If the Appropriation Act has not come into operation by the beginning of the financial year to which it relates, Parliament may resolve to authorise the issue of moneys from the Consolidated Fund to meet

expenditure for the provision of the services of Government at a level not exceeding the level of those services in the previous financial year.

(2) Any such authorisation under the preceding subsection may only apply for a period of 3 months from the commencement of the financial year.

142. Warrants for unforeseen expenditure – If it appears to a Minister responsible for finance that–

- (a) there is an urgent and unforeseen need to incur expenditure; and
- (b) no provision exists for that expenditure in any appropriation law or other law; and
- (c) the expenditure is consistent with an applicable law; and
- (d) 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 is approved by Cabinet - the Minister may, by special warrant, authorise the issue from the Consolidated Fund money to meet that expenditure and shall include such amount in a Supplementary Appropriation Bill for appropriation at the first sitting of Parliament following the date on which the warrant was issued.

143. Delay in appropriation due to dissolution of Parliament – Where at any time Parliament has been dissolved before any provision, or sufficient provision, is made for funding the services of Government, the Minister responsible for finance may issue for the payment out of the Consolidated Fund of moneys necessary for the continuance of those services if–

- (a) the authorisation is stated to cease to have effect no later than 3 months commencing on the date on which Parliament first meets after the dissolution;
- (b) statements of the sums so authorised are laid before Parliament as soon as is practicable; and
- (c) shall be included in an Appropriation Act under separate votes for the different heads of expenditure.

144. Excess or unauthorised expenditure –

(1) If it is found that more money has been expended on a purpose than was appropriated to it under this Part, or that money has been expended on a purpose for which no money was appropriated under this Part, the Minister responsible for finance shall without delay introduce a bill into Parliament condoning the unauthorised expenditure.

(2) The Public Accounts Committee shall be given reasonable time to study any proposed appropriation bill authorising expenditure before such a bill is presented to Parliament.

Part IV

Central Bank of Solomon Islands (*Date discussed 24/6/09*)

145. Central Bank

(1) There shall be a Central Bank of Solomon Islands.

(2) The primary object of the Central Bank of Solomon Islands is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(3) The powers and functions of the Central Bank of Solomon Islands are those prescribed in this Constitution and those customarily exercised and performed by central banks, which powers and functions shall be determined by an Act of the Federal Parliament and shall be exercised or performed subject to the conditions prescribed in terms of that Act.

(4) The Central Bank of Solomon Islands, in pursuit of its primary objective, shall perform its functions independently and without fear, favour or prejudice, but there shall be regular consultation between the Bank and the Minister responsible for Finance.

(5) The Minister responsible for finance shall be responsible for tabling all reports of the Central Bank in Parliament.

146. Currency of Solomon Islands – There shall be one national currency for Solomon Islands, which shall, in all respects, be approved, issued, regulated and managed by the Central Bank.

CHAPTER ELEVEN
CONGRESS OF STATES *(Date discussed 8/6/2009)*

147. Congress of States

- (1) There shall be a Congress of States comprising-
 - (a) the President, who shall be the chairperson;
 - (b) the Head of each State;
 - (c) not less than four and not more than twelve persons appointed by the President on the advice of the Heads of State.

- (2) Appointed members who shall be persons of high moral integrity and of high character and shall hold office for a period of four years.

- (3) In making appointments under clause (c) of subsection (1) the President shall ensure that an absolute majority of appointees are indigenous Solomon Islanders.

- (4) No member of the Congress of States shall be paid a salary but shall be entitled to allowances and reimbursement of reasonable expenses for attending meetings.

148. Functions of the Congress of States – The functions of the Congress of States are to-

- (a) advise on matters affecting the national interests;
 - (b) review and advise on any legislation affecting the affairs of the federation, taking into particular account the views of the State Governments.
 - (c) **advise** the selection of appropriate persons to hold office under 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 which the Congress of States sets for investigation or review on its agenda.
 - (f) **ensure constitutional democracy works in the Republic.**
- (2) **The Congress of States shall be answerable to the Federal Parliament**

149. Meetings of the Congress of States

- (1) The Congress of States shall meet **not less frequently than** four times each calendar year at times and places appointed by the President.
- (2) 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.

149A. State Premiers Conference – A federal law shall provide for the Premiers Conference

CHAPTER TWELVE STATE GOVERNMENT (*Date discussed 03/06/09*)

Part I State Government

150. Right to Self autonomy of State and Community Governments–

- (1) A State, communities and people **shall have**, subject to this Constitution, the right–
 - (a) to self **autonomy** in matters relating to their internal affairs within the limits given by this Constitution; and
 - (b) to participate fully through procedures determined by them, in devising governmental, administrative and other measures of democratic governance.
- (2) The government and administration of each State shall be in accordance with a written constitution, which shall, subject to this Constitution, be the paramount law of the State.
- (3) **There shall be in each State a state legislature and a state cabinet.**
- (4) **Schedule Seven** applies **inter alia** to the adoption of a State Constitution.

Part II States and **Federal and State Boundaries**

151. States and State Boundaries

- (1) Subject to the provisions of this section and Schedule **Seven**, the nine provinces in Solomon Islands existing prior to the creation of the Republic shall on the coming into effect of this Constitution become States, and their boundaries are as described in Schedule **Four**.
- (2) The total number of States shall not exceed twelve in number and on any admission or establishment of a new State, the Federal Parliament may impose such terms and conditions it thinks fit regarding the representation of the new State in the Federal Parliament.
- (3) The jurisdiction of each State shall extend seaward for twelve nautical miles from the low-water line of each island comprised in the State and, if the island is situated on an atoll or has a fringing reef shall—
 - (a) include any area contained within the atoll or between the island and the reef; and
 - (b) extend seaward for twelve nautical miles from the low-water line of the atoll or reef.
- (4) The area beyond the twelve nautical miles and extending to the State boundary referred to in column B Schedule **Four** shall come under federal jurisdiction.
- (5) The Federal Government may grant any or all State Governments full or partial jurisdiction beyond the twelve mile limit as set out in subsection (3) up to and beyond the State boundary referred to in relation to that State in column B of Schedule **Four**.
- (6) Two or more States may amalgamate to create a new State or a State may partition to create a new State but only in accordance to an arrangement agreed between the States concerned and the Federal Government.
- (7) An arrangement under subsection (6) shall not be inconsistent with this Constitution.
- (8) A State may surrender, increase, or alter the boundary of the State, upon such terms and conditions as may be agreed on between the States and the Federal Governments.

Part III

Adoption and Certification of State Constitutions

152. Certification of State Constitutions

(1) No State Constitution or amendment to or a State Constitution becomes law until the Constitutional Court has certified that-

- (a) if an originating constitution, it is adopted in accordance with **Schedule Seven**; or
- (b) if the text is pursuant to an arrangement under Section **151 (6)**, it is passed in accordance with the terms of that arrangement; or
- (c) if the text is an amendment to a State Constitution, it is passed in accordance with the State Constitution; and
- (d) in every respect the State Constitution or Constitutional amendment is not inconsistent with this Constitution.

(2) A State Constitution shall come into operation in accordance with its provisions

Part IV State Justice System

153. State Courts

(1) Subject to subsection (2), States **shall** establish **State** courts in accordance with the provisions of a State Constitution, and shall have such Jurisdiction and powers as determined by this Constitution and law.

(2) State Governments **shall** make arrangements satisfactory to the Chief Justice, for the establishment of a registry of the High Court in a State, and for the administration of that registry to be merged with the registry of a State Court. Unless decided in this manner, the High Court shall continue to operate within States as it did before this Constitution came into effect

Part V Traditional justice

154. Traditional law practice

(1) To the extent compatible with this Constitution, clan or tribal communities or any section of such communities **shall** exercise authority to administer their own system of justice according to their distinctive juridical customs, traditions and procedures.

(2) Traditional justice **shall** decide or resolve a matter or punish in accordance with methods customarily

practised by the peoples concerned for dealing with offences.

(3) State legislature must enact law to give effect to this section.

CHAPTER THIRTEEN STATE REVENUE ARRANGEMENTS

155. State Government taxes

(1) A State Government may impose any form of taxation other than federal taxes.

(2) It shall not be lawful for State Governments, except by law to—

- (a) levy a tax;
- (b) raise a loan or to receive money as a loan from any juridical person;
- (c) spend any public money.

(3) The power of a State Government to impose taxes, shall not be exercised in a way that it prejudices the economic policies outlined in the National Development Plan, economic activities across State boundaries, or the mobility of goods, services, capital or labour

155A. State Governments Tax Revenue Sources - The State Governments Tax Revenue sources shall be: Property, Payroll, Retail sales, Vehicles, Excises, User charges, Resource utilization tax, Tourism, Business Licenses, Entrance Fees for foreign investors, Direct Aid to States, Borrowings, Commercial and Industrial development costs and fees, GST, Sales Tax, Road Toll Tax, Berthing and Landing fees, Research and Development fees, Basic Rates, Agriculture Livestock, Fishing and seabed, mining, manufacturing, Land administration, PAYE and Sin taxes.

155B. Concurrent Power of Taxation - The Federal Government and State Government shall jointly levy and collect profit sales, excise, and personal income taxes on enterprises they jointly establish.

155C. Undesignated Powers of Taxation - The Federal Parliament and the Congress of States shall, in a joint session determine by two thirds majority vote on the exercise of powers of taxation which have not been specifically provided in the Constitution.

156. State loans –

(1) Subject to Section 155 (2) (b), a State Government may raise a loan, receive any money as a loan or give a guarantee without the prior approval of the Federal Government.

(2) A State Government must not raise a loan to finance current expenditures or raise a loan from banks or related financial institutions or enterprises that it either owns or has a controlling interest.

157. State Banks –

(1) State Governments may establish or participate in the establishment of banks and related financial institutions, which may extend their operations beyond the boundaries of the State.

(2) Any state bank or financial institution established by a State Government must comply with the requirements applying to such institutions and the Federal Law.

157A. Sinking Funds - In accordance with a State Law, a State Government may establish a Sinking Fund or any other similar funds.

**CHAPTER FOURTEEN
STATE POWERS**

158. State powers

(1) A State legislature has the power to make laws for the whole or part of the State.

(2) A State legislature has -

(a) exclusive power to make laws in relation to any matter listed in List II (state powers) of Schedule **Five**;

(b) power to make laws in relation to any matter in List III (concurrent powers); and

(c) power to distribute the power of decision making and implementation to **community governments**.

158A. Executive Authority

- (1) The executive authority of the State government shall extend to all subject matters in List II of Schedule 5.
- (2) The executive authority of the State Government shall not extend to any matter in List I (federal powers), and to any matter in List III (concurrent powers) except as may be provided by Federal or State law.
- (3) A state law may provide that the executive authority of the federal government shall extend to the administration of any specified provisions of state law and may for that purpose confer powers and impose duties on any authority of the Federal government.
- (4) Where, pursuant to subsection (3) any functions are conferred by State law on any authority of the Federal government, the State government shall make financial payments to the Federal government as may be mutually agreed upon for carrying out such functions on behalf of the other.

158B. Arrangements between State governments –

Subject to any provisions of federal or state law, arrangements may be made between State governments for the performance of any functions by the authorities of the one on behalf of the authorities of the other and such arrangements may provide for the making of payments in respect of any costs incurred under the arrangements.

159. Exercise of concurrent power by State

Governments– The exercise of concurrent powers shall be done with prior consultation between the State and Federal government. In the event that a State government is in the position to assume the powers under List III of Schedule 5, the Federal government shall not withhold the divestment of such power.

160. Exercise of powers generally – State Government and administration shall operate as locally and autonomously as circumstances allow and in particular must -

- (a) sanction the right for **community governments** to exercise government over their **domestic** affairs, **resources** and way of life;
- (b) provide for 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;

- (c) ensure the timely distribution of resources and revenues to those beneficially entitled; and
- (d) ensure the participation of women and youths in the structure and administration of government.

161. Limitations of power

- (1) State power shall be so exercised
 - (a) as not to confer legislative powers beyond the State;
 - (b) as to ensure compliance with any federal law applying to that State;
 - (c) as not to impede or prejudice the legislative competency or the executive authority of the Federal Government or any other State Government;
 - (d) as not to prejudice the economic, health or security interests of another State or the Republic as a whole.
- (2) The executive authority of a State extends to all matters with respect to which the legislature of that State may make laws.

162. Conflict of laws

- (1) Where a State law concerning a concurrent power conflicts with a federal law, the federal law shall prevail until otherwise determined.
- (2) All other disputes concerning a conflict of laws, the federal law shall prevail, and the State law, to the extent of the conflict, shall be invalid.
- (3) Any conflict of laws under this section may only arise where there is an actual conflict between the provisions of both laws.
- (4) Federal law shall prevail over state law if the federal law is aimed at preventing unreasonable action by a State in terms of section 161.

162A. Community Government Powers

- (1) A Community Government shall have the powers to:
 - (a) Regenerate essential values of traditional governance and leadership systems including customary arbitration methods;

- (b) Control and manage customary land and boundaries and other resources;
- (c) Formulate and coordinate development plans and use of resources
- (d) Indigenization of traditional human rights, education system, Christian principles, traditional medicines and cures, labour, and balance of economic activities;
- (e) Codify and enact customary laws, norms and systems;
- (f) Control of moral standards and values of society;
- (g) Decree over cultural norms, customs, customary land, sea resources and other cultural rights or customary justice on crimes and civil wrongs;
- (h) Protect and conserve natural environment;
- (i) Community security, including food, water, sanitation, and general health and hygiene; and
- (j) Promote cordial inter-communal relationships and harmony.

(2) The Community Governments Revenue Sources shall be: Head Tax, Basic Rate, PAYE, Local Business License, Land and Reef Resources, Royalties and Withholding Tax, Land Leases, Business Partnerships, Entrance Fees, Court Fees and Fines, Carbon Trading, Anchorage Fees, Intellectual Property, Conservation/ National Heritage Area Fees, Dog Tax, Livestock Tax, Aircraft Landing Fees and Alcohol Permit Fee.

CHAPTER FIFTEEN FINANCIAL SHARING PROVISIONS

Part I Sharing of Federal Revenues

163. Federal revenues to be shared – The Federal revenues to be shared with States shall be-

- (a) revenues derived from **all** natural resources; and
- (b) all other Federal derived tax revenues excluding State revenues.

164. Allocation of **all natural resource revenues** – The allocation of revenues derived from **all** natural resources shall be allocated from the commencement of this Constitution in accordance with **Part II, Schedule Six**.

165. Allocation of federal tax revenues

(1) The revenues derived from federal taxes shall be allocated from the commencement of this Constitution in accordance with **Part I of Schedule Six**.

(Subsection 2 to 4 and Section 165(a) & (b) deleted)

166. Revenue Sharing Account

(1) The Central Bank shall be responsible for making of payments to State Governments of their share of revenues under this Part.

(2) On receipt of all Federal Government revenues to which this Part applies, the total share of the State Governments in respect of money received, under whatever sharing formula applied at the time of receipt, shall be paid into an account maintained by the Central Bank as the “Revenue Sharing Account”.

(3) Payments to the Revenue Sharing Account shall be made before the federal revenues are committed to any other purpose, and are authorised by this section without the need for any further appropriation.

(4) No revenue shall be withdrawn from the Revenue Account other than to make payments to State Governments according to their agreed share of the federal revenues.

(5) Each State shall maintain an account to be called “State Joint Community Account” into which shall be paid all revenue allocated to the State from the Revenue Sharing Account.

(6) As far as is practicable, the Central Bank shall make payments of the share of federal government’s revenues under this Part, to the Consolidated Fund Accounts of the State Governments on a weekly basis.

(7) Each State Government shall pay to the Community governments of the State such proportion of its total revenue on such terms and in such manner as may be prescribed that meets the criteria of expenditure responsibilities assigned to those Community governments.

(8) All revenue derived from royalties, land lease and those customary in nature will be paid directly to the resource owners.

167. Role of the Central Bank of Solomon Islands

(1) The Revenue Sharing Account shall be maintained by the Central Bank

(2) The Governor of the Central Bank shall regularly report to the National Finance Commission in regard to the management of the Revenue Sharing Account and may make recommendations to the National Finance Commission regarding the operation of the account and to timely inform the National Finance Commission of macroeconomic and financial issues that may affect the account.

(3) Any recommendation made under this section shall be done so as to enable State Governments to operate effectively, manage their finances in a responsible manner, and assist the State Governments to provide an optimum level and standard of social and economic services to their populations.

168. Equalisation Transfers and State disparities

(1) The Federal Government shall with the endorsement of the National Finance Commission make equalization transfers from its own consolidated fund to ensure that:—

- (a) States, regardless of ability to raise revenue provide comparable levels of services at comparable levels of taxation; and
- (b) State disparities in development and living standards are minimised.
- (c) Minimum standards of State services are maintained.

(2) Equalisation transfers to qualifying States shall be unconditional.

(3) Federal legislation shall give effect to this section.

169. Special revenue arrangement applying to the State of Guadalcanal

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

(2) The parties shall in good faith negotiate an arrangement, which shall be enacted by the Federal

Parliament as a full and final settlement of all claims and grievances by Guadalcanal affected peoples arising out of the taking of land comprising Honiara City and the adjacent sea, reefs and seabed.

Part II **National Finance Commission**

170. Establishment of National Finance Commission

- (1) There shall be established a National Finance Commission.
- (2) The National Finance Commission shall comprise the following members:
 - (a) The Federal Minister of Finance or proxy;
 - (b) The Treasurer of each State and Honiara City or proxy, and
 - (c) Two other persons who in the opinion of the President have unquestionable integrity with requisite qualification and experience in finance, economics, commerce, planning and development.
- (3) If any of the other two members is unable to attend a meeting of the National Finance Commission, the President of the Republic may nominate another person of similar expertise to attend the meeting as their substitute, and that person shall be regarded as a member of the National Finance Commission for the purpose of that meeting.
- (4) The National Finance Commission shall meet at least three times a year and for extraordinary meetings as requested to do so by three State Governments.

171. The functions of the National Finance Commission – The functions of the National Finance Commission shall be to-

- (a) Monitor the accruals and disbursement of revenue from the Revenue Sharing Account;
- (b) Monitor the processes of revenue sharing and the general operation of the financial arrangements between Federal and State Governments;
- (c) Monitor the fiscal decentralization
- (d) Promote the desirability of stable and predictable allocations of revenue to State Governments;

- (e) Advise the Federal and State Governments on fiscal efficiency and methods by which their revenue can be increased
- (f) Receive petitions, representations or submissions from the Federal Government, State Governments, Community Governments, Congress of States, the Central Bank or other interested parties regarding the financial arrangements;
- (g) Make recommendations to relevant governments and persons to ensure the proper implementation of the financial arrangements;
- (h) Facilitate the settlement of inter-governmental disputes relating to financial or fiscal matters;
- (i) Advise Federal and State Governments on broadening economic base and development needs; and
- (j) Discharge such other functions as are conferred on the Commission by an Act of the Federal Parliament.

172. Obligations of the Federal Government – (*Deleted from the draft – covered in above sections*)

172A. Principles and Directives of Revenue

- (1) Federal government should have the primary responsibility of stabilization policy and income distribution policies and functions having a national/universal dimension (involving macroeconomic and redistribution implications)
- (2) Community governments have the right to sustainable development and to participate in state and national development and in particular, to be consulted with respect to policies and projects affecting their community
- (3) Community governments have the right to participate in the formulation of state and federal government budgets in relation to the National Development Plan.
- (4) Expenditure responsibilities shall be clear and formally assigned for each sphere of government
- (5) The assignment of capital expenditure responsibilities including the decentralization of capital

investment decisions among spheres of government must be the same for recurrent expenditure

(6) Responsibility for the provision of services must be at the lowest level of government that can discharge the service effectively

(7) Donors to take into account the constitutional aspirations of Solomon Islanders enshrined in this constitution and avoid practices that are harmful or ignore the autonomies between spheres of government.

172B. Fiscal Decentralization

(1) Financial responsibility must be decentralized in order for Communities and State Governments to carry out their functions effectively and must have an adequate level of revenue to do so.

(2) Fiscal decentralization must proceed according to a fiscal decentralization plan that takes into account the development needs and priorities of communities and states as they determine and must promote the expenditure and revenue autonomy of state governments

(3) The objectives and goals of fiscal decentralization must include the efficient allocation of resources, and an equitable provision for services, the preservation of the internal common market, macro stability and the promotion of social and economic growth

(4) Communities and State Governments have the right to participate in the formulation of a fiscal decentralization plan.

(5) The Federal Parliament and the Congress of States shall, in joint session approve the fiscal decentralization plan by an absolute majority.

CHAPTER SIXTEEN

HONIARA CITY *(Date discussed 8/06/09)*

173. Status of Honiara City

(1) Until the Federal Parliament otherwise determines, the territory of Honiara City shall be federal territory.

(2) Honiara City shall have a full measure of self-administration according to a federal law; and be responsible to the Federal Government.

(3) The residents of Honiara City shall be represented in the Federal Parliament in accordance with the provisions of this Constitution.

(4) The Federal Parliament shall have exclusive power to make laws with respect to the boundaries of Honiara City provided that the State Government of Guadalcanal must ratify any such legislative measures before it becomes law.

174. Objectives of Honiara City

- (1) The **objectives** of Honiara City are to –
- (a) conduct its business in an open, transparent and democratically accountable manner;
 - (b) ensure the provisions of services in a sustainable manner;
 - (c) promote a safe and healthy environment;
 - (d) encourage the involvement of communities and community organisations in the matters of government;
 - (e) promote social and economic development; and
 - (f) ensure prudent stewardship and the efficient and effective use of its resources in the interests of its community.
- (2) Honiara City shall, within its resources, strive to achieve the **objectives** set out in subsection (1).

175. Administrative principles – In performing its **objectives** Honiara City must in accordance with the following principles –

- (a) establish clear outcomes for its activities and give effect to them in an efficient and effective manner;
- (b) give priority to the basic needs of the community;
- (c) ensure that the community is adequately informed about its activities;
- (d) make itself aware of, and have regard to the views of all its community; and
- (e) ensure its by-laws are accessible to the public.

176. Governance principles – Honiara City in addition to the values in Chapter Six and section 217 shall act in

accordance with the following principles in relation to governance –

- (a) ensure that the role of **representative** democratic governance of the community is , 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; and
- (e) be a responsible and fair employer.
- (f) **regulating urban drift into Honiara city.**
- (g) **maintain link between Honiara city and State governments and communities through consultations.**

176A. Federal law provision – A federal law shall provide for the matters referred to in sections 174 to 176.

CHAPTER SEVENTEEN ENVIRONMENT, LAND AND DEVELOPMENT

Part I

Environment and natural resources (*Date discussed 24/6/09*)

177. Environmental principles

- (1) Every person has the right to an environment that is not harmful to his or her health or well being.
- (2) All governments, organs of government, bodies and persons exercising a power or performing a function involving the management of land, natural resources, water and the sea shall be guided by the need 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 fishery and ensure that the **harvesting** of 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; and
 - (j) **protect against the importation or usage of toxic wastes**
 - (k) ensure that environmental standards enforced by the Republic reflect the best of standards internationally.
- (3) All governments shall enact laws and other measures to give effect to the provisions of this Part.

Part II

Land, **Sea, Resources and Property Matters**

178. Ownership of Land, Sea and **other property**

- (1) **The ownership of all land and all natural resources on, in and above all lands in Solomon Islands inclusive of seas and resources therein shall vest in the owner or owners thereof.**
- (2) No person **or group** may be deprived of lawfully owned or held land, **sea** and **other** property except in accordance with law and justice, including fair and prompt compensation if appropriate.

179. Acquisition of customary land by governments – No government shall acquire ownership to customary land other

than by way of a leasehold interest or by an interest of a similar nature **not exceeding 75 years**.

180. Mutual obligations in the provision of public works

—
Customary land and resource owners and governments owe each other reciprocal obligations of good faith and fairness in dealings with each other over requests to acquire rights of access or ownership of customary land or use of resources for the purposes of public works.

Part III **National, State and Community Government** **Development Plans**

181. National Development Plan

- (1) There shall be a National Plan for the economic and social development of the Republic.
- (2) A National Development Plan shall be reviewed –
 - (a) at such intervals not exceeding three years; and
 - (b) have regard to State **and Community Government** Plans.

182. State and Community Government Development Plan

- (1) Each State **and Community Governments** shall adopt a Development Plan for the economic, social development and conservation of resources of the State and **Communities**.
- (2) The first State Development Plan shall be implemented within twelve months of a State Constitution coming into effect.
- (3) Clan and tribal groups, customary land and resource owners, the business community and all other persons of a State shall participate in the formulation and where it is appropriate in the implementation and the evaluation of a State Development Plan.
- (4) **All** must participate equitably in the planning and decision making process of State **and Community** Plans.
- (5) State law may regulate the preparation, review, administration and monitoring of State and **Community** Governments Plans.

183. Content of plans – The contents of a National Development Plan and a State and Community Government Development plan must be consistent with this Constitution.

Part IV
Economic and social reforms and development

184. Economic and social reforms and development

- (1) Any government or any organisation or body having responsibility for –
- (a) the implementation of the National Development Plan or a State and Community Governments Development Plan; or
 - (b) economic or social reforms; or
 - (c) any international development loan; or
 - (d) exercising oversight of development projects, shall –
 - (i) in regard to clauses (b), (c) and (d) of subsection (1) ascertain any democratic and constitutional implications of those activities; and
 - (ii) take appropriate measures to be fully informed of the impact of any plan of development, reform, loan or project on the environment; and
 - (iii) in the case of affected village and other communities to take all appropriate measures to be fully informed of the political, social, cultural and economic impact such activities will have on those communities; and
 - (iv) shall ensure that any plan of development, reform, loan or project is environmentally sustainable and politically, socially, economically and culturally sustainable from the perspective of affected village and other communities.
- (2) The implementation of any development plan, reform, or development project shall provide for mechanisms for the monitoring of effects on the environment and affected village and other communities in terms of sustainability set out in subsection (1).

(3) Affected village and other communities have a right to full, fair, adequate and effective participation in any development plan, reform and development project and a right to be fully informed of the conditions or policies to be implemented on the acceptance of a development loan and all other relevant matters and to be informed of the findings of any impact assessment in terms of subsection (2).

185. Free trade arrangements

(1) Before agreeing to accede to any free trade arrangement, the Federal Government shall undertake an empirically based study of the economic, social, cultural, environmental, democratic and constitutional implications of free trade commitments on the Constitution, State Constitutions, subsistence and local economies, rural and other communities particularly rural women, food, manufacturing, natural resources, services, labour markets, investment and cultural knowledge and other relevant matters.

(2) A study under subsection (1) shall be conducted locally and the findings released for public comment.

186. Control of water – A government or organs of government shall 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.

CHAPTER EIGHTEEN
THE LEGAL SYSTEM (*Date discussed 24/6/09*)

Part I
Judicial authority

187. Judicial authority

(1) The judicial authority of the Republic is vested in the courts.

(2) The courts are independent and subject only to the Constitution and law, which they shall apply impartially and without fear, favour or prejudice.

(3) Governments and organs of government, through legislative and other measures shall –

- (a) assist and protect the courts to ensure the courts' independence, impartiality, accessibility and effectiveness; and
 - (b) take all necessary measures to ensure that the courts are adequately financed and resourced.
- (4) No person or organ of any government may interfere with the functioning of the courts.
- (5) An order or decision issued by a court binds all persons to whom and organs of government to which it applies.

Part II

The Superior Courts

188. The Superior Courts of Solomon Islands

- (1) The superior courts of Solomon Islands **shall be** –
- (a) Constitutional Court;
 - (b) Court of Appeal; and
 - (c) High Court.
- (2) The Court of Appeal and High Court has the jurisdiction, including inherent jurisdiction, conferred on it immediately before the commencement of this Constitution and any further jurisdiction conferred on it by this Constitution or by law.
- (3) Nothing in this Chapter affects the continuance of a person in office as a judge under an appointment made before the commencement of this Constitution.

189. The Constitutional Court

- (1) There shall be a Constitutional Court for Solomon Islands, which shall be the highest court in all constitutional matters as conferred by this Constitution or by law.
- (2) The Constitutional Court shall consist of:
- (a) the Chief Justice, who is to be President of the Constitutional Court;
 - (b) such other judges as are appointed as Justices of the Constitutional Court; and
 - (c) the Justices of Appeal.

(3) The President of the Constitutional Court and other Justices of the Constitutional Court are appointed by the President, acting in accordance with the advice of the Judicial and legal Services Commission.

(4) A matter before the Constitutional Court shall be heard by at least 3 judges.

(5) The Constitutional Court has, in addition to powers conferred by this Constitution, exclusive jurisdiction, subject to such requirements as Parliament prescribes, to hear and determine:

- (a) appeals from all final judgments of the Court of Appeal concerning any matter arising under this Constitution or a State Constitution including its interpretation;
- (b) disputes between organs of government in the federal or state sphere concerning the constitutional status, powers or functions of any of those organs;
- (c) the constitutionality of any bill of the Federal Parliament or State legislature;
- (d) the constitutionality of any amendment to this Constitution or any State Constitution;
- (e) any dispute or matter concerning the obligations of the President or a Head of State.

(6) An appeal may not be brought from a final judgment of the Court of Appeal unless:

- (a) the Court of Appeal gives leave to appeal on a question certified by it to be of significant public importance; or
- (b) the Constitutional Court gives special leave to appeal.

(7) In the exercise of its appellate jurisdiction, the Constitutional Court has power to review, vary, set aside or affirm decisions or orders of the Court of Appeal and may make such orders (including an order for a new trial and an order for award of costs) as are necessary for the administration of justice.

(8) The Constitutional Court may review any judgment, pronouncement or order made by it.

190. The Court of Appeal

(1) The Court of Appeal shall consist of:

- (a) a judge, other than the Chief Justice, who is appointed as President of the Court of Appeal;
- and

- (b) such other judges as are appointed as Justices of Appeal.
- (2) The President of the Court of Appeal and the other Justices of Appeal are appointed by the President **of the Republic**, acting in accordance with the advice of the Judicial and Legal Services Commission.
- (3) The Court of Appeal has jurisdiction, subject to this Constitution and to such requirements as prescribed by Parliament, to hear and determine appeals from all judgments of the High Court, and has such other jurisdiction as is conferred by law.
- (4) Parliament may provide that appeals lie to the Court of Appeal, as of right or with leave, from other judgements of the High Court in accordance with such requirements as the Parliament prescribes.

191. The High Court

- (1) The High Court **shall** consist of:
 - (a) the Chief Justice; and
 - (b) such numbers of other judges as Parliament may prescribe.
- (2) The Parliament may make provision for the appointment of Masters of the High Court and may prescribe their jurisdiction and powers.
- (3) The Chief Justice and the other Justices of the High Court are appointed by the President **of the Republic**, acting in accordance with the advice of the Judicial and Legal Service Commission.
- (4) The High Court has unlimited original jurisdiction to hear and determine any civil or criminal proceedings under law and such other original jurisdiction as is conferred on it under this Constitution.
- (5) Subject to the exclusive jurisdiction of the Constitutional Court, the High Court has further original jurisdiction in any matter arising under this Constitution or a State Constitution including its interpretation.
- (6) The High Court has further jurisdiction, subject to the conferral by Parliament of rights of appeal and to such requirements as the Parliament prescribes, to hear and determine appeals from all judgements of subordinate courts.

(7) If in any proceedings in a subordinate court any question arises as to the interpretation of this Constitution or a State Constitution and the member presiding in the proceedings considers that a substantial question of law is involved, the member presiding must refer the question to the High Court.

(8) When the High Court gives its decision on a question referred to it under subsection (6), the Court in which the question arose must dispose of the case in accordance with:

- (a) the decision; or
- (b) if the decision is the subject of appeal to the Court of Appeal or to the Constitutional Court, the decision of the Court of Appeal or Constitutional Court, as the case may be.

(9) The High Court has jurisdiction to supervise any civil or criminal proceedings before a subordinate court and may, on an application duly made to it, make such orders, issue such writs and give such directions as it considers appropriate to ensure that justice is duly administered by the subordinate court.

192. Advisory jurisdiction

(1) The High Court has, on the application of an authority referred to in subsection (2), jurisdiction to give its opinion on any constitutional matter including the validity of any proposed law or law.

(2) The following are entitled to make application under subsection (1) –

- (a) President **of the Republic**;
- (b) Federal Parliament;
- (c) Attorney-General;
- (d) Any body, institution or commission established under this Constitution
- (e) State **Governor**;
- (f) State Legislatures; or
- (g) **Community Government**
- (h) Any other such person or institution specifically prescribed by a State Constitution.

(3) The High Court shall have power to dismiss any application under this section if found not to be genuine or have merit.

(4) The Rules of Court of the High Court may make provision in respect of matters relating to the jurisdiction of the High Court under this section.

193. Powers of courts in Constitutional matters – When deciding a constitutional matter a court–

- (a) shall declare that any law or conduct that is inconsistent with the constitution is invalid to the extent of the its inconsistency; and
- (b) may make an order that is just and equitable, including –
 - (i) an order limiting the retrospective effect of the declaration of invalidity;
 - (ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect;
 - (iii) such orders or give such directions as it considers appropriate including the award of compensation; and
 - (iv) normal orders of judicial review.

194. Disqualification of judge – A judge who has sat in a trial of a matter that is the subject of appeal to a higher court must not sit in the appeal.

195. Inherent Power – The superior courts have inherent power to protect and regulate their own process.

Part III Court Procedure

196. The Rules of Court

- (1) The Rules of Court applying to the procedures of the superior courts shall be made by a Rules Committee consisting of the –
- (a) Chief Justice;
 - (b) President of the Court of Appeal;
 - (c) Attorney General; and
 - (d) **President of Solomon Islands Bar Association**
 - (e) such other persons as the President **of the Republic**, acting after consultation with the Chief Justice, may appoint.

(2) The Rules Committee may make rules, not inconsistent with this Constitution or a law made by the Parliament, for regulating and prescribing the practice and procedure to be followed in the superior courts.

Part IV Tenure and other matters

197. Qualification for appointment

(1) A person is not qualified for appointment as a judge unless he or she –

- (a) holds or has held high judicial office in Solomon Islands or in any country prescribed by Parliament; or
- (b) has had not less than 5 years practice as a barrister or solicitor in Solomon Islands or in another country prescribed by Parliament.

(2) The Chief Justice is appointed by the President of the Republic acting in accordance with the advice of Judicial and Legal Services Commission.

(3) If the office of Chief Justice or judge is vacant, or if the person holding such office is for any reason unable to perform the functions of office, the President of the Republic acting in accordance with the advice of the Judicial and Legal Services Commission may either appoint -

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

198. Criteria for appointment of judicial officers – The making of appointments to judicial office is governed by the principle that judges should be of the highest quality.

199. Tenure of judges

(1) The term of appointment of the Chief Justice, a Justice of Appeal, a Justice of the Constitutional Court (including the President of the Court of Appeal) or a judge of the High Court expires upon his or her reaching the age of 70.

(2) A retired judge may be appointed as an acting judge for a fixed term after he or she has reached retirement age.

Original Subsection 3 deleted

(3) Nothing done by a judge shall be invalid by reason only that the retirement age has been reached.

Original Subsection 5 deleted

(4) **Subsection 3** shall not apply in the event of the removal of a judge from office.

200. Removal of judge for cause (*Date discussed on 25/6/09*)

(1) A judge may be removed from office for inability to perform the functions of his or her office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, and may not otherwise be removed.

(2) Removal of a judge from office must be by the President **of the Republic** pursuant to subsection (3).

(3) If the President **of the Republic** considers that the question of removing a judge from office ought to be investigated, then:

(a) the President **of the Republic** appoints:

(i) in the case of alleged misbehaviour—a tribunal, consisting of a chairperson and not less than 2 other members, selected by the President from among persons who hold or have held high judicial office in Solomon Islands or in another **Commonwealth** country.

(ii) in the case of alleged inability to perform the functions or office, a medical board, consisting of a chairperson and 2 other members, each of whom is a qualified medical practitioner;

(b) the tribunal or medical board enquires into the matter and furnishes a written report of the facts to the President **of the Republic** and advises **him** whether or not the judge should be removed from office; and

(c) if the tribunal or medical board advises that the judge should be removed from office, the

President **of the Republic** may remove the judge from office.

(4) If the question of removing a judge from office has been referred to a tribunal or medical board under subsection (3), the President **of the Republic** may suspend the judge from office and may, at any time, revoke that suspension.

(5) The suspension of the judge from office ceases to have effect if the tribunal or medical board advises the President **of the Republic** that the judge should not be removed from office.

201. Oath of office – Before any judge and any judicial officer begin to perform their functions, they shall take an oath of allegiance, in accordance with Schedule **Two**, that they will uphold and protect this Constitution.

202. The Judicial and Legal Services Commission

(1) **There shall be established a Judicial and Legal Services Commission and shall consist** of:

- (a) Chief Justice, who is the Chairperson;
- (b) Federal Attorney-General;
- (c) Chairperson of the Public Services Commission;
- (d) the person who is from time to time the President of Solomon Islands Bar Association; and
- (e) two other members appointed by the President **of the Republic**, acting on the advice of the **Federal Cabinet**.

(2) Additional appointments made by the Judicial **and Legal Services Commission** are –

- (a) office of magistrate; and
- (b) all judicial offices for which provision is made by **Federal Parliament**.

(3) A power of appointment under subsection (2) includes a power to remove and to exercise disciplinary control over persons holding or acting in such offices.

(4) In addition to the functions conferred on it elsewhere in this Constitution, the Judicial **and Legal Services Commission** may investigate complaints about judges and judicial officers of courts subordinate to the High Court and may take disciplinary action against them.

(5) Before members of the Commission begin to perform their functions, they shall take an oath of allegiance, in accordance with Schedule **Two**, to uphold and protect this Constitution.

CHAPTER NINETEEN PREROGATIVE OF MERCY

Part I Powers of the President

203. Federal Powers of Pardon

- (1) There shall be a Prerogative of Mercy Committee, which shall comprise of—
 - (a) a Chairman and two other persons, one of whom shall be a qualified medical practitioner and the other shall be a social worker, appointed by the President in his own deliberate judgement; and
 - (b) one person chosen from a list of nominated members submitted by each State Government, to consider a matter involving an ordinary resident of the State of that member.
- (2) A member of the Committee shall hold office at the pleasure of the President.
- (3) Before members of the Committee begin to perform their function, they shall take an oath of allegiance, in accordance with Schedule **Two**, that they will uphold and protect the Constitution.
- (4) The President, acting on the advice of the Prerogative of Mercy Committee, may—
 - (a) grant a pardon to any person convicted of any offence under any law in Solomon Islands, as either a free pardon or subject to lawful conditions;
 - (b) grant to any person a respite, either indefinite or for a specified period, of the execution of any punishment imposed on that person for any offence;
 - (c) substitute a less severe form of punishment imposed on any person for any offence; or
 - (d) remit the whole or any part of a punishment imposed on any person for any offence, or any penalty, forfeiture or other order imposed as a consequence of the conviction for an offence.

Part II
Exercise of State Powers

204. State Powers of Pardon

- (1) The Head of State may exercise powers similar to those vested in the President under Part I, in accordance with the provisions of a State Constitution or a State law.
- (2) The State power of pardon shall only apply to a person who has been convicted in State Court of an offence committed in that State.
- (3) The State Constitution or State law granting powers referred to in sub-section (1) shall make provision for the appointment of a State Prerogative of Mercy Committee and the power to grant a pardon may only be exercised in accordance with the advice of that Committee.

205. Limitation of exercise of power of pardon – Neither the President or a Head of State shall exercise any power in section **203 (4)** in respect of any offence arising under section **8**.

CHAPTER TWENTY
REPRESENTATION OF THE PEOPLE

Part I

Electoral Arrangements *(Date discussed 25/06/09)*

206. General principles

- (1) Electoral systems for any government under this Constitution shall be based on the following fundamental principles –
 - (a) the right of all Solomon Islands citizens to vote and to stand for elections at federal and state level free from nepotism or other social constraints;
 - (b) voting shall be by secret ballot and for voting records to be kept secret;
 - (c) elections shall be free and fair and where the influence of the elector's vote is based on political programmes rather than on personal or non political related criteria;
 - (d) elections shall ensure where practicable fair representation of Solomon Islands communities and gender; and
 - (e) elections shall be conducted by an independent body free from political interference.

- (2) In all elections –
 - (a) a person who has attained 18 years of age shall have the right to be registered to vote;
 - (b) the administrative arrangements for the registration of voters and the conduct of elections shall not deny a person’s right to vote and stand for election; and
 - (c) as far as is practicable, there shall be a system of continuous registration.

207. Disqualification from registration – A citizen is not qualified to be registered as a voter –

- (a) in more than one State;
- (b) if declared to be of unsound mind under a federal law;
- (c) if disqualified from registration as an elector or from voting at elections under a federal law; or
- (d) if he or she is under a sentence of imprisonment for a term of 6 months or more **including a suspended sentence for a crime** imposed by a court.

208. Voting procedures

- (1) The Electoral Commission **shall be** responsible for ensuring that –
 - (a) voting procedure is simple and precise;
 - (b) voters are given an opportunity to cast their votes in secret and free from the influence or intimidation of others;
 - (c) ballot boxes are kept secure and that this is capable of verification;
 - (d) votes are counted and recorded; and
 - (e) the results of those elections are declared within a period prescribed by applicable laws which shall be as short as reasonably possible.
- (2) If a State Government does not make provision for any aspect of the conduct of elections for the State legislature, the Federal law applying to the elections to the Federal Parliament will apply, with any necessary modification.
- (3) The right to vote in an election for a State legislature is restricted to persons entitled to vote in elections for the Federal Parliament.
- (4) Nothing in this Part shall prevent a State Constitution making provision enabling a clan or tribal

group or constituency to choose in accordance with their own procedures their or its representative for any public office so long as the procedure is not incompatible with this Constitution.

209. Federal Parliament Representations – The Federal Parliament shall have not more than 50 members.

210. Review of Federal Constituency Boundaries
(Reinstated 26/6/09)

- (1) The Electoral Commission shall as soon as practicable after the commencement of this Constitution review the number and boundaries of federal constituencies and to ensure such boundaries are consistent with this Constitution.
- (2) The Electoral Commission may review the number and boundaries of the constituencies whenever it considers it desirable, and may make recommendations to the Federal Parliament for alterations in the number and boundaries of the constituencies.
- (3) The Federal Parliament may approve or reject the recommendations of the Electoral Commission but shall not vary them; and if so approved, the recommendation shall have effect as from the next dismissal of the Federal Parliament.
- (4) When conducting a review under this section, the Electoral Commission shall-
 - (a) consult with each State Government, Honiara City and other interested parties;
 - (b) have regard to the principle that the inhabitants of each constituency be as nearly as equal as is reasonably practicable.
 - (c) ensure that constituencies do not cross State boundaries and have regard to the inconvenience of State constituencies crossing the boundaries of federal constituencies;
 - (d) the Electoral Commission may depart from the principle in subsection (b) to the extent as 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.

210. Review of Federal Parliament Representation

- (1) The Electoral Commission shall **whenever necessary review the number of Federal Parliament seats to be consistent with this Constitution.**
- (2) When conducting a review under this section, the Electoral Commission shall-
 - (a) consult with each State and Community Governments.

**Part II
Political Parties**

211. The right to form a political party

- (1) **There shall be not more than 3 political parties allowed in the Republic.**
- (2) Any person may, by lawful association form a political party.
- (3) No person, group or authority shall represent itself as a political party unless registered as a political party under this part.
- (4) A political party is entitled to financial support from the Republic on the basis prescribed by a federal law.
- (5) No person may use public resources to promote the interests of a political party.

212. Registration of political parties

- (1) All political parties shall be registered according to the requirements of a federal law.
- (2) The Electoral Commission is the register and regulator of political parties and for that purpose shall keep and maintain a register of political parties.
- (3) The Federal Parliament shall enact a law providing for the registration, regulation and funding of political parties participating in Federal and State legislatures.

213. Qualifications for registration

- (1) The essential qualifications for registration of a political party are that by its constitution or rules the

political party has a federal or state character, which seeks to–

- (a) promote and uphold the union of the Republic;
 - (b) practice democracy within the party through regular, fair and free elections;
 - (c) be transparent and accountable to its members and regulatory authorities;
 - (d) promote and respect Rights and Freedoms and gender equality; and
 - (e) promote and uphold this Constitution and the rule of law.
- (2) A political party is not eligible for registration if that party is founded purely on religious, linguistic, racial, ethnic, corporatist basis or seeks to engage in propaganda based on any of those matters.
- (3) A political party shall not engage in corrupt practices or encourage violence or intimidation of its members, supporters or opponents or any other persons.
- (4) A political party shall keep proper accounts, and proper books and records of account in the form approved by the Auditor-General.
- (5) Within three months after the end of its financial year, a political party shall submit its accounts and books and records of account to the Auditor-General for audit.
- (6) A political party shall comply with all requests of the Auditor –General in a timely manner and disclose and produce to the Auditor –General any document, record, financial statement and any other information or document should the Auditor–General so request;
- (7) The Auditor-General shall within three months of the submission under clause (5), audit the accounts and to submit the report on the audit to the political party.
- (8) The political party shall within one month of the receipt of the report of the Auditor- General publish its accounts in the Gazette and the national newspaper.

214. Cancellation of registration – The registration of a political party shall be cancelled if the political party –

- (a) is in breach of or has not complied with a matter listed in section **213** or law;

- (b) obtained its registration in a fraudulent or corrupt manner;
- (c) falsifies or misrepresents its records or accounts;
- (d) willfully fails to abide with requests, co-operate or intimidate the Auditor – General in carrying out his or her duties under this Part; or
- (e) instigated or connived in the commission of an election offence.

215. Party discipline

- (1) The rules of a political party shall contain provisions that ensure internal discipline including rules to vote in accordance with the party position, the discipline of party members in breach of party rules, adherence to the Constitution, standing orders or rules of a State legislature.
- (2) A political party shall not punish a Member of 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.
- (3) A member of any legislature who resigns from the political party that sponsored the member’s election or leaves the political party to join another or remains in office as an independent loses his or her seat.

216. Restrictions on holding of office in political parties -
The **President of the Republic** and public officials shall not hold office in a political party.

**CHAPTER TWENTY-ONE
THE PUBLIC ADMINISTRATION**

**Part I
Principles governing Federal and State public
administration**

217. Principles governing public administration

- (1) The guiding principles in public administration of the Republic include -
 - (a) promotion and maintenance of a high standard of professional ethics free from *nepotism* and other social constraints;

- (b) promotion of efficient, effective and economic use of resources;
 - (c) promotion and maintenance of fair employment practices;
 - (d) services shall be provided impartially, fairly, equitably and without bias;
 - (e) prompt and timely response to people's needs;
 - (f) Public administration shall be accountable;
 - (g) transparency to be fostered by providing the public with timely, accessible and accurate information;
 - (h) merit as the basis of appointments and promotions; and
 - (i) equal and adequate opportunities for training and advancement of men and women equally.
- (2) The above principles apply to-
- (a) administration in every sphere of government;
 - (b) organs of the Republic; and
 - (c) public enterprises.

Part II

Public Service Commission

218. Establishment of a Public Service Commission

- (1) There shall be a Public Service Commission for the Federal Government.
- (2) The Public Service Commission shall be independent and impartial and no person or organ of government may interfere with the functioning of the Commission.
- (3) A law shall provide for the appointment of Commissioners who shall be fit and proper persons with knowledge of, and experience in the administration and management of public services.
- (4) The Public Service Commission must function, be structured and regulated according to law.

- 219. The powers and functions of the Public Service Commission** – The powers and functions of the **Public Service Commission** are to–
- (a) report to the Federal Parliament on the activities and the performance of its functions;
 - (b) promote the values and principles set out in section **217** throughout the public service;
 - (c) investigate, monitor and evaluate the organisation, administration, and the personnel practices of the public service;
 - (d) propose measures to ensure efficient and effective performance of the public service;
 - (e) give directions throughout the public service on personnel procedures;
 - (f) review the terms and conditions of public service, code of regulations, training and qualifications of public officers and matters connected with personnel management and development of the public service and make recommendations on them to the Federal Government;
 - (g) Engage, dismiss, and discipline; and**
 - (h) perform such other functions as may be prescribed by this Constitution or by law.

Part III Federal and State Public Services

- 220. The Federal Public Service**
- (1) Within the public administration there is a public service for the Federal Government, which must function and be structured in terms of a federal law.

 - (2) The Federal Public Service is part of the executive branch of the Federal Government and shall impartially implement the decisions of the Government of the day by providing frank, honest and comprehensive advice to Ministers.

 - (3)** Employees of the Federal Public Service shall –
 - (a) fulfill their lawful obligations to the Government with professionalism and integrity;
 - (b) serve the aims and objectives of their portfolio Minister and ensure that their personal interests or activities do not interfere with this obligation;
 - (c) act in such a way that their department maintains the confidence of the Minister;

- (d) cooperate timely with Ministerial requests for information; and
 - (e) remain politically neutral.
- (4) An employee of the Federal Public Service shall not be—
- (a) victimised or discriminated against; or
 - (b) dismissed, removed from office, demoted in rank or otherwise punished, for having performed his or her duties in accordance with this Constitution.
- (5) A law shall protect the neutrality of the public service and shall determine the terms and conditions of employment in the Federal Public Service.

221. Establishment of State Public Service Commission

- (1) There shall be established a State Public Service Commission which shall be responsible for the –
- (a) employment of persons in the service of the State Government;
 - (b) management and control of State Government employees;
 - (c) conditions of employment and the entitlements of State Government employees;
 - (d) power to appoint, dismiss and discipline State Government employees; and
 - (e) any other related matter.
- (2) State laws under this section shall be consistent with the uniform principles and standards of employment applying to the Federal Public Service.

**Part IV
Police Force**

222. Police Force

- (1) The Police Force of Solomon Islands established and administered under the former Constitution shall continue to be the Police Force of Solomon Islands.
- (2) The Police Force shall be under the command of the Commissioner of Police.
- (3) The President of the Republic shall appoint the Commissioner of Police on the advice of the Cabinet

given after the **Cabinet** has consulted with the Federal Public Service Commission.

(4) The Commissioner of Police shall exercise control over and manage the Police Force in accordance with Solomon Islands policing policy and in accordance to such directions of policy from government in accordance with this Chapter.

(5) Except as provided in the preceding subsection, the Commissioner of Police shall be responsible for controlling the operations of the Police Force and in doing so shall not be subject to the direction or control of any person or authority.

(6) The primary focus of the Police Force is to –

- (a) prevent, combat and to investigate crime in a timely manner;
- (b) be accountable to the public;
- (c) maintain public order, to protect and secure Solomon Islands citizens and their property; and
- (d) uphold and enforce the law and this Constitution.

(7) The Police Force shall be administered and operated in accordance with the provisions of this Constitution, and any applicable law which may make provision for any matter related to the –

- (a) appointment of officers of any ranks;
- (b) employment of other staff;
- (c) removal and discipline of police officers;
- (d) right of officers to appeal against decisions to remove or discipline them, and the procedures for such appeals;
- (e) establishment of an independent police complaints body to investigate any alleged misconduct of, or offence committed by, a member of the Police Force, police inefficiency or a breakdown in relations between the police and the community; and
- (f) any other related matter.

(8) In the recruitment of officers in the Police Force and in the making of appointments and promotions regard **to fair and balanced representation**.

223. Policing jurisdiction and responsibilities

- (1) The Police Force shall have at all times, and throughout the Republic, jurisdiction to attend to all policing matters.
- (2) The Police Force must be structured by law to –
 - (a) function in the Federal, State and Community Governments;
 - (b) ensure effective co-ordination of the Police Force and effective cooperation among the spheres of government; and
 - (c) enable the Police Force to discharge its responsibilities effectively, taking into account the requirements of States.

224. Solomon Islands policing policy

- (1) The Federal, State and **Community Governments** shall jointly determine a Solomon Islands policing policy which shall make provision for different policies in respect of States after taking into account the policing needs and priorities of each State.
- (2) Each State Government is entitled to –
 - (a) monitor police operations within the State according to the needs and priorities of the State under the Solomon Islands policing policy;
 - (b) generally oversee the effectiveness and efficiency of the Police Force in the State;
 - (c) monitor police conduct;
 - (d) promote good relations between the police and the **community**;
- (3) In order to perform the functions set out in the preceding subsection State Government may –
 - (a) investigate or conduct an inquiry into any complaints of police inefficiency or a breakdown in relations between the police and any community; and
 - (b) give the Commissioner of Police directions of policy regarding the implementation of the Solomon Islands policing policy as it applies to the State;
 - (c) give the Commissioner of Police such general directions of policy with regard to the maintenance of public safety and public order.

(4) The Commissioner of Police shall in a timely manner comply with such directions or cause them to be complied with.

225. State policing responsibilities – State Governments shall be responsible for policing functions –

- (a) vested in it by this Part;
- (b) assigned to it by federal law; or
- (c) allocated to it in the Solomon Islands policing policy.

Part V **Correctional Services**

226. Correctional Services

- (1) The Correctional Service established and administered under the former Constitution shall continue to be called Correctional Services.
- (2) **Correctional Services** shall be under the command of the **Commissioner** of Correctional Services.
- (3) The President **of the Republic** on the advice of the **Cabinet** given after the **Cabinet** has consulted with the **Public Services Commission** shall appoint a **Commissioner** of **Correctional Services**.
- (4) The primary focus of the **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 where appropriate culturally appropriate; and
 - (d) reduce re-offending through rehabilitative and re- integrative interventions.
- (5) **Correctional Services** shall be a professional and disciplined service and shall be structured and regulated so as to –
 - (a) achieve its primary focus in subsection (1);

- (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.

(6) **Correctional** Services shall be structured, organised and administered in such a manner as federal law may prescribe.

227. Correctional Services responsibilities – The **Correctional** Services must operate and be structured by law to -

- (a) function in the Federal, State **and Community Governments**;
- (b) ensure effective co-ordination of the **Correctional** Service and effective cooperation among the spheres of government.; and
- (c) enable the **Correctional** Service to discharge its responsibilities effectively, taking into account the requirements of States.

228. State responsibilities

- (1) Each State is entitled to –
 - (a) monitor **Correctional** Service operations within the State according to the policies of the State; and
 - (b) generally oversee the effectiveness and efficiency of the **Correctional** Service in the State;
- (2) A State shall be responsible for **Correctional** Service functions -
 - (a) vested in it by this Part;
 - (b) assigned to it by federal law.

CHAPTER TWENTY-TWO INSTITUTIONS SUPPORTING CONSTITUTIONAL DEMOCRACY

Part I Governing Principles

229. Establishment and Governing Principles –

(1) The following institutions strengthen constitutional democracy in the Republic:

- (a) The Public Solicitor.
- (b) The Director of Public Prosecutions
- (c) The Human Rights Commission.
- (d) The Auditor-General.
- (e) The Electoral Commission.
- (f) The Ombudsman
- (g) The Leadership and Anti-Corruption Commission

(2) These institutions are independent, subject only to the Constitution and the law and shall -

- (a) be impartial;
- (b) exercise their powers and perform their functions without fear, favour or prejudice;
- (c) not be subject to direction or control by any person or authority or in any way interfere in the functioning of them.; and
- (d) annually report to the Federal Parliament.

(3) The Federal Government and organs of government, through legislative or other measures, shall -

- (a) assist and protect these institutions to ensure their independence, impartiality, dignity and effectiveness of them; and
- (b) take all necessary measures to ensure that these institutions are adequately financed and resourced.

230. Appointments to Commissions and Institutions

(1) The Public Solicitor, Auditor-General, the Ombudsman, Director of Public Prosecutions and members of any commission established by this Chapter shall be appointed by the President **of the Republic** acting in accordance with the advice of a committee consisting of the Prime Minister **acting on the advice of the Cabinet**, the Chairperson of the **Federal** Public Services Commission and Chairperson of the Judicial and Legal Services Commission.

(2) In addition to prescribed appointment criteria, a person to be eligible for appointment to a commission or hold office under this Chapter shall be a person who -

- (a) is a Solomon Islands citizen;

- (b) a fit and proper person to be a Commissioner or hold office; and
 - (c) complies with any other requirements prescribed by this Constitution or a federal law.
- (3) Membership of any Commission established by this Chapter shall reflect broadly the composition of Solomon Islands.
- (4) The involvement of the Congress of States in the appointment of members may be provided for as envisaged in section **148 (c)**;
- (5) Before any member to a Commission or officer appointed under this Chapter begins to perform the ir functions of office, they shall take an oath or affirm, in accordance with Schedule **Two**, that they will uphold and protect the Constitution.

Part II Public Solicitor

231. The Office of Public Solicitor – There shall be an Office of Public Solicitor.

232. The functions of Office - The function of the Office of Public Solicitor is to provide legal aid, advice and assistance to persons in need, and in particular to provide legal aid –

- (a) to persons charged with **all** criminal offences;
- (b) **to persons with civil actions;**
- (c) to any person when directed to do so by a superior court; and
- (d) in accordance with any provision of the Rights and Freedoms stated in Chapter **Four**;
- (e) **on the rights of resource owners; and**
- (f) such additional functions as prescribed by law.

233. Legal aid and cost for services

- (1) A law may prescribe conditions to be met before legal aid shall be provided, and may make provision in relation to a right of appeal in the event that an application for legal aid is refused.

(2) A law may make provision for the Public Solicitor to make a reasonable charge for services where a person is able to make a contribution toward the cost of the services provided.

(3) Nothing in this section shall affect the right of State Government to make arrangements for the provision of legal aid and assistance to any person.

234. Accessibility of office – The Office of Public Solicitor shall be accessible to all persons and communities throughout the Republic.

Part III Director of Public Prosecutions

235. The Office of Director of Public Prosecutions

(1) There shall be an Office of Director of Public Prosecutions.

(2) A person shall not be qualified for appointment as Director of Public Prosecutions unless he or she has had not less than 5 years practice as a barrister or solicitor in Solomon Islands or within a **Commonwealth** country.

(3) During any period when the Director of Public Prosecutions is absent or otherwise unable to perform the duties of office, a qualified person holding the office of Deputy Director of Public Prosecutions, or any other qualified person appointed by the President **of the Republic** in accordance with this Chapter shall act in that office.

236. Functions of Office of Director of Public Prosecutions

(1) The functions of the Director of Public Prosecutions shall be to–

- (a) institute and undertake any criminal proceedings against any person before any federal or state court in respect of any offence alleged to have been committed by that person and to carry out any functions incidental to instituting criminal proceedings;
- (b) take over and continue any criminal proceedings (including any appeal or any case stated in a criminal proceeding) that

- have been instituted by any other person, or any federal or state authority; and
- (c) discontinue at any stage before judgement is delivered, and any criminal proceedings instituted by the Office or by any other person, or any federal or state authority; and
 - (d) **Perform** such additional functions as prescribed by law.

(2) Where any case involves the defence, security or international relations of Solomon Islands, the Director of Public Prosecutions shall advise the Prime Minister, and shall have regard to any views officially communicated by the Prime Minister.

(3) Nothing in this section shall affect the right of State Government to make arrangements for the prosecution of offences in State courts, but such arrangements shall not derogate from the right of the Director of Public Prosecutions to exercise the functions of Office under this Constitution.

(4) All other matters concerning the office of Director of Public Prosecutions shall be determined by law.

237. Tenure of Director of Public Prosecutions

(1) The Director of Public Prosecutions shall vacate office at the age of **70** years.

(2) The President **of the Republic shall** permit the Director of Public Prosecutions to continue in office until such later age is attained as has been determined by the President **of the Republic** on the advice of the appointments committee in section **230**.

Part VI
Human Rights Commission

238. The Human Rights Commission – Within two years of coming into force of this Constitution, the Federal Parliament shall enact a law to establish a Human Rights Commission.

239. The Functions of the Human Rights Commission

(1) The functions of the Human Rights Commission shall be to –

- (a) promote respect and general awareness for human rights and a culture of human rights;
 - (b) promote compliance of international human rights treaties and obligations;
 - (c) promote the progressive realisation of **human** Rights and Freedoms.
 - (d) monitor, assess the observance of and the realisation of human rights; and
 - (e) adjudicate and rule on human rights disputes and matters; and
 - (f) such additional functions as prescribed by law.
- (2) The Human Rights Commission shall operate with the minimum of formality and shall be structured so that it is accessible to all persons and communities throughout the Republic.

Part V

Auditor-General

240. The Auditor-General

- (1) There shall be an Office of Auditor-General.
- (2) The Auditor-General shall be a person who has specialised knowledge of, or experience in, auditing, public finances and public administration.

241. Functions of Auditor-General

- (1) The functions of the Auditor-General are to audit and report on the accounts, financial statements and financial management of –
 - (a) all Federal Ministries and authorities of the Federal Government;
 - (b) all State Governments and authorities of State Government;
 - (c) **Community Governments;**
 - (d) **Federal Capital and State Capitals;**
 - (d) political parties; and
 - (e) any other institution or accounting entity required by federal or state legislation to be audited by the Auditor-General.
- (2) In addition to the duties prescribed in the preceding subsection, and subject to any legislation, the Auditor-

General shall audit and report on the accounts, financial statements and financial management of-

- (a) any institution funded from the Federal Consolidated Fund;
- (b) a State Consolidated Fund; or
- (c) any institution that is authorised in terms of any law to receive money for a public purpose.

(3) The Auditor-General shall prepare a report in respect of each audit done under subsections (1) and (2), and shall cause such report to be laid before the Federal Parliament, and any State legislature of the State Government to which a report relates.

(4) A copy of each report prepared by the Auditor-General shall be given to the Federal Minister for Finance, and the Federal Minister responsible for the Ministry or federal authority to which it relates **and appropriate State Minister for Finance.**

(5) The Auditor-General has the additional powers and functions prescribed by law.

Part VI Electoral Commission

242. Electoral Commission – There shall be an Electoral Commission.

243. Functions of Electoral Commission – The functions of the Electoral Commission **shall be-**

- (a) manage elections of Federal, State and other governments, unless a State establishes a body under state law to discharge these functions within the State;
- (b) ensure that those elections are free and fair.
- (c) supervise political parties;
- (d) delimit of electoral boundaries;
- (e) promote voter education; and
- (f) such additional functions as prescribed by law.

244. Composition of Electoral Commission

(1) The Electoral Commission shall consist of a Chairperson and **six** other persons **one of whom is the**

Federal Surveyor General and the other the Federal Government Statistician.

- (2) The period of appointment shall be five years.
- (3) A person is only qualified to be appointed Chairperson if he or she is qualified to hold office as a judge under this Constitution.
- (4) The Electoral Commission shall elect a Deputy Chairperson from among its members.
- (5) A person shall not be appointed as a member of the Electoral Commission if he or she is -
 - (a) a member of the Federal Parliament, a State legislature or any publicly elected authority;
 - (b) a candidate in an election to any public office;
 - (c) an un-discharged bankrupt;
 - (d) convicted or found guilty of any offence involving dishonesty; or
 - (e) removed from public or private office for reasons of misconduct.
- (6) A member of the Electoral Commission shall vacate office-
 - (a) at the expiration of the 5 year term from the date of appointment, but may be eligible for re-appointment;
 - (b) if the member becomes disqualified to be appointed a member of the Electoral Commission under this section;
 - (c) if the member is removed from office under subsection (5); or
 - (d) if the member dies or resigns from office.
- (7) The provisions of section **252** shall apply to members of the Electoral Commission, with the functions of the President **of the Republic** under that section, including sub section **7** being exercised in accordance with the advice of the Judicial and Legal Services Commission.

**Part VII
Ombudsman**

245. The Office of Ombudsman – There shall be an office of Ombudsman.

246. Functions of the Ombudsman

- (1) The functions of the Ombudsman shall be to:
 - (a) investigate any conduct in federal, state and Community government affairs, or in the public administration in any sphere of government that is alleged or suspected to be improper or an abuse of authority and of the conduct of any person to whom this section applies in the exercise of the functions, powers and duties of office.
 - (b) institute civil suits in cases of mal-administration on behalf of clients.
 - (c) assist in the improvement of the practices and procedures of any federal or state government body;
 - (d) ensure the elimination of arbitrary and unfair decisions; and
 - (e) educate the public as to the role of Ombudsman.

- (2) This section applies to members of the federal and state public services, the police force, the correctional services, the government of Honiara City, Federal, State and Community Governments, Commissions, State Owned Enterprises, Public Agencies and such other bodies as may be prescribed by law.

- (3) Subsection (1) does not apply to the President of the Republic or his personal staff, or to the Director of Public Prosecutions or any person acting in accordance with his or her instructions.

- (4) The Ombudsman shall not:
 - (a) investigate court decisions or the performance of any judge or judicial officer; or
 - (b) conduct an investigation into a matter if advice is given by the Federal Cabinet that the investigation would not be in the interests of the security of Solomon Islands.

- (5) The Ombudsman has the additional powers and functions prescribed by law.

247. Reporting obligations

- (1) The Ombudsman shall make an annual report to the Federal Parliament, and to each State Parliament, and may make such additional reports concerning the discharge of the authority of the Ombudsman as is necessary to draw attention to any defects in the administration of government or the application of any law.
- (2) Any report issued by the Ombudsman shall be open to the public unless exceptional circumstances, to be determined by federal legislation, require that a report be kept confidential.

248. Tenure

- (1) The Ombudsman shall not perform the functions of any other federal or state office, and shall not, without the approval of the President **of the Republic**, engage in any other occupation or receive any other official remuneration.
- (2) The Ombudsman shall hold office for a period of 5 years, unless he or she is removed from office on the grounds and using the same procedures as those, which apply to the removal of a judge as, provided by this Constitution.

Part VIII

Leadership and Anti-Corruption Commission

249. The Leadership and Anti-Corruption Commission

- (1) There shall be established a Leadership and Anti-Corruption Commission which shall operate in accordance with the provisions of this Chapter and law.
- (2) The persons appointed to the Leadership and Anti-Corruption Commission shall be persons of integrity chosen for their knowledge of and experience in administration and the prosecution or investigation of crime.
- (3) No person shall be eligible for appointment if such person is -
 - (a) a member of government.
 - (b) a public officer;
 - (c) an officer of any body or association that is of a political nature;

- (d) convicted or found guilty of a crime or convicted of a dishonesty or upon investigation under section 258 is found to be involved in any offence involving dishonesty.

250. Focus and Functions

- (1) The focus of the Leadership and Anti-Corruption Commission is to educate the public, government and public officials on corruption and the ethics of good leadership.
- (2) The functions of the Leadership and Anti-Corruption Commission are to –
 - (a) enforce **by institution of criminal prosecution** the Leadership Code and law in relation to the Leadership and Anti-Corruption Commission;
 - (b) receive declarations in accordance with the Leadership Code or a law in relation to the Leadership and Anti-Corruption Commission;
 - (c) retain custody of the declarations and make them available for public inspection on terms and conditions prescribed by the Federal Parliament;.
 - (d) receive and investigate complaints about non-compliance with or breach of the Leadership Code or a law in relation to the Leadership and Anti – Corruption Commission.
 - (e) investigate 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.
 - (f) combat corruption, theft, misappropriation and other improprieties in the conduct of public office;
 - (g) put in place measures aimed at the prevention of corruption; and
 - (h) such additional functions prescribed by law.

**Part IV
General Provisions**

251. Tenure of office of certain office-holders – The Auditor-General and Public Solicitor shall vacate office at the age of 70 years or at such later age as determined by the President, acting on the advice of Cabinet.

252. Removal of office-holders

- (1) This section applies to –
- (a) the offices of Auditor-General, Director of Public Prosecution and the Public Solicitor; and
 - (b) members of a Commission established by this Constitution.

(2) A person to whom this section applies may be removed from office only for inability to discharge the functions of his office (whether from infirmity of body or mind or any other cause) or for misbehaviour, and shall not be so removed except in accordance with the provisions of this section.

(3) A person to whom this section applies shall be removed from office by the President **of the Republic** if the question of his removal from office has been referred to a tribunal appointed under subsection (4), and the tribunal has recommended to the President **of the Republic** that he or she ought to be removed from office for inability or misbehaviour.

(4) If the President **of the Republic** considers that the question of removing a person to whom this section applies from office for inability or misbehaviour ought to be investigated, or if **Federal Cabinet through** the Prime Minister represents to the President **of the Republic** that a question involving the holder of an office referred to in paragraph (a) of subsection (1) ought to be investigated, then –

- (a) the President **of the Republic** shall appoint a tribunal which, subject to sub -section (5) shall consist of a Chairman who is a person who holds or has held high judicial office in some part of the Commonwealth, and not less than 2 other members; and
- (b) the tribunal shall inquire into the matter and report on the facts to the President **of the Republic** and recommend to **him** whether the person ought to be removed from office for inability or misbehaviour.

(5) Notwithstanding subsection (4), in the case of a tribunal to investigate the removal of a member of the

Judicial and Legal Service Commission, all members of the tribunal shall be persons who hold or have held high judicial office in some part of the Commonwealth.

(6) If the question of removing a person to whom this section applies has been referred to a tribunal under subsection (4), the President **of the Republic** may suspend the person from performing the functions of his or her office, and any such suspension may at any time be revoked by the President **of the Republic**, and shall in any case cease to have effect if the tribunal recommends to the President **of the Republic** that the person should be removed.

(7) Except as provided in subsection (2), the functions of the President **of the Republic** shall be exercised –

- (a) in relation to the office of Auditor – General, in accordance with the advice of the **Federal** Public Service Commission;
- (b) in relation to the office of Director of Public Prosecutions or Public Solicitor, in accordance with the advice of the Judicial and Legal Services Commission; and
- (c) in relation to a member of a Commission established by this Constitution, in accordance with the advice of the **Federal Cabinet**

(8) The provisions of this section shall not apply to any person acting in the office of Auditor-General, the Director of Public Prosecutions or the Public Solicitor, and the acting appointment of such a person may be lawfully revoked at any time.

CHAPTER TWENTY-THREE ACCOUNTABLE AND TRANSPARENT GOVERNMENT

Part I Leadership Code

253. Application of the Leadership Code – The provisions of this Part, and of any law imposing obligations and duties of leadership, shall apply to persons holding the office of –

- (a) the President **of the Republic**;
- (b) the Prime Minister, Deputy Prime Minister and Members of the Federal Parliament;

- (c) the head of the Federal Public Service and the heads of Federal Ministries;
- (d) members of any Commission and holders of office of institutions established under this Constitution;
- (e) State **Governors**;
- (f) **Members of State legislatures**;
- (g) the head of State Ministries and any State authority;
- (h) members of the Honiara City and senior officers; and
- (i) any other office holder as provided by a law or State Constitution.

254. Declaration of Assets and Liabilities

(1) Every person to whom this Part applies shall, if an existing office holder at the date of this Constitution coming into force, or otherwise before the office holder assumes office; and

- (a) at the end of every two years; and
- (b) at the end of the public officers term of office, submit to the Leadership and Anti - Corruption Commission a written declaration of properties, assets and liabilities as prescribed by federal law.

(2) The Leadership and Anti-Corruption Commission shall establish and maintain a register in which the assets and liabilities of persons to whom this Part applies are recorded and it is an offence of the Code if such person fails to make a declaration of assets and liabilities so that they are not recorded on the register or falsifies such a declaration.

(3) A person elected to any legislature shall before taking office, declare their assets and liabilities and subsequently take and subscribe before the Speaker of the relevant House the Oath of Allegiance, but a member may before taking the oath take part in the election of the Speaker or Deputy Speaker of the House.

(4) The Speaker and Deputy Speaker of the Federal Parliament and any person having authority to preside over a State legislature shall declare their assets and liabilities and subsequently take and subscribe the Oath of Allegiance.

(5) A person who is elected as the President and every Head of State government shall not begin to perform the functions of office unless that person has made the declaration of assets and liabilities and subsequently take the subscribed Oath of Allegiance.

(6) Any property or asset acquired by a person after the declaration required under this Code and which is not fairly attributed to income, gift or loan approved by this Code shall be deemed to have been acquired in breach of the Code unless the contrary is proved.

(7) Law may regulate the process established by this section.

255. Leadership Obligations

(1) Any person to whom this Part applies shall not be in a position where their personal interest conflicts with the duties and responsibilities of office or compromise the honesty, impartiality and integrity of the office holder.

(2) A public officer shall not -

- (a) place themselves in positions in which they have, or could be seen as having, a conflict between their private interest and their public duties;
- (b) compromise the fair exercise of their public duties;
- (c) use their office for private gain;
- (d) allow their integrity to be called into question; or
- (e) cause respect for, or confidence in the integrity of, the governance of Solomon Islands to be diminished.

(3) In addition to the general obligations any person to whom this Part applies shall not:

- (a) maintain or operate a bank account in a country outside Solomon Islands;
- (b) accept any loan, except from a government of the Federal Republic or an agency of government, a bank, building society, mortgage institution or any other financial institution recognised by law;
- (c) ask for or accept any benefit or property of whatever nature from any company, business enterprise, contractor, or businessman in return for anything to be

done or omitted to be done in the performance of a public function;

(4) It is the further duty of persons to whom this Part applies to—

- (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 obligations applying under this Part;
- (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;
- (c) safeguard public funds and ensure that they are spent only on legally authorised purposes and in legally authorised amounts;
- (d) safeguard public property and ensure that it is not lost, destroyed, damaged, misapplied or misused.

256. Gifts and Donations

(1) A gift or donation to a person to whom this Part applies on a public or ceremonial occasion is a gift made to the appropriate institution. A receipt of a gift or donation is not a contravention of this Code so long as the public officer hands over the gift to the appropriate institution as soon as possible.

(2) Any person or business enterprise shall not offer a public officer to whom this Part applies any property, gift or benefit of any kind for the granting of a favour or the performance of a function or non-performance in favour of that person.

257. Actions of nominees, trustees etc – A person to whom this section applies who engages in an act prohibited by this Code through a nominee, trustee, or other agent shall be deemed to have committed a breach of the Code.

258. Serious Offences under the Leadership Code *(reconsidered 26/6/09)*

(1) The following constitute serious offences under the Leadership Code-

- (i) conviction of an offence relating to the performance of the functions and duties of public office;
- (ii) misappropriation of the funds of public office or the destruction of properties of public office;
- (iii) engaging in corrupt practice or seeking or accepting a bribe for performing or not performing a duty or task;
- (iv) engaging in sexual or physical abuse of any person or abuse of office to obtain sexual or any other undue advantage from members of staff or any other person;
- (v) abuse of office to obtain a direct or an indirect undue advantage or enrichment;
- (vi) by intimidation, violent or other unlawful means interferes with the orderly conduct of government or organ of government;
- (vii) fails to comply with or obstructs the compliance of any obligation under this Constitution or an investigation conducted by the Leadership Anti-Corruption Commission; or
- (viii) commits any act or omission prohibited under this Part or in any law relating to the obligations of leadership.

(2) A person is not a fit and proper person to hold public office and shall be dismissed from office if-

- (a) convicted of a serious offence under this section; or
- (b) the Leadership and Anti-Corruption Commission finds upon an investigation that the person is not a fit and proper person to hold public office under this Part.

(3) A law may provide for a procedure by which investigations may be undertaken by the Leadership and Anti-Corruption Commission under section (2) (b).

259. Further provisions relating to Leadership

(1) A law may prescribe any further matter relating to the obligations of 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.

(2) A law may make provision for such supplementary and ancillary matters as are expedient to give effect to this Part.

Part II

Transitional arrangement and other matters

260. Application of State Laws

(1) Nothing in this Chapter shall affect the right of a State Government to make additional provision under State law relating to -

- (a) applying obligations of leadership to any person employed by a State Government;
- (b) the nature and extent of the obligations of leadership in a State administration;
- (c) the investigation, referral and determination of any matter involving the breach of obligations of leadership, and the penalties to be imposed for such breaches; or
- (d) the review and investigation of any aspect of governance.

(2) Any law made pursuant to this section shall be consistent with the provisions of this Constitution. In the event of any inconsistency with the provisions of a federal law, the federal law shall prevail.

CHAPTER TWENTY-FOUR MISCELLANEOUS FEDERAL POWERS AND RESPONSIBILITIES

261. Provision for special areas

(1) The Federal Government may make laws for the government of any federal territory or any State territory surrendered by the State and may allow representation in the Federal Parliament on terms which it thinks fit.

(2) The Federal Government may only exercise power under subsection (1) in consultation and with the co-operation of the people occupying the area or island community in question and any applicable State Government.

(3) State Constitutions may make provision consistent with this section in respect of any area under its jurisdiction.

262. Federal Intervention into the Affairs of a State – *(whole section Deleted)*

263. Taking over public debts of States

(1) The Federal Government may make an arrangement with a State regarding the public debt of the State, including—

- (a) taking over such debt or proportion of the debt by the Republic;
- (b) the management of such debts;
- (c) payment of interest and the provision and management of a sinking fund in respect of such debts;
- (d) the consolidation, renewal, conversion and redemption of such debts;
- (e) the borrowing of money by a State or the borrowing of money by the Republic for the State; or
- (f) the indemnification of the Republic by the State in respect of the debt taken over by the Republic.

(2) A federal law may provide for the carrying out of an arrangement under subsection (1).

264. International agreements

(1) The negotiating and signing of all international agreements and participation in **all** international forums is the responsibility of the Federal Government. **Where a state's interest, be it financial or otherwise, that will be affected by an international agreement it shall be a party to the negotiations together with the federal government.**

(2) An international agreement binds the Republic only after it has been approved by resolution of the Federal Parliament, unless it is an agreement referred to in subsection (3).

(3) An international agreement of a technical, administrative or executive nature, or an agreement which does not require either ratification or accession, entered into by the Federal Government, binds the Republic without approval of the Federal Parliament, but shall be tabled in Parliament within reasonable time.

(4) Subject to section **185** relating to the accession of free trade agreements, any international agreement becomes law in the Republic when the Federal Parliament enacts it into law; but a self-executing provision of an agreement, which has been approved by Parliament, is law in the Republic unless it is inconsistent with this Constitution or law.

(5) The Republic is bound by international agreements, which were binding on the Republic when this Constitution took effect.

CHAPTER TWENTY-FIVE AMENDMENT OF CONSTITUTION

265. Alteration of the Constitution

(1) This Constitution may be altered in the way set out in this Chapter and shall not be altered in any other way.

(2) Chapters **One, Two, Three, Four** and sections **184, 185** and **186** and this section may be amended by a bill passed by –

- (a) the Federal Parliament, with a supporting vote of at least 75 per cent of its members; and

- (b) with the endorsement of an absolute majority of the State legislatures.
- (3) Any other provisions of this Constitution may be amended by a bill passed –
- (a) by the Federal Parliament with a supporting vote of at least two thirds of its members; and
 - (b) with the endorsement of an absolute majority of the State legislatures, if the amendment –
 - (i) relates to a matter that affects a State or States; or
 - (ii) concerns a matter within the legislative competence of a State or States.
- (4) If a Bill referred to in subsection (3) or any part of a bill, concerns only a specific State or States, the Federal Parliament may not pass the bill or the relevant part unless it has been approved by the legislature or legislatures of the State or States concerned.
- (5) The procedures for the consideration and endorsement, or rejection, of any amendment by a State legislature may be provided for in the State Constitution, or if no provision is made, shall be as is determined by the State legislature.
- (6) Any bill amending the Constitution under this section shall not be introduced into the Federal Parliament unless notice of the bill has been given to the -
- (a) Speaker;
 - (b) Chairperson of the Congress of States; and
 - (c) State legislatures, at least 8 weeks before the first reading of the bill in Parliament.
- (7) A **law** to amend the Constitution shall not be submitted to the President for assent unless -
- (a) there has been an interval of not less than 90 days between the introduction of the bill in the Federal Parliament and the beginning of proceedings in Parliament in the second reading of the bill ; and
 - (b) after it has been passed by Parliament the bill has been endorsed by the State

legislatures in accordance with this Chapter.

(8) A bill amending the Constitution may not include provisions other than the constitutional amendments and is clearly expressed to be a bill to alter the Constitution.

(9) In this section –

- (a) references to this Constitution or to any particular provision of it, includes references to any other law in so far as that law alters the Constitution or any provision of it, as the case may be;
- (b) references to altering this Constitution or any particular provision of it, includes references to –
 - (i) repealing it , with or without re-enactment of it, or the making of a different provision in lieu of it;
 - (ii) modifying it, whether by omitting or amending any of its provisions,
 - (iii) or inserting any additional provisions in it, or otherwise;
 - (iv) suspending its operation for any period, or terminating any suspension; and
 - (v) making any other provision that is repugnant to or otherwise inconsistent with it.

CHAPTER TWENTY-SIX GENERAL PROVISIONS

266. Diligent performance of obligations – All constitutional matters shall be performed diligently and without delay.

267. Definitions

(1) In this Constitution, unless the context indicates otherwise–

“absolute majority” means at least one-half of all members plus one;

“constitutional matter” means any question involving the interpretation, protection or enforcement of this Constitution and any State Constitution.

“customary practice” means the rules of customary practice prevailing in and applying to an area of Solomon Islands;

“department” in relation to the Federal Government, includes any Department or Ministry of the Federal Government under the supervision of a Head of Department (by whatever title this is known in a particular case), and under the general direction and control of a Federal Minister;

“financial year” means the 12 months ending on the 31 December in any year, or on such other date as may from time to time be prescribed by federal law;

“former Constitution” means the Constitution set out in the Schedule to The Solomon Islands Independence Order 1978;

“freehold interest” means an estate in free simple absolute in possession or any interest in customary land of a similar nature;

“functions” includes rights, duties and powers;

“government” means Federal Government, State Government, Honiara City and any other government constituted under this Constitution.

“Head of State” means a person elected or appointed Head of State as required under Schedule **Seven**;

“indigenous Solomon Islander” has the same meaning as in the Lands Act, or as otherwise provided for by a federal law;

“Judge” means a Judge of the Constitutional Court, Court of Appeal or High Court;

“judicial officer” means a statutory officer of a court;

“lawyer” means a person entitled by law to practice as a barrister or solicitor in Solomon Islands;

“leasehold interest” means the interest of a tenant arising by virtue of a lease of land;

“meeting” in relation to the Federal Parliament, means any sittings of the Parliament commencing when the Parliament first meets after being summoned at any time, and terminating when

Parliament is adjourned, or at the conclusion of a session;

“oath of allegiance” means the oath of allegiance stated in Schedule **Two**.

“organ of government” or “organ of the Republic” means any department, government enterprise or administration in the federal, state or any sphere of government or any other functionary or institution exercising a power in terms of this Constitution or a public power or function in terms of any legislation but does not include a court or a judicial officer.

“President” means the President of Solomon Islands

“public office” includes any office under this Constitution, and any office for reward in the service of the federal or state governments under any federal or state law;

“public service” or “public service of the

Republic” means the service in a civil capacity of the federal and state governments.

“Rights and Freedoms” means the Fundamental Rights and Freedoms set out in Chapter Four.

“session” means the sitting of the Federal Parliament commencing when Parliament first meets after its prorogation or dissolution at any time, and ending when Parliament is prorogued or dissolved without having been prorogued;

“sitting” in relation to the Federal Parliament, means a period during which Parliament sits without adjournment, and includes any period during which the Parliament is in committee;

“Solomon Islands” means the territory recognised as the territory of Solomon Islands on 7 July 1978;

“Speaker” means the Speaker of the Federal Parliament”.

“Standing orders” means the standing orders of the Federal Parliament.

“statutory expenditure” means expenditure charged on the Federal Consolidated Fund, or on the general revenues and assets of Solomon Islands, by virtue of

any of the provisions of this Constitution, or by virtue of any provision of any federal law for the time being in force in Solomon Islands.

“subordinate court” means any court of law other than the High Court, Court of Appeal or Constitutional Court.

- (2) A federal law may make provision for any additional definition to be applied in relation to this Constitution.

268. Transitional arrangements – Schedule **Eight** applies to the transition to this Constitution.

269. Repeal of laws – The following Acts are repealed, subject to Section **268** and Schedule **Eight**

- (a) No. 783 of 1978 The Solomon Islands Independence Order 1978
- (b) No.2 of 2001 The Constitutional (Amendment) Act 2001
- (c) No.8 of 2000 The Amnesty Act 2000

270. Commencement

- (1) This Act called the Federal Constitution of Solomon Islands, **2012**, and comes into effect as soon as possible on a date set by the President by written instrument, which shall be no later than **(a nominated date)**
- (2) The President may set different dates before the date mentioned in subsection (1) in respect of different provisions of the Constitution.
- (3) Unless the context otherwise indicates, a provision referring to a time when this Constitution commences, shall be construed as a reference when that provision takes effect.
- (4) If a different date is set for any particular provision of the Constitution in terms of subsection (2), any corresponding provision of the former Constitution of Solomon Islands is repealed with effect from the same date.

SCHEDULE ONE

ELECTION OF THE PRESIDENT OF THE REPUBLIC

1. Calling of election meeting

(1) Whenever there is a vacancy in the office of President **of the Republic**, the Speaker shall convene a meeting of the members 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 at and the date and time on which nomination papers are to be delivered to the Chief Justice which time shall not be later than four days before the date appointed for the election meeting.

(2) All nomination papers must be accompanied by a declaration sworn by the candidate that he or she is not disqualified under section **75** of this Constitution to hold office as President.

2. List of Candidates

(1) A list specifying all candidates nominated and their respective nominators shall be submitted by, or by the direction of, the Chief Justice to each member prior to the election meeting.

3. Candidature

(1) The choice of candidature **shall be determined on a rotational basis in accordance with section 76(4)**.

(2) No person shall be a candidate unless he or she is nominated as such by four members, and no member may nominate more than one candidate.

(3) Any candidate may withdraw his or her candidature at any time before the conclusion of the election.

4. Election may be countermanded or suspended –

(1) The Chief Justice may countermand or suspend an election, at any stage of an election, if –

- (a) a candidate dies;
- (b) a candidate, in the opinion of the Chief Justice is seriously incapacitated; or
- (c) a candidate is not eligible or there are issues regarding the nomination or eligibility of a candidate.

- (d) in the opinion of the Chief Justice the election cannot be, or is unlikely to be, successfully completed.
- (2) If an election is countermanded the election procedure shall be commenced from its beginning.
- (3) If an election is suspended, the election proceedings shall be undertaken at a later time nominated by the Chief Justice.

5. Method of voting

- (1) The election shall be by secret ballot.
- (2) Each member shall have only one vote at the first, and at each subsequent ballot, if any, held in accordance with paragraph 7.

6. Conduct of the meeting

- (1) The election meeting shall be presided over, and the election shall be conducted by the Chief Justice.
- (2) The Chief Justice may for the purpose of counting votes, and for any other purpose related to the conduct of the election, enlist the assistance of any officer that may be necessary.
- (3) No person other than the Chief Justice, or an appointed officer shall be present at an election meeting.

7. Voting procedure

- (1) If any candidate receives an absolute majority of votes at any ballot he or she shall thereby be elected as President.
- (2) If no candidate receives an absolute majority of votes at the first ballot, a further ballot shall be held, at which –
 - (a) the candidate who received the fewest votes at the first ballot shall be eliminated;
 - (b) if there is a tie between two or more candidates for the fewest number of votes received at the first ballot, the Chief Justice shall decide by lot which of the candidates shall be eliminated.
- (3) If in the second ballot no candidate receives an absolute majority of votes, subject to sub-section (5),

further ballots shall be held until one candidate receives an absolute majority of votes.

(4) The procedure specified in sub -section (1) and (2) relating to the first and second ballots shall apply to subsequent ballots.

(5) If, after one or more ballots, all candidates save two have been eliminated, only one further ballot shall be conducted to decide the election between the two candidates at which the candidate receiving the greatest number of votes shall be elected President.

(6) If the ballot conducted in accordance with sub-section (5) results in a tie between two candidates, one further ballot shall be conducted to decide the election between the two candidates, and if there is again a tie between them, the Chief Justice shall countermand the election and the procedure shall be commenced from the beginning.

(7) No ballot shall be held within a period of less than six hours after the conclusion of the preceding ballot.

8. Announcement of results – When the count has been completed in any ballot the Chief Justice shall forthwith announce to the meeting the number of votes received by each candidate and, where any candidate has received an absolute majority of votes, or the greater number of votes under section 7 (5) or (6), shall declare the candidate to have been elected President.

9. Notification results – Upon the election of a President, the Chief Justice shall cause the fact and the identity of the President to be –

- (a) made known to the public in any appropriate manner; and
- (b) published as soon as possible in the Gazette.

10. 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 shall be determined by the Chief Justice, whose determination of the matter in dispute shall be final and conclusive, and may not be questioned in any proceeding whatsoever.

11. Functions of the Chief Justice – The functions conferred upon the Chief Justice by this Schedule shall be exercised in the deliberate judgement of the Chief Justice.

SCHEDULE TWO FORMS OF OATHS AND AFFIRMATIONS

1. Oath of Allegiance

I, do swear (or solemnly affirm) that I will uphold and protect the Constitution and be faithful and bear true allegiance to the Federal Republic of Solomon Islands.

(So help me God)

2. Oath for the due execution of the Office of President

I, do swear (or solemnly affirm) that I will uphold and protect the Constitution and will truly serve the Federal Republic of Solomon Islands in the office of President of Solomon Islands.

(So help me God)

3. Oath for the due execution of the office of member of Cabinet

I, being a member of the Cabinet of the Federal Government of Solomon Islands, do swear (or solemnly affirm) that I will uphold and protect the Constitution and to the best of my judgement, at all times when required, freely give my advice to the President of Solomon Islands for the management of the public affairs of Solomon Islands, and I do further swear (or solemnly affirm) that I will not on any account, at any time whatsoever, disclose the advice, opinion or vote of any member of the Cabinet, and that I will not, except with the authority of Cabinet and only for the best interests of Solomon Islands, reveal the proceedings of Cabinet, and in all things I will be a true and faithful member of Cabinet.

(So help me God)

SCHEDULE THREE ENTITLEMENTS OF MEMBERS OF THE FEDERAL PARLIAMENT

1. Members of the Federal Parliament (Entitlements) Commission

(1) There shall be a Members of Parliament (Entitlements) Commission consisting of -

- (a) a Chairperson and two members appointed by the President who are not Members of the Federal Parliament

- (b) the Governor of Central Bank; and
- (c) the Chairman of the Association of Chartered Accountants of Solomon Islands

(2) A person shall not be qualified to be an appointed member of the Commission if he/she is a member of, or a candidate for election, to the Federal Parliament.

(3) The office of the Chairperson and of appointed members shall become vacant -

- (a) at the expiration of such period not exceeding three years as may be specified in the instrument by which he/she was appointed;
- (b) on death, or by resignation in writing delivered to the President; or
- (c) upon his /her removal by the President, acting on the advice of the Prime Minister.

(4) The Chairperson and members shall be entitled to receive a daily allowance at the rate from time to time prescribed by the Constitutional Offices (Salaries) Act 1978 in respect of members of the Public Service

2. Powers of the Members of Parliament (Entitlements) Commission

(1) The power to determine the entitlements of members of Parliament, and to amend them **as and when the need arises**, shall vest in the Members of Parliament (Entitlements) Commission.

(2) In the exercise of their powers the Members of Parliament (Entitlements) Commission shall -

- (a) consider such representation as they may receive from persons, within such time as may be notified by them; and
- (b) have regard to such information as may be supplied to them by the Government, the Federal Parliament, or any other organisation in relation to the following matters -
 - (i) the state of the national economy and the financial position of the Government;
 - (ii) movements in the level of pay and other entitlements admissible to other persons in employment; and
 - (iii) changes in the retail price index and other relevant indicators showing the

cost of maintaining the standard of living the Parliamentarians might reasonably be expected to enjoy.

- (c) make regulations providing for the following matters-
 - (i) the scales of salaries and other entitlements payable to
 - (ii) Parliamentarians;
 - (iii) the terms, conditions and manner of payment of such salaries and entitlements, loans and advances of such salaries;
 - (iv) such other matters (including matters specified in subsection (3) as may facilitate the discharge of their functions as Parliamentarians.

(3) In making or amending the regulations, the Members of Parliament (Entitlements) Commission shall

-

- (a) consider in relation to Federal Parliamentarians and their families, the following matters -
 - (i) accommodation during sittings of the Federal Parliament;
 - (ii) housing;
 - (iii) medical treatment;
 - (iv) internal and external transport;
 - (v) travelling imprest;
 - (vi) **retirement and death** benefits;
 - (vii) appointment and terminal grants;
 - (viii) advances and loans;
 - (ix) additional payment for service in committees of the Federal Parliament;
 - (x) **life** insurance; and
 - (xi) such other matters as may facilitate the discharge of their function as Parliamentarians.
- (b) ensure that the salaries and other entitlements of Federal Parliamentarians increase **subject to clause 2(2)(b) of this Schedule.**

- (4) Every regulation made or amended under this section-
- (a) shall come into force on 1st day of April -
 - (i) of the year in which it was made, if it is made on that day; or
 - (ii) of the year next following the date on which it was made, if made on any other date - PROVIDED that the Members of Parliament (Entitlements) Commission may, in order to comply with subsection 3 (b), enforce any such regulation from such other date prospectively or retrospectively, as they may specify in that regulation; and
 - (b) shall, during the period such regulation is in force, have effect as if it were a provision of this Constitution.

3. Admissibility of entitlements to be in accordance with regulations

- (1) Upon the commencement of regulations made or amended under section 2, no entitlement, and no exemption of an entitlement from any tax or other liability, shall be applicable to any Federal Parliamentarian, except in accordance with those regulations.
- (2) In this Schedule -
 - (a) “entitlements” includes salaries, allowances and such other benefits, services or facilities, whether in cash or otherwise, as the Members of Parliament (Entitlements) Commission may consider necessary to be provided to Federal Parliamentarians to enable them to maintain the dignity of their office;
 - (b) “Parliamentarian” means the Prime Minister, Ministers, the Leader of the Federal Opposition, Deputy Speaker, and all other members of the Federal Parliament, whether or not Parliament is in session or is sitting;
 - (c) “year” means a period of twelve months commencing on 1 April and ending with 31 March next following.

(3) In the exercise of its functions under this Schedule, the Federal Parliament (Entitlements) Commission shall

not be subjected to the direction or control of any other person or authority except where otherwise provided by this Constitution

(4) Each State shall have a State Parliament (Entitlements) Commission constituted in the similar manner as in this Schedule.

**SCHEDULE FOUR
BOUNDARIES OF THE STATES**

*(Revised Boundaries of States done by CC Member Patt R. Loe – Outcome of revised in report presented in June 2009
“Technical Report on Review of Proposed State Boundaries of Solomon Islands.”*

Below is the old version of State Boundaries from the Draft Federal Constitution of Solomon Islands 2004.

Column A – Name	Column B – Description and Limits of Boundaries
Central	The area bounded by Longitude 159° East and 160° 30’ East and Latitudes 8° 45’ South and 9° 13 South.
Choiseul	The area bounded by a line commencing at a point on the boundary between Solomon Islands and Papua New Guinea in Longitude 156°13’ 30” East, thence in an easterly direction along that boundary to the intersection of that boundary at Longitude 157° 55’ East, thence due south to Latitude 7° 55’ South, thence by a straight line in a westerly direction to the point Latitude 7° 43’ 00” South Longitude 157° 30’ 00” East, thence in the same general direction to the point Latitude 7° 36’ 30” South Longitude 157° 00’ 00” East, thence in the same general direction to the point Latitude 7° 13’ 15” South Longitude 156° 23’ 45” East, thence to the point Latitude 6° 57’ 30” South Longitude 156° 22’ 00” East, thence in a northerly direction to the point Latitude 6° 45’ 45” South Longitude 156° 18’ 45” East, thence in a northerly direction to the point Latitude 6° 45’ 00” South Longitude 156° 13’ 30” East, thence due north to the point of commencement.
Guadalcanal	Excluding Honiara, the area bounded by a line commencing at a point in Latitude

	<p>9° 13' South Longitude 160° 30' East and bearing due south to a point in Latitude 9° 20' South, thence by a line bearing due east to a point in Longitude 161° East, thence by a line bearing due south to a point in Latitude 10° 30' South, thence along the common boundary with Central Province to a point in Longitude 159° East, thence by a line bearing due north to a point in Latitude 9°13 South, and thence along the common boundary with Central Province to the point of commencement.</p>
Isabel	<p>The area bounded by a line commencing at a point in Latitude 7° South Longitude 160° 30' East, thence by a line bearing due south to a point in Latitude 8° 45' South, thence by a line bearing due west to a point in Longitude 159° East, and thence along the common boundary with Western Province in a northerly direction to a point in Latitude 7° South, and thence to the point of commencement.</p>
Makira/Ulawa	<p>The area bounded by a line commencing at a point in Latitude 9° South Longitude 161° 50' East, thence by a line bearing due east to a point in Longitude 164° East, thence by a line bearing due south to a point in Latitude 12° 30' South, thence by a line bearing due west to a point in Longitude 161° East, and thence in a generally northerly direction along the common boundary with Central, Guadalcanal and Malaita Provinces to the point of commencement</p>
Malaita	<p>. The area bounded by a line commencing at a point on the boundary of Solomon Islands and Papua New Guinea in an approximate Latitude 4° 52' South Longitude 160° East, thence by a line bearing due east to a point in Longitude 163° East, thence by a line bearing due south to a point in Latitude 9° South, thence by a line bearing due west to a point in Longitude 161° 50' East, thence by a line bearing due south to a point in Latitude 10° South, thence by a line bearing due west to a point in Longitude 161° East, thence in a northerly direction along the</p>

	<p>common boundary with Guadalcanal, Central, Isabel and Western Provinces to a point intersecting the boundary of Solomon Islands and Papua New Guinea, thence generally north-easterly along that boundary to a point in approximate Longitude 159° East, and thence generally along that boundary to the point of commencement.</p>
Rennell and Bellona	<p>The area bounded by Longitude 159° East and 161° East and Latitudes 10° 30' South and 13°06' South.</p>
Temotu	<p>The area bounded by a line commencing at a point in Latitude 9° South and Longitude 164° East, thence by a line bearing due east to a point in Longitude 170° 20' East, thence by a line bearing due south to a point in Latitude 12° 30' South, thence by a line bearing due west to a point in Longitude 164° East, and thence north along the common boundary with Makira/Ulawa Province to the point of commencement.</p>
Western	<p>The area bounded by a line commencing at a point on the boundary between Solomon Islands and Papua New Guinea in Longitude 156° 13' 30" East, thence by a line due south to Latitude 6° 45' 00" South, thence in an easterly direction to the point Latitude 6° 45' 45" South Longitude 156° 18' 45" East, thence in a southerly direction to the point Latitude 6° 57' 30" South Longitude 156° 22' 00" East, thence in the same direction to point Latitude 7° 13' 15" South Longitude 156° 23' 45" East, thence by a line in an easterly direction to the point Latitude 7° 35' 30" South Longitude 157° 00' 00" East, thence in the same general direction to the point Latitude 7° 43' 00" South Longitude 157° 30' 00" East, thence by a line in the same general direction to the point Latitude 7° 55' 00" South Longitude 150° 55' 00" East, thence by a line due south to point in Latitude 8° 20'</p>

	<p>00” South, thence by a line bearing due East to a point in Longitude 159° East, thence by a line bearing due south to a point in Latitude 9° 20’ 00” South, thence by a line bearing due west to a point in Longitude 155° 20’ East, thence by a line bearing due north to intercept the boundary between Solomon Islands and Papua New Guinea, and thence along that boundary to the point of commencement.</p>
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**SCHEDULE FIVE
FEDERAL AND STATE LEGISLATIVE POWERS**

**LIST I
FEDERAL POWERS**

In addition to matters prescribed by this Constitution, the Federal Parliament may make laws in relation to the following subjects –

1. Justice

- (a) Civil and criminal procedure and law subject to Chapter 12 of the Constitution
- (b) The legal profession and the practice of the law (Including – law of evidence, interpretation of Federal laws, contract, partnership, agency, reciprocal enforcement of judgments, mutual assistance in criminal matters with foreign States, extradition, limitation of actions, bankruptcy and insolvency, administration of deceased estates, succession, statutory declarations, oaths and affirmations, actionable wrongs, property law, equity and trusts, negotiable instruments, registration of foreign investment, business names and age of majority)

2. Defence

- (a) Defence co-operation with foreign States
- (b) Civil Defence (*concurrent*)
- (c) Maintenance of national security

3. Internal Security

- (a) Control of fire-arms and offensive weapons
- (b) Public order
- (c) Police Force subject to Chapter **Twenty-one** of the Constitution
- (d) Intelligence services
- (e) Prisons Service subject to Chapter **Twenty-one** of the Constitution
- (f) **Immigration**
- (g) **Emigration**

4. External Affairs

- (a) Treaties, agreements and conventions and their implementation
- (b) Diplomatic, consular representation
- (c) Participation in and membership of International Organisations
- (d) Customs and the raising of custom revenue;
- (e) Quarantine;
- (f) Extra-territorial jurisdiction;
- (g) International fishing and enforcement obligations
- (h) **Illicit drugs and narcotics**
- (i) **Human trafficking and human organ trades**

5. Citizenship

- (a) Citizenship
- (b) Naturalisation
- (c) Deportation of foreign citizens

6. Public Finance

- (a) Currency and foreign exchange
- (b) Regulation of banks, insurance and financial institutions
- (c) Public borrowings
- (d) Public debt management
- (e) Financial management by **Federal** Government and **its** agencies
- (f) Taxes and rates in federal territories;

- (g) Taxation on income and profits from individuals, companies and businesses.
- (h) Taxation on sales and goods and services;
- (i) Fees payable under federal law
- (j) Securities
- (k) Shares and Stocks

7. Education

- (a) Tertiary education (education curriculum at this level)
- (b) Teacher training and certification

8. Health

- (a) registration of medical practitioners
- (b) Health professional training and certification
- (c) poisons and drug control
- (d) pharmaceuticals
- (e) international health matters and clearance requirements with WHO

9. Federal Institutions and Services

- (a) Federal institutions and services
- (b) Constitutional institutions
- (c) Federal Government enterprises, agencies and authorities
- (d) Official Secrets
- (e) Use of coats of arms, armorial bearings, flags, uniforms, orders and decorations (other than those of a State)

10. Trade, Commerce and Industry

- (a) Quality and standards
- (b) Imports and Exports
- (c) Regulation of local and foreign companies
- (d) Anti- monopolistic practices and trade practices
- (e) Intellectual property
- (f) Weights and measures
- (g) Hazardous substances

11. Shipping and navigation

- (a) All shipping, maritime matters and navigation
- (b) Maritime zones and territorial waters

- (c) Wrecks and salvage

12. Aviation and Transport

- (a) Civil aviation
- (b) Regulation of inter-state transport
- (c) Carriage of passengers and cargoes
- (d) Vehicle standards

LIST II STATE POWERS

(Common Provincial positions as of 24/6/09)

(Western has an overlap list)

(List agreed on for taking to Provincial feedback)

In addition to the matters prescribed by this Constitution State Governments may make laws in relation to the following subjects –

1. Custom

- (a) Application of customary laws, practices and traditions.
- (b) Codification of customary laws
- (c) Dispute resolution
- (d) Clan, tribal or village community governance and justice;

2. Town government

- (a) Establishment of town areas
- (b) Town government, administration and management
- (c) Imposition of rates and taxes
- (d) Enforcement of town laws

3. Businesses and trade

- (a) Hotels and rest houses
- (b) Markets and trade stores
- (c) Public entertainment including eating establishments
- (d) Gambling

4. State Government matters

- (a) State government and State judicial institutions and services
- (b) State financial management and investment
- (c) State business and commercial enterprises
- (d) Civil list and State pensions

5. Education

- (a) **Early Childhood** and primary education
- (b) Secondary education
- (c) **Vocational Education**
- (d) **Tertiary Education**
- (e) **Curriculum**
- (f) **Vocational Training**
- (g) **Scholarship**

6. Governance

- (a) **Public Service**
- (b) **Public holidays**
- (c) **Civil emergency**
- (d) **Archives and government records**
- (e) **Libraries and Museums**
- (f) **Commission of Inquiries**

7. Justice

- (a) The administration of justice
- (b) Establishment of tribunals and quasi judicial bodies

8. Agriculture, Fisheries and Forestry

- (a) Forests and forest resources
- (b) Agriculture, apiaries and livestock
- (c) Animal welfare
- (d) Fisheries, subject to Chapter 12, Part II of this Constitution

9. Health

- (a) Public Health

- (b) Medical and hospital services
- (c) Malaria and disease control

10. Land and Water

- (a) Land tenure and dealings
- (b) Land registration
- (c) Land planning, use and development
- (d) Water and protection of water

11. Minerals and Petroleum

- (a) Prospecting and mining
- (b) Exploration for and extraction of oil and gas

12. Trade, Commerce and Industry

- (a) Price control
- (b) Consumer protection and fair trade
- (c) Regulation of imports
- (d) Insurance
- (e) Alcohol and tobacco

13. Social Security and Trade Organisation

- (a) Employment, welfare of labor and trade unions
- (b) Compensation and superannuation
- (c) Employment benefits and pensions

14. Environment and Conservation

- (a) Environment protection and regulation
- (b) Conservation of natural resources and regulation of invasive species
- (c) Wild life protection and preservation of biological diversity
- (d) Genetic resources and genetically modified

15. Land Planning and Management

- (a) Land use planning and development
- (b) Regulation of building and construction

- (c) Preservation and protection of historical sites and cultural heritage

16. Information Technology

- (a) Internet Services
- (b) Television, Broadcasting
- (c) Communication Services

LIST III

CONCURRENT POWERS (*most Provinces want this list deleted*)

(Rennell Bellona, Central and Guadalcanal want concurrent power)

(Temotu will negotiate for free association)

Both levels of government may make laws relating to the following matters.

1. Governance

- (a) Public service
- (b) Public holidays
- (c) Civil emergency
- (d) Commissions of inquiry

2. Justice

- (a) The administration of justice
- (b) Establishment of tribunals and quasi-judicial bodies

3. Provision of services

- (a) Water supply, sanitation and sewage disposal
- (b) Electricity and power generation
- (c) Postal and telecommunications
- (d) Ports and harbours
- (e) Airports
- (f) Broadcasting
- (g) Fire services and fire prevention
- (h) Public works

4. Education

- (a) Curriculum
- (b) Vocational and technical training
- (c) Scholarships
- (d) Archives and government records
- (e) Libraries and museums

5. Health

- (a) Public health

- (b) Medical and hospital services
 - (c) Malaria and disease control
6. **Land and water**
 - (a) Land tenure and dealings
 - (b) Land registration
 - (c) Land planning, use and development
 - (d) Water and protection of water
 7. **Minerals and Petroleum**
 - (a) Prospecting and mining minerals
 - (b) Exploration for and extraction of oil and gas
 8. **Agriculture, Fisheries and Forestry**
 - (a) Forests and forest resources
 - (b) Agriculture, apiaries and livestock
 - (c) Animal welfare
 - (d) Fisheries, subject to Chapter 12, Part II of this Constitution
 9. **Trade, Commerce and Industry**
 - (a) Price control
 - (b) Consumer protection and fair trading
 - (c) Regulation of imports
 - (d) Insurance
 - (e) Alcohol and tobacco
 - (f) Regulation of trade practices
 - (g) State Tourism
 10. **Social Security and Trade Organisations**
 - (a) Employment, welfare of labour and trade unions
 - (b) Compensation and superannuation schemes
 - (c) Employment benefits and pensions
 11. **Environment and Conservation**
 - (a) Environment protection and regulation
 - (b) Conservation of natural resources and regulation of invasive species
 - (c) Wild life protection and preservation of biological diversity
 - (d) Genetic resources and genetically modified resources
 12. **Land Planning and Management**
 - (a) Land use planning and development
 - (b) Regulation of building and construction
 - (d) Preservation and protection of historical sites and cultural heritage

**SCHEDULE SIX
REVENUE SHARING FORMULA**

**PART I
Federal Tax Revenues**

1. The sharing ratio –

- (1) The sharing ratio of revenues referred to in section **165 (4)** of this Constitution shall be 50% to the Federal Government, and 50% to be shared by the State Governments in accordance with the formula set out in sub clause (2).
- (2) The State share of revenue is to be apportioned according to the following formula -
 - (a) 20% of the available funds shall be distributed on an equal basis to each State;
 - (b) 50% of the available funds shall 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 shall be distributed on the basis of the land area of each State.
- (3) There will be deducted from each state share of revenue the value of Federal Government budget inputs for that State.

**PART II
Natural Resource Revenues**

2. Forestry revenues –

- (1) Where the Federal Government derives export duties and any fees from logs or forest products harvested or produced in a particular State, the share of that State Government shall be 60% of those duties or fees.
- (2) No remission of export duties shall be granted in respect of any logs harvested in any State unless the relevant State legislature and the Federal legislature have endorsed the granting of the remission prior to it being made.

- (3) Any remission granted that is not in compliance with sub clause (3) shall be void and of no effect.
 - (4) All current remissions of export duties on log exports shall cease 12 months after the date of commencement of this Constitution, unless they have been ratified by the Federal Legislature and the relevant State legislature.
- 3. Mining, Petroleum and Gas revenues –**
Where the Federal Government derives export duties and any fees from mining, **Petroleum and Gas** operations in a particular State, the share of that State Government shall be 60% of those duties or fees.
- 4. Fisheries and other marine revenues –**
- (1) In respect of all federal revenues derived from duties paid in relation to the export of fish and other marine resources (excluding migratory fish species), and any fees paid for fishing rights, 60% shall belong to the producing state.
 - (2) The revenue share of a State in respect of revenue from migratory fish species is to be determined by a calculation based upon the respective areas of sea within the boundaries of a State as defined in Schedule **Four**.
- 5. Other Natural Resources- The Sharing formula shall be 60% for the producing state and 40% for the Federal Government.**

PART III

Review and Amendment

- 5. Review and amendment of the sharing ratio**
- (1) Subject to clause 2, the Federal Parliament may review and amend the sharing ratios in Parts I and II of this schedule by a Constitutional amendment.
 - (2) Any changes to the formula shall only come into effect on the –

- (a) recommendation of the National Finance Commission;
 - (b) enactment by the Federal Parliament of a law to that effect; and
 - (c) subsequent endorsement of the change by an absolute majority of State legislatures.
- (3) A law to change the sharing formula shall not be submitted to the President for assent unless it has the endorsement of an absolute majority of State legislatures.

SCHEDULE SEVEN STATE CONSTITUTIONS

1. Preparation –

- (1) Existing Provincial Assemblies are responsible in overseeing the preparation of their State Constitutions and shall do so through a body appointed by it representative of the community and gender of the Province.
- (2) Clans, tribes, village and church communities and all persons of the province 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 procedure determined by them, substantial agreement or consent to a draft constitution.
- (4) For the purposes of this section an “existing Provincial Assembly” shall be each of the Provincial Assemblies established under the Provincial Government Act 1997, in place immediately as at the commencement of this Constitution.

2. Content –

- (1) A State Constitution must not be inconsistent with this Constitution, and shall provide for:
 - (a) State Legislative and Executive Structures; and
 - (b) the institution of community government which shall include the powers, functions and status of community leaders or traditional chiefs where applicable.
- (2) A State Constitution shall also provide for:
 - (a) State Governor

- (b) provisions of financial management **at the state and community government levels** that are consistent with the federal revenue arrangements contained in Chapter **Ten** of this Constitution;
- (c) **provisions for resource revenue sharing between state and resource owners**
- (d) provisions for a **state** public service; and
- (e) for such additional matters considered to be appropriate for the administration of State **and Community** governments.

3. Adoption of a State Constitution –

- (1) A Provincial Assembly may pass a State Constitution if at least three quarters of its members vote in favour of it.
- (2) A State Constitution shall not be introduced into the Provincial Assembly unless the Speaker of the Assembly is satisfied that the constitution making process -
 - (a) involved genuine public participation of the State 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) If the Provincial Assembly passes a State Constitution, the Speaker of the Provincial Assembly shall submit the document to the Constitutional Court for certification in accordance with section **152** of this Constitution.

SCHEDULE EIGHT TRANSITIONAL AND SAVINGS PROVISIONS

Part I Transitional Arrangements

1. Transitional process obligations

- (1) All governments, organs of government, agencies and persons involved in effecting a transition under this Constitution shall -
 - (a) act diligently and in good full faith;
 - (b) as far as is practicable ensure that the process is seamless and undertaken with minimal disruption;
 - (c) ensure that the transition process is at a pace according to each State's needs, capacities and preferred timetable.

2. Definitions

“former Constitution” means the Constitution set out in the Schedule to The Solomon Islands Independence Order 1978.

“this Constitution” means the Federal Constitution of Solomon Islands, 2004.

3. Continuation of existing laws

- (1) All laws that were in force when this Constitution took effect including subsidiary legislation, unless inconsistent with the text or clearly inappropriate shall continue in force and shall continue to be administered by the authorities that administered them, subject to –
 - (a) any amendment or repeal; and
 - (b) such modifications as are necessary to bring them into conformity and to be consistent with this Constitution.

4. The President of the Republic - The person holding the office of Governor-General at the commencement date of this Constitution shall assume the office of President until an election is held pursuant to section **76**.

5. Federal Parliament

- (1) Anyone who was a member or office-bearer of the National Parliament when this Constitution took effect becomes a member or office bearer of the Federal Parliament under this Constitution and holds office as a member or office bearer in terms of this Constitution.
- (2) The Federal Parliament shall be regarded as being elected under this Constitution for a term that expires on **30 April 2012**.
- (3) The Federal Parliament consists of 50 members for the duration of its term that expires on **30 April 2012** subject to section **103** of this Constitution.
- (4) The standing orders of the National Parliament applying at the date when this Constitution took effect shall continue to apply to the Federal Parliament until Parliament –
 - (a) amends or replaces them; and
 - (b) such modifications as are necessary to bring them into conformity and to be consistent with this Constitution.
- (5) The Standing Committees of Parliament constituted at the date of commencement of this Constitution shall continue to be Committees of Parliament until it resolves to change or replace them.

6. Unfinished business of the National Parliament

- (1) Any unfinished business before the National Parliament when this Constitution took effect shall be proceeded with in terms of this Constitution.

7. Elections of the Federal Parliament

- (1) No election of the Federal Parliament may be held before **30 April 2012** unless Parliament is dissolved in terms of section **103 (1) (c)** after a motion of no confidence in the Prime Minister.
- (2) Section **93** of this Constitution is suspended until **30 April 2012**.

- 8. Federal Cabinet-** Any one who was Prime Minister, Deputy Prime Minister a Minister under the previous Constitution when this Constitution took effect continues in and holds office in terms of this Constitution.

- 9. Central Bank** – The *Central Bank of Solomon Islands Act (Cap No. 49)* shall continue to have full force and effect, subject to the provisions of this section and consistency with this Constitution, until such time as it is amended or replaced by an Act of the Federal Parliament.

10. Provincial Assemblies

- (1) Anyone who is a member or office bearer of a Provincial Assembly when this Constitution took effect shall continue as a member or office bearer of the Assembly for that Province and the Provincial Assembly shall operate and remain subject to the Provincial Government Act 1997 and relevant laws until such time a State Constitution comes into effect subject to clause **14**.
- (2) Members and office bearers of Provincial Assemblies shall be subject to the provisions of their respective State Constitutions.

11. Provincial executives

- (1) Anyone who was Premier, and a member of the Executive of a Province when this Constitution took effect, continues to hold office in terms of the Provincial Government Act 1997 and relevant laws until such time a State Constitution comes into effect subject to clause **14**.

- 12. Provincial ordinances and other laws** – Ordinances, rules and other laws of a Provincial Assembly in force

when this Constitution took effect shall continue in force subject to –

- (a) any amendment or repeal; and
- (b) such modifications as are necessary to bring them into conformity and to be consistent with this Constitution.

13. Continuation of Provincial Government authority

- (1) On coming into effect of this Constitution and subject to its provisions, the Federal Government and Provincial Governments shall continue to perform their functions and exercise jurisdiction as it 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 clause **14.**

- (2) All assets owned by the Federal Government within a State that falls within a functional area in List II (State powers) and list III (Concurrent powers) in this Constitution coming into effect shall remain in the ownership and control of the Federal Government and its relevant agencies and shall be held by the Federal Government on behalf of a State Government pending their establishment and assignment pursuant to clause **14.**

14. Assignment of legislation and powers to States

- (1) A State has the right to structure a transition process within a preferred timetable, not exceeding **10 years** from the date this Constitution comes into effect, according to its needs and capacities.
- (2) The assignment of jurisdiction and power under this Constitution to State Government shall be subject to a transitional arrangement agreed to between the State and the Federal Government.
- (3) Legislation or jurisdiction with regard to a matter within a functional area in List III (concurrent powers) or List II (State powers) shall be assigned by the President, on the advice of Cabinet, by written instrument, to a State Government.
- (4) For an assignment to be effectively carried out under sub clause (3) the President, on the advice of Cabinet, by written instrument, may –
 - (a) re-enact, amend or adapt the legislation to regulate its interpretation or application and if the assignment relates to only a part of the legislation,

- to amend or adapt the legislation to the extent that the legislation applies to State government;
- (b) regulate any other matter necessary as a result of the assignment, including such matters as secondment of staff, or the transfer of assets, rights, liabilities and obligations to or from the federal administration to the State Government.
- (5) A copy of the written instrument made in terms of sub clause (3) or (4) shall be submitted to the relevant State government, Congress of States and tabled before the Federal Parliament.
- (6) 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 section.

15. Transfer or secondment of public servants

- (1) This section is subject to any transitional arrangement under the preceding subsection.
- (2) When any department, public office or an employee of the Federal Public Service becomes transferred or seconded to a State, the employee shall become an employee of the State Public Service subject to the control of the Federal Government.
- (3) Any employee of the Federal Public Service who is not retained in the Federal Public Service shall, unless he or she is transferred or seconded to some other office of equal employment in the public service of the Republic, shall be entitled to receive redundancy compensation from the Federal Government under a federal law.
- (4) Any employee of the Federal Public Service who is retained in the Federal Public Service shall preserve all existing and accruing rights and shall be 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 his or her service.
- (5) The Federal Government shall pay any existing accrued right on the secondment of an employee of the Federal Public Service to a State. The State shall pay the Federal Government a contribution of any such accrued right to be calculated on the proportion, which the

seconded employee's term of service with the State bears to his or her whole term of service.

- (6) For the purpose of calculation of salary under subsection (4) the salary paid shall be that paid to the public employee as at the date of transfer or secondment.

16. Courts

- (1) Every court existing when this Constitution took effect continues to function and to exercise jurisdiction in terms of the legislation applicable to it, and anyone holding office as a judge or judicial officer continues to hold office in terms of legislation applicable to that office 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.
- (2) The Rules of Court applying to the proceedings of the High Court and the Court of Appeal and any other court as at the commencement of this Constitution shall continue to apply to those courts subject to;
- (a) any amendment or repeal; and
 - (b) such modifications as are necessary to bring them into conformity with and consistency this Constitution.
- (3) The court of Appeal becomes the Court of Appeal under this Constitution.
- (4) Anyone holding office as President or as a Justice of Appeal when this Constitution took effect becomes the President or a Justice of Appeal of the Court of Appeal under this Constitution.
- (5) The High Court becomes the High Court under this Constitution.
- (6) Any one holding office as Chief Justice or judge of the High Court when this Constitution took effect becomes the Chief Justice or judge of the High Court under this Constitution subject to any rationalisation contemplated in clause (8).
- (7) Every other person who holds a judicial warrant for any subordinate court when this Constitution took effect continues to hold the warrant for that court under this

Constitution subject to any rationalisation contemplated in clause 8.

- (8) As soon as is practical after this Constitution takes effect all courts, including their structure, composition, functioning and jurisdiction and all relevant legislation shall be rationalised with a view to establishing a judicial system suited the requirements of this Constitution.
- (9) The Cabinet member responsible for the administration of justice, acting after consultation with the Judicial and Legal Services Commission shall manage the rationalisation envisaged in clause (8).

17. Cases pending before the courts – All proceedings which were pending before a court when this Constitution took effect, shall be disposed of as if this Constitution had not been enacted, unless the interests of justice requires otherwise.

18. Oaths and affirmations – A person who has continued in office in terms of this Schedule and who has taken an oath of allegiance under the former Constitution is not entitled to repeat the oath of allegiance under this Constitution.

19. Other constitutional institutions –

- (1) In this Section “Constitutional Institutions” means –
- (a) The Ombudsman;
 - (b) Leadership Code Commission;
 - (c) Constituency Boundaries Commission;
 - (d) The Electoral Commission;
 - (e) The Judicial and Legal Services Commission;
 - (f) The Auditor-General;
 - (g) The Public Solicitor;
 - (h) The Director of Public Prosecutions;
 - (i) Members of Parliament (Entitlements) Commission;
 - (j) The Attorney-General; and any
 - (k) Constitutional office constituted under Section 44 of the former Constitution.
- (2) 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 to be consistent with this Constitution.

- (3) Persons holding offices under this Constitution that are not retained under the federal system of government shall cease to hold office at the date this Constitution takes effect.

20. Amalgamation of roles – Nothing in this Constitution shall affect the operation of any law, which aims to amalgamate the administration of the office of Ombudsman with those of the Leadership Code and Anti- Corruption Commission and Auditor-General and any other appropriate body.

21. Public administration and security services

- (1) Subject to any transitional arrangement under clause 13, the administration of the Public Service, Police Force and **Correctional** Service referred to in Chapter XIII of the former Constitution shall 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
- (2) Any investigation, referral or proceeding instituted in accordance with the provisions of Chapter VIII of the former Constitution and which are current as at the date of commencement of this Constitution shall be disposed of as if this Constitution had not been enacted, unless the interests of justice requires otherwise.
- (3) As soon as is practical after this Constitution takes effect 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.

22. Enactment of legislation required by this Constitution-

- (1) Where this Constitution requires the enactment of legislation, that legislation shall be enacted within the time specified otherwise the legislation shall be enacted within **three** years of the date this Constitution took effect.

**Part II
Saving Provisions**

23. Savings provisions –

- (1) All rights and all duties or obligations, however arising, by the National Government and subsisting immediately before this Constitution coming into effect shall be the rights, duties and obligations of the Federal Government under this Constitution.
- (2) All rights and all duties or obligations, however arising, by a Provincial Government and subsisting immediately before this Constitution coming into effect shall be the rights, duties and obligations of the Provincial Government under this Constitution.