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INDEPENDENT STATE OF PAPUA NEW GUINEA.***THE CONSTITUTION.******ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS (AMENDMENT) LAW.***

The Government proposes to introduce the *Organic Law on Provincial Governments and Local-level Governments (Amendment) Law* and, pursuant to Section 14(2) (*making of alterations to the Constitution and Organic Laws*) of the *Constitution*, I, BILL SKATE, Speaker of the National Parliament, hereby publish the proposed Law –

Draft of 13/6/03.

INDEPENDENT STATE OF PAPUA NEW GUINEA.**PROPOSED LAW TO ALTER THE ORGANIC LAW ON PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS.*****Organic Law on Provincial Governments and Local-level Governments (Amendment) Law.*****ARRANGEMENT OF CLAUSES.**

1. Application of this Law.
2. Outline of Provincial Government and Local-level Government Finances (Amendment of Section 82).
3. New Section 91A.

“91A. SUSPENSION OF THIS SUBDIVISION AND PROVISION OF PROVINCIAL GOVERNMENT AND LOCAL-LEVEL GOVERNMENT GRANTS DURING FISCAL YEAR COMMENCING 1 JANUARY 2004.

4. New Division V.5.

“Division 5. – Constitutional Regulations.

“118A. CONSTITUTIONAL REGULATIONS.

5. Suspension of provisions of Schedules 1 to 6 inclusive.
6. New Schedule 7.

Draft of 13/6/03.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

**A PROPOSED LAW TO ALTER THE ORGANIC LAW ON PROVINCIAL
GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS**

entitled

***Organic Law on Provincial Governments and Local-level Governments
(Amendment) Law,***

Being a Law to amend the *Organic Law on Provincial Governments and Local-level Governments*,

MADE by the National Parliament.

1. APPLICATION OF THIS LAW.

This law applies to and in respect of all Provinces except Bougainville Province.

**2. OUTLINE OF PROVINCIAL GOVERNMENT AND LOCAL-LEVEL
GOVERNMENT FINANCES (AMENDMENT OF SECTION 82).**

Section 82 of the *Organic Law on Provincial Governments and Local-level Governments* is amended by adding the following new Subsection:-

- “(2) For and in respect of the fiscal year commencing on 1 January 2004 –
(a) the provisions of Subsection (1)(b), shall be suspended; and
(b) the grants from the National Government shall be as provided
by Section 91A.”.

3. NEW SECTION 91A.

Subdivision IV.3.D of the *Organic Law on Provincial Governments and Local-level Governments* is amended by inserting before Section 91 the following new section:-

**“91A. SUSPENSION OF THIS SUBDIVISION, OTHER THAN
THIS SECTION, AND PROVISION OF PROVINCIAL
AND LOCAL-LEVEL GRANTS FOR FISCAL YEAR
COMMENCING 1 JANUARY 2004.**

(1) The provisions of this Subdivision, other than this section, are suspended in relation to grants which, but for the provisions of this subsection, would be due in the financial year commencing on 1 January 2004 to Provincial Governments and Local-level Governments.

Organic Law on Provincial Governments and Local-level Governments (Amendment).

“(2) The National Government, in the fiscal year commencing on 1 January 2004 –

- (a) shall make the following grants to each Provincial Government:-
 - (i) function grants;
 - (ii) block grant;
 - (iii) provincial staff grant;
 - (iv) derivation grants;
 - (v) such other economic grants as are specified in any other law or agreement; and
- (b) may make to a Provincial Government a less-developed districts grant; and
- (c) shall make to each Local-level Government (other than urban Local-level Governments) a rural Local-level Government grant; and
- (d) shall make to each urban Local-level Government a town services grant; and
- (e) shall make to each Joint Provincial Planning and Budget Priorities Committee a provincial development grant; and
- (f) shall make to each Joint District Planning and Budget Priorities Committee a district development grant.

“(3) The grants referred to in Subsection (2) shall be made and used in accordance with Schedule 7 and as prescribed.”.

4. NEW DIVISION V.5.

The Organic Law on Provincial Governments and Local-level Governments is amended by adding to Part V the following new Division:-

“Division 5. – Constitutional Regulations.

“118A. CONSTITUTIONAL REGULATIONS.

As authorized by Section 258 (*Constitutional Regulations*) of the *Constitution*, the Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make Constitutional Regulations, not inconsistent with this law, prescribing all matters that are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this law, and in particular for prescribing penalties not exceeding K5,000.00 for contraventions of the Constitutional Regulations.”.

Organic Law on Provincial Governments and Local-level Governments (Amendment).

5. SUSPENSION OF PROVISIONS OF SCHEDULES 1 TO 6 INCLUSIVE.

The provisions of Schedules 1 to 6 inclusive of the ***Organic Law on Provincial Governments and Local-level Governments*** are suspended in relation to the fiscal year commencing 1 January 2004.

6. NEW SCHEDULE 7.

The ***Organic Law on Provincial Governments and Local-level Governments*** is amended by adding the following new Schedule:-

“ S C H E D U L E 7.

GRANTS PAYABLE TO PROVINCIAL GOVERNMENTS AND LOCAL-LEVEL GOVERNMENTS FOR THE FISCAL YEAR COMMENCING 1 JANUARY 2004.

Sch. 7.1 **Function Grants.**

7.1.1 The National Government shall make to each Provincial Government a separate function grant for the cost of the administration in the province of each of the following:-

- (a) primary health;
- (b) basic education;
- (c) maintenance of transport infrastructure and buildings.

7.1.2. When a function grant is made, the National Government –

- (a) shall specify the purpose (being one of the purposes specified in Section Sch. 7.1.1) for which it is made; and
- (b) may specify that the grant may be used to meet the cost of salaries, wages or capital items (other than maintenance).

7.1.3. A Provincial Government-

- (a) shall use a function grant only for the purpose specified in accordance with Section Sch. 7.1.2(a); and
- (b) may use a function grant to meet the cost of salaries, wages or capital items (other than maintenance) only if specified in accordance with Section Sch. 7.1.2(b); and
- (c) shall allocate to spend at least one half of each function grant in the districts.

7.1.4. The amount of function grants shall be calculated in accordance with Section Sch.7.3.

Sch 7.2 **Block Grants.**

7.2.1 The National Government shall make to each Provincial Government a block grant.

Organic Law on Provincial Governments and Local-level Governments (Amendment).

- 7.2.2 Subject to Section Sch. 7.2.3, the use of the block grant shall be at the discretion of the Provincial Government.
- 7.2.3 The Provincial Government shall allocate to spend at least one half of the block grant in the districts.
- 7.2.4 The amount of the block grant shall be calculated in accordance with Section Sch. 7.3.

Sch 7.3 Calculation of Function Grants and Block Grants.

- 7.3.1. The minimum amount to be available for apportionment, in accordance with Section Sch. 7.3.2, between functions grants and the block grant to a province, shall be calculated in accordance with the formula –
 - (a) K10 per head of population of the province (being the population of the province according to the most recent national census figures); plus
 - (b) K4 per square kilometer of the certified land mass of the province.
- 7.3.2. The National Executive Council shall, in consultation with the Provincial Government concerned, determine the proportion of the minimum grant calculated in accordance with Section Sch.7.3.1 (or such larger amount as may be determined by the National Government) which is to be applied to the function grants and the block grant for the province.

Sch. 7.4. Provincial and Local-level Staff Grant.

- 7.4.1. The National Government shall make to each Provincial Government and Local-level Government a provincial and local-level staff grant.
- 7.4.2. The amount of provincial and local-level staff grant shall be an amount equal to the sum of the salaries and allowances, and the cost of other conditions of employment as prescribed by an Act of Parliament, for the –
 - (a) offices of Provincial Administrator and District Administrators as provided for in Section 73; and
 - (b) extended service of the National Departments and agencies as provided for in Section 80; and
 - (c) teaching services as provided for in Section 77; and
 - (d) other staff as provided for in Section 78; and
 - (e) Provincial Government and Local-level Government Secretariats as provided for in Section 81.
- 7.4.3. A –
 - (a) provincial staff grant shall be used towards the costs of staffing referred to in Section Sch. 7.4.2; and
 - (b) local-level staff grant shall be used towards the costs of staffing referred to in Section Sch. 7.4.2.

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- 7.4.4. The provisions of Section Sch 7.4 do not limit the right of a Provincial Government or Local-level Government to apply any revenues raised by the Provincial Government or the Local-level Government to the cost of their staffing.

7.5 **Derivation Grant.**

7.5.1 In Section Sch. 7.5 –

- “export value”, in relation to a primary product, means, subject to Section Sch. 7.5.2, the FOB value at the port or airport of export;
- “port or airport of export”, in relation to any primary product, means the port or airport at which the primary product is entered for export;
- “primary product” includes timber, fish and agricultural products, but does not include –
- (a) any product more than 40% of the components of which are imported; or
 - (b) any product the province of origin of which cannot be determined, except where the product is processed and a value-added component due to processing can be attributed to a particular province;
- “processing”, in relation to any primary product, includes any package, or submission to any process of manufacture, by which the export value of the primary product is increased;
- “province of production” means the province in which the primary product was produced.

- 7.5.2 Where for the purposes of the calculation of the amount of tax payable under any Act of the Parliament an export value is attributed to or determined for any primary products, the value so attributed (or if there is more than one such value, the higher or highest of them) shall be deemed to be the export value of the primary products for the purposes of this Schedule.

- 7.5.3 The National Government shall pay to each Provincial Government a derivation grant.

- 7.5.4 The derivation grant is calculated at the rate of 0.75% of the export value of primary products produced or processed in the province, other than primary products in respect of which the province receives a royalty.

- 7.5.5. In the case of goods exported from Papua New Guinea without processing in any province of production, the export value of the goods shall be attributed to the province of production.

- 7.5.6. In the case of any goods exported from Papua New Guinea that have been processed, before export, in a province other than the province of production, the export value of the goods shall be apportioned between

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the province of production and the province in which the processing took place, in accordance with the amounts of proportions of that value that are attributed to the unprocessed goods and to the processing, respectively.

- 7.5.7. For the purpose of the application of Section Sch.7.5.6 to goods that are processed more than once, the reference in that Section to the amount or proportion of the export value that is attributable to the processing shall be read as a reference to the amount or proportion of that value that is attributable to any re-processing, and the balance of the value shall be apportioned as if –
- (a) the goods were exported immediately before the re-processing; and
 - (b) that balance was the export value of the goods.

- 7.5.8. Where the origins or value of goods, including fish, cannot be identified or where the goods were taken or processed, the National Executive Council, in consultation with the National Economic and Fiscal Commission shall, for the purposes of this Schedule, apportion the export value of the goods in such reasonable manner as seems to it just and in accordance with the purposes of this Schedule.

- 7.5.9. A Provincial Government shall use the derivation grant only for –
- (a) promoting the production of primary products for export and for secondary processing and export; and
 - (b) rehabilitating the infrastructure necessary to enable the producers of primary products, whether processed or not, to convey their products to a port or airport or other market place.

7.6. Other Economic Grants.

- 7.6.1. The National Government shall make available to Provincial Governments and Local-level Governments such other economic grants as are specified in any other law or agreement.

7.7. Rural Local-level Government Grant.

- 7.7.1 The National Government shall pay to each Local-level Government (other than urban Local-level Governments) a rural Local-level Government grant in accordance with this section.
- 7.7.2 The minimum amount of rural Local-level Government grant for each province to be available for distribution in accordance with Section Sch.7.7.3 shall be calculated in accordance with the formula –
- (a) K3 per head of the rural population of the province (being population of the province according to the most recent national census, less the population of the urban areas in the province according to the most recent national census); plus
 - (b) K2 per square kilometer of the certified land mass of the province.

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- 7.7.3. The rural Local-level Government grant for a province shall be apportioned between the Local-level Governments (other than urban Local-level Governments) in the province in accordance with the population of the Local-level Governments areas; and
- 7.7.4. The amount apportioned for a Local-level Government in accordance with Section Sch. 7.7.3 shall be paid directly to that Local-level Government through the Provincial and District Treasury.
- 7.7.5. A Local-level Government in receipt of an amount of rural Local-level Government grant under this section shall –
- (a) use the grant to fund the functions which are the responsibility of that Local-level Government; and
 - (b) not use the grant towards the payment of salaries, fees or allowances unless the National Government gives specific authorization.

7.8 Town Services Grant.

- 7.8.1. The National Government shall pay to each urban Local-level Government a town services grant in accordance with this section.
- 7.8.2. The minimum amount of town services grant for each province to be available for distribution in accordance with Section Sch.7.8.3 shall be calculated at the rate of K9 per head of urban population (being the population according to the most recent national census of townships in the Province declared prior to the coming into operation of this provision, under any Act of the National Parliament relating to the declaration of town boundaries and townships).
- 7.8.3. The town services grant for each province shall be apportioned between the urban Local-level Governments in the province in accordance with the population of each urban area.
- 7.8.4. The amount apportioned for an urban Local-level Government in accordance with Section Sch. 7.8.3 shall be paid directly to that Local-level Government through the Provincial and District Treasury.
- 7.8.5. An urban Local-level Government in receipt of an amount of town services grant under this section shall use the grant only to fund the functions for which it is responsible.

7.9. Less-developed District Grant.

- 7.9.1. The National Government may make a less-developed district grant to a Provincial Government in accordance with this section.
- 7.9.2. Where the National Executive Council determines that-
- (a) a district within a province is a less-developed district; and
 - (b) the Provincial Government of that province lacks the fiscal capacity to address underdevelopment in that district through the use of its own resources,
- it may direct the making of a less- developed district grant to that province.

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- 7.9.3. Before making a determination under Section Sch. 7.9.2 the National Executive Council shall consider a report from the National Economic and Fiscal Commission –
- (a) as to which districts are considered as less-developed; and
 - (b) as to the amount of internal revenue likely to be received by the Provincial Government in the fiscal year.
- 7.9.4. The total amount available to a Provincial Government as less-developed district grant shall be divided equally among the less-developed districts in respect of which the grant is made.
- 7.9.5. Subject to Sections Sch. 7.9.4 and 7.9.6, a Provincial Government in receipt of a less-developed district grant –
- (a) shall use the grant within the district or districts concerned for development projects which improve the access to the district or districts concerned; and
 - (b) may, with the prior written consent of the Departmental Head of the Department responsible for national planning and monitoring matters, spend the grant or part of the grant outside a district or districts concerned where such expenditure is required to improve access to a district or districts concerned; and
 - (c) shall obtain the approval of the Departmental Head of the Department responsible for national planning and monitoring matters, in consultation with the Departmental Head of the Department responsible for treasury matters, to all projects for the expenditure of the grant, before implementation of such projects.

7.10. **District Development Grant.**

- 7.10.1. The National Government shall make a district development grant in respect of each district in accordance with this section.
- 7.10.2. The amount of the district development grant shall be calculated in accordance with the formula of K9.00 per head of the population in the district (being the population of the district according to the most recent national census figures).
- 7.10.3. The district development grant shall be allocated as follows:-
- (a) one half shall be for projects selected by the Joint District Planning and Budget Priorities Committee from among projects in the approved District Plan;
 - (b) one quarter shall be for use by the Joint District Planning and Budget Priorities Committee as a function grant for the maintenance of transport infrastructure within the district;
 - (c) one quarter by the Member of the National Parliament representing the open electorate for use on projects or for electoral development purposes.

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- 7.10.4. The National Government shall, within the first month of each quarter, make a payment of all monies due for that quarter for the purposes of the district development grant –
- (a) as specified in Section Sch. 7.10.3(a) and (b) - to the Joint District Planning and Budget Priorities Committee; and
 - (b) as specified in Section 7.11.3(c) - to the Member of the National Parliament representing the open electorate.
- 7.10.5. The monies referred to in –
- (a) Section Sch. 7.10.4(a) – shall be paid to the Provincial and District Treasury and by the Provincial and District Treasury to the Joint District Planning and Budget Priorities Committee; and
 - (b) Section Sch. 7.10.4(b) – shall be paid as prescribed.
- 7.10.6. The National Executive Council shall issue District Development Grant Guidelines relating to the district development grant specifying –
- (a) the purposes for which the portion of it allocated under Section Sch. 7.10.3(c) may be used; and
 - (b) the manner in which it shall be disbursed and accounted for; and
 - (c) other administrative arrangements pertaining to it.
- 7.11. **Provincial Development Grants.**
- 7.11.1. The National Government shall make a provincial support grant in respect of each provincial electorate in accordance with this section.
- 7.11.2. The amount of the provincial development grant shall be calculated in accordance with the formula of K1.50 per head of the population in the province (being the population of the province according to the most recent national census figures).
- 7.11.3. The provincial development grant shall be allocated as follows;–
- (a) one half shall be for projects selected by the Joint Provincial Planning and Budget Priorities Committee from among projects in the approved Provincial Plan;
 - (b) one quarter shall be for use by the Joint Provincial Planning and Budget Priorities Committee as a function grant for the maintenance of transport infrastructure within the province;
 - (c) one quarter by the Member of the National Parliament representing the provincial electorate for use on project or for electoral development purposes.
- 7.11.4. The National Government shall, within the first month of each quarter, make a payment of all monies due for that quarter for the purposes of the provincial development grant –

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- (a) as specified in Section Sch. 7.11.3(a) and (b) – to the Joint Provincial Planning and Budget Priorities Committee; and
 - (b) as specified in Section 7.11.3(c) – to the Member of the National Parliament representing the provincial electorate.
- 7.11.5. The monies referred to in –
 - (a) Section Sch. 7.11.4(a) – shall be paid to the Provincial and District Treasury and by the Provincial and District Treasury and by the Provincial and District Treasury to the Joint Provincial Planning and Budget Priorities Committee; and
 - (b) Section Sch. 7.11.4(b) – shall be paid as prescribed.
- 7.11.6. The National Executive Council shall issue Provincial Development Grant Guidelines relating to the provincial development grant specifying –
 - (a) the purposes for which the portion of it allocated under Section Sch. 7.11.3(c) may be used; and
 - (b) the manner in which it shall be disbursed and accounted for; and
 - (c) other administrative arrangements pertaining to it.”.