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Provincial Government Act 1997
(No. 7 of 1997)

TEMOTU PROVINCE LOCAL GOVERNMENT ORDINANCE, 2010

AN ORDINANCE TO ENABLE LOCAL COMMUNITIES IN TEMOTU TO SO FAR AS POSSIBLE GOVERN THEMSELVES BY FORMING AND PARTICIPATING IN LOCAL COUNCILS SUITABLE TO THEIR NEEDS; AND VARIOUS MATTERS NECESSARY FOR OR INCIDENTAL TO THE FORMATION, FUNCTIONS, POWERS, AND MANAGEMENT OF SUCH COUNCILS

Part 1 - Preliminary

Short title and
commence
ment

1. (1) This Ordinance may be cited as the Temotu Province Local Government Ordinance 2010 and shall come into effect upon assent by the Minister and publication in the *Gazette*.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires:

“Act” means any natural person who has either: attained 18 years of age; is legally married, including any custom marriage; or is co-habiting with another person in a relationship a kin to marriage;

“Adult” means any natural person who has either: attained 18 years of age; is legally married, including any custom marriage; or is co-habiting with another person in a relationship a kin to marriage;

“Assembly” or “Provincial Assembly” means the Temotu Provincial Assembly;

“Basic rate” means a rate or series of rate specified in an Order made pursuant to section 8 and payable, subject to any exemption specified in the Order or any other enactment, either generally by all adults normally resident in Temotu Province or only by adults normally resident in the area of a particular Local Council specified in the relevant Order;

“Community” means any group or groups of persons living in Temotu in a defined local geographic area, or within a local area that is capable of being clearly defined, and who, because of their shared history, customs or other unifying factors reasonably regard themselves as forming a single community;

“District” means the territory, including any local or territorial waters, within Temotu covered by a Local Council;

“District resident” means any resident who normally resides within the district of a Local Council;

“Executive” or “Provincial Executive” means the Provincial Executive of Temotu Province;

“Government” or “Provincial Government” means Temotu Provincial Government;

“Local Council” or “Council” means a Council created by an Order issued pursuant to section 5;

“Member” means a member of a Local Council, whether elected or appointed;

“Minister” means the member of the Executive for the time being allocated responsibility for local government by the Premier;

“Ordinary Member” means a Member other than a Council’s Chairperson, Treasurer or any Deputy Chairperson or Secretary;

“Premier” means the Premier of Temotu Province;

“Province” means Temotu Province;

“Provincial Officer” includes any employee of the Government and/or Assembly, and includes for the length of their secondment, any public officer seconded to a post forming part of the Government establishment, but does not include any elected member of the Assembly;

“Provincial Secretary” means the Provincial Secretary for the time being of Temotu Province and includes any person authorised to and acting in or carrying out the functions of the position:

“Provincial Treasurer” means the person appointed pursuant to the Temotu Province Financial Management Ordinance and includes any person authorised to, and acting in or carrying out the functions of the position:

“Resident” means any person who normally lives in Temotu Province or who is actually present in Temotu Province, whether temporarily or otherwise, for a period of not less than 90 days in any financial year; and “reside” has a similar meaning;

“Treasurer” means the member of a Local Council elected or appointed by a Council to take responsibility for its finances:

Words not otherwise defined in this Ordinance have the same meaning as defined or used in the Act; use of the male gender includes the female; words used in the singular form include the plural, and words in the plural form include the singular.

Part 2 - Formation of Local Councils

3. (1) Any community or group of associated communities ^{Applications} may apply to the Minister to form a Local Council.

(2) An application to form a Local Council:

- (a) must be in writing;
- (b) must clearly describe the local geographic areas and communities proposed to comprise the Local Council district;
- (c) must provide details of how the people in the affected communities have demonstrated their desire to form and be included in one Local Council:

- (d) must indicate what consultation have been held with neighbouring communities about the proposed boundaries and likely effects of forming a Local Council;
- (e) may include indicative proposals as to the proposed name, structure, functioning and institutions of the proposed Local Council;
- (f) may, where provincial resources allow and the Provincial Secretary so authorises, be made with or after assistance from provincial officers

Report from
Provincial
Secretary

4. (1) The Minister will, within 14 days of receiving an application that complies with section 3(2), refer the application to the Provincial Secretary for a report and recommendation on whether to proceed with the application.

(2) The Provincial Secretary must:

- (a) confirm the existence and reasonable cohesiveness of each applicant community;
- (b) where the proposed council will cover more than one community, satisfy him or herself and report whether each community supports the application, and whether, given their geography, respective histories and composition the communities may reasonably be expected to co-operate together in one Local Council and with no unreasonable disadvantage likely to eventuate to any participating community;
- (c) advise whether the proposed district is likely to have sufficient physical, human and financial resources to support the operation of a local council and its proposed or likely activities;

- (d) advise whether the formulation of the proposed Local Council will be likely to have any harmful effects on neighbouring communities or geographical areas, and if so whether or how these can be eliminated or minimised;
- (e) advise on whether any proposals in the application for the Local Council's governance and institutions comply with the requirements of this Ordinance, and/or any changes or consultation that will be required to ensure compliance; and
- (f) advise on whether there is an excess of existing Local Councils in the neighbouring areas and whether combining with another Local Council would be appropriate.

(3) In considering the application and before reporting the Provincial Secretary will arrange consultations with the applicant communities and any other persons or groups likely to be affected by the formation of the proposed Council. The Provincial Secretary may determine how best to consult communities and other affected persons, provided that the consultation programme will include at least one public meeting for each community proposed to be covered.

(4) The Provincial Secretary must provide his report to the Minister within three months of receiving it from the Minister, unless the Provincial Secretary advises the Minister that more time is required for consultation, or for the applicants to provide more information or for the Provincial Secretary to otherwise satisfy him or herself on any of the matters required by subsection (2); in which case the Minister may grant an extension of time of not more than a further three months, and advise the applicant accordingly.

(5) As well as covering the matters specified in subsection (2) the Provincial Secretary's report must recommend either that:

- (a) the application complies with requirements and should be referred to the Executive for approval and to authorise preparation of a Local Council Order;
- (b) the application complies with requirements except in particular described respects and should be either: referred to the Executive for decision (if non-compliance is minor and/or likely to be able to be corrected or be referred back to the applicant with advice on the issues requiring attention before the application can be considered further; or
- (c) the application does not comply with requirements and should be rejected by the Minister and referred back to the applicant with the Minister's decision and reasons and a copy of the Provincial Secretary's report.

(6) Where an applicant is dissatisfied with a decision of the Minister under section 5(c) and/or the recommendation of the Provincial Secretary under section 5(b) or 5(c) the applicant may appeal in writing to have their application considered or reconsidered by the Executive. The Executive will consider the applicant's written appeal and may (but is not required to) call representatives of the applicant to present their appeal to the Executive in person.

(7) The decision of the Executive on any application, or on any appeal brought under subsection (6) is final and shall not be subject to challenge by any person or any Court.

Local Council
Order

5. (1) Where the Executive approves an application pursuant to section 4(5)(a) or 4(5)(b), it will direct the Minister and Provincial Secretary to consult with the successful applicant on the terms of a Local Council Order to constitute the Local Council.

(2) Each Local Council Order must include:

- (a) the name of the Local Council;
- (b) the boundaries of the Local Council's district;
- (c) the composition and arrangements for membership of the Local Council, and for electing and/or appointing members, including the appointment or election of a Council Chairperson and Treasurer (and a Deputy Chairperson and/or Secretary, if the Order allows and a Council so decides), which arrangements must be consistent with and meet the minimum requirements including for democracy and transparency, set out in Schedule 1;
- (d) the functions of the Local Council, which must be drawn from the list of possible functions set out in Schedule 2 or be provided for in another provincial or national enactment;
- (e) any property of the Provincial Government that is to be bailed or assigned to or managed by the Local Council;
- (f) the date the Order will come into force, which shall be not less than three months after the date of the Order;
- (g) the date for the first election of the Local Council; and
- (h) the appointment of a local returning officer to conduct the first election.

(3) The Executive may approve, and authorise the Minister to sign and make, a Local Council Order that complies with subsection (2) after receiving and considering:

- (a) a copy of the draft Order;

- (b) details of the consultations with the applicant on the contents of the Order, including the areas of disagreement, if any, between the Minister, officials and the applicant, on the provisions of the Order;
- (c) the Minister's recommendation on how such areas of disagreement should be dealt with; and
- (d) the Minister's certificate that he or she is satisfied that the Local Council to be constituted by the Order complies with this Ordinance, and that he or she recommends that the Local Council be established.

(4) Each Local Council Order must be laid before the Provincial Assembly at its next meeting and is subject to a negative resolution by the Assembly at that meeting.

Part 3 - Conditions of Service

Voluntary
service

6. (1) Members of Local Council are fulfilling a voluntary duty of service to their community and as such are not guaranteed any remuneration. However the Executive may set a small honourarium which will be applied to all Local Councils and may be amended by the Executive from time to time.

Travel and
subsistence

7. (1) Where a Member is required to travel on official business approved by the Council, he or she may be reimbursed the actual and reasonable costs of their transport.

(2) Where approved official travel, other than to attend a Council meeting or Council committee meeting, requires a Member to be away from their normal place or residence for one or more nights the Member may be reimbursed by the Treasurer at the rate for a night allowance specified in Schedule 3, and as that rate maybe amended from time to time by an Order approved by the Executive and signed by the Minister.

(3) All payments to Members, whether made under this section or not, must be recorded by the Treasurer and a return must be made to the Provincial Treasurer each financial year, detailing all such payments.

Part 4 - Finance and Basic Rate

8. (1) Every adult resident is liable to pay the ordinary basic rate set for all residents in an Order issued pursuant to this section, unless he or she qualifies for an exemption contained in the Order or in another enactment:

Provided that a Local Council may recommend and the Executive may at its discretion and by Order approve a different local basic rate or schedule of local basic rates for a Local Council district. Where local basic rates are in force, the local basic rates apply to district residents instead of and not in addition to the ordinary basic rate.

(2) Any Order setting local or ordinary basic rates may provide for revenue sharing between the Provincial Government and a Local Council, but in no case may more than 50 per cent of collected basic rates (after deduction of any reasonable collection costs) be retained by or paid to the Provincial Government instead of the Local Council.

(3) Where the Provincial Government collects revenue on behalf of a Local Council it will pay the Local Council its share of revenue at least quarterly to the Local Council's bank account, and at the same time provide a statement detailing revenue collected, any collection expenses deducted, and the apportionment of the revenue.

9. (1) A Local Council may apply to the Executive, and the Executive may allow the Local Council, to appoint its own local revenue collectors; but nothing in this section limits the right of the Provincial Government to collect basic rates directly from any district resident.

(2) Local revenue collectors and the Local Council must comply with all Financial or Accounting Instructions regarding revenue that may be issued by the Provincial Government, either generally, or particularly for Local Councils.

(3) Local revenue collectors may be paid on a wages or commission basis: but in all cases the gross amount of all revenue (that is, without deduction of any commission) collected by each local revenue collector must be deposited by the collector to the Local Council's bank account at least monthly, and copies of all issued receipts and other required documentation must be provided to the Local Council within two days of such deposit.

(4) The Local Council must report quarterly to the Provincial Treasurer on locally collected revenue in the format prescribed in Instructions or by the Provincial Treasurer. The Local Council may calculate and pay any revenue share owing to the Provincial Government at the same time as it provides its report, but must in any case pay the share within 7 days of confirmation by the Provincial Government to the Local Council of the amount owing.

Other revenue

- 10.** (1) The Local Council may derive other revenue from:
- (a) reasonable fees for services provided to district residents or others;
 - (b) the Council's share of any profit or surplus derived from any economic development or similar project participated in by the Council;
 - (c) such other revenue sources, including grants, as may be approved by the Executive after consultation with the Council.
- (2) The Local Council may accept grants from the Provincial Government, Solomon Islands Government or any Solomon Islands Government agency without requiring any further approval from the Provincial Government; but should the Local Council be offered and wish to accept funds from any Solomon Islands based aid agency or other non-governmental organisation it must first obtain the approval of the Minister or, for amounts or values over SBDS5,000, the Executive.

(3) A Local Council may not:

- (a) accepts funds from any non Solomon Islands agency or source;
- (b) apply for or accept any overdraft facility, loan or credit facility (other than normal credit terms offered by local suppliers); or
- (c) act as guarantor or indemnified or any other person or venture

unless the fund, facility, guarantee or indemnity as the case may be is expressly provided for in an Order made by the Executive and signed by the Minister, after the Executive has satisfied itself and resolved that the Order is within its powers, all relevant Solomon Islands written law has been complied with, and the facility etc is reasonably prudent in all the circumstances and likely to be of benefits to district residents and Temotu Province.

(4) The Local Council must provide a quarterly report on all revenues received by it from all sources other than basic rates, and shall provide any additional information requested by the Provincial Treasurer, Minister or Executive.

11. (1) Each Local Council will appoint one of its members by resolution to be the Council's Treasurer. Treasurer

(2) The Treasurer shall continue to hold office so long as he or she continues to be a member of the Council, unless he or she resigns or is removed or replaced by a valid Council resolution.

- (3) The Treasurer shall be responsible to:
- (a) maintain and operate the Council's bank account and, with the Council Chairperson, act as a cheque signatory;
 - (b) report to the Council on the management of its finances;
 - (c) ensure compliance with all Provincial Financial Instructions that apply to the Local Council; and
 - (d) provide an annual statement, in a form prescribed by Financial Instructions or by the Provincial Treasurer, of the income and expenditure and financial position of the Local Council.
- (4) Where appropriate and when available, the Treasurer may be offered support and/or training by Provincial Treasury and Finance personnel, and may refer any question on financial matters to the provincial Treasurer, for advice.

Expenditure

- 12.** (1) Each Local Council may approve expenditure and expend approved funds on or in connection with any activity falling within the functions approved for the Council in its Local Council Order so long as:
- (a) the Treasurer confirms that there are or will be sufficient funds on hand to meet the expenditure when it falls due to be paid;
 - (b) the Council bank account is not in overdraft;
 - (c) the Council is satisfied and certifies that the expenditure is prudent; is reasonably likely to benefit a community in the Local Council district or a significant group or proportion of district residents; and does not unfairly or unreasonably advantage or disadvantage particular families or district residents over other families or district residents.

(2) Expenditure on any activity must be approved by the Council at a Council meeting, provided that where expenditure on an activity or project has previously been approved and the Council has so delegated, the Chairperson and Treasurer together may approve and make further required expenditure on the activity or project between Council meetings, of up to \$200 on any one item and totalling a maximum of \$500 for any one activity or project, so long as the expenditure is reported to and endorsed by the Council at the next Council Meeting.

(3) If any Council expenditure incurred by the Chairperson and/or Treasurer, whether pursuant to subsection (2) or otherwise, or by any other Member purporting to act for the Council is subsequently held by the Council to have been unreasonable, unwarranted or outside authority and is not endorsed by the Council, the Council must direct the Chairperson, Treasurer and/or other Member concerned to personally reimburse the Council bank account for the amount expended, and the persons who authorised or made such shall be jointly and severally liable to reimburse the expenditure.

(4) Where the Executive is satisfied that a Council has approved any expenditure or made any payment other than in accordance with this section, the Executive may revoke the approval, and any amounts actually paid may be recovered from Council members in a civil action brought by the Provincial Government. Council members shall be jointly and severally liable for any amount ordered to be recovered; provided that a member shall have a defence against recovery if the member can prove that he or she voted against approving the expenditure or making the payment and requested that their contrary vote be recorded.

13. (1) Notwithstanding any expenditure having been authorised by a Local Council according to section 12, the Minister may limit, suspend or cancel any expenditure by a Local Council if in his or her opinion financial exigencies or the public interest so requires.

Power of
Minister to
limit, cancel or
suspend

(2) No action may be taken by the Minister under subsection (1) unless the Minister has first notified the Local Council and afforded the Council a reasonable opportunity to show why the expenditure should not be limited, suspended or cancelled.

(3) Any decision by the Minister to limit, suspend or cancel any Local Council expenditure will lapse 30 days after the decision has been notified to the Local Council unless the Minister's decision has been referred to and been endorsed by the Executive; provided that when deciding to endorse any limitation, cancellation or suspension the Executive may vary and/or limit the effect of the limitation, cancellation or suspension or any conditions imposed by the Minister; and the Executive may revisit its or the Minister's decision at any time, on its own motion or at the request of the Minister or Council.

operation of
bank account

14. (1) The Treasurer will be responsible for operating the Council's bank account, except that all withdrawals or cheques must be signed by the Treasurer and Council Chairperson (or, during the Chairperson's absence from the district or his or her physical or mental incapacity, by the duly appointed Deputy Chairperson).

(2) It shall be an offence, punishable on conviction by a fine of not more than \$1,000 or by imprisonment for not more than six months or by both a fine and imprisonment, if:

- (a) any bank account signatory pre-signs a blank cheque or withdrawal form;
- (b) any bank account signatory signs any partially completed cheque or withdrawal form, in such a manner that will allow either the amount or the payee to be added after his or her signature; or
- (c) any member other than an authorised signatory signs a cheque or withdrawal form, or if the member is a signatory, signs a cheque or withdrawal form when they are not authorised to do so according to this section.

(3) Any fine imposed pursuant to this section shall be payable to the Provincial Fund.

15. (1) The Provincial Treasurer is responsible for supervising the financial management of each Local Council and may undertake any steps reasonably necessary to assure the Provincial Government that a Local Council's finances are being managed prudently, including but not limited to:

- (a) requesting reports from the Treasurer or Council on any financial matter or transaction;
- (b) reviewing any bank or other financial records maintaining by the Council;
- (c) carrying out spot checks or other financial controls on the Council's financial affairs; and
- (d) recommending to the Executive Financial or Accounting Instructions in respect of Local Councils that are reasonably directed to ensure sound financial management in an organisation of a Council's size and type.

(2) The supervision by the Provincial Treasurer is in addition to and does not replace any requirement for the affairs of a Local Council to be audited pursuant to section 103 of the Constitution of the Solomon Islands.

Part 5 - Meetings

16. (1) Subject to the requirements of this Part and any other stipulation as to procedure contained in this Ordinance, each Local Council may determine its own meeting procedures, and may vary its procedures where it considers a variation necessary or expedient to better meet the requirements of a particular meeting or class of meeting or subject matter.

(2) Notwithstanding subsection (1) a Local Council, when determining its procedure either generally or in a particular case, shall wherever practicable adopt procedures that afford district residents an opportunity to participate in meetings of the Council, and to allow individual residents or groups to be heard on matters in which the individual or group has a legitimate interest.

Number and
type of meet-
ings

17. (1) A Local Council may meet as often as is necessary to transact its business; but to the maximum extent practicable shall hold meetings on a regular schedule that is advertised in advance to district residents and the general public.

(2) Notwithstanding subsection (1), a Local Council must meet at least once in each quarter of the financial year. If for any reason a Council is not able to or fails to meet in a quarter, the Chairperson must provide a written explanation to the Minister within 14 days of the end of the quarter, detailing why the Council did not or could not meet; and the Minister will provide the explanation to the next meeting of the Executive.

(3) Where a Local Council does not meet in any two quarters of a financial year the Chairperson, at the same time as providing the explanation required by subsection (2) must report to the Minister, for the Executive's consideration:

- (a) the Chairperson's and member's opinions as to whether the Council is continuing to function, or the function efficiently and effectively;
- (b) what if any steps the Council proposes to take to improve its performance, both generally and with regard to the requirement to meet each quarter; and
- (c) any reasons or considerations that the Council believes the Executive should take into account, when deciding whether or not to suspend or cancel the operations of the Council and/or have any or all of its functions taken over by the Provincial Government.

(4) Where the Executive determines that a Local Council's failure to meet justifies that the Council should be suspended or have its Local Council Order cancelled, the Executive must follow the procedure set out in section 25.

(5) Nothing in this Part prevents a Local Council from calling additional or special purpose meetings, either to transact its normal business or for any particular purpose that falls within the Council's functions. Without limiting the scope of its power to meet for particular purposes, a Council may call meetings to:

- (a) mediate or attempt to resolve any family, community, inter community or other local dispute or conflict;
- (b) consult any community or other group regarding issues affecting the group, or to inform the community about Local Council, Provincial Government or national issues;
- (c) plan or organise community activities and events; or
- (d) foster community action, including organising community support or contribution to any local project or activity, including by community labour.

18. (1) Subject to this section, meeting of the Local Council shall be in public, at a date and time publicly notified at least 24 hours in advance, and at a place where district residents have reasonable opportunity to attend and participate. ^{Meetings to be in public}

(2) The Chairperson, or during his or her absence from Temotu Province the Deputy Chairperson if one has been appointed, may decide when to call meetings, unless the Council at one meeting approves the date and time for the next meeting, or has otherwise approved a schedule of meeting dates; provided that where no meeting has been held for one complete quarter any number of Members sufficient to constitute a quorum may sign and deliver a notice to the Chairperson (if he or she is present in the Province) and to all Members present in the Province to require a meeting to be held on a nominated date not less than 7 days after the date the notice is delivered to Members.

(3) Notwithstanding subsection (1) the Chairperson, or if he or she is incapacitated or absent from the Council district the Deputy Chairperson, may call an emergency meeting without giving 24 hours notice in advance, and the reason for the emergency shall be recorded in the minutes of the meeting.

(4) Any any meeting a majority of members present and voting may determine that the public be excluded for any item of business on the grounds that:

- (a) a matter is commercially sensitive and its discussion in public would prejudice the Council's interests or the legitimate interests of a party dealing or offering to deal with the Council;
- (b) exclusion of the public is necessary to protect the reasonable expectation of privacy of a natural person;
- (c) information has been supplied to the Council in confidence, and the supplier reasonably expects that the confidence will be maintained;
- (d) the subject matter is such that its discussion in public would be likely to offend against commonly held community standards of decency, good taste or decorum; or
- (e) deliberations in private are reasonably necessary to facilitate the resolution of a dispute or conflict.

(5) Where the public is excluded of any item in accordance with subsection (4) the category of justification for the exclusion shall be recorded in the minutes of the meeting, together with the outcome or any resolution for the Council on the item; provided that the Council may determine, on any of the grounds set out in subsection (4), that all or part of the Minutes relating to the item may be excluded from the public record.

19. (1) Each Local Council must keep a permanent, written record of its meetings and decisions.

Records
Minutes

(2) The written record:

- (a) may be handwritten;
- (b) if it is kept in electronic form, must also have a printed copy;
- (c) must be collected and firmly attached in a file or folder or be pasted or recorded in a minute book;
- (d) should be made available for inspection on request by district residents at a reasonable time and place, either by the Chairperson or any Member appointed to act as the Council's secretary or record-keeper;
- (e) need not contain a word-for-word or detailed record of discussions; but
- (f) must record every decision, approval or resolution of the Council, and whether the decision etc was made by unanimous or majority vote of the Council (or, where the procedure of the Council so allows, by consensus or according to any prevailing custom);
- (g) must, where a Member so requests, record any member's contrary vote or abstention on any decision, approval or resolution;
- (h) must record any conflict of interest notified or identified pursuant to section 20;
- (i) may, if the Executive so requires, be copied by the Provincial Government at the Government's expense so that the Provincial Government may retain a copy

Conflict of
interest

20. (1) No member may vote on any matter in which he or she has an actual or perceived conflict of interest.

(2) A member may participate in deliberations, but not vote, on any matter in which he or she has an actual or perceived conflict of interest only if:

- (a) the Member notifies the conflict to the meeting before deliberation on the relevant matter begins; and
- (b) the other Members present unanimously agree that the Member may participate in discussions.

(3) Each Member is responsible for notifying the Council meeting, prior to deliberations on a relevant matter, that he or she has or may be perceived to have a conflict of interest on an item of business; provided that another Member may raise a question as to whether a Member has a conflict.

(4) Where another Member raises a question under subsection (3), the Member in question may comment on whether he or she believes himself to have a conflict. Where the Member concerned does not admit or agree that there is a conflict and any other Member does not accept the Member's position, the Chairperson shall decide whether there is a conflict.

(5) Every notification or determination of a conflict, and whether the affected Member was permitted to participate in deliberations, shall be recorded in the written record.

(6) The fact that a Member who has participated in discussions or voted on a matter without disclosing a conflict and is later found to have had a conflict of interest shall not invalidate any decision or action taken by the Council; provided that the matter must be reported to the Council and to the Minister (who may consider whether the situation warrants any action under section 25); and any Member may require that any relevant decision be put to the Council afresh, with the affected member excluded from discussion and voting.

(7) A Member has an actual conflict of interest on a matter if he or she, his or her husband, wife or partner, children (including adopted children), or parents or his or her business associate:

- (a) has or have a direct financial interest in the outcome of the decision or transaction; or
- (b) will otherwise derive any personal or family income or other benefit or advantage from a proposed decision or transaction that is separate or different from, additional to or disproportionate to any benefit they might expect to receive from the decision or transaction as an ordinary community member or district resident.

(8) A Member has a perceived conflict of interest when a properly informed district resident could reasonably conclude that the Member's decision on a matter is likely to be materially affected by their personal, family or business interests, rather than by the interests of the community as a whole.

21. (1) A Local Council may appoint such committees as it ^{Committees} considers desirable to assist the Council with its functions.

(2) A Committee may be made up of Council Members only; or a combination of Members and other district residents invited and appointed by the Council.

(3) A Committee may recommend actions or expenditure to the Council, and/or the Committee may be given responsibility for supervising or implementing a Council activity or function; provided that any necessary expenditure must still be approved, in advance, by the Council.

(4) Members of Local Committees are fulfilling a voluntary duty of service to their community and as such are not guaranteed any remuneration. However the Local Council may set a small honourarium which will be applied to all Local Committees and may be amended by the Local Council from time to time.

- (5) (a) Where a Committee Member is required to travel on official business approved by the Council, he or she may be reimbursed the actual and reasonable costs of his or her transport.
- (b) Where approved official travel, other than to attend a Committee meeting, requires a Committee Member to be away from their normal place of residence for one or more nights the Committee Member may be reimbursed by the Treasurer at the rate for a night allowance specified in Schedule 3, and as that rate may be amended from time to time by an Order approved by the Executive and signed by the Minister.
- (c) All payments to Committee Members, whether made under this section or not, must be recorded by the Treasurer and a return must be made to the Provincial Treasurer each financial year, detailing all such payments.

Part 6 – By-laws

Scope of
By laws

- 22.** (1) A Local Council may in the manner set out in this Part make by-laws affecting on the Local Council district.
- (2) A by-law may relate to a whole district and/or all district residents, or to part of a district only.
- (3) A by-law must relate to and be restricted to one or more of the functions of the Local Council, as provided for in the Local Council Order; or to a matter that is reasonably incidental to the performance or control of such a function.
- (4) A by-law may not contain any provision which is provided for in any other written law that applies in Temotu Province.

23. (1) A Local Council that is considering or proposing to make a by-law must notify by public notice all district residents likely to be affected at least 14 days before the meeting at which it will consider or make the by-law of:

Making of
By-laws

(a) the likely or intended scope and subject matter of the proposed by-law;

(b) if possible, the draft text of the by-law;

(c) the place and time the by-law will be discussed;

so that interested or affected residents may be present and make their views known about the proposal.

(2) The written text of the draft by-law must be available at the meeting called to discuss it, with sufficient copies to allow district residents attending the meeting to read and consider the text.

(3) Before voting on the by-law the Chairperson must afford district residents attending the meeting a reasonable opportunity to be heard on the by-law.

(4) Where the Council approves the by-law the Chairperson shall verify and sign a copy as an accurate record of the by-law, and provide the verified copy to the Provincial Secretary.

(5) The Provincial Secretary must submit the by-law to the next meeting of the Executive, together with his or her comments on whether the by-law complies with this Part and any difficulties or costs that may arise from the by-law.

(6) No by-law is effective unless and until approved by the Executive. If the Executive declines to approve a by-law it must notify the Council of its decision, and may provide comments to the Council about how the by-law might be appropriately amended or improved, so that it may receive Executive approval.

Provincial
Government
may assist

24. (1) Nothing in this Part prevents a Local Council from requesting, or the Executive or any provincial officer from providing assistance to the Local Council with the development, drafting or implementation of any by-law.

Part 7 – Miscellaneous

Suspension,
removal or
cancellation of
Councils

25. (1) Where the Minister is satisfied that any Local Council has:

- (a) acted outside its allotted functions or authority;
- (b) failed to carry out any of its allotted functions (including by failing to meet);
- (c) in the performance of any allotted function acted in a manner prejudicial to the interest of district residents or the people of Temotu Province;
- (d) made default on, mismanaged or failed to properly account for the financial affairs of the Council;

the Minister may, after having given the Local Council notice of his or her intention to do so and having considered any representation of the Council, suspend the Council from the performance of a function or all its functions for a period of not more than 30 days.

(2) Where the Minister has suspended any function of Local Council, he or she must report his or her action to the Executive in writing. The Executive must, at its next available meeting or if no meeting is scheduled within the next 30 days at a special meeting called for the purpose, consider whether to:

- (a) continue the suspension for a defined period (which period may be renewed or extended by the Executive order);
- (b) remove the Members and appoint a new Council in their place until the next scheduled election;
or
- (c) cancel the relevant Local Council Order and disestablish the Local Council.

(3) Before determining whether or what action to take under subsection (2) the Executive shall afford the members of the suspended Council a reasonable opportunity to be heard by the Executive; and may invite comments or representations from other district residents.

(4) Where the Minister has suspended a Council and/or the Executive has taken action under subsection (2) the Provincial Secretary shall take possession of the records and other property of the Local Council and shall be responsible, until such time as a Council is again in place, for deciding whether to continue (temporarily or otherwise), amend or cease any services or activities previously carried on by the Council.

26. (1) The Executive may make such regulations and orders as it ^{Regulations} deems necessary for the better implementation of this Ordinance (either generally, or in respect of a particular Local Council or district). Such regulations may include but are not limited to:

- (a) the further specification of the powers and functions of any Council;
- (b) the delineation or amendment of any Local Council district;
- (c) provision for the better collection and administration of basic rates, the exemptions from basic rates, any penalties for any person failing to pay their basic rate;
- (d) financial and other administrative instructions applying to Local Councils;
- (e) procedures for dealing with the suspension, removal or cancellation of an Local Council;
- (f) further procedures governing the election or appointment of Members.

Repeals

27. (1) The Temotu Province Area Council Ordinance 1992 is hereby repealed.
- (2) Subject to subsection 3, the Temotu Province Basic Rate Ordinance 1995 is hereby repealed.
- (3) Notwithstanding subsection (2), if the Executive has made no basic rate Order under section 8, either generally or in respect of a particular district or Local Council, the Temotu Province Basic Rate Ordinance 1995 shall be deemed an Order made under section 8 and shall continue in force according to its terms in respect of each area or district of Temotu Province for which a basic rate is not otherwise provided.

Schedule 1

(Section 5(2)(c))

Composition of Local Council

Minimum requirements to be provided for in Local Council Orders

- I. (1) Councils to consist of not fewer than 5 and not more than 7 elected members.
- (2) Power of the Executive, on the recommendation of the Minister, to appoint up to 3 further members of the Council from the Local Council district, to ensure adequate representation of men and women, and communities within a Council district.
- (3) At least 60 percent of elected members to be elected by universal suffrage, either from the district at large or through local wards (based on village, islands or other suitable local divisions).
- (4) Where an Order so permits, up to 40 percent of members may be elected by and from a House of Chief approved and recognised by the Executive.
- (5) Quorum for a Council is 3 members if total membership is 5; otherwise 4 members of any type. No business to be transacted without a quorum present.

2. (1) Each Local Council is to appoint one of their number as Chairperson and another as Treasurer, each by majority resolution at the first meeting.

(2) The Chairperson and/or Treasurer may be replaced if he or she resigns by notice in writing; or a majority of all members resolves at a meeting held not less than seven days after notice has been given to members of a proposed resolution that the officer concerned stand down and/or be replaced.

(3) The Council may appoint from their number a Deputy Chairperson and/or Secretary, if the Local Council Order so allows.

(4) The Deputy Chairperson and/or Secretary may resign at any time by notice in writing; or may be replaced by a majority resolution at any meeting.

(5) The Council may nominate a member to chair a duly convened meeting at which neither the Chair nor Deputy (if appointed) is present.

3. (1) All members must be adults normally residents in the Local Council district, who would not be disqualified under section 15 of the Act if they were standing for the Provincial Assembly (except that a provincial officer may stand for and/or serve as a Council member if the Provincial Secretary gives approval). Any member who becomes so disqualified will be deemed to have resigned from the Council at the date that their disqualification becomes final or irrevocable, and the Executive may appoint a replacement.

Eligibility for membership

(2) Members of the Provincial Assembly are not eligible to be elected to a Local Council; and any Local Council member who is elected to the Provincial Assembly must resign within 30 days of election (and the Executive may appoint a replacement).

(3) A member who is absent from the district for more than 90 days within two consecutive quarters of the financial year shall be deemed to have resigned from the Council and may be replaced by appointment by the Executive.

(4) A member who does not attend any meeting for two consecutive quarters (unless the Council has not met in those quarters) shall be deemed to have resigned and may be placed as in subsection (2), unless the Council by majority grants leave of absence on grounds of sickness, compassionate leave or other reasonable grounds beyond the control of the member.

Term

4. (1) A Council may be elected for not less than a one, and not more than a three year term, as the relevant Order may prescribe.

(2) If a member resigns from or dies in office:

- (a) if an appointed member, maybe replaced by a further appointment;
- (b) if elected by a House of Chiefs, may be replaced by another chief elected by that House;
- (c) if otherwise elected, the Council and Minister to consult as to whether a by-election is practical or desirable; if not Minister to recommend an appointment or vacancy to the Executive, until the next scheduled election.

Elections

5. (1) The Council will appoint a local returning officer three months prior to schedule elections. The local returning officer may not be an intending candidate or close relative of any intending candidate, but may be a provincial officer, if the Provincial Secretary approves.

(2) The local returning officer will call by public notice for nominations for candidates for universally elected members six weeks prior to the election date, with nominations closing three weeks prior to the election date.

(3) All candidates for universally elected membership to be nominated in writing by two district residents, with signed consent to nomination from nominee and payment of any nomination fee prescribed by regulations.

- (4) The local returning officer will publish a list of candidates two weeks prior to the election date and prepare a ballot paper (one ballot box/single ballot paper system to be used).
 - (5) The local returning officer and assistant(s) will conduct the election day, with each polling station to be open for one consecutive period of not less than four hours.
 - (6) If more than one polling station is necessary or the election involves local wards, the local returning officer may recruit extra assistants and/or schedule and advertise different polling times at different places, including on separate days if necessary.
 - (6 A) the local returning officer may use the Provincial electoral roll to establish any resident's eligibility to vote in a Council election.
 - (7) The local returning officer and assistant(s) will conduct the counting of votes, with supervision from a police officer (if available), school principal, or a respected elder who is not a candidate or associated or related to any candidate.
 - (8) The local returning officer will announce the results, provide the return to the Provincial Secretary and ensure the security of the ballot papers and other voting materials until these can be brought to the provincial offices or a police station for safekeeping.
 - (9) The Provincial Secretary may order a recount, supervised by him or her or a nominee.
 - (10) The Executive may annul any election result and call a fresh election supervised by provincial officers if it is satisfied after a report from the Provincial Secretary and/or the local returning officer that an election has not been free and fair.
 - (11) The local returning officer and assistant(s) may be paid an honourarium and reasonable expenses, up to any maximum specified by regulation, with such expenses to be met from Council funds.
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(12) Where a Council includes chiefs' representatives, the House of Chiefs shall be responsible for deciding and conducting its own procedure and shall advise the names of the chiefs elected to the local returning officer and Provincial Secretary within two working days of election day; provided that a person nominated for any universally elected vacancy may not subsequently be elected by the Chiefs.

(13) The Executive will consider the outcome of the election within one month of being advised of the results, and determine whether any appointed members are required to ensure an appropriate mix of men and women, and of representatives of communities within the district, on the Council.

(14) Wherever possible, the Executive will endeavour to appoint any additional members within two months of being advised of the election results.

Schedule 2

(Section 5(2)(d))

Range of possible functions for Local Councils

1. (1) Cleaning and disposal of waste
- (2) Water supplies and sanitation
- (3) Provision, maintenance and control of public facilities
- (4) Avoidance, abatement and control of public nuisances
- (5) Control of domestic animal within district (including dogs)
- (6) Approval, control and/or management of cemeteries
- (7) Control of markets
- (8) Resolution of local, family or community disputes
- (9) Liaison with and support of Police, local and Magistrate's courts (including any functions delegated by or exercised in conjunction with Police or courts)
- (10) Liquor matters delegated by Temotu Province Liquor Licensing Board
- (11) Other matters delegated to or within the authority of Local Councils according to any Temotu Provincial Government Ordinance
- (12) Promotion, participation in, management and/or control of local economic or social development projects
- (13) Organisation and direction of free community labour by able-bodied residents to achieve or assist in any function; provided that rules for compulsion of district residents to provide labour are specified and limited by a suitable by-law, and no district resident is compelled to provide more than 20 days of community labour.

Schedule 3

(Sections 7 and 21 (5))

- i. (1) Within Temotu Province
 - (a) Where food or rations are provided: S50.00 per night
 - (b) No food or rations provided: S70.00 per night
- (2) Outside Temotu Province
 - (c) Solomon Islands Public Service rates for travel/subsistence

Passed by the Temotu Provincial Assembly this 28th day of October 2010.

This printed impression has been carefully compared by me against the ordinance passed by the Temotu Provincial Assembly and is found to be a true and correct copy of the Ordinance.

Emma Moiya
Clerk to the Temotu Provincial Assembly

Assented to by the Honourable Minister of Provincial Government, this 3rd day of March 2011.

Hon. Braddley Tovosia
Minister of Provincial Government
