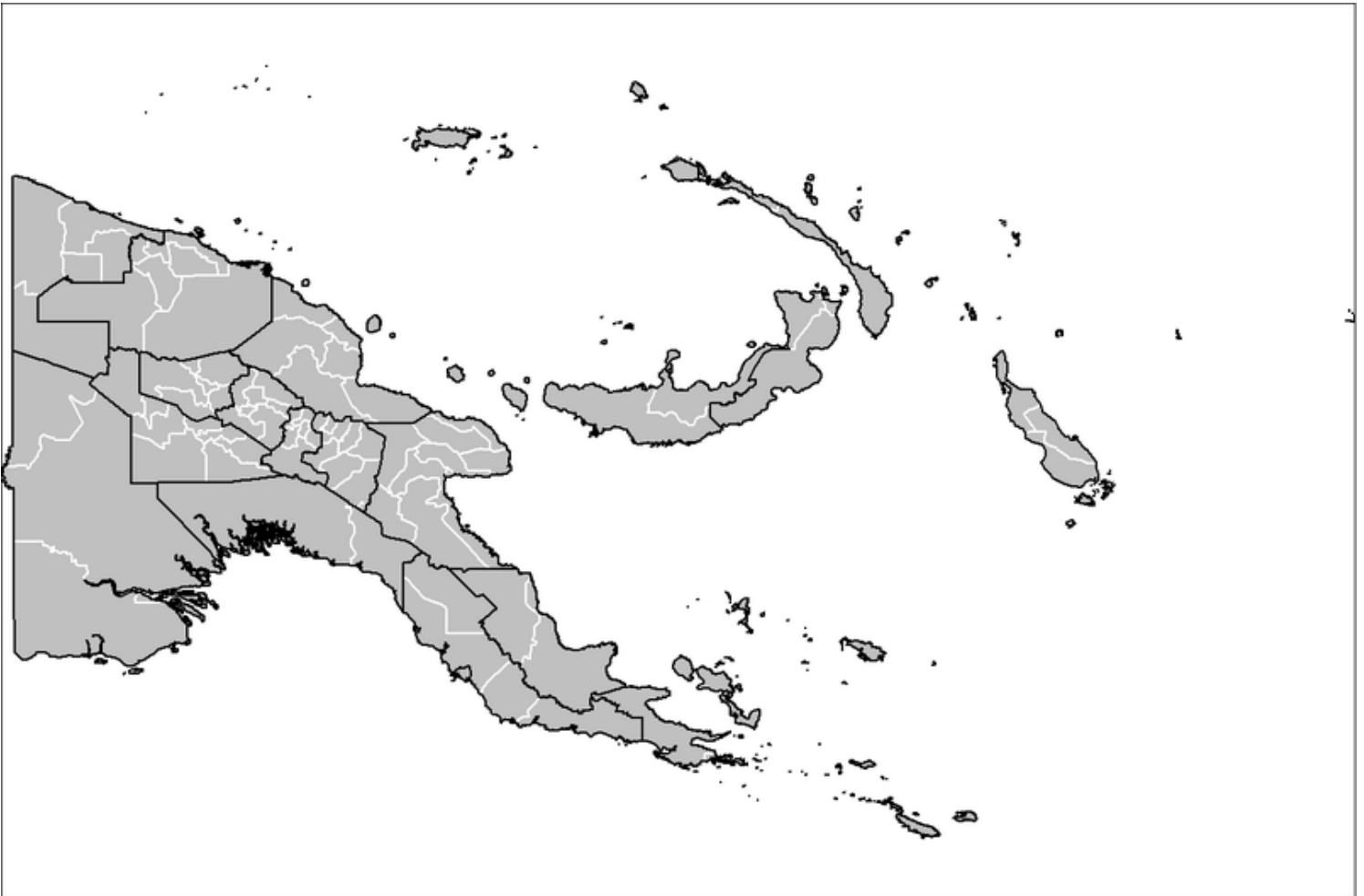




**TIMELINES AND DEADLINES:
ELECTORATES FOR THE NEXT PARLIAMENT AND
RELATED MATTERS**
James MacPherson



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INTRODUCTORY REMARKS – Paul Barker

A country functions if it has a clear social contract between the State and its population, which is honoured. It requires clear rules, which are socially accepted and applied fairly and transparently.

Papua New Guinea is often commended for having an enlightened Constitution and sound laws and regulations, but criticised for then failing (increasingly) to apply these laws, even-handedly at least. It is often stated also that PNG is over-governed, in terms of having too many tiers of Government, but without adequate resources (financial or human) for some of those tiers to perform their functions effectively, notably at the sub-national level. Over recent years there have been simultaneous drives towards Autonomous Provinces, new Provinces (as with Hela and Jiwaka), strengthening LLGs, and establishing District Authorities and replacing the Provincial Government system. There has been a negative public perception, expressed in forums such as the CIMC Regional Development Forums, towards Provincial Governments and particularly against the undemocratic and largely unaccountable Joint-District Planning and Budget Priorities Committees (JDPBPCs), often controlled by local MPs, which are viewed as exercising undue control over resources but failing to adhere to required planning (or in many cases financial) procedures, entailing the Wards leading up to District Plans. Papua New Guinea can accommodate some diversity in its political and administrative systems (as some other countries do), but there is a limit to the extent of that diversity or the tiers of government a small country like PNG can afford, operationally, legally or financially.

Whilst there will be debate over the best systems to be applied for the country, or for different regions of the country, it is clear that the Constitution and laws must be applied, or, where required, amended in a timely manner. Clear systems of representation and government, and the fair and transparent application of the law and functions of government are critical and will be particularly so as the development of major new natural resource projects, notably LNG, proceed. Many developing countries have had their economies and their political and social fabric severely ravaged, rather than enhanced, by rapid access to major resource wealth, particularly from oil and gas (widely termed “Dutch Disease” or the Resource Curse). Countries which have benefited from resource wealth have been those, like Botswana, which place strong emphasis on clear processes and good governance; indeed Botswana has one of the lowest corruption rates in Africa, enabling them to better manage major revenue, including through the use of mechanisms, such as sovereign wealth or future funds, which must not tampered with, as well as ensuring effective expenditure on public goods.

In keeping with this need for sound planning and governance, and foresight in the legislative process, the Institute of National Affairs is pleased to be able to publish this timely Discussion Paper by Dr. James MacPherson on the need for the Government and Parliament to address the issue of Provincial Electorates and the number of Open Electorates in a timely manner, to avoid a potential Constitutional crisis and enable the Electoral Commission to be prepared well in advance for the next National Election. It is preferable to apply the best option, but what is arguable even more critical is that issues are addressed promptly and in an orderly manner and in accordance with legal process.

Paul Barker
Executive Director,
Institute of National Affairs,
December 2009

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FOREWORD - Sir Barry Holloway

Need to act+

Parliament must act now to ensure a Constitutional Parliament, provision for Local-level Government Elections and effective district administrations after the next General Election.

Parliament must

Parliament must enact legislation which gives clear Terms of Reference to a Boundaries Commission which will recommend on electorates for the next Parliament.

The National Government must draft amendments to the *Constitution* and organic laws which can obtain a three quarters majority.

The National Government needs to draft legislation which would meet its commitments for provincial electorates reserved for women, new provincial electorates for Hela and Jiwaka provinces, and general provision for restoration of provincial electorates.

Parliament needs to think deeply about what would happen if rejection of Boundaries Commission recommendations led to electorates for the next Parliament which are incompatible with the *Constitution* and *Organic Law on National and Local-level Government Elections*.

Parliament needs to consider how Parliament House can be extended to accommodate up to 155 Members of Parliament.

Parliament needs to consider how new district administrations, new local-level government areas and new electoral rolls can be planned and implemented in the few months between decisions on recommendations from the Boundaries Commission and the issue of writs for the next General Election.

Failure of the Government to plan now could undermine district administration and local-level government.

Sequence of Legislation

Attainment of three quarters absolute majority in Parliament is difficult.

Parliament and the National Government must plan a legislative program which leads to a workable Parliament after the next General Election.

Parliament can do this by separating and sequencing legislative decisions.

Parliament should therefore decide, probably according to the following sequence, whether:

1. provincial electorates should be created and reserved for women. The decision to enact legislation sets boundaries for deciding on:
 - retention of provincial electorates; and
 - number of open electorates.
2. provincial electorates as now constituted should be retained. The decision to enact legislation sets boundaries for deciding on:
 - The number of open electorates; and
 - Making provincial boundaries automatically provincial electorate boundaries from the issue of writs.
3. The number of open electorates should be in a new range of 110 to 120, or revert to 81 to 91.

Phased legislation would shorten time for the work of the Boundaries Commission, for response by Parliament, and implementation of decisions.

Phased legislation will avoid the very considerable risk of no clear Terms of Reference for a Boundaries Commission, and constitutionally invalid electorates for the next Parliament

Failure of the Government to act now could lead to a constitutional quagmire which would undermine our proud democracy.

Barry Holloway

December 2009

EXECUTIVE SUMMARY

National hopes for national strategic development depend on decision-makers.

National Parliament is the highest level of national decision-making. Parliament now needs to decide on electorates which will elect future Parliaments.

Parliament in 2002 amended the *Organic Law on National and Local-level Government Elections* to remove provisions for provincial electorates and increase the number of open electorates. Commencement of these amendments was deferred from 2007 to the next General Election. Parliament has amended the *Constitution* to remove reference to provincial electorates.

Expert groups and various national forums have debated parliamentary reform over the last two years. They strongly support moves which include:

- retention of provincial electorates;
- creation of provincial electorates reserved for women; and
- creation of provincial electorates for the new Hela and Jiwaka provinces.

They have not discussed an increase in open electorates.

Amendment of the *Constitution* and Organic Laws to create proposed changes requires lengthy procedures and prescribes substantial parliamentary majorities. Present legislation also requires convening a Boundaries Commission. A Boundaries Commission must recommend new provincial electorates and redistribution of open electorates.

Since 1977 Parliament has rejected all Boundaries Commission recommendations to change electorates and electorate boundaries.

The Boundaries Commission in recommending provincial electorates to match provinces must at the same time recommend a distribution of open electorates according to a formula based on population. Recommendations for a new distribution of open electorates will impact on present electorates which elected present Members of Parliament.

The *Constitution* s125 requires Parliament to accept or reject Boundaries Commission recommendations. Parliament cannot amend recommendations. Parliament must simultaneously accept or reject all recommendations for provincial and for open electorates. Rejection of recommendations for a new distribution of open electorates would also be rejection of recommendations for new provincial electorates – whether reserved for women or for Hela and Jiwaka provinces.

Parliament must amend the *Constitution* and the *Organic Law on National and Local-level Government Elections* to provide legislation which meets National Government commitments to retain provincial electorates, establish reserved provincial electorates for women candidates, and establishes new provincial electorates for Hela and Jiwaka provinces.

If Parliament rejects Boundaries Commission recommendations, Papua New Guinea could be placed in a constitutional crisis where legislative provision for electorates does not match approved electorates. Parliament has accepted no recommendations from a Boundaries Commission since 1977. Parliament therefore also needs to amend present legislation so that any rejection by Parliament of Boundaries Commission recommendations does not lead to a constitutional crisis.

Amendment of Section 125 of the *Constitution* and the *Organic Law on National and Local-level Government Elections*, requires a three quarters absolute majority in Parliament. This is by no means assured.

Amendment of constitutional legislation and work of the Boundaries Commission require an extended timetable. This shortens time available to the Electoral Commission before the next General Election for preparation of open electorate rolls, and the Department of Provincial and Local Government Affairs to plan new district administrations and Local-level Government areas. Shortage of time could lead to corrupt manipulation of electoral rolls and increased political patron-client relations in appointment of district administrators.

Other risks include failure to provide for Hela and Jiwaka provincial electorates, with flow-on effects for the LNG project.

Decisions on the new shape of parliament and required legislation should be made as soon as possible. Otherwise an opportunity for an improved Parliament could lead to problems in disputed membership of parliament, problems in defining provincial governments, difficulties with electoral rolls, disorganized district administration, problems in electing in local-level governments and unrest in a province which is key to future economic development.

At the worst, failure to prepare legislation and to approve electorates in conformity with legislation would require a deferred General Election. Such a deferral parallels uncomfortably Bainimarama's Fiji – with its long term deferral of parliamentary elections – in the name of preparing for the holding of parliamentary elections.

ACKNOWLEDGEMENTS

Sir Barry Holloway contributed greatly to the writing of this paper. His long and in depth experience of government and administration in Port Moresby and in the provinces and districts were a very great resource in balancing what should be and what can be.

Mr Graham Tuck contributed valuably by drawing attention to impact of redistribution of open electorates on local-level government areas, and in expressing clearly and concisely legislative requirements.

James MacPherson

Acronyms

OLBNCD	Organic Law on Boundaries of the National Capital District
OLNLLGE	Organic Law on National and Local-level Government Elections
OLPB	Organic Law on Provincial Boundaries
OLPGLLG	Organic Law on Provincial Government and Local-level Government

1. INTRODUCTION

1.1 *Purpose*

The nation is 24 months from issue of writs for the next General Election. This paper briefly discusses the National Government's proposed alterations of membership of Parliament and related difficulties in the lead up to the 2012 General Election. In doing so, it describes timelines and deadlines for decisions on:

- legislation to determine electorates for the next Parliament;
- operation of a Boundaries Commission and Parliament's response to recommendations from the Boundaries Commission relating to electorates for the next Parliament; and
- consequences of decisions which must now be made.

1.2 *Background*

A representative, competent, and effective Parliament after the next General Election is needed to move the nation to the summit described in the *National Vision 2050*.

Our General Election in 2007 was more honest and orderly than its predecessors. Credit goes to our maturing people and to the Electoral Commission. Credit goes to national leaders who legislated Limited Preferential Voting. They looked at benefits of improved representation of our people in Parliament, and positive relations between candidates during the run-up to elections.

Problems of inflated electoral rolls in some provinces and voting abuses in the 2007 General Election are being addressed.

National leaders have done well to raise the issue of who is to elect what Members of Parliament (MPs) to the next Parliament. With strategic vision and political practicality, leaders used national forums to debate membership of the next Parliament. Forums debated:

- women MPs; and
- retention of provincial electorates; and
- provincial electorates for Jiwaka and Hela.

National leaders endorsed reserved provincial electorates for women MPs. The National Government with help from UNDP has begun steps to draft legislation to create provincial electorates reserved for women.

Most national leaders recognise that cultural pressures have excluded women from representation in Parliament. They recognise the extraordinary contribution of the very few

women MPs, and value of a stronger female voice inside Parliament. Many support moves for reserved provincial electorates for women.

Leaders recognised the value of reviewing provincial boundaries (all established before Independence) to build on social and cultural identity and improve provinces as a level of administration and government. Parliament’s almost unanimous amendment of the *Organic Law on Provincial Boundaries (OLPB)* to create Hela and Jiwaka Provinces signals willingness to change.

Political leaders did not discuss the legislated increase in open electorates. An amendment to the *Organic Law on National and Local-level Government Elections (OLNLLGE)* (s35(1)) due to commence with issue of writs for the next General Election mandates increase in the range of open electorates from 81-90 to 110-120 open electorates.

1.3 Decision-making: timelines and deadlines

The Constitution requires decisions on membership of Parliament to be made and implemented in a fixed sequence:

1. Parliament considers and enacts legislation under which Boundaries Commissions recommend on electorates;
2. the Boundaries Commission recommends on provincial and open electorates;
3. Parliament responds to Boundaries Commission proposals;
4. The Electoral Commission implements new electorates and boundaries.

Table 1.1 shows approximate times required for each step.

Table 1.1 Timelines

Sequence	Activities	Time Required	Agencies	Report Section
1	Review and amend <i>Constitution</i> and OLNLLGE	Minimum of 4 months.	Parliament	2
2	Recommend and agree on open electorate boundaries.	About 14 months	Boundaries Commission and Parliament	3
3	Prepare electoral rolls.	6 months?	Electoral Commission	4

Provincial electorates and open electorates have different links with provinces and districts.

A Boundaries Commission must recommend provincial electorates which are identical with provinces as defined under the OLPB and *Organic Law on the Boundaries of the National Capital District (OLBNCD)*. Changes to the OLPB and OLBNCD redefine provincial electorates. Electoral considerations are secondary.

Open electorate boundaries and district boundaries are also identical. However, electorate boundaries determine district boundaries and not vice versa (*Organic Law on Provincial Governments and Local-level Governments (OLPGLLG)* s73(4)). The Boundaries Commission

uses procedures and formulae prescribed by the OLNLLGE to determine electorate boundaries which then become electorate boundaries.

1.4 *Structure of this Paper*

Section 2 of this paper describes:

- legislation in force or scheduled to commence about the time of the next General Elections and which enables or defines provincial electorates and boundaries;
- timelines and deadlines for enacting new legislation.

Section 3 describes legislation that would retain provincial electorates, enable creation of women's provincial electorates, and provide for Hela and Jiwaka provincial electorates.

Section 4 of this paper describes:

- constitutional and organic law legislation affecting number, distribution, and boundaries of open electorates;
- Boundaries Commission recommendations required by legislation;
- conditions under which Parliament can accept or reject Boundaries Commission recommendations; and
- timelines for Boundaries Commission reports and Parliament's responses.

Time after Parliament's acceptance or rejection of Boundaries Commission recommendations and before issue of writs for the next General Election will be limited. Section 5 therefore describes potential challenges offered the National Government by:

- development of new electoral rolls for each electorate;
- possible consequences for provincial government;
- variation of open electorates for district administration;
- variation of open electorates for local-level governments; and
- incompatible legislation and provision for electorates.

2. LEGISLATION AND NATIONAL ELECTORATES

2.1 *Legislation and Electorates*

The Constitution and Organic Laws define membership of Parliament. Parliament can amend *the Constitution* and Organic Laws which define future Parliaments.

Table 2.1, below, shows the legislation which defines the number of electorates and procedures for recommending and agreeing on electorates. It also shows legislation:

- in operation; and scheduled to continue with the next General Election; or
- in operation but scheduled to lapse with the next General Election; or
- scheduled to come into operation with the next General Election.

Table 2.1 Legislation defining Provincial Electorates

Legislation	Provisions	Operation
<i>Constitution</i> s4(5)	NCD to be a provincial electorate for the purposes of s125 of the <i>Constitution</i> .	
<i>Constitution</i> s5	An organic law may provide for declaration of parts of the country as provinces.	<i>OLPB</i>
<i>OLPB</i> Schedule	1. Defines provincial boundaries. 2. An amendment creates 2 new provinces: Hela and Jiwaka	1. In operation. 2. In operation after next General Election
<i>Constitution</i> s101	(1)(a) provides for single member open electorates (1)(c) Requires provincial electorates to be single member (2) an Organic Law shall make provision for the number of open and provincial electorates (4) number and boundaries of open and provincial electorates determined under <i>the Constitution</i> s125 (5) alteration to the number or boundaries of electorates takes effect for the next general election.	Provisions for provincial electorates scheduled to cease to operate after issue of writs for the next General Election
<i>Constitution</i> 125(1)	Number of provincial electorate and their boundaries to be determined by Parliament in accordance with recommendations from a Boundaries Commission	In operation. Provisions related to provincial electorates repealed after issue of writs for the next General Election.
<i>Constitution</i> 125(3)	Parliament may accept or reject but not amend recommendations of the Boundaries Commission	In operation.
<i>OLNLLGE</i> s34	one provincial electorate for each province boundaries of provinces are boundaries of provincial electorates boundaries of provinces come into effect after next distribution of electorates	Repealed with issue of writs for General Election in 2012
<i>OLNLLGE</i> s38	(1) The number of open electorates is not less than 81 nor more than 91 (1) The number of open electorates is not less than 110 nor more than 120.	In operation but replaced with issue of writs for the next General Election. To come into operation with issue of writs for the next General Election.

Under the above legislative, the present Parliament consists of:

- 20 seats for elected representatives of provincial electorates; and
- 89 seats for elected representatives of open electorates.¹

2.2 *Legislation scheduled to come into operation with issue of writs for the next General Election*

The **Constitution** has been amended at s.101 and s.125 by **Constitutional Amendment (No. 30) (Provincial Electorates) Law 2006** to:

- remove provisions concerning provincial electorates and provincial seats in Parliament with effect on the date of issue of writs for the general election first held after the general election scheduled for 2007 [i.e. in 2012].

The OLNLLGE has been amended at s.34, s.35 and s.36 by the **Organic Law on National and Local-level Government Elections (Amendment No. 1) Law** to:

- remove provisions concerning provincial electorates; and
- replace the range of 81 to 91 open electorates with the range of 110 to 120.

These amendments would result in a Parliament of 110 to 120 seats in 2012.

2.3 *National Government Intentions*

The National Government intends to:

- retain provincial electorates beyond 2012;
- create provincial electorates for Hela and Jiwaka provinces; and
- establish reserved provincial electorates for 22 women.

The National Government and Parliament have not debated whether they will replace the legislation which provides for the number of open electorates to increase to a range of 110 to 120 open electorates.

These amendments can be timed flexibly before the General Election.

2.4 *Legislation in Progress*

Parliament to retain provincial electorates for the next Parliament must repeal or defer coming into operation of the repeal of the OLNLLGE s34 and must repeal the **Constitutional Amendment (No. 30)(Provincial Electorates) Law 2006**. No notice of legislation has been given.

UNDP, through recent national newspaper advertisements, has advertised consultancies to recommend legislation to establish provincial electorates for women. The advertisement states that the consultancies are the responsibility of the Department of Community Development, and follow a workshop in early September, whose members included the

¹ The 89 open electorates were set in 1977 when Parliament adopted a Boundaries Commission report and recommendations. All reports and recommendations since then have been rejected.

acting Secretary of the Department of the Prime Minister and NEC. Records of that workshop are not publicly available.

Draft legislation is to be ready in May. The initiative shows awareness of the need to amend the *Constitution* and OLNLLGE in time for the Boundaries Commission to recommend on electorates or to exclude the Boundaries Commission from the recommendation process.

The proposed procedures for preparing legislation are unusual. The normal agencies would be the Constitutional and Law Reform Commission and Office of Legislative Counsel.

2.5 *Timelines for Amending Legislation*

Amendments to an Organic Law or *the Constitution* require:

- Circulation of the proposed law to all MPs at least one month before it is introduced into Parliament; and
- Opportunities for debate separated by at least two months.

Only after legislation is in place can the Boundaries Commission develop its report and recommendations on:

- provincial electorates [especially for new Hela and Jiwaka and altered Southern Highlands and Western Highlands Provinces];
- open electorates within the new range of 110-120; and
- reserved provincial electorates for 22 women representatives.

Between the next sitting of Parliament scheduled to commence on 2nd March 2010 and the date of issue of writs for the 2012 General Election:

- the national government must have legislation in place;
- Boundaries Commission must present a report and recommendations;
- parliamentary process must ensure the Boundaries Commission report and recommendations are adopted; and
- the Electoral Commission must prepare for the elections.

2.6 *Prescribed Parliamentary Majorities*

Amendment of the *Constitution* s101 requires an absolute Parliamentary majority (*Constitution* s17(1)).

Amendment of the *Constitution* s125 or of the OLNLLGE requires a three quarters absolute majority in Parliament (*Constitution* s17(3)).

To achieve prescribed majorities, the Government will have to negotiate with the Opposition agreement on constitutional legislation.

The Government must keep in mind that successive Parliaments have rejected every Boundaries Commission report after that for 1977. This raises the question of whether the present Parliament will reverse that trend.

Proposals to nominate women MPs under *the Constitution* s102 failed. Rejection showed that support for three additional women MPs could not obtain the prescribed two thirds absolute parliamentary majority. Proposals now to enact Constitutional and Organic Laws to approve provincial electorates for women MPs would require a three quarters absolute majority.

Creation of that political and parliamentary support requires increased efforts and negotiation.

The Government and Parliament will need fallback positions if planned legislation is not enacted or the Boundaries Commission report is not accepted.

3. PROVINCIAL ELECTORATES

3.1 Defining Provincial Electorates

The *Constitution* s125 and *OLNLLGE* prescribe procedures for a Boundaries Commission recommending electorate boundaries and Parliament accepting or rejecting Boundaries Commission recommendations.

Provisions for the National Capital District, provinces and provincial boundaries come under the *Constitution* s4 and s5. These provisions are separate from provisions for provincial electorates under s101 and s125. The *Constitution* s125(1) requires that the Boundaries Commission recommend provincial electorates and their boundaries. This is a requirement even though recommendations must be of provincial electorate boundaries identical with provincial boundaries in operation after the next General Election.

The *OLNLLGE* s34(3) provides that a change in the boundaries of any provincial electorate shall only come into effect after the next following redistribution of electorates. If there is no redistribution of electorates, including open electorates, and provincial electorates are retained, then Jiwaka with the Western Highlands Provinces and the Southern Highlands with Hela Province will elect a single provincial MP.

Without amendment of the *Organic Law on Provincial Governments and Local-level Governments* Jiwaka with the Western Highlands Province and the Southern Highlands Province with Hela Province each could be headed by a single Provincial Governor elected by a joint electorate!

The Boundaries Commission must recommend on both provincial and open electorates and their boundaries. Parliament can only accept or reject recommendations from Boundaries Commission on provincial and open electorates. If Parliament rejects recommendations on open electorates, it also rejects recommendations on provincial electorates. If Parliament accepts recommendations on provincial electorates, then it also accepts recommendations on open electorates.

Parliament has rejected every Boundaries Commission recommendation since 1977. Parliament could reject recommendations from a new Boundaries Commission. Rejection of open electorates would also be rejection of new provincial electorates.

Parliament, to have provincial MPs for Hela and Jiwaka after the next General Election could unlink Boundaries Commission and parliamentary consideration of provincial electorates from consideration of open electorates. Parliament could pass constitutional amendments which:

- make provinces and provincial boundaries as defined by the *Constitution* s4, s5, and *OLNLLGE* provincial electorates and provincial electorate boundaries from the issue of writs for the next General Election; and

- remove the Boundaries Commission from a role in recommending provincial electorates; or
- unlink Parliament's acceptance or rejection of provincial electorates from acceptance or rejection of open electorates.

3.2 Open Electorates and New Provincial Boundaries

Separate consideration of provincial and open electorate boundaries would solve some problems. It might cause other problems with open electorates (such as Anglimp-South Wahgi and perhaps Kutubu-Nipa) which would then stretch across two provinces. This would breach the intention of the *OLNLLGE* s36(2)(b) that boundaries of open electorates should not cut across boundaries of a province or provincial electorate. This issue is discussed in the Section 4.

3.3 Scenarios and Legislation

Amendment of the OLPB to create Hela and Jiwaka Provinces changes interaction between Parliament and the Boundaries Commission. Parliament's rejection of recommendations of the Boundaries Commission would offer problems:

- Parliament's rejection of Boundaries Commission recommendations must be rejection of all recommendations;
- Electorates for the next General Election should include Jiwaka and Hela provincial electorates;
- Under present provisions of the *OLNLLGE*, the Boundaries Commission must recommend on establishment of provincial electorates – and at the same time on open electorates.
- If Parliament rejects the Boundaries Commission's recommendations for open electorates, then it must also reject recommendations for Jiwaka and Hela provincial electorates and women's provincial electorates.

Constitutional amendments to remove provisions for provincial electorates were enacted in 2006 by a majority of 88 for and 0 against on two occasions. Not one Provincial Governor voted against the measures which they are said to have unanimously rejected in the consultations in Lae. Somehow, if provincial electorates are to be retained, the amendment must be repealed by a three quarters absolute majority.

The Government and MPs need to consider and debate constitutional issues and scenarios related to any failure to make constitutional amendments or to approve recommendations of a Boundaries Commission.

4. BOUNDARIES COMMISSION AND OPEN ELECTORATES

4.1 *Activation of the Boundaries Commission*

Section 3 of this Report described the legislative link between provincial electorates and the work of Boundaries Commission. If Parliament is to meet requirements for provincial electorates to correspond to provinces, if women are to be elected from reserved provincial electorates, then *the Constitution* and OLNLLGE need to be amended or a Boundaries Commission convened.

Section 2 described the three quarters absolute majority required to amend s125 of *the Constitution* and the OLNLGE and described difficulties in obtaining this majority.

Section 3 also described how a Boundaries Commission activated to consider provincial electorates also had to recommend on open electorates

Parliament might also convene the Boundaries Commission in order to:

- avoid split of open electorate, the Anglimp South Wahgi electorate and possibly the Nipa-Kutubu electorate, across provincial boundaries;
- Meet requirements of the amended OLNLLGE s35 to increase the number of open electorates; and
- Ensure open electorates reflect present distribution of the population.

The Boundaries Commission needs unambiguous terms of reference. Constitutional issues need to be decided before the Boundaries Commission is activated.

4.2 *Equitable Representation and Open Electorates*

National leaders, in discussing electorates for the future parliament, took for granted moves to ensure open electorates have 'the same population within limits prescribed by an Organic Law' (*Constitution* s125(2)). The OLNLLGE s36(2)(b) defines those limits as 20% above and below a quota determined by the national population divided by the number of open electorates.

Our Parliament no longer fully represents our people. The 2002 National Census shows huge differences in population in open electorates. The open electorate with the largest population had five times the population of the electorate with the smallest population. The difference is not the 40% required by the OLNLGE for redistribution but 500%.

The interest of individual MPs in rejecting proposals for redistribution of open electorates becomes stronger each year. Cumulative changes in population mean that even if the number of open electorates remains the same, there will be large changes in boundaries. New electorate boundaries which reflect changes in population will jeopardise many MPs' political futures.

4.3 *Open Electorates to be contained within Provincial Boundaries*

The new boundary between Jiwaka and Western Highlands provinces cuts the present Anglimp-South Wahgi electorate. The OLNLLGE s36(2)(b) provides that an open electorate shall not cut across provincial (or provincial electorate) boundaries. However, although Anglimp-South Wahgi has a population double some other electorates in the Western Highlands, constitutionally it cannot be divided without redistributing all open electorates.

Provisions in the *Hela (Administration) Act* (enacted in October 2009) for inclusion of Bosavi and Kutubu areas of the Nipa-Kutubu district (and electorate) within the administrative arrangements for new Hela Province offer parallel problems. Proponents of this provision justify inclusion on cultural grounds and lack of government services within the Kutubu part of the Kutubu-Nipa electorate. However, opponents of the inclusion argue that this is an attempt to appropriate all Southern Highlands Province mineral income to Hela Province.

Disputes on this have led to almost immediate proposals to amend the *Hela (Administration) Act* to exclude Kutubu, but include Bosavi, in the Hela Province.

Proposed inclusion of Bosavi and Kutubu within Hela province signals two further problems. It may require further amendment of the OLPB. It shows the need to build consensus among MPs if Parliament is to obtain the three quarters absolute majority for required legislation.

4.4 *Boundaries Commission Timelines*

The OLNLLGE s37-42 sets a schedule of work for a Boundaries Commission. This includes requirements for provision of first and second sets of recommendations on electorates, and Parliament consideration of each.

The major unknown is timing of Parliament's response. Parliament could accept the first set of recommendations – but never has. It could respond immediately to the first set of recommendations from the Boundaries Commission or establish a Committee to take up to four months consider them.

However, it is certain that time is short. Making the right decisions requires careful negotiation and large parliamentary majorities. The Boundaries Commission requires time to make its recommendations and Parliament to consider them.

The Table below shows a likely timetable

Table 4.1 Tentative Schedule of Boundaries Commission

ACTIONS	APPROXIMATE TIMELINE	DECISIONS AND ACTIONS
<p>Amend <i>OLNLLGE</i> and <i>Constitution</i></p> <ol style="list-style-type: none"> 1. Preserve provincial electorates? 2. Reduce number of open electorates? 3. Create reserved electorates for women. 4. Possible compromises? 	<p>Amendment must be circulated to MPs 1 month before moved in Parliament.</p> <p>Opportunities for debate in sittings, 2 months apart.</p> <p>November sitting of Parliament is normally devoted to the Budget.</p> <p>Earliest enactment of amendment to <i>Constitution</i> and <i>OLNLLGE</i> July 2010</p>	<p>Parliament</p> <p>A three quarters absolute majority in Parliament for key measures. Negotiate with:</p> <ul style="list-style-type: none"> • Provincial governors; and • Open MPs. <p>A compromise may provide a mild increase in the number of open electorates after redistribution by providing no province has fewer open electorates after the General Election in 2012 than it had before.</p>
<p>Preparation of first Boundaries Commission Report</p>	<p>2010 August</p> <p>2010 October</p> <p>2010 December</p> <p>2011-January</p> <p>2011-June</p>	<p>Boundaries Commission</p> <ol style="list-style-type: none"> 1. Initial investigation to determine whether redetermination of boundaries is necessary – will be based on assessments 2005-2007. 2. Maps of proposed electorates circulated. 3. Received comments from public interest groups on proposals for new General Election boundaries 4. Public inquiry in each electorate into proposed new open electorate boundaries. <p>Report and map submitted to Parliament</p>
<p>Parliament consideration of first Boundaries Commission Report by Parliament</p>	<p>2011 June – August</p>	<p>Parliament</p> <p>Parliament can extend consideration up to 4 months or decide to accept or reject immediately. Simple majority.</p>
<p>Preparation of second Boundaries Commission Report</p>	<p>2011 September</p>	<p>Boundaries Commission</p>
<p>Parliament consideration of second Boundaries Commission Report</p>	<p>2011 October - November</p>	<p>Parliament</p> <p>Accept by a simple majority or reject by two thirds absolute majority within 40 days.</p>

5 FLOW-ON OF DECISIONS

5.1 *Time is Short*

Time will be very short for implementing consequences of changes in electorates. Flow-on implementation includes:

- Electoral rolls for the new electorates;
- Increased numbers in the new Parliament;
- District administrations for new districts;
- New local-level government areas; and
- New local-level government electoral rolls.

5.2 *Electoral Commission Preparations for a General Election following Redistribution of Electorates*

Implementation requires the Electoral Commission to prepare for the new General Election according to decisions made by Parliament. This is likely to include new provincial electorates and open electorates.

The Electoral Commission will need to enrol electors for new electorates within the short time before issue of writs. The Electoral Commission is likely to have three or four months only before issue of writs for the General Election.

The 2007 General Election was more peaceful than the 2002 General Election. Nonetheless, it showed continuing massive corruption of rolls and voting, in certain electorates including electorates in Hela –homeland of the Liquefied Natural Gas Project.

Parliament must ensure the Electoral Commission has adequate time to prepare electoral rolls required by Parliament's decisions.

Delays in defining new electorates threaten election of a representative and legitimate Parliament – and much of our economic future.

5.3 *Size of Parliament*

The national government has not stated an intention to replace the forthcoming range of 110 to 120 open electorates and open seats in Parliament, so it the increased range of 110 to 120 may take effect.

If the national government succeeds with the required legislative amendments in a timely manner, but does not remove provisions for an increased number of open electorates, the next Parliament will consist of a total of 154 to 164 MPs representing:

- 22 provincial electorates;
- 22 reserved provincial electorates for women representatives; and

- 110 to 120 open electorates.

MPs are already expressing concern about accommodation in Parliament. Planning for accommodation for an increased number of MPs would have to begin earlier. Those preparations could be made meaningless, if the present Parliament rejects Boundaries Commission recommendations.

5.4 *District Administration following Redistribution of Open Electorates*

The *OLPGLG* s72(4) provides that boundaries of each district shall be the same as the open electorate. As a result, changes of open electorates flow on to administrative districts. District administration boundaries and staff would have to be re-assembled and redefined. Up to 35 new district centres might have to be established.

With increased responsibilities and funding to go to district level, quick redrawing of district boundaries and recruitment of staff is a recipe for incompetent administration, unaccountable use of funds, and appointment of district administrators and administrations through patronage.

Parliament needs make contingency plans for developing new district centres and administrations.

5.5 *Continuity of Provincial Government*

Consequent amendments to the *Organic Law on Provincial Governments and Local-level Governments* may be required.

The *Organic Law on Provincial Governments and Local-level Governments* (OLPGLLG) s17 provides for MPs representing provincial electorates to become *ex officio* Provincial Governors. Provincial MPs thereby convene the initial Provincial Assembly following a General Election (*OLPGLLG* s14). If there are no provisions for election of Provincial MPs then *OLPGLLG* s19(4) applies. This enables the Provincial Governor to remain in office until the election of the next Provincial Governor. Without provincial electorates and without alternative provisions, previous Provincial Governors could continue indefinitely as Governors². Alternatively, there could be a constitutional gap.

If constitutional provision for provincial electorates is not restored, then amendments to the *Organic Law on Provincial Governments and Local-level Governments* should provide for election of Provincial Governors by the Provincial Assembly.

If provincial electorates reserved for women are created, then the *Organic Law on Provincial Governments and Local-level Governments* s10(3) provides that the women elected from

² This provision enables Provincial Governors of Madang and Western Highlands to remain as Governors after they ceased to be Members of Parliament.

those electorates are to be members of the provincial assembly. However, Parliament may wish to give women provincial MPs other provincial appointments such as Deputy Governor.

Possible exclusion of provincial electorates from Parliament and redistribution of open electorates flows on to provincial government and administration.

5.6 LNG and Hela Province

Oil and gas easily explode if not handled with care.

Oil and gas can easily explode in Hela, down to the coast and across the nation.

The spark could begin with a corrupt election in Hela which had no legitimacy with the people of Hela.

The spark could begin with failure to provide for a duly elected Governor of the new province.

Bougainville is perhaps the most expensive lesson in the costs of poor management of the social impact of major projects. Have we learned it?

5.7 Reshaping Local-level Government Areas

Reshaping electorates also requires reshaping Local-level Government Areas. The OLPGLG s34 provides for the term of local-level governments to run concurrently with the term of Parliament. The date for return of writs in a general election for local-level governments is fixed for a date no more than three months after the date fixed for the return of writs of the general election to Parliament.

Moreover, the OLPGLG s27(1A) provides that in principle local-level government areas do not cross open electorate boundaries. An increase in number of open electorates within the new range of 110-120 will result in many of the present 313 local-level government boundaries having to be altered.

The process leading to proclamation of local-level governments cannot be commenced until after Parliament adopts the Boundaries Commission report for open electorates in the new range of 110 to 120.

Experience shows that considerable time is required to redefine local-level governments and their areas. The Electoral Commission would need more time to prepare electoral rolls for a general election to local-level governments. It is most unlikely that local-level general elections could be completed within three months of the date fixed for the return of writs for the parliamentary general election.

6 DEFERRED GENERAL ELECTION

Other Melanesian examples strongly suggest that stable and legitimate government requires undisputed membership of Parliament.

If Parliament fails to make decisions on Boundary Commission recommendations compatible with legislation before the next General Election questions will be raised about the constitutional status of the next Parliament – or it might require deferral of the General Election.

In the Solomon Islands ethnic tension and electoral disputes led to collapse of National Government and national disintegration according to ethnic and regional groupings. Outside intervention was required to restore government.

Commodore Bainimarama's takeover of Government in Fiji, outside the *Constitution*, was partly motivated by a wish to redefine the composition of Parliament. His government has deferred a General Election for many years, controlled media and judiciary and repressed opposition.

Papua New Guinea is much larger than the Solomon Islands and Fiji. It is much more ethnically diverse than Fiji although it lacks the division between indigenous and Indian populations. Its military and police do not have the presence of the Fijian police and defence force.

The only certainty would be uncertainty.

ATTACHMENT A. EXTRACTS OF THE CONSTITUTION OF THE INDEPENDENT STATE OF PAPUA
NEW GUINEA

Amendments of the Principal Act by the *Constitutional Amendment (No.3)(Provincial Electorates) Law* 2006 which removed provisions related to provincial electorates are indicated by strikethrough.

101. Membership.

- (1) Subject to this section, the Parliament is a single-chamber legislature, consisting of—
 - (a) a number of members elected from single-member open electorates; and
 - ~~(b) a number of members elected from single member provincial electorates; and~~
 - (c) not more than three nominated members, appointed and holding office in accordance with Section 102 (nominated members).
- (2) An Organic Law shall make provision for the number of open ~~and provincial~~ electorates.
- (3) No member may represent two or more electorates at the same time.
- (4) The precise number of open electorates ~~and of provincial electorates~~ and their boundaries shall be determined from time to time in accordance with Section 125 (electorates).
- (5) An alteration to the number of electorates or to the boundaries of an electorate takes effect for the purposes of the next general election and of succeeding elections.

125. Electorates.

- (1) The number of open electorates ~~and of provincial electorates~~ and their boundaries shall be determined by the Parliament in accordance with recommendations from a Boundaries Commission from time to time, at intervals determined by or under an Organic Law, being intervals of not more than 10 years.
- (2) In recommending open electorates and open electorate boundaries, the Boundaries Commission shall, taking into account any considerations laid down by an Organic Law, endeavour to ensure that all open electorates contain approximately the same population, within limits prescribed by an Organic Law.
- (3) The Parliament may accept or reject, but may not amend, any recommendation of the Boundaries Commission under Subsection (1).
- (4)

ATTACHMENT B. EXTRACTS OF THE ORGANIC LAW ON NATIONAL AND LOCAL-LEVEL GOVERNMENT ELECTIONS

Amendments to the Principal Act enacted under the *Organic Law on National and Local Level Government Elections (Amendment) Law* 2002 and due to come into operation with the issue for writs for the next General Election are indicated. Provisions deleted are show by strikethrough.

34. Provincial Electorates

- ~~(1) There shall be one provincial electorate for each Province.~~
~~(2) The boundaries of each provincial electorate are the boundaries of the Province for which it is the provincial electorate.~~
~~(3) A change in the boundaries of any Province shall, for the purposes of this Law, take effect only after the next following redistribution of electorates.~~

35. Open Electorates

- (1) The number of open electorates shall be as determined by the Boundaries Commission but in no case shall the number of open electorates be less than ~~84~~ 110 or more than 120
~~94~~. (insertions and deletions to come into operation with the issue of writs for the next General Election)

36. Size of Open Electorates

- (1) For the purposes of a proposed redistribution of the country into open electorates, the Boundaries Commission shall determine a population quota by the following formula:—

$$Q = P/N$$

where—

Q is the population quota for the electorate; and

P is the total population of the country; and

N is the provisional number of open electorates as determined by the Boundaries Commission within the limits specified in Section 35.

- (2) Subject to Subsection (3), in drawing the boundaries of open electorates, the Boundaries Commission shall not draw them in such a way that—

(a) the population of any electorate is more than 20 per centum more than or less than 20 per centum less than the population quota prescribed by Subsection (1) except in circumstances which in the opinion of the Boundaries Commission would otherwise lead to an unreasonable result; or

(b) the boundaries of an open electorate cut across the boundary of a province ~~provincial electorate~~.

- (3) Where the Boundaries Commission has—

(a) at a meeting determined the provisional number of electorates and proceeded to determine the population quota calculated for that number of electorates in accordance with Subsection (1); and

- (b) a later meeting determines that there be more or less electorates than the provisional number determined at the earlier meeting,

the Boundaries Commission shall not re-determine the population quota.

(4) In determining the degree of variation of size between electorates (within the 20 per centum plus or minus allowable) the Boundaries Commission shall give due consideration to—

- (a) density of population; and
- (b) physical features and communications; and
- (c) existing electoral boundaries; and
- (d) Local-level Government and provincial and other administrative areas; and
- (e) the community and diversity of interest, where it considers it relevant to do so.

37. Notification of Proposed Redistribution

(1) In accordance with Section 125 (*Electorates*) of the *Constitution* or otherwise, where the Boundaries Commission, after its own initial investigation, is of the opinion that a redetermination of boundaries is required, it shall -

- (a) give public notification of its intention to re-determine boundaries in –
 - (i) the National Gazette; and
 - (ii) a national newspaper circulating through the country; and
- (b) cause a map with a description of the boundaries of the proposed electorates to be exhibited at such National, Provincial and Local-level Government offices as will give the people of the country a reasonable opportunity of seeing it.

(2) A notification under Subsection (1)(a) shall -

- (a) invite public attention to the map referred to in Subsection (1)(b) and state the places and times at which the map may be inspected; and
- (b) fix a date (being a date not less than two months following the date of publication of the notification under Subsection (1)(a) on which and at a place at which a public enquiry into the proposed redistribution will be heard; and
- (c) invite any of the following to attend the public enquiry and make representations or objections to make written representations or objections on the proposed redistribution: -
 - (i) any member of the Parliament affected by the proposed redistribution;
 - (ii) the members of the Provincial Government and of any Local-level Government Council of the area affected by the proposed redistribution;
 - (iii) the officers of the National Public Service employed in the area affected by the proposed redistribution;
 - (iv) any cultural or land groups in the area affected by the proposed redistribution;
 - (v) any other person whom the Boundaries Commission considers relevant.

(3) Any written representations or objections referred to in Subsection (2)(c) may be lodged with the Chairman of the Boundaries Commission at any time before the date fixed for a public enquiry under Subsection (2)(b).

38. Public Enquiry

The Boundaries Commission shall hold a public inquiry on the date and the place fixed under Section 37(2) shall hold a public enquiry on the date and at the place fixed under Section 37(2) and shall consider all representations and objections made at the public inquiry or previously submitted to the Chairman of the Boundaries Commission.

39. Report of Boundaries Commission

(1) The Boundaries Commission shall, as soon as practicable after the completion of the public inquiry referred to in Section 38, forward to the Minister a report of its proposals for the re-distribution of the country into electorates, together with a map signed by not less than three members of the Boundaries Commission showing the boundaries of each proposed electorate.

(2) The report shall state, as nearly as can be ascertained, the population in each proposed electorate.

40. Report to be laid before the Parliament

The report and map forwarded under Section 39 shall be presented by the Minister to the Parliament within seven sitting days after its receipt by him.

41. Determination of new Electorates

(1) The Parliament shall consider a report presented under Section 40 and shall, subject to Subsection (2) by resolution made within two months of the date of presentation of the recommendations -

- (a) accept the recommendations of the Boundaries Commission for a proposed redistribution; or
- (b) reject the recommendations of the Boundaries Commission for a proposed redistribution; or
- (c) reject the recommendations of the Boundaries Commission for a proposed redistribution and refer back to the Boundaries Commission specific matters relations to the recommendations for reconsideration.

(2) The Parliament may refer a report represented under Section 40 to an appropriate Parliamentary Committee to consider and report back to Parliament, and where Parliament makes such a referral, the period of two months referred to in Subsection (1) shall be read as four months.

(3) Where the Parliament –

- (a) by resolution under Subsection (1)(a) accepts the recommendations of the Boundaries Commission for a proposed redistribution; or
- (b) fails to make a resolution under Subsection (1)(a), (b), or (c) on the recommendations of the Boundaries Commission for a proposed redistribution,

the recommendations of the Boundaries Commission for a proposed redistribution constitute a determination of the open electorates and their boundaries and those electorates until altered and those electorates until altered shall, subject to Subsection (5), be the open electorates for the purposes of election of members to the Parliament.

(4) The Minister shall cause the number of open electorates and their boundaries determined in accordance with the Subsection (3) or (9) to be published in the National Gazette.

(5) Until -

- (a) in the case of a determination under Subsection (3) or Subsection (9) in respect of a redistribution in pursuance of Section 125 (*Electoral*) – the dissolution or expiration of the Parliament scheduled to be elected in 2002; and
- (b) in the case of any other determination under Subsection (3) or (9) – the dissolution or expiration of the Parliament next following the determination,

The redistribution shall not affect the election of a new member to fill a vacancy happening in the parliament, for the purposes of any such election the electorates as previously existing, and the rolls in respect of these electorates, shall continue to have full force and effect, notwithstanding that new Rolls for the new electorates may have been prepared.

(6) Where the Parliament –

- (a) by resolution under Subsection (1)(b) rejects the recommendations of the Boundaries Commission for a proposed redistribution; or
- (b) by resolution under Subsection (1)(c) rejects the recommendations of the Boundaries Commission for a proposed redistribution and refers to the Boundaries Commission specific matters relating to the recommendations for reconsideration,

the Boundaries Commission shall, within 40 days of the date of the resolution –

- (a) in a case to which Paragraph (a) applies, reconsider the recommendations in the report submitted under Section 40; and
- (b) in a case to which Paragraph (b) applies reconsider the specific matters referred to it,

and shall submit a further report making new recommendations or confirming its previous recommendations and shall forward to the Minister a copy of the further report, together with, in the case of any new recommendations, a map signed by not less than three members of the Boundaries Commission showing the boundaries of each proposed open electorates.

(7) The report and any map forwarded to him under Subsection (6) shall be presented by the Minister to the Parliament within seven sitting days after its receipt by him

(8) The Parliament shall consider a report presented under Subsection (6) and may, by resolution made within 40 days of such presentation –

- (a) by a simple majority, accept; or
- (b) by a two thirds absolute majority, reject,

the recommendations of the Boundaries Commission for a proposed redistribution.

(9) Where –

- (a) a resolution under Subsection (8)(a) accepts the recommendations of the Boundaries Commission for a proposed redistribution; or
- (b) a resolution under Subsection (8)(b) fails to obtain a two thirds absolute majority; or
- (c) the period of 40 days referred to in Subsection (8) has expired without the determination of a resolution under Subsection (8)(a) or (b),

the recommendations of the Boundaries Commission for a proposed redistribution shall constitute a determination of the open electorates and their boundaries and those electorates until altered shall, subject to Subsection (5), be open electorates for the purposes of election of members of Parliament.

(10) Where the Parliament, in accordance with Subsection (8)(b), rejects the recommendations of the Boundaries Commission for a proposed redistribution, the recommendations shall not take effect.