IN THE HIGH COURT OF SOLOMON ISLANDS
(Civil Jurisdiction)

Civil Case No. 628 of 2025

BETWEEN:	**AUDITOR-GENERAL OF SOLOMON ISLANDS**	**- Claimant**
AND:	**PACIFIC GAMES NATIONAL HOSTING AUTHORITY**	**- First Defendant**
AND:	**ATTORNEY-GENERAL OF SOLOMON ISLANDS**	**- Second Defendant**

Date of Hearing: 20 August 2026
Date of Ruling: 20 August 2026

Mr J. Taupongi for the Claimant
Mr B. P. Jamakolo for the First and Second Defendants

RULING

AULANGA, PJ

PART I: INTRODUCTION AND BACKGROUND

1. This is the Ruling of the Court in Civil Case No. 628 of 2025, a proceeding brought by the Auditor-General of Solomon Islands against the Pacific Games National Hosting Authority as First Defendant and the Attorney-General of Solomon Islands as Second Defendant, pursuant to rule 15.9.3 of the *Solomon Islands Courts (Civil Procedure) Rules 2007* ("the Rules"). The proceeding seeks the construction of provisions of the *Constitution of Solomon Islands*, the *Public Financial Management Act 2013*, the *Pacific Games 2023 Act 2017* and subsidiary legislation made thereunder, together with declarations as to the legal rights and obligations of the parties that flow from that construction.

2. The dispute has its genesis in the ordinary discharge of the Claimant's constitutional audit function. In the course of conducting the annual financial statement audit and a

special audit of the First Defendant's procurement practices in relation to the Pacific Games 2023, hosted in Honiara from 19 November to 2 December 2023, the Claimant formed views on the correct legal characterisation of the Sports Solomons Fund, on the appropriation of public monies said to belong to that Fund, on the executive authority under which those monies were expended, and on the validity of certain procurement policies adopted by the First Defendant. The First Defendant did not accept those views. Notwithstanding several meetings between the Claimant, his auditors and the First Defendant, and notwithstanding engagement at the highest levels of government, the disagreement could not be resolved administratively. The Claimant accordingly commenced this proceeding on 17 December 2025, which he amended on 22 December 2025, inviting the Court to resolve the legal questions that lie at the heart of the impasse.

3. The Pacific Games 2023 was a national undertaking of considerable magnitude and pride. Solomon Islands was awarded the right to host the Games by the Pacific Games Council on 11 May 2016, when the Host Agreement was signed, and an Addendum to that Agreement was signed on 15 April 2018 following concerns raised by the Pacific Games Council as to the progress of preparations. Solomon Islands thereafter enacted the *Pacific Games 2023 Act 2017*, constructed sporting infrastructures, and mobilised public resources on an unprecedented scale in the country's history. Between the 2019 and 2024 financial years, Parliament appropriated in excess of one billion Solomon Islands dollars in connection with the Games, principally under the Development Budget of the Office of the Prime Minister and Cabinet. Given the substantial sums involved and the rapid deployment required for a fixed event, it is to be expected that management of these funds would face rigorous audit scrutiny, raising issues of significant legal and public importance.

4. Although the proceeding touches upon the expenditure of very substantial sums of public money, the Court's task in this Ruling is a narrow and specific one. It is not to conduct a forensic or performance audit of the Pacific Games 2023, still less to make findings of individual wrongdoing against any officer, contractor or public servant. It is to construe the applicable written law and, in the light of that construction, to declare the rights and obligations of the parties so that the Claimant's audit function

may proceed on a sound and settled legal footing, and so that the First Defendant and the wider public service may have clarity as to the legal framework governing special funds of this kind in the future.

5. The questions raised are not confined in their significance to this case alone. As the Claimant correctly submits, and as the Court accepts, the proper construction of section 25 of the Public Financial Management Act 2013 and the associated provisions considered in this Ruling bears directly upon the management of every special fund presently maintained by an agency of the Government of Solomon Islands, and upon the conduct of audits of those funds by the Office of the Auditor-General. It is for that reason, among others, that the Court has treated the timely and authoritative resolution of these questions as a matter of real public importance.

6. The Court also records that the Defendants, for their part, advance a serious and carefully constructed submission that the Claimant's case proceeds upon what they describe as a fundamental error of statutory construction, namely a failure to distinguish between the conditions that govern the incurring of expenditure from a special fund and the constitutional act by which Parliament appropriates money in the first place. As explained in Part V and Part X below, the Court has found real merit in parts of that submission, and this Ruling accordingly departs in some respects, though not in its ultimate practical effect, from the analysis the Court would otherwise have adopted on the materials available before the Defendants' submission was filed.

PART II: PROCEDURAL HISTORY AND REPRESENTATION

7. The original Claim in this proceeding was filed on 17 December 2025 and was amended on 22 December 2025. The Amended Claim is a Category C claim seeking declarations under rule 15.9.3 of the Rules, and is supported by a Sworn Statement of David Teika Dennis, the Auditor-General, filed on 5 January 2026, verifying the claim.

8. The Claimant filed a Further Sworn Statement of David Teika Dennis on 14 August 2026, which annexes an extensive body of documentary exhibits marked "DTD-1" through "DTD-29" and "DTD-B" to "DTD-E", comprising, among other things, the Host Agreement and its Addendum, the *Pacific Games 2023 Act 2017* and its subsidiary legislation, the several Appropriation Acts and Advance Warrants referred to in this

Ruling, ministerial and Board minutes, correspondence, and the report of the Public Accounts Committee dated 17 September 2024.

9. The First and Second Defendants filed an Amended Defence and Counter-Claim on 9 April 2026, further amended on 6 August 2026, in which they admit the great majority of the factual allegations pleaded in the Amended Claim but join issue on the legal characterisation and legal consequences of those facts, and in which they advance a Counter-Claim against the Claimant. The Court has considered the further Amended Defence of 6 August 2026 in its own terms. It reorganises the Defendants' positive case under the headings of Parliamentary Appropriation and Executive Expenditure by Warrant, reinforces the objection to the Claimant's reliance on rule 15.9.3 addressed in Part VI below, and adds an express plea, addressed in Part XV below, that the Claimant failed to conduct timely annual audits of the First Defendant. It also, for the first time, withdraws an earlier admission concerning the issue of an Accounting Warrant to the First Defendant's own accountable officer, substituting a new positive case addressed in Part XI below. Save in that one respect, the Court is satisfied that the further amendment does not alter the substance of the matters requiring determination in this Ruling, and proceeds on that footing.

10. The Defendants' evidentiary case is contained in the Additional Sworn Statement of Dr Sir Jimmie Rodgers filed on 11 August 2026 and the Further Additional Sworn Statement of Dr Sir Jimmie Rodgers filed on 20 August 2026. Dr Rodgers deposes in his former capacity as Secretary to Prime Minister and Cabinet and in his capacity as Chairman of the First Defendant.

11. The Claimant filed a Claimant's Amended Reply to Amended Defence on 10 August 2026, in which he joins issue with the Defendants' contention that primary declaratory relief 1 to 7 should be answered in their favour, maintains that primary declaratory relief 1 to 7 should be answered in his favour, adopts the Defendants' admissions on a number of paragraphs of the Statement of Case while putting in issue any fact or point of law avoided or unanswered, and asserts that the Defendants have misapplied the doctrine of *lex specialis derogat legi generali*, which he foreshadows arguing fully at the hearing.

12. The Claimant filed his Closing Submission on 17 August 2026, a comprehensive document addressing the constitutional and statutory framework, the issues in controversy and the relief sought, structured in five parts and fifteen chapters.

13. The Claimant was, until 10 June 2026, represented in this proceeding by counsel Mr Gabriel Kwanae Suri, who signed and filed both the original and the Amended Claim. Upon Mr Suri's appointment as the Attorney-General of Solomon Islands, by a Notice of Change of Advocate filed in this proceeding on 10 June 2026, the Claimant now represented by Mr John S. Taupongi. The Court records its appreciation of the earlier work of Mr Suri on this matter. It further observes that the change of representation that followed his appointment was, in the circumstances, both necessary and proper, the former counsel for the Claimant having become, by operation of the *Constitution*, the Second Defendant to the very proceeding in which he had earlier acted for the Claimant.

14. This matter was listed for hearing on 20 August 2026 at 3:00pm. The Court had earlier directed, and generously extended time for, the filing of the Defendants' written submissions, allowing the First and Second Defendants until 12:00pm on 20 August 2026 to file. The Defendants' Submission was filed about an hour and half before the hearing on 20 August 2026, signed by Mr Brenton P. Jamakolo of the Attorney-General's Chambers.

PART III: THE PLEADINGS

15. By his Amended Claim, the Claimant pleads, in summary, that the Sports Solomons Fund is a special fund established by section 30 of the *Pacific Games 2023 Act 2017* ("the Act") pursuant to section 100(2) of the *Constitution*; that Parliament appropriated monies for the Pacific Games 2023 in each financial year from 2019 to 2024 as part of the Development Budget of the Office of the Prime Minister and Cabinet, first under Head 481 and later under Head 14; that those monies were thereafter transferred from the account of the Office of the Prime Minister and Cabinet to a bank account styled the Sports Solomons Fund; and that the First Defendant thereafter authorised expenditure from that account, initially under a policy called the Sol2023 Procurement Policy adopted in September 2019 and, from

March 2023, under the NHA Procurement Policies and Practices Modification, Resolution NHA 03-23-01 ("the Modification Policy").

16. The Claimant pleads that this arrangement did not comply with several requirements of the *Public Financial Management Act 2013* ("the PFMA"), namely: that no estimates of income and expenditure of the Sports Solomons Fund, approved by the Minister of Finance, were ever tabled before the National Parliament as required by section 25 of the PFMA; that the Development Budget of the Office of the Prime Minister and Cabinet did not separately identify the Sports Solomons Fund on a consolidated basis as required by clause M2.8.3 of the Financial Instructions; that no Accounting Warrant was issued by the Permanent Secretary of Finance to the Accountable Officer of the First Defendant as required by section 57 of the PFMA before withdrawals were made from the Fund; and that, in relation to monies advanced under Advance Warrants issued to the Permanent Secretary of Finance in November 2020 and in July and August 2023, no Advance Warrant was issued directly to the First Defendant and no Appropriation Act existed at the relevant time against which the aggregate of such advances could be assessed as required by section 60(2) of the PFMA.

17. The Claimant further pleads that the Modification Policy purported to vest in the First Defendant, its Secretariat, the Games Organising Committee, the Facilities Committee and named individual officers a greatly expanded authority to expend public monies without competitive tender, by way of what the Modification Policy itself styles a "Blanket Waiver", in excess of the modification contemplated by rule 8(2) of the Pacific Games 2023 Procurement Instructions 2019 and contrary to rule 9 of those Instructions read with section 12 of the Act.

18. In their Amended Defence, the First and Second Defendants admit the substantial majority of the factual allegations pleaded, including the chronology of the Host Agreement, the enactment of the Act and its subsidiary legislation, the terms of the several Appropriation Acts, the terms of the Modification Policy and the terms of the Financial Instructions, including, as the Claimant's Amended Reply confirms, that Parliament appropriated the Development Budget for the Pacific Games 2023. Where the Defendants join issue is principally upon the paragraphs of the Statement of Case asserting non-compliance with section 25 of the PFMA and clause M2.8.3 of the

Financial Instructions, the paragraph asserting that the Modification Policy exceeded the modification contemplated by rule 8(2) of the Procurement Instructions, the paragraph asserting that the First Defendant was unable to show evidence of expenditure authority under section 60(1) of the PFMA or a prior Appropriation Act, and the concluding paragraphs asserting overall non-compliance and entitlement to relief. By their further Amended Defence of 6 August 2026, the Defendants additionally withdraw an earlier admission of the paragraph of the Statement of Case asserting that no Accounting Warrant was issued to an accountable officer of the First Defendant, pleading in its place that the Accounting Warrant issued to the Accountable Officer of the Office of the Prime Minister and Cabinet covered the full funding allocations under the Recurrent and Development Budgets, inclusive of the funding for the Pacific Games 2023, a contention the Court addresses in Part XI below.

19. By way of positive case, the Defendants plead that the First Defendant is an independent statutory entity deriving its legitimacy from the Pacific Games Council Charter, the Host Agreement and its Addendum, and the Act; that section 46 of the Act vests in the First Defendant authority to issue its own procurement instructions and policies, intended, in the Defendants' words, to free it from the rigid procurement processes that would otherwise apply to government agencies generally; that where there is any inconsistency between the procurement processes established by relevant statutes and section 46, the maxim *lex specialis derogat legi generali* applies in favour of the First Defendant's own procurement regime; and that the First Defendant acted reasonably and in good faith in accordance with its statutory mandate.

20. By their Counter-Claim, the First Defendant, as First Counter-Claimant, and the Attorney-General, as Second Counter-Claimant, seek two declarations against the Claimant, as Counter-Defendant: first, that the audits presently in issue span the years 2019 to 2023, during which years the Counter-Defendant failed to conduct annual audits of the First Defendant as required by section 108 of the *Constitution*; and second, that the Counter-Defendant comes to this Court without clean hands.

21. By his Amended Reply, the Claimant joins issue with the Defendants' positive case in its entirety, maintains that all seven primary declaratory reliefs should be answered

in his favour, and adopts the Defendants' admissions on the specified paragraphs of the Statement of Case, including the admission, qualified as described above, that Parliament appropriated the Development Budget for the Pacific Games 2023, while putting in issue any fact or point of law he says the Defendants have avoided, left unanswered or ignored. The Reply also asserts, in answer to the Defendants' pleading that the Claimant is not entitled to rely on rule 15.3.9 of the Rules, that the Claimant has a legal interest, in his official capacity, depending on the construction of the laws pleaded in the Claim, entitling him to apply for the determination of the legal issues raised.

PART IV: THE EVIDENCE

22. The Claimant's evidence establishes that the Pacific Games Council's General Assembly resolved on 11 May 2016 that Solomon Islands would host the 2023 Pacific Games, that the Pacific Games Council and the Solomon Islands Government executed the Host Agreement on that date, and that the Host Agreement was varied by an Addendum signed on 15 April 2018, which set milestones for the Government to achieve, including the establishment of the Sports Solomons Fund. The Act was enacted in early 2017 to facilitate the Games and commenced on 26 October 2018. Subsidiary legislation implementing the Act, including the Procurement Instructions 2019 and the *Sports Solomon (Special Fund) Rules 2019*, was made and gazetted on 11 March 2019.

23. Between the 2019 and 2024 financial years, Parliament enacted successive Appropriation Acts under which substantial sums were appropriated under the Development Budget of the Office of the Prime Minister and Cabinet in connection with the Games: SBD75,000,000 under the *2019 Appropriation Act*; SBD65,000,000 under the *2020 Appropriation Act*; SBD198,400,000 under the *2021 Appropriation Act*; a further SBD43,709,392 under the *2020 Supplementary Appropriation Act 2021*, in relation to an Advance Warrant issued on 30 November 2020; SBD100,125,487 under the *2022 Appropriation Act*; SBD367,000,000 under the *2023 Appropriation Act*; and a further SBD202,719,524 under the *2023 Supplementary Appropriation Act 2024*, in relation to three Advance Warrants issued on 11 July 2023, 17 July 2023 and 9 August

2023 in respect of monies received from the Governments of Papua New Guinea and Saudi Arabia. It is common ground between the parties, as the Claimant's Amended Reply confirms, that these sums were appropriated by Parliament for the purpose of the Pacific Games 2023.

24. The Claimant deposes that on 14 May 2021, the Chairman of the First Defendant wrote to the then Prime Minister seeking approval to "operationalise" the Sports Solomons Fund and recommending the use of a separate budget head for it as a special fund, and that on 17 May 2021, the Prime Minister approved the operationalisation of the Fund and authorised the transfer to the First Defendant of SBD198,400,000 and any future additional funds. Thereafter, monies appropriated under the Office of the Prime Minister and Cabinet's Development Budget were transferred to a bank account styled "Sports Solomons Fund", and the First Defendant authorised expenditure from that account.

25. The Claimant further deposes that the First Defendant adopted the Sol2023 Procurement Policy in September 2019 and, in March 2023, replaced it with the Modification Policy, which increased the delegated expenditure authority of individual officers and committees of the First Defendant well beyond the thresholds prescribed by the *Public Financial Management (Procurement) Regulations 2021*, culminating in a Blanket Waiver of competitive tendering for what the Modification Policy describes as priority procurement.

26. The Claimant deposes to the engagement of KPMG in 2024 to conduct financial statement audits of the First Defendant for the 2020 to 2023 financial years and six months of the 2024 financial year, and to conduct a special audit examining the First Defendant's procurement practices; to the production of draft management letters and a draft Special Audit Report; to meetings between the Claimant, KPMG and the First Defendant on 8 April 2025 and 2 December 2025 at which the parties' differences could not be resolved; to the report of the Public Accounts Committee published on 17 September 2024, which found the administration of the First Defendant's special fund by the Office of the Prime Minister and Cabinet and the Ministry of Finance and Treasury not to be in compliance with the law; to a written legal opinion issued by the then Attorney-General to the Office of the Prime Minister and Cabinet on 7 November

2025; and to a letter from Dr Rodgers to the Claimant dated 10 November 2025 responding to the ongoing special audit.

27. The Claimant's Amended Reply adds further, more granular, evidence of the Claimant's engagement with the First Defendant over the audit process, which the Court accepts as a fair and more complete account of that engagement than the bare chronology of completed audit reports might, on its own, suggest. By letters dated 14 May 2020, 30 May 2024 and 30 July 2024, the Claimant informed the Chairman and the Executive Director of the First Defendant of the audits and of the engagement of KPMG to undertake them, and the corresponding signed engagement letters were placed in evidence. The Claimant and KPMG representatives held formal meetings with the First Defendant on 8 April 2025 and 2 December 2025, and the Claimant separately met the Prime Minister, First Defendant representatives and KPMG on 26 July 2024, 31 January 2025 and 5 December 2025. Draft audit reports for the financial statement audits of 2019 to 2021 and for the special audit were shared with the First Defendant, and the First and Second Defendants provided responses to those draft reports. The Court has had regard to this evidence in assessing the Counter-Claim in Part XV below.

28. An email from the Chief Executive Officer of the Games Organising Committee dated 6 October 2022, exhibited to Dr Rodgers' Additional Sworn Statement as "JR1", identifies twenty-two categories of procurement said to pose the greatest risk to the timely delivery of the Games, ranging from catering, uniforms and accommodation to medical equipment, ambulance services and broadcast infrastructure, several of which were, as at that date, already time-critical. The Chief Executive Officer of the Pacific Games Council responded the same day describing the position as "concerning" and asking that it be shared with the Council's own board. This correspondence forms an important part of the factual matrix against which the Court has assessed the operational context in which the First Defendant adopted the Modification Policy some five months later, a context which the Court accepts was genuine and pressing, although, for the reasons given in Part XII below, that operational context does not of itself render the Blanket Waiver lawful.

29. In his Additional Sworn Statement of 11 August 2026, Dr Rodgers deposes, in his former capacity as Secretary to Prime Minister and Cabinet, that he authorised the transfer of monies appropriated for the Pacific Games under the Office of the Prime Minister and Cabinet's Budget to the First Defendant's special fund account, and, in his capacity as Chairman of the First Defendant, that he authorised expenditure of the Fund, and that this has been the process consistently used by government for other special funds. He does not, however, identify or exhibit any Accounting Warrant issued by the Permanent Secretary of Finance to an accountable officer of the First Defendant, any Advance Warrant issued directly to the First Defendant, any estimates of income and expenditure of the Sports Solomons Fund tabled before Parliament, or any consolidated presentation of the Fund's estimates of the kind required by clause M2.8.3 of the Financial Instructions.

30. The principal thrust of Dr Rodgers' evidence is instead directed to explaining, and to a degree excusing, the weaknesses later identified in the First Defendant's financial and procurement systems by reference to what he says was the Claimant's own delay in completing the 2019 financial statement audit of the First Defendant and in furnishing the corresponding draft management letter, which he says was not received until 6 October 2023, only weeks before the opening of the Games, thereby depriving the First Defendant, in his submission, of any earlier opportunity to correct the weaknesses subsequently identified in the 2024 audits. He deposes that the Modification Policy of March 2023 was adopted in direct response to the concerns evidenced by the correspondence described above, at a time when, in his assessment, the Games were under serious threat of not occurring at all.

31. In his Further Additional Sworn Statement of 20 August 2026, filed in response to the Claimant's Further Sworn Statement of 14 August 2026, Dr Rodgers largely reiterates and elaborates upon the matters deposed in his earlier statement, disputes a narrow point as to the precise date in April 2020 on which the First Defendant's 2019 financial statements were furnished to the Claimant, and again submits that the Claimant bears a share of the responsibility for the weaknesses identified in the 2024 audits. He does not address, still less answer, the Claimant's evidence concerning the absence of

Accounting Warrants, the absence of Advance Warrants issued directly to the First Defendant, or the absence of tabled Fund estimates.

32. It follows that on the central factual matters upon which the questions of construction in this proceeding depend, in particular the absence of tabled Fund estimates under section 25 of the PFMA, the absence of a consolidated presentation under clause M2.8.3 of the Financial Instructions, and the absence of a directly issued Advance Warrant, the Claimant's evidence stands uncontradicted. As to the existence of an Accounting Warrant, the Defendants' further Amended Defence of 6 August 2026 now pleads, for the first time and without supporting evidence, that a warrant issued to the Accountable Officer of the Office of the Prime Minister and Cabinet extended to the Games funding, a plea the Court addresses on its own terms in Part XI below. The Defendants' evidence, while it usefully explains and to some extent mitigates the practical circumstances in which the First Defendant found itself, does not controvert the documentary and factual foundation upon which the Claimant's case otherwise rests.

PART V: THE DEFENDANTS' WRITTEN SUBMISSIONS

33. As recorded in Part II above, the First and Second Defendants did not file written submissions by 12:00pm on 20 August 2026, the deadline the Court had earlier and generously extended for that purpose, notwithstanding that the Claimant's Closing Submission had been in the hands of counsel for the Defendants since 16 August 2026. The Defendants' Submission was filed later that same day, an hour and half before the hearing. No application was made to formally extend time, and no explanation for the earlier default was placed before the Court.

34. The Court has given careful consideration to the appropriate course. On the one hand, a court should be slow to reward, or to appear to reward, a party's disregard of its own directions, particularly in a proceeding of this kind where the public interest in the timely and authoritative resolution of the questions raised is real and was recorded by the Court as a matter of significance. On the other hand, the Defendants' Submission engages substantively, and on the whole carefully, with the legal questions the Court must in any event determine on their merits, raises no new

evidence, and identifies real authorities, several of them of high persuasive value in this jurisdiction, bearing on the correct construction of the statutory provisions in issue. Declining to consider a properly reasoned legal submission on questions of law of general public importance, merely because it arrived some hours later than directed, would risk the Court determining those questions without the benefit of the fullest argument reasonably available to it, to the ultimate disservice of the public interest the Court has already identified as being at stake in this proceeding.

35. The Court has therefore admitted and fully considered the Defendants' Submission in preparing this Ruling. In doing so, the Court has not treated the earlier default as irrelevant. It bears upon the exercise of the Court's discretion as to costs, addressed in Part XVI below.

36. The Defendants' Submission makes four principal contentions, each of which is addressed in this Ruling. First, it contends that the Claimant's case proceeds upon a fundamental error of statutory construction in conflating the conditions that govern the incurring of expenditure from a special fund under section 25 of the PFMA with the constitutional act by which Parliament appropriates money under section 102 of the *Constitution*, and that a similar error infects the Claimant's treatment of the Advance Warrant and Accounting Warrant provisions. This contention is addressed in Parts X and XI below. Second, it contends that section 46 of the Act is a specific statutory delegation which, properly construed harmoniously with the PFMA by reference to the maxim *generalia specialibus non derogant*, empowers the First Defendant to establish a Games-specific procurement regime, citing *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 and *Newhaven Port and Properties Ltd, R (on the application of) v East Sussex County Council* [2015] UKSC 7. This contention is addressed in Part XII below. Third, it contends that the Claimant approaches this Court without clean hands, in that his own office failed to conduct timely annual audits of the First Defendant between 2019 and 2023, and that this failure should lead the Court to decline the discretionary relief sought, or at least materially to qualify it, citing *King Crude Carriers SA & Ors v Ridgebury November LLC & Ors (Rev1)* [2025] UKSC 39. This contention is addressed in Part XV below. Fourth, it raises an evidentiary objection that the Claimant's two Sworn Statements have not

been formally tendered or examined and that a closing submission is not evidence. This contention is addressed in Part VI below.

PART VI: THE NATURE OF THIS PROCEEDING, THE WEIGHT OF THE EVIDENCE, AND A PRELIMINARY OBJECTION

37. Rule 15.9.3 of the Rules provides that a person claiming any legal or equitable right which depends on the construction of any provision of a written law may apply for the determination of the question of construction and a declaration as to the right by filing a claim. This is the vehicle by which the Claimant has brought his case, and it is well suited to a dispute of this kind, where the primary facts are substantially undisputed and the true controversy between an auditor and the entity it audits is one of law.

38. The Defendants submit, correctly as a general proposition, that a closing submission is not evidence, and that where the Claimant seeks to establish disputed factual propositions by reference to sworn statement that has not been tendered and whose maker has not been examined, the Court must determine what evidentiary weight, if any, can properly be given to that material. The Court accepts that general proposition. It does not, however, assist the Defendants on the facts of this case, for two related reasons.

39. First, the practice adopted in this proceeding, of each party filing sworn statements in advance of a hearing conducted substantially on the papers, is the ordinary and accepted practice for a Category C claim of this kind under rule 15.9.3, where the essential character of the dispute is a question of construction rather than a contest of primary fact requiring the Court to assess credibility. Neither party sought to cross-examine the other's deponent, neither party objected, before the hearing, to the other's sworn statements being read, and the First and Second Defendants filed their own responsive sworn evidence, that of Dr Rodgers, engaging directly with the substance of the Claimant's evidence rather than objecting to its admissibility. In those circumstances, and having considered it appropriate at the hearing for the Claimant's two Sworn Statements to be read into the record, a course to which no objection was taken at the time, the Court declines to revisit any objections now on

the strength of a submission raising the point, for the first time, in the Defendants' own written submission.

40. Second, and more fundamentally, on the specific factual matters that matter to the Court's determination of the questions of construction in this case, in particular the existence or non-existence of a tabled Fund estimate, an Accounting Warrant, or an Advance Warrant issued directly to the First Defendant, there is no genuine dispute on the evidence actually before the Court. The Defendants' own evidence, that of Dr Rodgers, does not assert the existence of any such instrument; it explains the administrative practice that was in fact followed and offers reasons, going to responsibility rather than to the existence of the instruments themselves, why that practice should be viewed sympathetically. Where a specific factual assertion of this kind, capable of straightforward documentary proof if false, goes unanswered by a party with every opportunity and every institutional means to answer it, the Court is entitled to accept it, whether or not the underlying sworn statement has been formally tested by cross-examination, particularly in a proceeding of the summary character contemplated by rule 15.9.3.

41. Paragraph 1 of the Amended Defence, properly read, denies that the Claimant is entitled to the primary declaratory relief sought, and does so by reference to the Defendants' broader contention that the First Defendant possessed independent statutory authority over the Fund and its procurement. That is, in substance, a substantive answer on the merits of the questions posed, and the Court has treated it as such. To the extent, however, that the Defendants intend by their pleading, read with their reference to rule 15.3.9 of the Rules, to contend that this proceeding is not properly constituted or that the Claimant was wrong to invoke rule 15.9.3, the Court finds that any such objection has been waived, and separately finds, on the Claimant's own answer in his Amended Reply, that he has a legal interest, in his official capacity, depending upon the construction of the laws pleaded in the Claim, sufficient to entitle him to apply for the determination sought.

42. It is well established in this jurisdiction, following *Kumagai Gumi Ltd v Attorney-General* [2002] SBHC 52, that a defendant who files an unconditional response to a claim, still less a defendant who goes further and files a full defence and counter-claim

engaging with the merits, thereby submits to the jurisdiction of the Court and to the form of the proceeding, and is barred from later raising an irregularity of that kind. As Palmer ACJ (as he then was) explained in that case, the ordinary and correct course for a defendant who wishes to challenge the propriety of a claim is to file a conditional appearance and then apply to strike out the claim for non-compliance with the Rules. A defendant who instead files a defence has taken a fresh step that amounts to an effective waiver of any such irregularity. The First and Second Defendants filed an Amended Defence and Counter-Claim on 9 April 2026, further amended on 6 August 2026, which engaged fully with the Statement of Case and advanced an independent Counter-Claim of their own. They cannot now be heard to say, nor did they attempt in their pleading to say with any clarity, that the proceeding is improperly brought. The Court proceeds on the footing that the questions raised are properly before it under rule 15.9.3 of the Rules.

43. The Defendants' further Amended Defence of 6 August 2026 also pleads that the Claimant could, in any event, have proceeded to complete and present his audit reports without resort to this Court, and that the matters in issue are accordingly immaterial to the performance of his constitutional duty to audit and report to Parliament. The Court does not accept that this deprives the proceeding of its utility or the Claimant of his entitlement to bring it. The very difficulty the Claimant faces in completing and presenting his audit reports is that the parties hold genuinely opposed views on the correct legal characterisation of the transactions those reports must describe, a difficulty rule 15.9.3 exists to resolve in advance rather than to leave the Claimant to resolve unilaterally, at the risk of audit findings later shown to rest on a mistaken view of the law. That the Claimant retained a residual practical ability to report in the face of that uncertainty does not mean he was bound to do so without first seeking the Court's guidance on the questions of construction that divide the parties.

PART VII: PRINCIPLES OF CONSTRUCTION

44. Before applying the constitutional and statutory provisions set out in Part VIII below to the facts of this case, it is appropriate to state the principles of construction the

Court has applied, including the authorities pressed upon the Court by the Defendants in their Submission.

45. The *Constitution* is the supreme law of Solomon Islands. Section 2 of the *Constitution* provides, in effect, that if any other law is inconsistent with the *Constitution*, the *Constitution* prevails and the other law is, to the extent of the inconsistency, void. Any subsidiary legislation, policy or resolution that is inconsistent with the *Constitution*, or with an Act of Parliament validly made under it, is accordingly void to the extent of that inconsistency, regardless of the good faith or the practical necessity that may have motivated its adoption.

46. Legislation is to be construed purposively, giving effect to the intention of Parliament as disclosed by the words used, read in their context and in light of the evident purpose of the enactment, rather than by a narrow or literal construction that would defeat that purpose. At the same time, where the words of a statute are clear and admit of only one reasonable meaning, the Court must give effect to that meaning, however inconvenient the consequence may be thought to be for one party or another. A statutory condition that limits or qualifies the exercise of an executive power is not, for that reason alone, to be read as limiting the legal effect of an Act of Parliament itself; the latter requires clear language, a distinction to which the Court returns in Part X below.

47. Where two provisions of the law appear to conflict, the governing approach, accepted in both Australian and English law and adopted by this Court, is that stated by the High Court of Australia in *Project Blue Sky Inc v Australian Broadcasting Authority*. A statute is to be construed on the basis that its provisions are intended to work together as a coherent whole to achieve harmonious ends. Where an apparent conflict arises between particular provisions, the Court should, so far as the language permits, adjust the meaning of the competing provisions so that each is given an operation that best gives effect to the purpose of the statute as a whole, rather than treating one provision as simply overriding or nullifying the other. Related to this approach is the presumption, sometimes expressed by the maxim *generalia specialibus non derogant*, that where a general provision and a specific provision appear to cover the same ground, the specific provision is ordinarily intended to continue to govern the

situation it addresses. The Defendants rightly draw the Court's attention to the discussion of that presumption by the United Kingdom Supreme Court in *Newhaven Port and Properties Ltd, R (on the application of) v East Sussex County Council*, at [93], adopting the formulation in *Bennion, Statutory Interpretation, 6th ed (2013),* that where the literal meaning of a general enactment covers a situation for which specific provision is made elsewhere, it is presumed that the specific provision was intended to continue to govern that situation, and the general provision is not treated as displacing it. The same presumption is well established in Australian law, including in the judgments of the High Court in *Saraswati v The Queen* (1991) 172 CLR 1.

48. The Court accepts the Defendants' submission that these authorities state the correct approach, and has applied them throughout this Ruling. The Court does not, however, accept that their proper application yields the result for which the Defendants contend on every issue in this case. As the passage from *Project Blue Sky* itself makes clear, harmonious construction is not a licence to treat a specific provision as having whatever scope is administratively convenient. It requires the Court to identify, from the text, context and purpose of the specific provision itself, the true limits of the field it occupies, and to give the general provision its ordinary operation outside those limits. Similarly, the presumption discussed in *Newhaven* and *Saraswati* is a presumption only, displaced where the specific provision's own terms, or the terms of instruments made under it, disclose that no such priority was intended, or was intended only within defined limits. The Court explains, in Parts X to XIII below, why the application of these very principles leads it to reject, in significant part, the broader propositions the Defendants advance, while accepting the Defendants' submission on other points, in particular as to the correct relationship between section 25 of the PFMA and Parliament's appropriation power.

49. It is well established principle that subsidiary legislation must be construed, so far as possible, consistently with the Act under which it is made, and cannot lawfully extend the powers conferred by that Act, still less contradict the plain terms of the parent Act or of another Act of Parliament which the parent Act does not purport to override. A *fortiori*, an internal policy or resolution adopted by a statutory body, being of a lower legal order again than subsidiary legislation, cannot lawfully extend or override either

its parent Act or the subsidiary legislation made under it, including subsidiary legislation made by that same body pursuant to the very power said to authorise the policy or resolution in question.

50. Finally, the Court has approached the construction of the PFMA and the Act conscious that both are directed, in their different ways, to the same overarching constitutional objective identified in Chapter X of the *Constitution*, namely the maintenance of parliamentary and executive discipline over the raising, appropriation, expenditure and audit of public monies. As Muria CJ observed in *Abe v Minister of Finance* [1994] 2 LRC 10, the constitutional provisions governing appropriation reflect "the age-old constitutional principle that Parliament retains the power to authorise the raising and expenditure of public finances", and any law, rule or arrangement that seeks to circumvent that principle, or which runs counter to it, offends section 102 of the *Constitution*. The Act is, on its face, a facilitative statute, designed to enable the efficient delivery of a specific, time-bound national event, and the Court accepts, consistently with the Defendants' submission, that section 46 of the Act must be given real and practical effect as a specific delegation for that purpose. Nothing in its text, however, suggests an intention to create an enclave within the public finances of Solomon Islands wholly insulated from the ordinary framework of accountability established by the PFMA and by Chapter X of the *Constitution*, and, as the Court explains in Part XII below, the subsidiary legislation made under the Act itself confirms that no such wholesale insulation was intended.

PART VIII: THE CONSTITUTIONAL AND STATUTORY FRAMEWORK

51. The proper starting point for the construction exercise required in this case is Chapter X of the *Constitution*, sections 100 to 108, which establishes the constitutional architecture of public finance in Solomon Islands.

52. Section 100 establishes the Consolidated Fund and requires, subject to the *Constitution*, that all revenues and other monies raised or received by the Government be paid into and form one Consolidated Fund, save that section 100(2) empowers Parliament to make provision for the establishment of a special fund,

which shall not form part of the Consolidated Fund. It is under this power, read with section 30 of the Act, that the Sports Solomons Fund was established.

53. Section 101 of the *Constitution* controls the withdrawal of monies from the Consolidated Fund. It provides:

> *"Withdrawal of money from the Consolidated Fund*
>
> *101. (1) No money shall be issued from the Consolidated Fund except upon the authority of a warrant issued under the hand of the Minister of Finance.*
>
> *(2) No warrant shall be issued by the Minister of Finance for the purpose of meeting any expenditure unless:*
>
> *(a) the expenditure has been authorised for the financial year during which the issue is to take place by an Appropriation Act;*
>
> *(b) the expenditure has been authorised in accordance with the provisions of section 103 or 104 of this Constitution; or*
>
> *(c) it is statutory expenditure."*

54. Section 102 governs the preparation and enactment of the annual Budge. It provides:

> *"(1) The Minister of Finance shall cause to be prepared and laid before Parliament before the commencement of each financial year estimates of the revenues and expenditure of the Government for that year, provided that in exceptional circumstances which shall be explained to Parliament the Minister may cause the estimates to be laid before Parliament not later than ninety days after the commencement of the financial year.*
>
> *(2) The heads of expenditure contained in the estimates (other than statutory expenditure) shall be included in a bill to be known as an Appropriation Bill which shall be introduced into Parliament to provide for the issue from the Consolidated Fund of the sums necessary to supply those heads and the appropriation of those sums for the purposes specified therein.*
>
> *(3) If in respect of any financial year it is found that the sum appropriated by the Appropriation Act for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no sum has been appropriated by that law, a supplementary estimate*

> *showing the sums required shall be included in a Supplementary Appropriation Bill for appropriation."*

55. Sections 103 and 104 of the *Constitution* make further provision for advance expenditure in certain circumstances and for expenditure during a dissolution of Parliament respectively. Section 108 establishes the office of Auditor-General. Section 108(3) and (4) provide:

> *"(3) The public accounts of Solomon Islands, of all Ministries, offices, courts and authorities of the Government, of the government of Honiara city and of all provincial governments, shall be audited and reported on annually by the Auditor-General, and for that purpose the Auditor-General or any person authorised by him in that behalf shall at all times be entitled to access to all books, records, returns and other documents relating to such accounts.*
>
> *(4) The Auditor-General shall submit his reports to the Speaker who shall cause them to be laid before Parliament; and he shall also send a copy of each report to the Minister of Finance and the Minister concerned."*

56. Section 108(5) of the *Constitution* further provides that, in the exercise of his functions, the Auditor-General shall not be subject to the direction or control of any other person or authority. These provisions, taken together, confer upon the Auditor-General both the power and the duty to audit annually the public accounts of every authority of Government, including the First Defendant, and to report the results of that audit to Parliament through the Speaker, independently of executive direction.

57. Turning to the PFMA, section 2 defines several terms of central importance to this case. "Public money" is defined to mean any money raised, received or held on behalf of the Government, including any money required by the PFMA or another law to be paid into or form part of the Consolidated Fund or any special fund. "Accountable officer" is defined to mean the Permanent Secretary of a Ministry, or a person appointed to act for the Permanent Secretary, or a person in charge of the day-to-day operations of a Government agency. "Government agency" is defined to mean a Government Ministry, an office or body established by the *Constitution* whose office holders receive remuneration from the Consolidated Fund, or a body or manager

authorised to manage a special fund. "Accounting warrant" is defined to mean a warrant issued by the Secretary, pursuant to a general warrant issued by the Minister, authorising an accountable officer to make appropriated expenditure for the financial year.

58. By these definitions, once monies have been appropriated for a special fund, the body or manager authorised to manage that fund is itself a "Government agency" for the purposes of the PFMA, and the person in charge of its day-to-day operations is its "accountable officer", subject to the ordinary obligations and constraints the PFMA places on accountable officers generally, including the requirement of an accounting warrant discussed below.

59. Section 4 of the PFMA provides a rule of priority of considerable significance to this case: in the event of inconsistency between a provision of the PFMA and a provision of any other legislation, the provision of the PFMA prevails. As the Defendants correctly submit, that provision must itself be construed in context and cannot be treated as a universal rule that every provision of the PFMA necessarily overrides every specific Games-related provision, for that would render Parliament's specific delegation in section 46 of the Act largely ineffective. The Court returns to the proper construction and application of section 4 in Parts X and XII below.

60. Section 25 of the PFMA, upon whose construction the first and central question in this case turns, provides:

> *"No expenditure shall be incurred from a special fund unless estimates of the income and expenditure of the special fund for that financial year, approved by the Minister, have been tabled before the National Parliament."*

61. Section 46 of the PFMA requires that, before the start of each financial year, the accountable or accounting officer of any Government agency, including in respect of any special fund, prepare for the Permanent Secretary of Finance budget estimates of the resources required by the agency and estimates of revenue, in accordance with prescribed procedures and timeframes.

62. Sections 55 to 60 of the PFMA establish the mechanism by which appropriated funds are, in practice, released for expenditure. Section 55 provides that no money shall be withdrawn from the Consolidated Fund except under the authority of a general warrant issued by the Minister of Finance to authorise the Permanent Secretary of Finance to make issues from the Consolidated Fund, or to make statutory expenditure authorised by an Act. Section 57 provides:

> *"57. (1) The Secretary may issue an accounting warrant authorising an accountable officer to incur expenditures for the purposes, up to the limit, and subject to the conditions contained therein.*
>
> *(2) Despite subsection (1), the Secretary may only issue an accounting warrant that states the purposes and amounts as appropriated and reflected in the general warrant issued by the Minister and any contingency warrant issued by the Minister.*
>
> *(3) The Accountant-General may not make any payment or accept any charge in his accounts, and an accountable officer may not incur any commitment or expenditure, unless authorised by (a) an accounting warrant; or (b) a contingency warrant issued by the Minister."*

63. Section 60 of the PFMA makes separate provision for advances. It provides:

> *"60. (1) Subject to this section, the Minister may by warrant under his hand authorise the Secretary to make disbursements of monies forming part of the Consolidated Fund, or other public funds, for the purpose of making an advance: (a) on behalf of and recoverable from another Government; (b) to or on behalf of a Government agency where in the opinion of the Minister such advance is in the public interest and will be repaid within twelve months from the date on which it is made; (c) to or on account of any special fund, where such funds are recoverable before the close of the financial year in which they are made; (d) to an accountable or accounting officer for prescribed purposes or under the prescribed terms, conditions and limits; and (e) to meet expenditure against an authorised loan in accordance with Part 8 in anticipation of the receipt of any instalment of such a loan.*

(2) The total of the sums disbursed for the purpose of making advances shall not exceed in aggregate at any one time, after deducting repayments and monies on deposit, an amount approved by an Appropriation Act.

(3) Where the Minister exercises his power to issue an advance warrant under this Act, he shall officially publish a notice not later than 30 days after issuing of the advance warrant to the Secretary, specifying the details of the warrant."

64. Finally, section 73 of the PFMA provides, at subsection (1), that every accountable and accounting officer shall conduct Government procurement activities in a way that ensures prudent spending and use of public resources and in accordance with the prescribed procedures, and, at subsection (2), that an accountable officer who conducts Government procurement activity shall not undermine competitive activity or give an unfair advantage to a bidder.

65. The Court now turns to the Act itself. Section 5 sets out the functions and powers of the First Defendant, including, by section 5(2)(a), that in exercising its functions the First Defendant must act in accordance with the Pacific Games Charter, the Host Agreement and the Act, and, by section 5(3), that the First Defendant has the powers necessary to perform its functions, including the power to authorise withdrawals from the Fund. Section 30 establishes the Sports Solomons Fund as a special fund pursuant to section 100(2) of the *Constitution*. Section 31 sets out the purpose of the Fund. Section 32 identifies three sources of income for the Fund: (i) appropriations made to it by Parliament; (ii) money received by the First Defendant, including from sponsors; and (iii) money received by the Government for the hosting of the Games. Section 33 provides that, during the existence of the First Defendant, withdrawals from the Fund may be made for the functions of the First Defendant, the Games Organising Committee and the Facilities Committee, with the authorisation of the First Defendant, and makes separate provision for withdrawal after the First Defendant ceases to exist. Section 46 provides that the First Defendant may issue instructions specifying the procurement procedures and policies applicable to procurement carried out for the purpose of the Games, including procurement by the Games

Organising Committee and the Facilities Committee. Section 12 contemplates the appointment of a subcommittee by the First Defendant for the assessment of bids.

66. On 11 March 2019, subsidiary legislation was made under the Act and gazetted as Legal Notices 19 to 23 of 2019. The *Pacific Games 2023 Administrative Bodies Management Rules 2019 (Legal Notice No. 19)* provide, by rule 3, that the Sports Solomons Fund shall be administered and managed by the Administrative Bodies in accordance with the Act and the Rules, and, by rule 7(2), that the Administrative Bodies must ensure that appropriate financial management is exercised in accordance with the PFMA, the Financial Instructions and all other rules and regulations made under the PFMA. The *Pacific Games 2023 Procurement Instructions 2019 (Legal Notice No. 22)* provide, by rule 8(1), that the Instructions do not empower the First Defendant to override its obligation to comply with the rules and regulations made under Part 9 of the PFMA, the *Solomon Islands International Financial Instructions 2014*, the *Solomon Islands Government Procurement and Contract Administration Manual 2013*, or Chapter 7 of the Financial Instructions dealing with Supply Chain Management, and, by rule 8(2), that the provisions mentioned in rule 8(1) may be modified. Rule 9 of the Procurement Instructions names the subcommittee to be appointed by the First Defendant to assess bids. The *Pacific Games 2023 Sports Solomon (Special Fund) Rules 2019 (Legal Notice No. 23)* provide, by rule 10(a) and (b), that the First Defendant must at all times adhere to internationally accepted good accounting practices and comply with the provisions of the PFMA, its regulations and the Financial Instructions, and, by rule 12, that the First Defendant may appoint from its Secretariat one officer to be its Accountable Officer and another to be its Accounting Officer.

67. Clause M2.8.3 of the Financial Instructions provides that the Development Budget, Statutory Expenditure and Special Funds must be separately identified, but also presented on a consolidated basis together with the Recurrent Budget, to highlight the total resources available to and deployed by the Government. The Financial Instructions are not mere administrative guidance. In this specific context, they are elevated to the force of subsidiary legislation by rule 10(b) of the Special Fund Rules, rule 8(1)(d) of the Procurement Instructions and rule 7(2) of the Administrative Bodies

Management Rules, each of which expressly requires compliance with the Financial Instructions.

68. Finally, the NHA Procurement Policies and Practices Modification, Resolution NHA 03-23-01, adopted by the First Defendant's Board in March 2023, comprises six resolutions concerning the overarching procurement of priority procurement, an increase in delegated authorities, modifications to tendering requirements, modifications to procurement thresholds, flexibility in contract awards and a special awards process. Under the modification to tendering requirements, the First Defendant's Board approved a "Blanket Waiver" for all priority procurement to be implemented by the respective committees. The accompanying table of delegated expenditure authority substantially increased the sums individual officers and bodies of the First Defendant could authorise without reference to the Central Tender Board thresholds prescribed by the *Public Financial Management (Procurement) Regulations 2021*, up to and including authority for the Games Tender Board to make awards of SBD10,000,001 or more, for the Chair of the First Defendant acting alone to make awards between SBD2,500,001 and SBD8,000,000, and for a number of named individual officers, including the Chief Executive Officer of the Games Organising Committee, the Executive Director of the Sports Infrastructure National Implementation Support unit and the Chief Technical Officer, to make awards of up to SBD500,000 or SBD200,000 acting alone.

PART IX: THE ISSUES FOR DETERMINATION

69. Arising from the pleadings, the evidence and the submissions from both parties, the Court identifies the following questions for determination, adopting the numbering used in the Amended Claim itself, while noting that the Defendants' Submission renumbers and to some extent regroups the same questions for its own purposes. The Court has used the Amended Claim's numbering throughout this Ruling for consistency with the pleadings, cross-referring to the Defendants' own numbering where it assists.

70. Question 1: whether, for purposes of appropriation of the special fund known as the Sports Solomons Fund as envisaged by section 32(a) of the Act, the estimates of

income and expenditure of that special fund for the relevant financial year must be approved by the Minister of Finance and tabled before the National Parliament, as required or implied by section 25 of the PFMA.

71. Question 2: whether, for the same purpose, those estimates must be separately identified and presented to Parliament on a consolidated basis together with the Recurrent Budget, as required by clause M2.8.3 of the Financial Instructions.

72. Question 3: whether the inclusion and appropriation of funds for the Pacific Games 2023 under the Development Budget of the Office of the Prime Minister and Cabinet, without complying with section 25 of the PFMA as read with clause M2.8.3 of the Financial Instructions, means that the appropriation was made under and for the Annual Budget of the Office of the Prime Minister and Cabinet, and not specifically for the Sports Solomons Fund.

73. Question 4: whether it was legally mandatory that an Accounting Warrant be issued by the Permanent Secretary of Finance to the Accountable Officer of the First Defendant before withdrawals or expenditure were made under sections 5(3) and 33(1)(b) of the Act, as required by section 57(1) and (3) of the PFMA.

74. Question 5: whether the First Defendant had lawful expenditure authority to expend monies paid by the Office of the Prime Minister and Cabinet to the Sports Solomons Fund from monies advanced by the Permanent Secretary of Finance to Head 14, Office of the Prime Minister and Cabinet, pursuant to section 60(1) of the PFMA and section 103(2) of the *Constitution*, in circumstances where (a) no Advance Warrant was issued directly to the First Defendant pursuant to section 60(1)(c) of the PFMA, and (b) there was no prior Appropriation Act for purposes of assessing the aggregate amount to be advanced as required by section 60(2) of the PFMA.

75. Question 6: whether the Modification Policy vested greater or absolute authority in the First Defendant to override, deviate from or ignore the application of sections 2, 4, 25, 46(1) and (2), 57(1) to (3) and 73(1) and (2) of the PFMA, rule 7(2) of the Administrative Bodies Management Rules, rules 2 to 7, 8(1) and 9 of the Procurement Instructions, and rule 10(a) and (b) of the Special Fund Rules.

76. Question 7: whether rule 9 of the Procurement Instructions supplements section 12 of the Act by naming the subcommittee to be appointed by the First Defendant to assess bids, and if so, whether the vesting of the Blanket Waiver, pursuant to the Modification Policy, in the names of individual officers of the First Defendant, its Secretariat, the Games Organising Committee, the Facilities Committee and other bodies, to expend substantial amounts of monies without competitive tender, is contrary to rule 9 as read with section 12 of the Act.

77. If the answer to Questions 1 to 3, or to all or any of them, is in the affirmative, the Claimant seeks a declaration that the funds appropriated by Parliament for the Pacific Games 2023 formed part of the Annual Budget, and hence the Consolidated Fund, and were not properly appropriated for a special fund. If the answer to Question 4 is affirmative and or the answer to Question 5 is negative, the Claimant seeks a declaration, for auditing purposes, that the Accountable Officer of the First Defendant did not have valid expenditure authority to expend funds for the Pacific Games 2023, and that his expenditure approvals were accordingly ultra vires. If the answer to Question 6 is negative and or the answer to Question 7 is affirmative, the Claimant seeks declarations that the making and implementation of the Modification Policy was an abuse of power and is null and void, and that expenditure made pursuant to it was without lawful authority and is likewise null and void for auditing purposes. The Claimant further seeks orders that he complete and present his audit reports on the Pacific Games 2023 to Parliament on the basis of the declarations made, that the First Defendant's members respond to him cooperatively in light of those declarations, and costs.

PART X: DETERMINATION OF ISSUES 1 TO 3: APPROPRIATION AND THE PRECONDITIONS TO EXPENDITURE FROM THE SPECIAL FUND

78. The Defendants' central submission on Questions 1 to 3, and the submission the Court has found most persuasive in the whole of the Defendants' Submission, is that the Claimant's case conflates two distinct legal acts: the constitutional act by which Parliament appropriates public money, governed by section 102 of the *Constitution* and exercised through an Appropriation Act, and the statutory precondition, imposed by section 25 of the PFMA, that must be satisfied before expenditure may be incurred

from a special fund once monies have found their way into it. Having considered that submission carefully against the text of section 25, the Court accepts it, and this Part accordingly departs from the analysis the Court would otherwise have adopted, while reaching, for reasons explained in Parts XI to XIV below, substantially the same practical outcome for the purposes for which the Claimant brings this proceeding.

79. Section 25 of the PFMA provides that no expenditure shall be incurred from a special fund unless estimates of the income and expenditure of the special fund for that financial year, approved by the Minister, have been tabled before the National Parliament. The Defendants correctly observe that the statutory subject of section 25 is expenditure, not appropriation. The provision does not say that no sum shall be appropriated to a special fund unless the estimates contemplated by the section have first been approved and tabled, nor does it declare that an Appropriation Act is invalid or ineffective if the estimates of a special fund have not previously been approved and tabled.

80. Parliament's power to appropriate money is conferred and regulated by section 102 of the *Constitution*, which requires only that estimates of the revenues and expenditure of the Government for the year be laid before Parliament and that the heads of expenditure be included in an Appropriation Bill. Once Parliament enacts that Bill, it has, in the words of Muria CJ in *Abe v Minister of Finance*, exercised the constitutional power that belongs to it alone, and the legal effect of that Act cannot be displaced by an implication drawn from an administrative budgeting provision of a later, general statute unless the *Constitution* or that statute clearly says so. Section 25 of the PFMA contains no such clear words. The Court accordingly accepts the Defendants' submission that section 25 does not operate as a condition precedent to Parliament's exercise of its appropriation power, and to that extent answers Question 1 differently from the way it would otherwise have done: section 25 does not require that estimates of the Sports Solomons Fund be approved and tabled before Parliament can validly appropriate money in connection with the Pacific Games 2023. It does, however, and to this extent the Court answers Question 1 in the affirmative, require that such estimates be approved by the Minister of Finance and tabled before Parliament before any expenditure is incurred from the Fund once monies

appropriated for the Games have been paid into it. That is what the plain words of section 25 provide, reinforced by section 4 of the PFMA, and nothing in the Defendants' Submission persuades the Court otherwise on this narrower but still important point.

81. The same reasoning applies, with appropriate adjustment, to Question 2. Clause M2.8.3 of the Financial Instructions requires that the Development Budget, Statutory Expenditure and Special Funds be separately identified, and also presented on a consolidated basis together with the Recurrent Budget. The Court accepts the Defendants' submission that a Financial Instruction, being subordinate to the *Constitution* and to Acts of Parliament, cannot by itself amend the constitutional allocation of the appropriation power or impose a new condition upon the validity of an Appropriation Act, and that nothing in the *Constitution* or the PFMA states that a failure to present a special fund in the form clause M2.8.3 contemplates renders an appropriation enacted by Parliament void or ineffective. The better construction, which the Court adopts, is that clause M2.8.3 regulates how budget information is prepared and presented to Parliament as a matter of budgetary practice and transparency, elevated to subsidiary legislative force in this specific context by rule 10(b) of the Special Fund Rules, and that a failure to comply may have administrative, accounting or audit consequences of the kind identified in this Ruling, without retrospectively transforming an enacted Appropriation Act into something Parliament did not enact. The Court accordingly answers Question 2 in a qualified form, that is, clause M2.8.3 does require the separate identification and consolidated presentation of Fund estimates as a matter of budgetary practice, and the First Defendant and the Office of the Prime Minister and Cabinet were and remain obliged to comply with it, but non-compliance does not operate as a statutory condition upon the validity of an appropriation enacted by Parliament.

82. Question 3 must be reconsidered in light of the Court's answers to Questions 1 and 2. The Claimant's own chronology, which the Amended Reply confirms is common ground to the extent that it records that Parliament appropriated the Development Budget for the Pacific Games 2023, together with the Defendants' evidence and submissions, satisfies the Court that the several Appropriation Acts under which sums

were appropriated year on year under Head 481, later Head 14, of the Development Budget of the Office of the Prime Minister and Cabinet, were validly enacted appropriations for the purpose of funding the Pacific Games 2023, that purpose being apparent from the Development Budget line items themselves, from the Public Accounts Committee's own consideration of the relevant Supplementary Appropriation Bills, and from the entire statutory and administrative apparatus, including the Act itself, that Parliament and the Executive built around the hosting of the Games. The Court is not persuaded, for the reasons given above, that the mere fact that section 25 of the PFMA and clause M2.8.3 of the Financial Instructions were not observed strips those appropriations of their character as monies appropriated for the Games, or relegates them to the status of an undifferentiated appropriation to the Office of the Prime Minister and Cabinet unconnected to the Games. The Court accordingly answers Question 3 in the negative, in the specific sense advanced by the Claimant, namely that the appropriations were made under and for the Annual Budget of the Office of the Prime Minister and Cabinet and not specifically for the Sports Solomons Fund. The Court finds, to the contrary, that the appropriations were made, and were understood by Parliament and the Executive alike to have been made, for the purpose of hosting the Pacific Games 2023, and that this purpose was subsequently given effect through the statutory mechanism established by the Act, including the Prime Minister's decision of 17 May 2021 to operationalise the Fund and to authorise the transfer of appropriated monies to it.

83. None of this, however, answers the separate and, in the Court's judgment, more important question whether the monies so appropriated and transferred were thereafter lawfully expended from the Fund once they arrived there. That question does not turn on the character of the appropriation, which the Court has now resolved in the Defendants' favour, but on whether the specific statutory preconditions to expenditure from a special fund, discussed in Part XI below, were satisfied. It is to those preconditions, rather than to the validity of the underlying appropriation, that the true legal difficulty in this case, on the Court's analysis, in fact belongs. The Court records, for completeness, that this reallocation of the legal difficulty does not reduce its practical significance for the purposes of this proceeding; if anything, it sharpens the focus of the inquiry onto the question that actually matters for the Claimant's

audit function, namely whether expenditure from the Fund was lawfully authorised, addressed in Part XI.

PART XI: DETERMINATION OF ISSUES 4 AND 5: EXECUTIVE EXPENDITURE AUTHORITY

84. The Court turns to Question 4, concerning the necessity of an Accounting Warrant, addressed by the Defendants under the heading of their own Issue 5. The Defendants submit that section 33 of the Act confers upon the First Defendant an express and specific statutory power to authorise withdrawals from the Fund, that section 57 of the PFMA remains relevant to the Government's general accounting machinery but contains no words expressly repealing, suspending or conditioning that specific withdrawal power, and that the Claimant has not demonstrated that the phrase "accountable officer" in section 57 necessarily captures the Chair of the First Defendant, or any other officer of the First Defendant, in the manner the Claimant asserts.

85. The Court accepts, applying the harmonious construction approach described in *Project Blue Sky*, that sections 33 of the Act and 57 of the PFMA should be read together so that each is given a sensible operation, rather than treating one as impliedly repealing the other. Properly construed, however, the Court is satisfied that the two provisions answer different questions and operate cumulatively rather than as alternatives. Section 33 of the Act identifies, within the internal governance structure created for the Games, who has the authority to decide that a withdrawal should be made from the Fund for the functions of the First Defendant, the Games Organising Committee or the Facilities Committee, namely the First Defendant itself. It does not purport to say, and on its terms cannot be read as saying, that the officer who gives effect to that decision is thereby exempted from the separate and general obligations the PFMA imposes on every accountable officer of every Government agency, a category which, by the definitions in section 2 of the PFMA discussed in Part VIII above, expressly includes the body or manager authorised to manage a special fund. Section 57(3) of the PFMA is framed in prohibitory terms of general application: an accountable officer "may not" incur any commitment or expenditure unless authorised by an accounting warrant or a contingency warrant. There is nothing in

section 33 of the Act, or elsewhere in the Act, that says, even by necessary implication, that the First Defendant's accountable officer is to be treated differently from every other accountable officer in government in this respect. Absent such words, and applying the very principle of harmonious construction on which the Defendants themselves rely, the Court does not read section 33 as displacing section 57; it reads the two as operating together, so that the First Defendant's Board or Chair may validly decide, under section 33, that a withdrawal should be made, while the First Defendant's accountable officer, appointed under rule 12 of the Special Fund Rules, remains subject to the requirement that the Permanent Secretary of Finance first issue an accounting warrant before that decision can lawfully be given effect by way of actual expenditure.

86. The Court accordingly answers Question 4 in the affirmative, that is, an Accounting Warrant issued by the Permanent Secretary of Finance to the Accountable Officer of the First Defendant was, and remains, a legally mandatory precondition to the incurring of expenditure from the Sports Solomons Fund, in addition to, and not displaced by, the First Defendant's own internal authorisation under section 33 of the Act. The evidence before the Court, uncontradicted for the reasons given in Part IV above, is that no such Accounting Warrant was ever issued to an accountable officer of the First Defendant, and the Court so finds.

87. The Court has considered the further Amended Defence of 6 August 2026, by which the Defendants withdraw their earlier admission on this point and instead plead that, following current government practice for the treatment of special funds, the Accounting Warrant issued to the Accountable Officer of the Office of the Prime Minister and Cabinet covered the full funding allocations under the Recurrent and Development Budgets, inclusive of the funding for the Pacific Games 2023. No evidence supports this new plea. Dr Rodgers, whose evidence is directed specifically to the administrative practice actually followed, does not depose to the existence of any such Accounting Warrant, still less exhibit it, and the plea appears for the first time in the further Amended Defence itself. In any event, even taken at its highest, the plea does not answer the deficiency the Court has identified. The Fund is a special fund established under section 100(2) of the *Constitution* with its own accountable

officer appointed under rule 12 of the Special Fund Rules, distinct from the Accountable Officer of the Office of the Prime Minister and Cabinet. A warrant addressed to the latter, in respect of that office's own Head of expenditure, does not, without more, authorise expenditure by the former from the Fund once monies have been transferred to it and become subject to withdrawal decisions taken under section 33 of the Act. Absent evidence of a sub warrant, delegation or equivalent instrument extending the Office of the Prime Minister and Cabinet's Accounting Warrant to the First Defendant's own accountable officer, the Court is not satisfied that the plea, even if accepted at face value, displaces the finding recorded in the preceding paragraph.

88. Question 5 concerns the specific tranches of Fund monies sourced through Advance Warrants issued to the Permanent Secretary of Finance under section 60(1) of the PFMA, notably the Advance Warrant of 30 November 2020, in the sum of SBD43,709,392, and the three Advance Warrants of July and August 2023, totalling SBD202,719,524, drawn from monies received from the Governments of Papua New Guinea and Saudi Arabia. The Defendants submit, under their own Issue 4, that the Claimant's construction is too narrow, that section 60 of the PFMA is a mechanism for moving public money into the relevant governmental financial structure pending or anticipating appropriation, that a budget head identifies the appropriation within Government's financial structure without necessarily exhausting the statutory mechanisms by which the appropriated or advanced money is thereafter administered, and that the relevant donor advances were later brought within Supplementary Appropriation legislation, which the Court should not ignore.

89. The Court accepts the general force of the Defendants' submission that an Advance Warrant addressed to the Permanent Secretary of Finance in respect of a particular Head does not, of itself and without more, forever preclude the lawful onward application of the advanced monies to the statutory purpose, here the Games, for which the advance was in truth made, particularly once a Supplementary Appropriation Act has been enacted. The Court is not, however, persuaded that this general proposition answers the specific difficulty identified in the Claimant's evidence, which the Defendants' Submission does not squarely address: the timing of

the Supplementary Appropriation Acts relied upon. Section 60(2) of the PFMA provides that the total of the sums disbursed for the purpose of making advances shall not exceed in aggregate at any one time an amount approved by an Appropriation Act. On the evidence, the *2020 Supplementary Appropriation Act 2021*, which retrospectively appropriated the sum the subject of the 30 November 2020 Advance Warrant, was not enacted until 6 October 2021, some ten months after the advance was made. The *2023 Supplementary Appropriation Act 2024*, which retrospectively appropriated the sums the subject of the July and August 2023 Advance Warrants, was not enacted until 18 September 2024, more than a year after the last of those advances, and after the monies had already been received and applied to the Games, which concluded in December 2023. Section 60(2), on its plain words, contemplates an Appropriation Act in existence at the time an advance is made, providing the ceiling against which the propriety of that advance can be assessed as it is made. A Supplementary Appropriation Act enacted many months, or in one instance more than a year, after the event, ratifying what has already occurred, cannot serve that function. Nor, on the evidence, was any Advance Warrant ever issued directly to the First Defendant under section 60(1)(c), as distinct from to the Permanent Secretary of Finance in respect of Head 14.

90. The Court has considered whether the subsequent enactment of the Supplementary Appropriation Acts, even if not contemporaneous, should nonetheless be treated, applying a purposive and harmonious construction of the kind urged by the Defendants, as sufficient retrospectively to cure the absence of a prior Appropriation Act. The Court does not accept that it can. Section 60(2) exists to impose a real and effective ceiling on the Executive's power to disburse public money by way of advance in anticipation of appropriation, a power that would otherwise circumvent the very principle, identified by Muria CJ in *Abe v Minister of Finance*, that Parliament alone retains the power to authorise the raising and expenditure of public finances. To treat a Supplementary Appropriation Act enacted more than a year after monies have already been received and spent as satisfying section 60(2) would deprive that provision of any real restraining effect and would invert the relationship between Parliament and the Executive that Chapter X of the *Constitution* is designed to preserve. For these reasons the Court answers Question 5 in the negative: the First

Defendant did not have lawful expenditure authority, within the meaning of section 60(1) of the PFMA and section 103(2) of the *Constitution*, to expend the monies paid to it by the Office of the Prime Minister and Cabinet that were themselves sourced from the Advance Warrants of 30 November 2020, 11 July 2023, 17 July 2023 and 9 August 2023, there having been neither an Advance Warrant issued directly to the First Defendant nor a prior Appropriation Act against which the aggregate of those advances could be assessed at the time they were made. The Court notes that this conclusion accords with the position the Claimant's Amended Reply records as no longer genuinely in dispute on the pleadings as they then stood, although the Court has reached it independently, on the merits, in light of the fuller argument since advanced in the Defendants' Submission, rather than by treating the point as conceded.

91. It follows that Question 4 is answered in the affirmative and Question 5 is answered in the negative. The Court addresses the consequential relief that follows in Part XIV below.

PART XII: DETERMINATION OF ISSUE 6: SECTION 46, THE MODIFICATION POLICY, AND THE LIMITS OF THE SPECIAL REGIME

92. Question 6 requires the Court to determine whether the Modification Policy, adopted by the First Defendant's Board in March 2023, validly vested in the First Defendant greater or absolute authority to override, deviate from or ignore the statutory and subsidiary legislative provisions identified in the question. This is the issue on which the Defendants' Submission is at its most developed, invoking section 46 of the Act, the maxim *generalia specialibus non derogant*, and the authority of *Project Blue Sky* and *Newhaven*.

93. The Court accepts that section 46 of the Act is a real and deliberate statutory delegation. Parliament did not merely authorise the First Defendant to administer the ordinary Government procurement system; it authorised the First Defendant to specify procurement procedures and policies applicable to procurement carried out for the purpose of the Games. The Court accepts the Defendants' submission that this power must be given genuine operative content, and that a construction under which

section 46 could never produce any procedural difference from the ordinary Government procurement regime would deprive Parliament's words of much of their practical effect, contrary to the approach mandated by *Project Blue Sky*.

94. The question, properly framed applying that same approach, is not whether section 46 has real content, which the Court accepts it does, but what the true limits of that content are. It is at this point that the Court agrees with the Defendants' submission, for a reason drawn directly from the very subsidiary legislation made under section 46 itself. Rule 8 of the Procurement Instructions 2019, gazetted as Legal Notice No. 22 of 2019, is not a rival, general enactment external to the Games regime, of the kind at issue in *Newhaven* or *Saraswati*. It is itself the specific instrument by which Parliament's delegate exercised the very section 46 power the Defendants say is unconstrained. Rule 8(1) provides that the Instructions do not empower the First Defendant to override its obligation to comply with the rules and regulations made under Part 9 of the PFMA, the *Solomon Islands International Financial Instructions 2014*, the *Solomon Islands Government Procurement and Contract Administration Manual 2013*, or Chapter 7 of the Financial Instructions dealing with Supply Chain Management. That is not the Court reading a limit into section 46 from outside; it is the First Defendant's own delegate, exercising the First Defendant's own section 46 power in 2019, expressly declining to claim the very authority the Modification Policy purported to exercise in 2023. Rule 8(2) permits modification of the matters mentioned in rule 8(1), but modification is, on any ordinary use of language, a narrower concept than wholesale override, deviation or disregard, and the Court does not accept that the specific regime Parliament authorised under section 46, as the First Defendant itself understood and implemented it in 2019, extends to the latter.

95. This distinction matters because it means the *generalia specialibus non derogant* principle discussed in *Newhaven* and *Saraswati*, properly applied, does not assist the Defendants on this issue; if anything, applied consistently, it confirms the Court's conclusion. The principle asks the Court to identify the field the specific provision was truly intended to occupy and to respect that field against the encroachment of a later or more general provision. Here, the specific provision's own field, as fixed by rule 8(1) and (2) of the Procurement Instructions made under section 46 itself, was deliberately

drawn so as to preserve compliance with Part 9 of the PFMA and the associated procurement instruments, subject only to modification, not replacement. The Modification Policy of March 2023 did not modify that field. On the evidence, it purported to remove the field's central safeguard altogether for a defined category of procurement, by way of a "Blanket Waiver" of competitive tendering, applicable to all priority procurement, vesting authority in named individual officers at thresholds up to and including SBD1,000,000 for a single officer or committee acting alone and SBD10,000,001 or more for the Games Tender Board. Such a wholesale removal of competitive process, particularly at the very thresholds where the general law considers competitive tendering most necessary, cannot in the Court's judgment be characterised as a "modification" within the meaning of rule 8(2). It squarely engages, and offends, the prohibition in section 73(2) of the PFMA against undermining competitive activity, a substantive safeguard the Defendants themselves accept, at paragraph 143 of their Submission, remains an important one that a Games-specific procedure must continue to satisfy.

96. The Court has also considered the Defendants' submission, at paragraphs 148 to 152 of their Submission, that the Pacific Games Charter and the Host Agreement form part of the legitimate factual and contextual background against which the Court should construe the purpose of the Act, and that section 5(2)(a) of the Act itself requires the First Defendant to act in accordance with the Charter and the Host Agreement. The Court accepts that this context is properly considered, and has had regard to it in assessing, in Part IV above, the genuine operational pressures that led to the Modification Policy. Section 5(2)(a) of the Act, however, requires the First Defendant to act in accordance with the Charter, the host contract and the Act; it does not subordinate the Act, still less the PFMA, to the Charter or the Host Agreement, and the Defendants do not, in the end, contend otherwise. The operational context explains why the First Defendant's Board considered the Modification Policy necessary; it does not enlarge the legal power available to the Board to adopt it.

97. The Court further notes that Dr Rodgers' own evidence, candid and helpful as it is in explaining the operational pressures that led to the Modification Policy, confirms that the increased delegations were adopted as maximum limits and that, in his evidence,

those limits, especially at the Co-Chair and Chair levels, were not in fact reached in every instance. That evidence, while offered in mitigation, does not answer the question of the Modification Policy's validity; a delegation of authority that is unlawfully broad does not become lawful merely because it was not exercised to its fullest extent in every case. It is, however, relevant context for the scope of the consequential relief the Court grants, addressed in Part XIV.

98. The Court has also considered, and rejects, any suggestion that the validity of the Modification Policy depends upon whether it was itself gazetted as subsidiary legislation. The Modification Policy is, on its face, an internal Board resolution exercising the instructive and policy-making function conferred by section 46 of the Act, rather than an instrument that purports itself to be subsidiary legislation of the kind made by Legal Notice. Its validity accordingly turns not on any question of publication or form, but on the question of vires the Court has already determined, namely whether its content exceeded the scope of the power section 46 confers, read together with rule 8 of the Procurement Instructions made under that power. For the reasons given above, the Court finds that, to the extent it purported to authorise the Blanket Waiver of competitive tendering, it did.

99. For these reasons, the Court answers Question 6 in the negative. The Modification Policy did not, and as a matter of law could not, validly vest in the First Defendant, its Secretariat, or any individual officer or committee, authority to override, deviate from or ignore the provisions of the PFMA and its associated subsidiary legislation identified in Question 6, at least to the extent that the Modification Policy purported to dispense with competitive tendering altogether by way of the Blanket Waiver. To that extent, the Modification Policy exceeded the power conferred by rule 8(2) of the Procurement Instructions and was made without lawful authority.

PART XIII: DETERMINATION OF ISSUE 7: THE PROCUREMENT SUBCOMMITTEE AND THE BLANKET WAIVER

100. Question 7 has two limbs. The first is whether rule 9 of the Procurement Instructions supplements section 12 of the Act by naming the subcommittee to be appointed by the First Defendant to assess bids. Section 12 of the Act contemplates the

appointment of a subcommittee for that purpose; rule 9 of the Procurement Instructions gives that contemplation practical effect by identifying the relevant subcommittee mechanism. Reading the two provisions together, the Court is satisfied that rule 9 does indeed supplement section 12 in the manner the Claimant contends, providing the operative machinery for what section 12 establishes in principle. The Court answers the first limb of Question 7 in the affirmative.

101. The second limb asks whether the vesting of the Blanket Waiver in the names of individual officers, rather than in the subcommittee contemplated by rule 9 and section 12, is contrary to those provisions. The Defendants submit, at paragraphs 139 to 147 of their Submission, that this conclusion should not be accepted merely because the Policy is described in submissions as a "blanket" waiver, and that the Court should first identify what section 46 authorised and then read the 2019 Procurement Instructions and the 2023 Policy together where possible. The Court has done precisely that in Part XII above, and it is because the Court has undertaken that exercise, rather than assumed the answer, that it has reached the conclusion it has. Given the Court's finding that the Blanket Waiver dispenses with the competitive process, including necessarily the subcommittee assessment of bids, for priority procurement up to very substantial thresholds, it follows, as a matter of the ordinary meaning of the Policy's own terms rather than as a matter of characterisation in submissions, that the Blanket Waiver bypasses the very mechanism rule 9 and section 12 establish. A bid that is never put out to competitive tender is, self-evidently, never assessed by the subcommittee those provisions contemplate. The Court answers the second limb of Question 7 in the affirmative.

102. The Court's answers to Question 6, in the negative, and Question 7, in the affirmative on both limbs, each independently, and together cumulatively, satisfy the condition pleaded in the Amended Claim for the corresponding consequential relief, to which the Court now turns. The Court reiterates, in fairness to the Defendants' concern at paragraphs 146 and 147 of their Submission, that this conclusion is a limited one: it does not follow, and the Court does not find, that the whole of the Modification Policy or the entire statutory procurement framework established by section 46 of the Act is invalid. The scope of the Court's findings is addressed precisely in Part XIV below.

PART XIV: CONSEQUENTIAL RELIEF

103. In light of the Court's answers to Questions 1 to 7, the Court now turns to the consequential relief sought in the Amended Claim.

104. The condition attached to the first consequential relief sought, that the answer to Questions 1 to 3, or to all or any of them, be in the affirmative, is met only in the qualified sense the Court has explained in Part X above: Questions 1 and 2 are answered in the affirmative only insofar as they concern the preconditions to expenditure from, rather than appropriation to, the Fund, and Question 3 is answered in the negative. The Court accordingly declines to make the declaration sought in the broad terms of the first consequential relief, namely that the funds appropriated by Parliament for the Pacific Games 2023 formed part of the Annual Budget and Consolidated Fund and were not properly appropriated for the Sports Solomons Fund as a special fund. Instead, and in order to give proper effect to its findings, the Court declares that the funds appropriated by Parliament under the Development Budget of the Office of the Prime Minister and Cabinet for the financial years 2019 to 2024 were validly appropriated for the purpose of the Pacific Games 2023, but that expenditure from the Sports Solomons Fund required, and in the relevant years did not receive, compliance with section 25 of the PFMA, and separately required, and did not receive, compliance with sections 57 and 60 of the PFMA as found in Part XI above.

105. As the Court has answered Question 4 in the affirmative and Question 5 in the negative, the Court declares, for auditing purposes, that the Accountable Officer of the First Defendant did not have valid expenditure authority to expend the monies identified in Part XI above for the Pacific Games 2023, and that expenditure approvals made in reliance on those monies were accordingly made without lawful authority.

106. As the Court has answered Question 6 in the negative and Question 7 in the affirmative, the Court declares that the making and implementation of the Modification Policy, insofar as it purported to authorise the Blanket Waiver of competitive tendering described in Part XII above, was in excess of the First Defendant's lawful power and is, to that extent, null and void; and the Court further

declares, for auditing purposes, that expenditure by the Accountable Officer of the First Defendant made pursuant to the Blanket Waiver aspect of the Modification Policy was without lawful authority and is, to that extent, null and void.

107. The Court wishes to be precise as to the scope of the declarations made in the preceding paragraph, in direct response to the concern the Defendants raise at paragraphs 146 and 147 of their Submission. They do not extend to, and should not be read as invalidating, every element of the Modification Policy or every act of procurement undertaken by the First Defendant between March 2023 and the conclusion of the Games. The Court's findings are confined to the aspects of the Modification Policy, and expenditure made pursuant to them, that dispensed with competitive tendering altogether by way of the Blanket Waiver, contrary to section 73(2) of the PFMA and rule 9 of the Procurement Instructions read with section 12 of the Act. Adjustments of thresholds and approval layers that stopped short of dispensing with competitive process entirely are not, by this Ruling, declared invalid, and nothing in this Ruling should be taken as impugning individual procurement decisions not specifically examined in this proceeding, a task properly reserved for the Claimant's ongoing audit function.

108. The Court declines, however, to treat these declarations as retrospectively unwinding payments already made to third-party contractors and suppliers who provided goods and services for the Games in good faith and, so far as the evidence before the Court discloses, without notice of any defect in the First Defendant's internal authority. The declarations made in this Ruling operate for the purposes identified in the Amended Claim itself, namely to clarify the legal framework within which the Claimant's audit function is to be exercised. They are not orders for restitution, recovery or the unwinding of completed third-party transactions, no such relief having been sought in this proceeding and no third party having been joined to it.

109. The Court orders that the Claimant complete and present his audit reports on the Pacific Games 2023 to Parliament, through the Speaker, in accordance with section 108(4) of the *Constitution*, on the basis of the declarations and orders made in this Ruling.

110. The Court further orders that the First Defendant and its members respond to the Claimant consistently and cooperatively in the discharge of his audit function, in line with the declarations and orders made in this Ruling. The Court trusts that this order will not need to be invoked. The proper working relationship between an auditor and the entity it audits is best served by cooperation rather than by resort to further litigation, and the Court expects that both parties, now that the applicable law has been authoritatively determined, will conduct themselves accordingly.

PART XV: THE COUNTER-CLAIM AND THE CLEAN HANDS SUBMISSION

111. The Court turns to the Counter-Claim advanced by the First Defendant, as First Counter-Claimant, and the Attorney-General, as Second Counter-Claimant, against the Claimant, as Counter-Defendant, together with the related and more broadly framed submission, advanced at paragraphs 29 to 87 of the Defendants' Submission, that the Claimant's entire claim should be dismissed, or the relief sought materially qualified, because the Claimant does not come to this Court with clean hands.

112. The Defendants' submission is carefully constructed. It does not contend that any failure by the Claimant relieved the First Defendant of its own statutory obligations concerning financial management and procurement. Rather, it contends that the Claimant's own constitutional audit function, entrusted to him by section 108(3) of the *Constitution*, was not discharged annually and in a timely manner between 2019 and 2023, the very years in which the weaknesses now complained of are said to have arisen and persisted; that the draft management letter concerning the First Defendant's 2019 financial statements was not provided until 6 October 2023; that no further annual financial statement audits were completed for 2020, 2021, 2022 or 2023 until KPMG was engaged in 2024; that this deprived the First Defendant of the annual cycle of audit, identification of weakness, recommendation and corrective action that section 108(3) is designed to secure; and that the Claimant cannot fairly ask the Court to condemn the First Defendant for the persistence of weaknesses over that period while disregarding his own office's failure to exercise the very oversight mechanism intended to detect and facilitate their correction.

113. The Court accepts the factual premise of this submission, substantially as advanced. Section 108(3) of the *Constitution* imposes on the Auditor-General a duty to audit and report annually on the public accounts of, among others, all authorities of Government, which the Court accepts extends to the First Defendant. The evidence, including the chronology in Dr Rodgers' Additional Sworn Statement, is not contradicted on this specific point and establishes that the financial statement audit of the First Defendant for the 2019 financial year, though the subject of an engagement letter issued in May 2020, was not completed and its findings communicated by draft management letter until October 2023, and that no further annual audits were completed for the 2020 to 2023 financial years until KPMG was engaged for that purpose in 2024, the 2019 financial statement audit itself being subsequently folded, without separate conclusion, into the 2020 and 2021 financial statement audits conducted by KPMG, for which a draft report was not received until 19 March 2025, as the Defendants' further Amended Defence of 6 August 2026 now clarifies. The Court accordingly declares, on the Counter-Claim, that annual audits of the First Defendant required by section 108(3) of the *Constitution* were not completed for the financial years 2019 to 2023 within the timeframe that provision contemplates.

114. The Court is, however, satisfied, having regard to the fuller evidence recorded in Part IV above, that this finding must be understood in its proper and more complete context, and should not be overstated in the way the Defendants' Submission at times seemed to portray. The Claimant's Amended Reply and supporting evidence establish that the Office of the Auditor-General did not simply disengage from the First Defendant during this period. Engagement letters were sent in May 2020 and again in May and July 2024; formal meetings involving the Claimant, KPMG and the First Defendant were held in April and December 2025; further meetings involving the Prime Minister, the First Defendant and KPMG were held in July 2024, January 2025 and December 2025; and draft audit reports for the 2019 to 2021 financial statement audits and the special audit were shared with the First Defendant, which provided its own responses to them. What the evidence discloses, in the Court's assessment, is not an auditor who abandoned his constitutional function and then opportunistically revived it to bring this proceeding, but a genuine and mutual institutional difficulty,

on both sides substantially unexplained beyond the pressures of preparing for and delivering a major international event at pace, in maintaining the annual audit cycle Chapter X of the *Constitution* contemplates. The Court does not find, on this evidence, bad faith, obstruction or deliberate default on the part of the Claimant or his office, and Dr Rodgers, to his credit, does not depose to any.

115. Turning to the wider submission that this history should lead the Court to dismiss the claim, or materially qualify the relief granted, the Court has considered carefully the authority of *King Crude Carriers SA & Ors v Ridgebury November LLC & Ors (Rev1)* the Defendants press in support. Having examined that decision, the Court does not consider that it assists the Defendants to the extent their Submission suggests. The Supreme Court in that case was concerned with whether a party who had, by its own breach, prevented a contractual condition precedent from being satisfied, could nonetheless rely on the resulting non-satisfaction of that condition. The Court declined to apply the maxim that a party may not take advantage of its own wrong as a free-standing bar of general application, holding instead that the answer depended on the proper construction of the specific contractual framework in issue, and that, on that construction, the party in breach was entitled to succeed. If anything, the case illustrates a broader and, in this Court's respectful view, sound methodological point equally applicable here: whether a party's own default disentitles it from relying on or enforcing a legal position is not answered by invoking an equitable maxim in the abstract, but by construing the specific legal framework said to give rise to the right in question, and asking what consequences that framework itself attaches to the default.

116. Applying that approach, the Court asks what consequence the *Constitution* and the PFMA themselves attach to a failure by the Auditor-General to conduct a timely annual audit. The answer, on a careful reading of section 108 of the *Constitution* and the PFMA, is none that bears on the Auditor-General's standing or entitlement to bring a proceeding of this kind. Section 108(5) of the *Constitution* provides that the Auditor-General shall not be subject to the direction or control of any other person or authority in the exercise of his functions, a provision plainly designed to insulate the office from exactly the kind of collateral pressure that would be created if every delay, however explicable, in the exercise of the audit function could be turned into a bar to

the Auditor-General later invoking the Court's jurisdiction to resolve a genuine and important question of law necessary to the future proper performance of that very function. The doctrine of unclean hands, so far as it exists as a distinct doctrine at all outside the discretionary equitable remedies of injunction and specific performance from which it developed, has, at best, uncertain application to a statutory application under rule 15.9.3 of the Rules for the construction of legislation and declarations as to legal rights of general and public importance, brought by a constitutional office holder in the exercise of a public duty rather than in pursuit of a private or proprietary interest. The Defendants have not identified, nor does the Court find on the evidence, any impropriety on the Claimant's part connected with the bringing of this proceeding itself, as distinct from the separate and already addressed question of the timeliness of earlier audits, which the Court has taken into account, so far as it properly can, in the areas of this Ruling to which it is actually relevant, including costs in Part XVI below.

117. The Court accordingly declines to dismiss the Claimant's claim, or to decline the declaratory relief otherwise warranted by the Court's determination of Questions 1 to 7, on the basis of the clean hands submission, and declines to make the second declaration sought on the Counter-Claim, that the Counter-Defendant comes to this Court without clean hands. That part of the Counter-Claim is dismissed.

118. It follows that the Counter-Claim succeeds only to the limited extent recorded in the preceding paragraphs, and otherwise fails.

PART XVI: COSTS

119. The general rule in this jurisdiction, as elsewhere, is that costs follow the event, such that the successful party recovers its costs from the unsuccessful party. The Court has determined the great majority of the substantive questions in this proceeding, and the whole of the consequential relief sought in the Amended Claim, in the Claimant's favour, subject to the more precise and, in parts, more qualified declarations the Court has made in Part XIV above in place of the broader declarations originally sought on Questions 1 to 3. The Claimant has also substantially defeated the Counter-Claim, succeeding in resisting the more significant of the two declarations sought against

him, and defeating entirely the wider submission that the whole claim should be dismissed for want of clean hands.

120. In those circumstances the Claimant remains plainly the successful party in this proceeding, taken as a whole, notwithstanding that the Court has not accepted every submission advanced on his behalf and has, in Part X above, adopted a construction of section 25 of the PFMA more favourable to the Defendants than the Claimant's own formulation of Questions 1 to 3 proposed. The Court also takes into account, in fixing the appropriate costs order, the First and Second Defendants' failure to file written submissions by the deadline the Court had generously extended for that purpose, a default which, while ultimately remedied and considered on its merits as explained in Part V above, occasioned the Court additional and avoidable work in preparing this Ruling. Costs of the proceeding, including the Counter-Claim, shall be paid by the First and Second Defendants, to the Claimant. Such costs are to be agreed between the parties and, failing agreement, are to be taxed.

PART XVII: DISPOSITION AND ORDERS

121. For the reasons given in this Ruling, the Court makes the following declarations and orders.

1. **Question 1 is answered in the affirmative: section 25 of the *Public Financial Management Act 2013* requires the Minister of Finance's approved estimates of income and expenditure of the Sports Solomons Fund to be tabled before Parliament before expenditure is incurred from the Fund, but does not condition the validity of Parliament's appropriation for the Pacific Games 2023.**

2. **Question 2 is answered in the affirmative: clause M2.8.3 of the Financial Instructions requires separate identification and consolidated presentation of Fund estimates as a matter of budgetary practice, but non-compliance does not invalidate an Appropriation Act.**

3. **Question 3 is answered in the negative: the appropriations made under the Development Budget of the Office of the Prime Minister and Cabinet for the**

financial years 2019 to 2024 were validly made for the purpose of the Pacific Games 2023 and are not, by reason only of non-compliance with section 25 of the *Public Financial Management Act 2013* or clause M2.8.3 of the Financial Instructions, to be treated as appropriations made under and for the Annual Budget of the Office of the Prime Minister and Cabinet unconnected to the Sports Solomons Fund.

4. Question 4 is answered in the affirmative.

5. Question 5 is answered in the negative.

6. Question 6 is answered in the negative.

7. Question 7 is answered in the affirmative on both limbs.

8. It is declared that the funds appropriated by Parliament under the Development Budget of the Office of the Prime Minister and Cabinet for the financial years 2019 to 2024 were validly appropriated for the purpose of the Pacific Games 2023, but that expenditure from the Sports Solomons Fund required, and in the relevant years did not receive, compliance with sections 25, 57 and 60 of the *Public Financial Management Act 2013*.

9. It is declared, for auditing purposes, that the Accountable Officer of the First Defendant did not have valid expenditure authority to expend monies from the Sports Solomons Fund for the Pacific Games 2023, including monies sourced from the Advance Warrants of 30 November 2020, 11 July 2023, 17 July 2023 and 9 August 2023, and that expenditure approvals made in reliance on those monies were without lawful authority.

10. It is declared that the Modification Policy (Resolution NHA 03-23-01), insofar as it purported to authorise the Blanket Waiver of competitive tendering, exceeded the First Defendant's lawful power and is, to that extent, null and void.

11. It is declared, for auditing purposes, that expenditure made pursuant to the Blanket Waiver aspect of the Modification Policy was without lawful authority and is, to that extent, null and void.

12. The Claimant is to complete and present his audit reports on the Pacific Games 2023 to Parliament, through the Speaker, in accordance with section 108(4) of the *Constitution*, on the basis of the declarations made in this Ruling.

13. The First Defendant and its members are to respond to the Claimant consistently and cooperatively in the discharge of his audit function, in accordance with the declarations made in this Ruling.

14. On the Counter-Claim, it is declared that annual audits of the First Defendant required by section 108(3) of the *Constitution* were not completed for the financial years 2019 to 2023 within the timeframe that provision contemplates. The declaration that the Counter-Defendant comes to this Court without clean hands is refused, and that part of the Counter-Claim is dismissed. The Defendants' submission that the Claimant's claim should be dismissed, or the relief granted materially qualified, for want of clean hands is rejected.

15. The First and Second Defendants shall pay the Claimant's costs of this proceeding, including the Counter-Claim, such costs to be agreed and, failing agreement, to be taxed.

THE COURT

THE HIGH COURT OF SOLOMON ISLANDS
PUISNE JUDGE

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Hon. Justice Augustine S. Aulanga

PUISNE JUDGE