

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 37.

Supreme Court.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Justice at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 37.

Supreme Court Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 37.

Supreme Court Act.

Being an Act to implement Subdivision VI.5.C (*the Supreme Court of Justice*) of the Constitution by making further provision in relation to the Supreme Court of Justice.¹

PART I.—PRELIMINARY.

1. Interpretation.

(1) In this Act, unless the contrary intention appears—

“appeal” includes the reservation of a case, a point in a case or a question of law for the consideration of the Supreme Court under Section 15 or 21;

“appellant” includes a person who wishes to appeal under this Act;

“charge” includes an indictment and an information;

“defendant” includes a person against whom relief is sought in a matter or who is required to attend the proceeding in a matter as a party to the proceedings and, in relation to a criminal proceeding, includes the accused person;

“Judge” means a Judge of the Supreme Court;

“judgement” includes a finding, decree, order, rule, conviction, verdict and sentence, a decree, order or rule nisi, and a refusal to make a finding, decree, order or rule;

“matter” or “proceeding” includes any proceedings in the Supreme Court or the National Court whether or not between parties, and also any incidental proceedings in any proceedings;

“party” includes, in relation to criminal proceedings, a prosecutor and a defendant;

“plaintiff” includes a person seeking relief against another person by any form of proceedings in the Supreme Court or the National Court and, in relation to criminal proceedings, includes the prosecutor;

“the Registrar” means the Registrar of the Supreme Court;

“the Rules of Court” means the Rules of Court of the Supreme Court.

(2) For the purposes of this Act, where a person is acquitted on the ground of unsoundness of mind which was not set up by him, he shall be deemed to have been convicted, and any order to keep him in custody shall be deemed to be a sentence.

PART II.—THE SUPREME COURT.

2. Judge sitting on appeal from his own judgement.

(1) Subject to Subsection (2), a Judge shall not sit as a member of the Supreme Court if he has previously adjudicated (whether on appeal or otherwise) on the merits of the case.

¹ The original Act was made by the Constituent Assembly as a Provisional Act of the Parliament. See Constitution, Section 266(2).

(2) A Judge is not precluded from sitting as a member of the Supreme Court in cases where he has given an interlocutory judgement only, or any other judgement not going to the merits of the case.

3. Continuation of appeal notwithstanding absence of Judge.

(1) Where in the course of an appeal before the Supreme Court and at any time before the delivery of the judgement, a Judge hearing the appeal is unable, through illness or any other cause, to attend the proceedings or otherwise to exercise his functions as a Judge—

- (a) the hearing of the appeal shall, subject to Subsection (2), continue; and
- (b) the judgement shall be given by the remaining Judges; and
- (c) the Court shall be deemed to be duly constituted.

(2) Where—

- (a) either party does not agree to the remaining Judges continuing to hear the appeal; or
- (b) in any case, there is only one Judge remaining able to hear the appeal,

the appeal shall be reheard.

PART III.—APPEALS TO THE SUPREME COURT.¹

Division 1.—General.

4. Right of appeal from National Court.

(1) An appeal in accordance with this Act lies to the Supreme Court from a judgement of the National Court.

(2) An appeal lies in any civil or criminal proceedings, to the Supreme Court from a Judge of the National Court sitting on appeal—

- (a) on a question of law; or
- (b) on a question of mixed fact and law; or
- (c) with the leave of the Supreme Court, on a question of fact.

5. Incidental directions and interim orders.

(1) Where an appeal is pending before the Supreme Court—

- (a) a direction not involving the decision on the appeal; or
- (b) an interim order to prevent prejudice to the claims of the parties; or
- (c) an order in any proceedings (other than criminal proceedings) for security for costs; or
- (d) an order dismissing an appeal in any proceedings (other than criminal proceedings) for default in furnishing security; or
- (e) an order admitting an appellant to bail,

may be made by a Judge.

(2) A direction or order made under Subsection (1) shall be deemed to be a direction or order of the Supreme Court.

(3) A direction or order made under Subsection (1) may be discharged or varied by the Supreme Court.

¹ See, also, Constitution, Sections 155 and 166.

6. Appeal to be by way of rehearing.

(1) An appeal to the Supreme Court shall be by way of rehearing on the evidence given in the court the decision of which is appealed against, subject to the right of the Supreme Court—

- (a) to allow fresh evidence to be adduced where it is satisfied that the justice of the case warrants it; and
- (b) to draw inferences of fact.

(2) For the purposes of hearing and determining an appeal, the Supreme Court has all the powers, authority and jurisdiction of a Judge exercising the jurisdiction of the National Court.

7. Judgements of the Supreme Court.

(1) Subject to Subsection (2), a judgement of the Supreme Court shall be in accordance with the opinion of the majority of the Judges present.

(2) If in an appeal the opinions of the Judges are divided in such a way that there is no majority opinion, the judgement appealed against stands.

8. Supplemental powers of Supreme Court.

(1) For the purposes of this Act, the Supreme Court may, if it thinks it necessary or expedient in the interests of justice to do so—

- (a) order the production of any document, exhibit or other thing connected with the proceedings the production of which appears to it necessary for the determination of the case; and
- (b) order any persons who would have been compellable witnesses at the trial to attend and be examined before the Court, whether or not they were called at the trial, or order any such person to be examined on oath before—
 - (i) a Judge of the National Court; or
 - (ii) an officer of the Supreme Court; or
 - (iii) a magistrate of a court of summary jurisdiction; or
 - (iv) any other person appointed by the Court for the purpose,and may admit as evidence any deposition so taken; and
- (c) receive the evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness, and, if the appellant consents, of the husband or wife of the appellant in cases where the evidence of the husband or wife could not have been given at the trial except with that consent; and
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts or any scientific or local investigation that cannot, in the opinion of the Court, conveniently be conducted before the Court—order the reference of the question for inquiry and report, in accordance with Part IV., by a referee appointed by the Court and act on the report of the referee so far as it thinks fit to adopt it; and
- (e) exercise in relation to the proceedings of the Court any other powers that may for the time being be exercised by the National Court on appeals or applications; and

(f) issue any warrants necessary for enforcing the orders or sentences of the Court.

(2) The Supreme Court shall not increase a sentence in a criminal proceeding by reason of, or in consideration of, any evidence given under Subsection (1).

9. Attendance of appellant in custody.¹

Except with the consent of the appellant, the hearing of an appeal to the Supreme Court shall not take place in the absence in custody of the appellant unless he so conducts himself as to render the continuance of the proceedings in his presence impracticable and the Court orders him to be removed and the hearing of the appeal to continue in his absence.

10. Powers that may be exercised by Judge.

(1) Any power of the Supreme Court under this or any other Act—

(a) to give leave to appeal; or

(b) to extend the time within which notice of appeal or of an application for leave to appeal may be given; or

(c) to admit an appellant to bail,

may be exercised by a Judge in the same manner as it may be exercised by the Court.

(2) Where a Judge refuses an application in relation to a matter specified in Subsection (1), the appellant may apply to the Supreme Court to have the matter determined by that Court.

11. Frivolous or vexatious appeals.²

(1) Notwithstanding this Act, where the Registrar is of the opinion that a notice of appeal, or a notice of an application for leave to appeal, does not show any substantial ground of appeal, the Registrar may refer the appeal to the Supreme Court for summary determination.

(2) Where the Registrar refers a notice of appeal, or notice of an application for leave to appeal, to the Supreme Court under Subsection (1), and the Court is satisfied that the appeal—

(a) is frivolous or vexatious; and

(b) can be determined without a full hearing,

it may, notwithstanding anything in this Act or any other law, dismiss the appeal summarily without calling on any person to attend the hearing.

12. Judgements by less than the full number of Judges.

(1) When any cause or matter, after being fully heard before the Supreme Court, is ordered to stand for judgement, it is not necessary that all the Judges before whom it was heard be present together in Court to declare their opinions on it, but the opinion of any of them—

(a) may be reduced to writing; and

(b) may be read or handed down to the parties or their counsel by any other Judge at any subsequent sitting of the Supreme Court at which judgement in the cause or matter is appointed to be delivered.

¹ See, also, Constitution, Section 37(5).

² But see Constitution, Section 37, especially Subsections (1) (5) and (15).

(2) In a case referred to in Subsection (1), the question shall be decided in the same manner, and the judgement of the Court has the same force and effect, as if the Judge whose opinion is so read or handed down had been present in Court and had declared his opinion in person.

Division 2.—Additional Provisions Relating to Appeals in Civil Cases.

13. Application of Division 2.

This Division applies to and in relation to proceedings other than criminal proceedings.

14. Civil appeals to the Supreme Court.

(1) Subject to this section, an appeal lies to the Supreme Court from the National Court—

- (a) on a question of law; or
- (b) on a question of mixed fact and law; or
- (c) with the leave of the Supreme Court, on a question of fact.

(2) An appeal does not lie from an order of the National Court made by consent of the parties.

(3) No appeal lies to the Supreme Court without leave of the Supreme Court—

- (a) from an order allowing an extension of time for appealing or applying for leave to appeal; or
- (b) from an interlocutory judgement made or given by the National Court except—
 - (i) where the liberty of the subject or the custody of infants is concerned; or
 - (ii) in cases of granting or refusing an injunction or appointing a receiver; or
 - (iii) in such other cases prescribed by the Rules of Court as are in the nature of final decisions; or
- (c) from an order of the National Court as to costs only that by law are left to the discretion of the National Court.

(4) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory judgement.

15. Cases or points of law reserved for Supreme Court.

(1) A Judge or Judges of the National Court sitting in the exercise of any jurisdiction other than criminal jurisdiction—

- (a) may reserve any case or any point in a case for the consideration of the Supreme Court; or
- (b) may direct any case or point in a case to be argued before the Supreme Court,

and the Supreme Court may hear and determine any such case or point so reserved or directed to be argued.

(2) Except where the contrary intention expressly appears in a law, the powers conferred by Subsection (1) may be exercised in relation to any appeal or matter that comes before a Judge or the National Court under any law by which a Judge or that Court is designated as the Judge, Court, arbitrator or person appointed to hear and determine the

appeal or matter, notwithstanding that the determination of the Judge or of the Court is expressed to be final or without appeal.

16. Decision, etc., on appeal.

On the hearing of an appeal, the Supreme Court shall inquire into the matter and may—

- (a) adjourn the hearing from time to time; or
- (b) affirm, reverse or modify the judgement; or
- (c) give such judgement as ought to have been given in the first instance; or
- (d) remit the case in whole or in part for further hearing; or
- (e) order a new trial.

17. Time for appealing under Division 2.

Where a person desires to appeal to or to obtain leave to appeal from the Supreme Court, he shall give notice of appeal, or notice of his application for leave to appeal, as the case may be, in the manner prescribed by the Rules of Court within 40 days after the date of the judgement in question, or within such further period as is allowed by a Judge on application made to him within that period of 40 days.

18. Security for appeal.

(1) The Supreme Court or a Judge may, in special circumstances, order that just security be given for the costs of an appeal or an application for leave to appeal and, if an application is granted, for the prosecution of the appeal.

(2) If any security ordered under Subsection (1) is not given in accordance with the order, the appeal, or the application for leave to appeal, as the case may be, shall be deemed to have been abandoned.

19. Stay of proceedings on appeal.

Unless otherwise ordered by the Supreme Court or a Judge, an appeal, or an application for leave to appeal, to the Supreme Court does not operate as a stay of proceedings.

Division 3.—Additional Provisions Relating to Appeals in Criminal Cases.

20. Application of Division 3.

This Division applies to and in relation to criminal proceedings.

21. Reservation of points of law.

(1) When any person is indicted, the National Court shall, on the application of counsel for the accused person made before verdict, and may in its discretion, before or after verdict without such application, reserve any question of law that arises on the trial for the consideration of the Supreme Court.

(2) If the accused person is convicted, and a question of law has been reserved under Subsection (1) before judgement, the National Court may—

- (a) pronounce judgement on the conviction and respite execution of the judgement; or

(b) postpone the judgement until the question has been considered and decided, and may—

- (c) commit the person convicted to prison; or
- (d) admit him to bail on recognizance, with or without sureties, and in such sum as the Court thinks proper, conditioned to appear at such time and place as the Judge directs, and to render himself in execution, or to receive judgement, as the case may be.

(3) The National Court shall state, in the case signed by the Judge or Judges exercising the jurisdiction of the Court, the question of law reserved under Subsection (1), with the special circumstances on which it arose, and the case shall be transmitted to the Supreme Court.

(4) Any question reserved under Subsection (1) shall be heard and determined by the Supreme Court.

(5) Any question reserved under Subsection (1) shall be heard and determined after argument by and on behalf of the prosecution, and of the accused or convicted person or persons, if they desire that the question shall be argued, and the Supreme Court may—

- (a) affirm the judgement given at the trial; or
- (b) set aside the verdict and judgement and order a verdict of not guilty or other appropriate verdict to be entered; or
- (c) arrest the judgement; or
- (d) amend the judgement; or
- (e) order a new trial; or
- (f) make such other order as justice requires,

or the Court may send the case back to be amended or restated.

22. Criminal appeals.

A person convicted by the National Court may appeal to the Supreme Court—

- (a) against his conviction, on any ground that involves a question of law alone; and
- (b) against his conviction, on a question of mixed fact and law; and
- (c) with the leave of the Supreme Court, or on the certificate of the National Court that it is a fit case for appeal, against his conviction on any ground of appeal—
 - (i) that involves a question of fact alone; or
 - (ii) that appears to the Supreme Court to be a sufficient ground of appeal; and
- (d) with the leave of the Supreme Court, against the sentence passed on his conviction, unless the sentence is one fixed by law.

23. Determination of appeals in ordinary cases.

(1) Subject to Subsection (2), on an appeal against a conviction the Supreme Court shall allow the appeal if it thinks that—

- (a) the verdict should be set aside on the ground that under all the circumstances of the case it is unsafe or unsatisfactory; or

- (b) the judgement of the Court before which the appellant was convicted should be set aside on the ground of a wrong decision on any question of law; or
- (c) there was a material irregularity in the course of the trial,

and in any other case shall dismiss the appeal.

(2) Notwithstanding that the Supreme Court is of the opinion that the point raised in the appeal might be decided in favour of the appellant, it may dismiss the appeal if it considers that no miscarriage of justice has actually occurred.

(3) If the Supreme Court allows an appeal against conviction, it shall, subject to this Act, quash the conviction and direct a verdict of not guilty be entered.

(4) On an appeal against sentence, if the Supreme Court is of opinion that some other sentence, whether more or less severe, is warranted in law and should have been passed, it shall quash the sentence and pass the other sentence in substitution for it, and in any other case shall dismiss the appeal.

24. Appeal by Public Prosecutor against sentence.

(1) In this section "sentence" includes any order made on conviction with reference to the person convicted or his property.

(2) The Public Prosecutor may appeal to the Supreme Court against any decision of the National Court, whether on appeal or sitting as a court of first instance, as to sentence, and the Supreme Court may in its discretion vary the sentence and impose such sentence as it thinks proper.

25. Appeal against quashing of conviction.

Where the National Court has given a judgement quashing a conviction, or any count or part of a charge, the Public Prosecutor may appeal to the Supreme Court against the judgement, and the Supreme Court may—

- (a) determine the appeal; and
- (b) if the appeal is sustained make such order for the prosecution of the trial as it thinks necessary or desirable.

26. Reference of point of law following acquittal on indictment.

(1) Where a person tried on indictment has been acquitted whether in respect of the whole or part of the indictment and the Principal Legal Adviser desires the opinion of the Supreme Court on a point of law that has arisen in the case—

- (a) the Principal Legal Adviser may, within 40 days after the acquittal, refer the point to the Supreme Court; and
- (b) the Court shall, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of its consideration of a point referred to it under this section, the Supreme Court shall hear argument—

- (a) by, or by counsel on behalf of, the Principal Legal Adviser; and
- (b) if the acquitted person desires to present any argument to the Court, by counsel on his behalf or, with the leave of the Court, by the acquitted person himself; and
- (c) by, or by counsel on behalf of—
 - (i) the Public Prosecutor; and

(ii) the State Solicitor,

or either of them, if they desire to present any argument to the Court.

(3) No report of proceedings under this section shall be published that discloses the name or identity of any person charged at the trial or affected by the decision given at the trial.

(4) Any publication in contravention of Subsection (3) is punishable as contempt of the Supreme Court.

(5) A reference under this section does not affect the trial in relation to which the reference is made or any acquittal in that trial.

27. Powers of Supreme Court in special cases.

(1) If it appears to the Supreme Court that an appellant, though not properly convicted on some charge, or on some count or part of the charge, has been properly convicted on some other charge, or on some other count or part of the charge, the Court may—

- (a) affirm the sentence passed on the appellant; or
- (b) pass such sentence in substitution for it as it thinks proper and is warranted in law by the verdict on the charge or on the count or part of the charge, on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and he could on the charge have been found guilty of some other offence, and the Supreme Court is satisfied as to facts that proved him guilty of the other offence, instead of allowing or dismissing the appeal the Court may—

- (a) substitute for the verdict a verdict of guilty of the other offence; and
- (b) pass such sentence in substitution for the sentence passed at the trial as is proper and as is warranted in law for that other offence, not being a sentence of greater severity.

(3) If on appeal it appears to the Supreme Court that although the appellant committed the act or made the omission charged against him he was not of sound mind at the time when the act or omission alleged to constitute the offence occurred, so as not to be responsible for it according to law, the Court may—

- (a) quash the judgement given at the trial; and
- (b) order the appellant to be kept in strict custody in the same manner as if that fact had been found under Section 592 of the Criminal Code.

28. New trial.

(1) If on an appeal against conviction, the Supreme Court thinks that—

- (a) a miscarriage of justice has occurred; and
- (b) having regard to all the circumstances, the miscarriage of justice can be more adequately remedied by an order for a new trial rather than by any other order that the Court has power to make,

the Court may, of its own motion or on the application of the appellant, order a new trial in such manner as it thinks proper.

(2) Where a new trial is ordered, the Supreme Court may make such order as it thinks proper for the safe custody of the appellant or for admitting him to bail.

29. Time for appealing under Division 3.

(1) Subject to Subsection (2), where a person convicted desires to appeal or to obtain leave to appeal to the Supreme Court, he shall give notice of appeal, or notice of his application for leave to appeal, as the case may be, in the manner prescribed by the Rules of Court within 40 days after the date of conviction.

(2) The time within which notice of appeal, or notice of an application for leave to appeal, may be given may be extended at any time by the Supreme Court on application made within 40 days after the date of conviction.

(3) In the case of a conviction involving a sentence of death or of corporal punishment—

- (a) the sentence shall not be carried out until after the expiration of 40 days, or such further time as is allowed under this section, after the date of conviction; and
- (b) if notice is given in accordance with Subsection (1), the sentence shall not be carried out until after the determination of the appeal, or where an application for leave to appeal is finally refused, of the application.

30. Suspension of order for restoration of payment of compensation or expenses.

(1) The operation—

(a) of any order made on conviction by the court of first instance or by the National Court on appeal for—

- (i) the payment of compensation or of any of the expenses of the prosecution; or
- (ii) the restoration of any property to any person; and

(b) of any provision of any law re-vesting, in the case of any such conviction, in the original owner or his personal representative the property in stolen goods,

is (unless the court of first instance or the National Court directs to the contrary in any case in which in its opinion the title to the property is not in dispute) suspended—

- (c) in any case until the expiration of 40 days after the date of the conviction, or where the Supreme Court or a Judge allows, under Section 29(2), a further period for giving notice of appeal, or notice of an application for leave to appeal, until the expiration of the further period; and
- (d) where notice of appeal, or notice of an application for leave to appeal, is given in accordance with this Act, until the determination of the appeal or where an application for leave to appeal is finally refused, of the application.

(2) Where the operation of an order or provision is suspended under Subsection (1), the order or provision does not take effect as to the property in question if the conviction is quashed on appeal.

(3) Where the operation of an order or provision is suspended under Subsection (1), the Supreme Court or a Judge may give such directions as it or he thinks proper for the custody, during the suspension, of any property or goods involved.

(4) The Supreme Court may, by order, annul or vary an order made for—

- (a) the payment of compensation or of any of the expenses of the prosecution; or

(b) the restoration of any property to any person even if the conviction is not quashed,
and the order, if annulled does not take effect, and if varied takes effect as so varied.

(5) In Subsection (4), "order" includes a direction referred to in Subsection (1).

31. Costs of appeal.

(1) On the hearing and determination of an appeal, no costs shall be allowed to either side.

(2) The expenses—

(a) of any witness attending on the order of the Supreme Court or examined in any proceedings incidental to the appeal; and

(b) of the appearance of an appellant, when in custody, on the hearing of his appeal or on any proceedings preliminary or incidental to the appeal; and

(c) of and incidental to—

(i) any examination of witnesses conducted by any person appointed by the Court for the purpose; or

(ii) any reference of a question to a referee appointed by the Court under Section 8(1)(d), shall be paid out of the Consolidated Revenue Fund to an amount allowed by the Court, subject to any provision as to rates and scales of payment made by the Rules of Court.

32. Duties of Registrar with respect to notices of appeal, etc., in criminal proceedings.

(1) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal, or notices of application for leave to appeal, under this Act in criminal proceedings to—

(a) any person who asks for them; and

(b) officers of courts; and

(c) officers in charge of corrective institutions, rural lock-ups and police lock-ups; and

(d) other officers or persons as he thinks fit.

(2) The officer in charge of a corrective institution, rural lock-up or police lock-up shall cause—

(a) the forms and instructions referred to in Subsection (1) to be placed at the disposal of detainees desiring to appeal or to make any application under this Act; and

(b) any such notice given by a detainee in his custody to be forwarded on behalf of the detainee to the Registrar.

PART IV.—REFEREES.

33. Powers and remuneration of referees.

(1) Where a reference is made under Section 8(1)(d), the referee—

(a) subject to the Rules of Court, has such authority and shall conduct the reference in such manner as the Supreme Court directs; and

(b) shall be deemed, for the purpose of the conduct of the reference to be an officer of the Supreme Court.

(2) The report of a referee shall, unless set aside by the Supreme Court, be deemed to be a finding of fact.

(3) Referees shall be paid such fees and expenses as are prescribed by the Rules of Court.

34. Directions by Supreme Court.

A referee may seek the directions of the Supreme Court, and shall comply with any such directions whether or not sought by him.

35. Power of Supreme Court to impose terms as to costs, etc.

Where an order is made under Section 8(1)(d) in any proceedings (other than criminal proceedings), the Supreme Court may impose such terms as to costs or otherwise as the Court thinks proper.

PART V.—ADMINISTRATION.

36. Principal Seat of Supreme Court.

The Principal Seat of the Supreme Court shall be in the National Capital District.

37. Sittings of the Supreme Court.

Sittings of the Supreme Court shall be held as required at—

(a) the Principal Seat of the Court; and

(b) at such other places as required,

at such times as the Court determines.

38. Principal Registry of Supreme Court.

There shall be a Principal Registry of the Supreme Court at the Principal Seat of the Court.

39. Registrar and officers.

The Judicial and Legal Services Commission may appoint—

(a) an officer (including the Registrar of the National Court) to be the Registrar of the Supreme Court; and

(b) such other officers as are necessary.

40. Powers of Registrar.

The Registrar may administer oaths and perform such duties in respect of any proceedings pending in the Supreme Court as are assigned to him by the Rules of Court or by any special order of the Court.

41. Seal, etc.

(1) The Supreme Court shall have a seal of the Court for the sealing of all writs and other instruments and documents issued out of the Court and requiring to be sealed.

(2) In addition to the seal provided for by Subsection (1), the Supreme Court shall, for the purposes of authentication, have a seal or stamp with which any summons, office copy, certificate, report or other document requiring authentication may be sealed or stamped.

42. Continuance of Rules of Court.¹

Subject to Section 184 (*rules of court*) of the Constitution, the *Supreme Court (Full Courts Appeals) Rules* made under the *Papua New Guinea Act 1949-1975* of Australia, as in force immediately before its repeal, and in force immediately before the repeal are, by virtue of this section, adopted as Rules of Court of the Supreme Court and apply, with the necessary modifications, to the extent to which they applied, or purported to apply, immediately before Independence Day.

43. Practice and procedure.¹

Subject to any Rules of Court continued in force by this Act or made under Section 184 (*rules of court*) of the Constitution and except as directed by the Supreme Court at any stage of the matter, the practice and procedure in and in relation to a matter in the Supreme Court shall be the practice and procedure provided by law in relation to matters of that kind in the pre-Independence Full Court of the Supreme Court.

¹ But see Constitution, Section 184. No provision seems to have been made for the adoption of Rules of Court by Act, nor do the pre-Independence Rules appear to have been adopted by Constitution, Section Sch. 2.6. Sections 42 and 43 may, however, be saved by Constitution, Section 184(4).

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 37.

Supreme Court Rules.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 37.

Supreme Court Rules.

Being Rules of Court for regulating and prescribing the practice and procedure of the Supreme Court of Justice in relation to—

- (a) appeals; and
- (b) the original interpretative jurisdiction of the Supreme Court pursuant to Sections 18 (*original interpretative jurisdiction of the Supreme Court*) and 19 (*special references to the Supreme Court*) of the Constitution; and
- (c) the reservation of a case or point of law; and
- (d) references to the Supreme Court of a point of law, following an acquittal on an indictment, pursuant to Section 26 of the *Supreme Court Act*.

MADE by the Judges of the Supreme Court under Section 184 (*rules of court*) of the Constitution.

PART I.—PRELIMINARY.

1. Interpretation.

In these Rules, unless the contrary intention appears—

- “the Act” means the *Supreme Court Act*;
- “authority”, in relation to any special reference, means the authority by whom the application is made under Section 19 of the Constitution;
- “court” means the Supreme Court;
- “the principal legal adviser” means the principal legal adviser within the meaning of the *Principal Legal Adviser Act*;
- “reference”, in Part II., means a reference to the court of a question relating to the interpretation or application of any provisions of a Constitutional law under Section 18 of the Constitution;
- “registry” means the Principal Registry of the court;
- “special reference” means an application to the court for its opinion on any question relating to the interpretation or application of any provision of a Constitutional law under Section 19 of the Constitution.

PART II.—ORIGINAL JURISDICTION.

Division 1.—Commencement and Continuance of Proceedings.

2. Commencement, etc., of proceedings.

(1) Subject to these Rules, proceedings which relate to a matter or question within the original jurisdiction of the court shall be entitled “In the Supreme Court of Justice” and shall be commenced and continued, with the necessary modifications, in accordance with the Rules of the National Court.

(2) Where any proceedings under Subsection (1) are pending before the court—

- (a) a direction not involving a final decision on the proceedings; and
- (b) an interim order to prevent prejudice to the claims of the parties; and
- (c) an order for security for costs; and
- (d) an order in the nature of orders such as are referred to in Section 8(1)(a), (b) and (d) of the Act,

may be made by a Judge.

(3) On the direction of the court, on the application of a party to the proceedings or of its own motion, a single Judge may take evidence on any issue of fact necessary for the determination of the proceedings and state those facts as found by him, and the court may act on such statement of facts as far as it thinks fit to adopt it.

Division 2.—References under the Constitution.

Subdivision A.—References under Section 18 (*original interpretive jurisdiction of the Supreme Court*) of the Constitution.

3. Application of Section 4.

Where a court or tribunal making a reference consists not of a Judge of the National Court but of a magistrate or some other officer, Section 4 applies, unless a contrary intention appears, as if the description of his office were substituted where the words "Judge of the National Court" are used.

4. Procedure on making reference.

(1) Where a Judge of the National Court proposes to make a reference under Section 18 of the Constitution, he may give such directions as he considers proper for the drafting of the reference and for the preparation of the documents for the court, including copies for use at the hearing by the court and the parties.

(2) A reference shall set forth the question to be referred and such facts as are admitted or found by the Judge of the National Court and are necessary for the proper consideration of the question.

(3) The court may act on a statement of the facts referred to in Subsection (2) insofar as it thinks fit to adopt it.

(4) Where a question turns on the form of the pleadings before the court or tribunal from which it is to be referred, then so much of the pleadings shall be set out in the reference as raise the question.

(5) The original reference shall be signed by the Judge of the National Court by whom the reference is to be made or in his absence another Judge of the National Court, and shall be transmitted to the Registrar who shall set it down for hearing, unless the court or a Judge of the court otherwise orders, at the first sittings of the court to be held after 28 days immediately after the date of its receipt by the Registrar.

(6) An application to the court preliminary to and relating to a proposed reference shall be dealt with at such time as the Chief Justice, or if he is not available, the next most senior Judge available, directs.

(7) A reference shall be entitled "Reference under Section 18 of the Constitution", together with the year and number of the reference.

(8) The Registrar shall, at least seven days before the date of hearing, cause a copy of the reference to be made available to each of the Judges constituting the court to consider the case, and to the parties to the reference or their lawyers.

(9) The Judge by whom the reference is made or, in his absence, another Judge of the National Court may, on the application of a party or of his own motion, on notice to the parties, amend the reference at any time before argument.

5. Certain rules to apply.

Sections 28, 40, 41, 42 and 44(1), with the necessary modifications, apply as if the reference were an appeal to the court.

6. Section 2 to apply where reference is pending.

Where a reference is pending before the court, Section 2(2) applies as if such reference constituted proceedings within the original jurisdiction of the court.

Subdivision B.—Special references under Section 19 (*special references to the Supreme Court*) of the Constitution.

7. Application of certain sections.

This Subdivision applies to special references.

8. Form of special reference.

(1) A special reference shall be in writing and shall—

- (a) state the question the subject of the reference, to which, if appropriate, a copy of the law or proposed law, the validity of which is in question, shall be annexed; and
- (b) specify the relevant provisions of the Constitutional law; and
- (c) be in Form 1; and
- (d) be signed by the authority making the application, or by the proper officer on behalf of the authority, as required by law; and
- (e) be filed in the registry.

(2) A special reference shall be entitled "Special reference under Section 19 of the Constitution", together with the year and number of the special reference.

9. Application for directions.

(1) Within seven days of the special reference being filed, the authority shall apply to a Judge for directions in relation to—

- (a) the form and contents of the question to be decided by the court; and
- (b) the provision of counsel adequate to enable full argument of the question before the court; and
- (c) the submission of legal argument in writing; and
- (d) the setting down of the question for hearing by the court, and the date of the hearing; and
- (e) the contents of the reference book; and
- (f) such other matters as the Judge considers proper.

(2) The application shall be made in Form 2.

10. Special reference may be amended.

The authority may, at any time by leave of the court or a Judge, amend the special reference on notice to such persons as the court or Judge may direct.

11. Special reference may be withdrawn.

The authority may withdraw the special reference—

(a) at any time before the court has begun the hearing; or

(b) after the hearing has begun but before the court has given its opinion, by leave of the court and on such conditions as the court thinks fit,

and notice of such withdrawal shall be given on behalf of the authority to such persons as the court or a Judge may direct.

12. Court may decline to give opinion.

The court may decline to give an opinion on the question the subject of the special reference if, in its opinion, the question is trivial, vexatious, hypothetical, or unlikely to have any immediate relevance to the circumstances of Papua New Guinea.

PART III.—APPEALS.

13. Application of Part III.

This Part applies to all appeals brought by virtue of the Act.

14. The appellant.

Where the court or a Judge directs that a party shall have the carriage of proceedings, this Part applies as if that party were included in the description "the appellant".

15. Sittings.

The court shall sit on the fourth Monday of each of the months of March, May, July, September and November in each year and such other days as may be specially appointed from time to time by the Chief Justice, the Deputy Chief Justice or next most senior Judge who is available, as the case may be.

16. Adjournment of appeal.

If for any reason an appeal is not heard or disposed of at the sittings of the court for which it was set down, it shall, subject to any direction which may be given by the court or by a Judge, stand adjourned to the next sittings of the court.

17. Judge may give directions in respect of cases reserved under Section 15 of the Act.

(1) Where a Judge of the National Court reserves a case or any point in a case or any question of law for consideration of the court under Section 15 of the Act, he or in his absence another Judge, may give such directions as he or that other Judge considers proper for the preparation of documents for the use of the court.

(2) Subject to any directions under Subsection (1) the provisions of these Rules relating to setting down for hearing and preparation and distribution of documents shall, with the necessary modifications, apply as if proceedings under Section 15 of the Act were an appeal by the party whom the Judge directs shall have the carriage of the proceedings.

18. Notice of Appeal.

(1) An appeal shall be instituted by the filing of a Notice of Appeal.

(2) A Notice of Appeal shall show—

- (a) that an appeal lies without leave or that leave has been granted or the appropriate certificate given; and
- (b) whether the whole or part only, and what part, of the judgement is appealed from; and
- (c) brief but specific particulars of the grounds relied on in support of the appeal; and
- (d) what judgement the appellant seeks in place of that appealed from; and
- (e) an address for service of the appellant.

(3) Without derogating from the requirements of Subsection (2), where an appellant alleges that a judgement or order is against the evidence or the weight of the evidence, or that it is wrong in law, the Notice of Appeal shall specify the particulars relied on to demonstrate that it is against the evidence or the weight of the evidence, or the specific reasons why it is alleged to be wrong in law, as the case may be.

19. Filing, etc., Notices of Appeal.

(1) The Notice of Appeal shall be filed in the registry.

(2) On filing the notice under Subsection (1) the appellant shall, for the purposes of Sections 17 and 29 of the Act, be deemed to have given Notice of Appeal in the prescribed manner.

(3) Where the appeal is from a Judge of the National Court sitting on an appeal, a copy of the Notice of Appeal shall be left with the court or tribunal from the judgement of which appeal was brought to the Judge of the National Court.

(4) A copy of the Notice of Appeal shall be served promptly by or on behalf of the appellant on each party affected by the relief sought by the Notice of Appeal or interested in maintaining so much of the judgement as is appealed from.

(5) The court or a Judge may direct—

- (a) that Notice of Appeal be served on any other person; and
- (b) that service on a particular party or person be dispensed with; and
- (c) that service be effected in a particular manner.

20. Application for leave to appeal.

An application for leave to appeal shall be made by written notice—

- (a) showing that an appeal lies with leave; and
- (b) stating the nature of the case, the questions involved and the reasons why leave should be given; and
- (c) containing an address for service of the party giving the notice.

21. Filing, etc., of notice of application for leave to appeal.

(1) The notice of application for leave to appeal shall be filed in the registry.

(2) On filing the notice under Subsection (1), the applicant shall, for the purposes of Sections 17 and 18 of the Act, be deemed to have given notice of application for leave to appeal, in the prescribed manner.

(3) Sections 19(3), (4) and (5) and 25 shall apply, with the necessary modifications, to an application for leave to appeal and the notice of the application.

(4) When leave to appeal has been granted, the court may treat the notice of application for leave as Notice of Appeal but otherwise Notice of Appeal shall be filed within 21 days immediately after the date on which leave is granted or within such extended period as the court or a Judge may at any time allow.

22. Notice of appearance to be filed, etc.

A person served with a Notice of Appeal, or an application for leave to appeal, who desires to be heard at any stage of the proceedings shall, within 14 days immediately after service on him of the notice or application, as the case may be, file a notice of appearance containing an address for service and shall serve a copy of that notice of appearance on each of the other parties.

23. Objection to competency of appeal.

(1) A respondent who objects to the competency of an appeal, or of an application for leave to appeal, shall, within 14 days immediately after service on him of the Notice of Appeal or notice of application for leave to appeal, as the case may be, file in the registry a notice stating briefly but specifically the grounds of his objection and serve on the appellant a copy of that notice of objection.

(2) Any party may file affidavits.

(3) An objection of which notice has been given shall be determined by the court at or before the hearing of the appeal, or of the application for leave to appeal, as the case may be, as the court thinks proper.

(4) If notice of objection is not given and the appeal or the notice of application for leave to appeal is dismissed as incompetent, the respondent shall not receive any costs of the appeal unless the court, on special grounds, orders otherwise.

24. Cross appeal.

(1) A respondent who desires to appeal from any part of the judgement from which the appellant has appealed, or to seek a variation of a part of the judgement, need not institute a substantive appeal, but in addition to complying with Section 22 he shall within the period or extended period provided for by Section 17 of the Act, file in the registry a notice of cross appeal and promptly serve a copy of the notice on the appellant and any other person affected by the relief that he claims.

(2) The notice of cross appeal shall state what part of the judgement the respondent cross appeals from or contends should be varied, and shall, in the manner required by Section 18(3), state briefly but specifically the grounds of the cross appeal and the relief which he seeks in place of the judgement cross appealed from, or the variation of that judgement that he seeks.

(3) It is not necessary to give notice of cross appeal if a respondent proposes to contend that some matter of fact or law has been erroneously decided against him but does not seek a discharge or variation of a part of the judgement actually pronounced.

25. Setting down appeal.

(1) Subject to Subsection (2), unless the court or a Judge otherwise orders, an appeal shall be set down by the appellant for hearing at the first sittings of the court to be held after 28 days immediately after the institution of the appeal.

(2) An appeal referred to the court under Section 11 of the Act by the Registrar, and all applications to the court preliminary to an appeal, shall be dealt with at such time as the Chief Justice, or if he is not available, the next most senior Judge available in chambers, directs.

(3) If the appellant does not set down the appeal for hearing as prescribed by this section or by any order made under this section any respondent may set down his cross appeal for hearing and may also apply to the court by motion on notice for an order dismissing the appeal for want of prosecution.

(4) Where an appeal is set down for hearing, notice of the setting down shall promptly be served on the respondent, except where the appeal is one referred to the court under Section 11 of the Act by the Registrar.

26. Preparation, etc., of appeal books.

(1) As soon as practicable after a Notice of Appeal has been filed and served, the lawyer acting for the appellant shall—

- (a) make out a draft index of the documents which are to constitute the appeal book before the court; and
- (b) file the draft index in the registry; and
- (c) make an appointment to settle the draft index before the Registrar.

(2) The Registrar may vary the draft index as he thinks proper and may, if he thinks it necessary, obtain the direction of the Judge of the National Court from whose judgement the appeal is being brought.

(3) The appeal book for use on the hearing of an appeal shall, unless the court or a Judge otherwise orders, be prepared in bound volumes on paper of such size as may be approved by the Registrar, and otherwise in accordance with the provisions of Order XCIII of the Rules of the pre-Independence Supreme Court of Papua New Guinea as adopted by the *National Court Act* and every tenth line in each page shall be numbered.

(4) The thickness of any one volume of the appeal book shall not exceed 38 mm.

(5) The title page shall give the full and correct title of the proceedings, and the names of the lawyers for each party and their addresses for service.

(6) After the title page there shall follow the index, consisting of a complete list of documents contained in the appeal book as settled by the Registrar, indicating the page at which each document appears and, where a document is a copy, indicating that it is a copy.

(7) The index shall show—

- (a) the date of each document; and
- (b) in the case of exhibits—the exhibit mark on the document; and
- (c) in the case of documents marked for identification—the letters “m.f.i.” following the exhibit mark.

(8) In the index, the exhibits shall be arranged in the order in which they have been lettered or numbered.

(9) The documents shall be arranged in the appeal book in the following order:—

- (a) process and pleadings; and
- (b) evidence (oral or affidavit); and
- (c) testimony taken on commission or before an examiner and put in or used as evidence; and

(d) exhibits, which—

- (i) shall be arranged in chronological order according to the date borne by the documents, or in the case of manifestly or admittedly misdated documents, their known dates; and
- (ii) being documents that are undated—shall be placed in the sequence contended for by the appellant, but the appellant shall inform the respondent of the position or order proposed for the document, and the respondent may require that a note "Date and order disputed" be inserted in the appeal book at the head of the document; and
- (iii) where they include correspondence between or among two or more persons, or a group of documents which should be read consecutively and not interspaced among other documents, those letters forming the correspondence or the group of documents—shall be arranged in order of their dates and in a position together at a convenient place in relation to the other exhibits; and

(e) the reasons for judgement of the primary Judge or court; and

(f) the formal judgement or order of the primary Judge or court; and

(g) if the judgement appealed from is that of a Judge of the National Court sitting on an appeal—the Notice of Appeal, the reasons for judgement and the formal order in that proceeding; and

(h) the Notice of Appeal to the court; and

(i) the certificate referred to in Subsection (13).

(10) The date and a short description of each document shall precede it, but formal headings shall not be printed or copied, and jurats, formal identification of exhibits and similar formal information shall be omitted.

(11) Interrogatories and answers, and affidavits of documents, shall not be copied except so far as they were put in evidence.

(12) A copy of the appeal book shall be examined with the original documents, and all copies shall be corrected.

(13) The examined copy of the appeal book shall be filed in the registry with a certificate by the parties or their lawyers that it has been examined and is correct.

(14) The appeal book shall be prepared and produced in a manner satisfactory to the Registrar.

(15) Unless the court or a Judge otherwise orders, the appellant shall, not less than seven days before the commencement of the sittings at which the appeal is set down for hearing, lodge with the Registrar four copies of the appeal book or, if the Registrar expressly requests, six copies of the appeal book, for the use of the Judges on the hearing, and shall serve on each of the respondents separately represented two copies of the appeal book.

(16) Subject to Section 31 of the Act and to Subsection (19), the costs of the appeal book shall be costs in the cause, unless the court otherwise orders.

(17) When the evidence of witnesses is transcribed, there shall appear at the bottom of each page of such evidence the name of the witness, and whether he is examined, cross-examined, re-examined, or re-called.

(18) Only those documents that are relevant or necessary for the appeal shall be included in the appeal book.

(19) The costs of copies of unnecessary documents or of documents copied at unnecessary length will not be allowed.

27. Method of bringing evidence taken in lower court.

When any question of fact is involved in an appeal, the oral evidence taken in a lower court shall, subject to any special order, be brought before the court by the production of a copy of the Judge's notes certified by his associate, or a person authorized for the purpose if the evidence has been taken in the National Court, and, in any other case, by such other means as the Judge whose judgement is appealed from directs, or as the court may deem expedient.

28. List of legislation, etc., for court.

The lawyer for each party to proceedings under the Act before the court shall, if it is practicable to do so, at least 48 hours before the day on which the proceedings are listed for hearing or, if it is not practicable to do so, then as soon as practicable afterwards, supply to the associate to the presiding Judge of the court a list of all legislation and authorities to which that party may refer at the hearing.

29. Interlocutory order shall not operate so as to preclude relief.

An interlocutory order or rule from which there has been no appeal shall not operate so as to bar or prejudice the court from giving such decision on an appeal as may be just.

30. Service of notices, etc.

Subject to Section 19(5) service on any person of any notice or other document may be effected in the manner provided by law for the service of documents, or by leaving a copy at the address for service contained in the notice of that person or, if no proper notice has been given, at the address for service (if any) of that person in the proceeding from which the appeal is brought.

PART IV.—ADDITIONAL RULES FOR APPLICATIONS UNDER DIVISION III.3 OF THE ACT.

31. Reservation of points of law.

(1) Where a Judge of the National Court proposes to reserve a question of law under Section 21 of the Act, whether on the application of the accused or not, he may give such directions as he considers proper for the drafting of the case stating the question of law reserved and for the preparation of documents for the use of the court.

(2) A case stating a question of law reserved under Section 21 of the Act on the trial of a person indicted for an indictable offence shall set out such facts only as are relevant to raise the question of law reserved.

(3) Where any question turns on the form of the pleadings, then so much of the pleadings shall be set out as raises the question.

(4) A case under Section 21 of the Act shall state whether judgement on the conviction was pronounced or respited or was postponed and whether the convicted person was committed to prison or admitted to bail on recognizance to render himself in execution or receive judgement.

(5) The original case shall be transmitted by the Judge of the National Court by whom it is signed to the Registrar who shall set the case down for hearing in accordance with Section 27 of the Act and shall, at least seven days before the date of hearing, cause a copy of the case to be made available to each of the Judges constituting the court to consider the

case and shall deliver a copy to the Public Prosecutor and a copy to the accused or his lawyer.

(6) The Judge by whom the case is stated may amend the statement of the case at any time before argument.

32. Notice of Appeal under Section 24 of the Act.

A Notice of Appeal by the Public Prosecutor under Section 24 of the Act shall be filed in the registry within 40 days immediately after the pronouncement of the sentence or the quashing appealed from or within such further time as is allowed by the court or a Judge on application made within 40 days immediately after the decision or judgement appealed from.

33. Procedure on Notice of Appeal, Etc.

Where—

- (a) a Notice of Appeal or of application for leave to appeal has been filed under Section 22 or 24 of the Act; or
- (b) a case or point in a case has been reserved for the consideration of the court under Section 15 of the Act; or
- (c) a question of law has been reserved under Section 21 of the Act,

the trial Judge may report to the court giving his opinion on the case generally or on any point arising in the case of the appellant, and the court may—

- (d) request the trial judge whenever it appears to be necessary for the proper determination of any appeal or application to furnish it with a written report giving his opinion on the case generally or on any point arising in the case of the appellant; and
- (e) direct the Registrar to furnish that Judge with any document or information which it considers material,

and the Registrar shall, after the transmission of a report of the trial Judge to the members of the court, furnish promptly a copy of that report to each party to the appeal or application.

PART V.—REFERENCE OF POINTS OF LAW.

34. Interpretation of Part V.

In this Part unless the contrary intention appears "reference" means a reference of a point of law to the court under Section 26 of the Act.

35. Requirements for reference.

(1) Every reference shall be in writing and shall—

- (a) specify the point of law referred and, where appropriate, such facts of the case as are necessary for the proper consideration of the point of law; and
- (b) summarize the arguments intended to be put to the court; and
- (c) specify the authorities intended to be cited; and
- (d) be filed in the registry.

(2) A reference shall be entitled "Reference under Section 26 of the *Supreme Court Act*" together with the year and number of the reference.

36. Notice of reference to be served.

(1) The Registrar shall cause to be served on the person acquitted in whose case the point of law arose, notice of the reference which shall—

- (a) state that the reference will not affect the trial in relation to which it is made or any acquittal in that trial; and
- (b) invite the person acquitted, within such period as may be specified in the notice, being not less than 28 days immediately after the date of service of the notice, to inform the Registrar if he wishes to present any argument to the court and, if so, whether he wishes to present such argument in person or by counsel on his behalf.

(2) The court shall not hear argument by or on behalf of the principal legal adviser until the period specified in the notice has expired, unless the person acquitted agrees or has indicated that he does not wish to present any argument to the court.

(3) The Registrar shall cause to be sent by post, notice of the reference to the Public Prosecutor and the Public Solicitor.

37. Withdrawal, etc., of reference by principal legal adviser.

The principal legal adviser may withdraw or amend the reference at any time before the court has begun the hearing, or, after that, and until the court has given its opinion, may withdraw or amend the reference by leave of the court, any notice of such withdrawal or amendment shall be served on the person acquitted, on behalf of the principal legal adviser.

38. Service.

(1) For the purpose of this Part, service of a document on the person acquitted may be effected—

- (a) subject to Paragraph (c), in the case of a document to be served on a corporation by leaving it at or by sending it by post to the registered office of that corporation; and
- (b) subject to Paragraph (c), in the case of a document to be served on any other person—by—
 - (i) post as provided by law; or
 - (ii) delivering it to the person to whom it is directed; or
 - (iii) leaving it for him with some person at his last known or usual place of abode; or
- (c) by sending it by post addressed to the lawyer who acted for the person acquitted at the trial.

(2) For the purpose of this Part, service of a document on the Registrar may be effected by—

- (a) post; or
- (b) addressing it to him and leaving it at the registry; or
- (c) delivering it to the Registrar.

39. Directions of the court.

Where a reference has been made to the court, the court may give such directions as may be required concerning the terms of the reference and the matters to be included in it.

PART VI.—GENERAL.

40. Amendment, etc., of proceedings.

The court or a Judge may order that any person be added as a party to an appeal or that the proceedings be amended, and may impose such conditions as appear just, and give all consequential directions.

41. Appeal to court from direction of Judge.

A party dissatisfied with a direction given by a Judge under these Rules may on notice to the other parties to or concerned in the appeal, apply to the court which may make such order as appears just.

42. Orders may be made.

Where proceedings under the Act are pending, the court or a Judge may, subject to the Act, make such orders as are considered necessary for—

- (a) the custody or release on bail or otherwise of a person in custody; and
- (b) the custody, preservation and production of exhibits or other property; and
- (c) the suspension of payment of any fine; and
- (d) the suspension or variation of any order relating to restitution of property.

43. Forms, etc., in criminal proceedings.

The Registrar, after consultation with the Chief Justice, shall prepare and issue forms and instructions in relation to criminal proceedings under the Act for use in accordance with Section 32 of the Act.

44. Application for directions.

(1) Where a person desires to take any step in proceedings under the Act and the manner or form of the procedure is not prescribed, that person may apply to a Judge for directions and any step taken in accordance with directions so obtained shall be deemed regular.

(2) Where compliance with the provisions of these Rules relating to the preparation of documents or appeal books for the court may cause unnecessary hardship, expense or delay, the Registrar, after consultation with the Chief Justice, or if he is not available the senior Judge available in chambers, may waive compliance to such extent as in his opinion is reasonable.

45. Number of Judges.

On the hearing of a reference or a special reference under Part II. or a reference under Section 26 of the Act the court shall consist of an uneven number of Judges and the opinion of the majority shall prevail.

46. Transitional.

Where, immediately before 17 June 1977, the date on which the Supreme Court Rules 1977 came into force, an appeal was pending or proceeding before the court, that appeal shall proceed as if these Rules had not been made.

SCHEDULE.

PAPUA NEW GUINEA.

Supreme Court Act.

Rules Sec. 8(1)(c).

Form 1.

GENERAL FORM OF SPECIAL REFERENCE.

In the Supreme Court of Justice (Year and number.)

In the matter of a special reference under Section 19 of the Constitution.

an authority referred to in Section 19 of the Constitution, makes application that the Supreme Court give its opinion on a question relating to the interpretation or application of a provision of a Constitutional law.

The question is (state the question.)

A copy of the law or proposed law the validity of which is the subject of the special reference is annexed.

(Where appropriate, the law or proposed law is to be annexed.)

The relevant provisions of the Constitutional law are—

(state the sections by number and the title of the Constitutional law.)

Dated , 19

Signed by or on behalf of the authority as required by law

This application was filed by— (Name of the authority or his lawyer.)

PAPUA NEW GUINEA.

Supreme Court Act.

Rules Sec.9(2).

Form 2.

APPLICATION FOR DIRECTIONS.

In the Supreme Court of Justice (Year and number.)

In the matter of a special reference under Section 19 of the Constitution.

Take notice that application will be made to this Honourable Court at the Supreme Court House, Waigani, at a.m. on , 19 , for directions as to the conduct of this special reference.

(State any particular matter on which directions are desired.)

Dated , 19

This notice is given by— (Name of the authority or his lawyer.)

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 37.

Supreme Court.

APPENDIXES.

APPENDIX 1.

SOURCE OF THE SUPREME COURT ACT.

Part A.—Previous Legislation.

Supreme Court Act 1975 (No. 104 of 1975).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference ¹ .	Section, etc., in Revised Edition.	Previous Reference ¹ .
1	1	23	22
2	2	24	23
3	3	25	24
4	4	26	41
5	6	27	25
6	7	28	26
7	8	29	27
8	9	30	28
9	10	31	29
10	11	32	30
11	12	33	31
12	38	34	32
13	13	35	33
14	14	36	34
15	5	37	36
16	15	38	35
17	16	39	39
18	17	40	40
19	18	41	37
20	19	42	45
21	20	43	47
22	21		

¹Unless otherwise indicated, references are to the Act set out in Part A.

APPENDIX 2.

SOURCE OF THE SUPREME COURT RULES.

Part A.—Previous Legislation.

Supreme Court Rules 1977 (Statutory Instrument No. 22 of 1977).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference ¹ .	Section, etc., in Revised Edition.	Previous Reference ¹ .
1	1	24	24
2	2	25	25
3	3	26	26
4	4	27	27
5	5	28	28
6	6	29	29
7	7	30	30
8	8	31	31
9	9	32	32
10	10	33	33
11	11	34	34
12	12	35	35
13	13	36	36
14	14	37	37
15	15	38	38
16	16	39	39
17	17	40	40
18	18	41	41
19	19	42	42
20	20	43	43
21	21	44	44
22	22	45	45
23	23	46	47

¹Unless otherwise indicated, references are to the Rules set out in Part A.