

CLAIMS BY AND AGAINST THE ADMINISTRATION ORDINANCE 1951.⁽¹⁾

No. 11 of 1951.

An Ordinance to provide for Claims by and against the Administration of the Territory, and for other purposes.

BE it ordained by the Governor-General of the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Papua and New Guinea Act 1949-1950* as follows:—

1. This Ordinance may be cited as the *Claims by and against the Administration Ordinance 1951.*⁽¹⁾ Short title.
2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice⁽¹⁾ in the *Gazette*. Commencement.
3. The Ordinances specified in the First Schedule to this Ordinance are repealed. Repeal.
4. In this Ordinance, unless the contrary intention appears— Definitions.
 - “suit” includes any action or original proceeding between parties in any Court of competent jurisdiction;
 - “the Crown Law Officer” means the Crown Law Officer of the Territory;
 - “the Treasurer” means the Treasurer and Director of Finance of the Territory.
5. Any person making a claim against the Administration whether in contract or *in tort* may, in respect of the claim, bring a suit against the Administration in any Court of the Territory in which such a suit may be brought as between subject and subject. Suits against Administration.
6. Suits on behalf of the Administration may be brought in the name of the Administration by the Crown Law Officer or, in respect Suits by Administration.

(1) Particulars of this Ordinance are as follows:—

Date on which made by Gov.-Gen. in Council:	Date on which notified in <i>Cwllth. Gaz.</i>	Date on which took effect.
26. 4. 1951	30. 4. 1951	7. 6. 1951 (<i>Papua and N.G. Govt. Gaz. of 7. 6. 1951</i>)

PART A : CLAIMS BY AND AGAINST THE ADMINISTRATION—

of a suit brought in a Court of Petty Sessions or a District Court, by the Crown Law Officer or by a person appointed by the Administrator⁽²⁾ in that behalf.

Service of process where Administration is a party.

7. Where the Administration is a party to a suit, all process in the suit required to be served upon that party shall be served upon the Crown Law Officer or, in respect of a suit brought in a Court of Petty Sessions or a District Court, upon the Crown Law Officer or upon a person appointed by the Administrator⁽²⁾ to receive service.

Rights of parties.

8. In any suit to which the Administration is a party, the rights of parties shall, as nearly as possible, be the same, and judgment may be given and costs awarded on either side, as in a suit between subject and subject.

No execution against Administration.

9.—(1.) No execution or attachment or process in the nature of execution or attachment shall be issued against the property or revenue of the Administration in any suit.

(2.) When a judgment is given against the Administration, the registrar, clerk or other proper officer of the Court by which the judgment is given shall issue to the party in whose favour the judgment is given a certificate in accordance with Form 1 in the Second Schedule to this Ordinance.

Satisfaction of judgment by Treasurer.

10. On receipt of the certificate of a judgment against the Administration, the Treasurer shall satisfy the judgment out of moneys legally available.

Execution by the Administration.

11. When in any suit a judgment is given in favour of the Administration and against any person, the Administration may enforce the judgment against that person by process of extent, or by such execution, attachment, or other process as could be had in a suit between subject and subject.

Recovery of certain fines.

12.—(1.) When a fine is imposed upon a person otherwise than by a judgment or conviction of a Court, Magistrate or Justice, the Judge or a Magistrate of the Court by which, or the Magistrate or Justice by whom, the fine is imposed shall, if the fine is not immediately paid, by certificate under his hand in accordance with Form 2 of the Second Schedule to this Ordinance, certify that fact together with the name and the place of abode or business of the person on whom the fine is imposed and the cause and amount of the fine, and shall deliver the certificate or send it by post to the Crown Law Officer.

(2) Pursuant to Secs. 6 and 7, the Administrator, by notice dated 8.6.1951 and published in Papua and N.G. *Govt. Gaz.* of 14.6.1951, appointed "the Officer for the time being performing the duties of Senior Clerk at the District Head-quarters of each and every Division and District in the Territory as persons by whom suits on behalf of the Administration may be brought in a Court of Petty Sessions or District Court, and as persons upon whom all process required to be served in any suit brought in a Court of Petty Sessions or District Court to which the Administration is a party may be served".

(2.) Upon receipt of the certificate, the Crown Law Officer shall cause a final judgment to be signed in the Supreme Court for the amount of the fine together with One pound for costs.

(3.) A judgment under the last preceding sub-section may be in accordance with Form 3 in the Second Schedule to this Ordinance, and may be enforced in the same manner as any other judgment of the Supreme Court.

13.—(1.) When a person has entered into any recognizance to the Administration and the recognizance is forfeited, the Judge or a Magistrate of the Court before which, or the Magistrate or Justice before whom, it is forfeited may cause the recognizance to be estreated, and in that case the Judge, Magistrate or Justice shall, by a certificate under his hand in accordance with Form 4 in the Second Schedule to this Ordinance, certify that the forfeiture has taken place, and shall cause the recognizance and certificate to be delivered or sent by post to the Crown Law Officer.

Debts due by recognizance to be recovered by judgment.

(2.) Upon receipt of the recognizance and certificate the Crown Law Officer shall cause a final judgment to be signed in the Supreme Court for the amount of the recognizance and One pound for costs.

(3.) Every judgment under the last preceding sub-section may be in accordance with Form 5 in the Second Schedule to this Ordinance and may be enforced in the same manner as any other judgment of the Supreme Court.

14.—(1.) When a final judgment is signed under section twelve or section thirteen of this Ordinance, whether execution has been issued thereon or not, the Supreme Court or a Judge thereof may order satisfaction to be entered upon the judgment.

Judgments on fines and recognizances may be vacated by Court or Judge.

(2.) An order under this section shall not be made except upon a rule nisi or summons calling upon the Crown Law Officer to show cause, or unless it is proved by affidavit, to the satisfaction of the Court or Judge, either that the judgment has been satisfied, or that according to equity and good conscience and the real merits of the case the person against whom the judgment has been signed ought not to be required to satisfy the judgment.

15.—(1.) Any person who had, immediately before the first day of July, One thousand nine hundred and forty-nine, a claim, whether in contract or in tort, against—

Claims by and against former Administrations.

(a) the Territory of Papua;

(b) the Administration of the Territory of New Guinea; or

(c) the Provisional Administration of the Territory of Papua-New Guinea;

may, in respect of that claim, bring a suit against the Administration under the provisions of this Ordinance in all respects as if the claim were a claim against the Administration.

PART A: CLAIMS BY AND AGAINST THE ADMINISTRATION—

(2.) Where—

- (a) the Territory of Papua;
- (b) the Administration of the Territory of New Guinea; or
- (c) the Provisional Administration of the Territory of Papua-New Guinea;

had, immediately before the first day of July, One thousand nine hundred and forty-nine, a claim, whether in contract or in tort, against any person, the Administration may, in respect of that claim, bring a suit under the provisions of this Ordinance, in all respects as if the claim were a claim by the Administration.

(3.) Nothing in this section affects the operation of any law of the Territory relating to the limitation of actions.

THE SCHEDULES.

Section 3.

THE FIRST SCHEDULE.

ORDINANCES OF THE TERRITORY OF PAPUA.

Claims by and against the Government Ordinance, 1911.(3)

ORDINANCES OF THE TERRITORY OF NEW GUINEA.

Claims by and against the Administration Ordinance 1927.(4)

Claims by and against the Administration Ordinance 1931.(4)

THE SECOND SCHEDULE.

FORM 1.

Section 9.

A.B. v. The Administration of the Territory of Papua and New Guinea.

I hereby certify that A.B., of _____, did on the _____ day of _____, 19____, obtain a judgment of the [name of Court] in his favour, and that by such judgment the sum of £ _____ was awarded to him.

Dated this _____ day of _____, 19____.

_____, 19____
Registrar [or Clerk].
[Name of Court].

FORM 2.

Section 12 (1).

I hereby certify that at the _____, held at _____, on the _____ day of _____, 19____, C.D. of [place of abode or business and occupation] was fined the sum of £ _____ for [cause of fine].

Dated at _____ this _____ day of _____, 19____.

Judge [Magistrate or Justice].

FORM 3.

Section 12 (3).

In the Supreme Court
of the Territory of Papua and New Guinea.

On the application of A.B., Esquire, Crown Law Officer of the said Territory, who gives the Court to understand and be informed that at the _____, held at _____ on the _____ day of _____, 19____, before C.D., a fine of _____ pounds was imposed on E.F. for that he [state cause of fine] as by the certificate of the said C.D. now filed of record appears:

(3) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. I., on pp. 255-258.

(4) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. I. on pp. 215-218.

FORM 3—continued.

It is adjudged that the Administration of the Territory of Papua and New Guinea do recover against the said E.F. the said sum of pounds and One pound for costs, making together the sum of pounds.

FORM 4.

Section 13 (1.).

I hereby certify that at the _____, held at _____, on the _____ day of _____, 19____, the recognizances hereto annexed were forfeited and were then and there caused to be estreated. Dated at _____ this _____ day of _____, 19____. Judge [or as the case may be].

FORM 5.

Section 13 (3.).

In the Supreme Court _____ of the Territory of Papua and New Guinea.

On the application of A.B., Esquire, Crown Law Officer of the said Territory, who gives the Court to understand and be informed that at the _____, held at _____ on the _____ day of _____, 19____, before C.D., the recognizance of one E.F. by which he acknowledged to owe the Administration of the Territory of Papua and New Guinea the sum of _____ pounds was forfeited and estreated as by the said recognizance and the certificate of the said C.D. now filed of record appears:

It is adjudged that the Administration of the Territory of Papua and New Guinea do recover against the said E.F. the said sum of pounds and One pound for costs, making together the sum of pounds.