

## THE JURY ORDINANCE OF 1907.<sup>(1)</sup>

**B**E it enacted by the Administrator of Papua by and with the advice and consent of the Legislative Council thereof as follows:—

1. The trial of a person of European descent charged with a crime punishable with death shall be held before a jury of four persons: Save as aforesaid the trials of all issues both civil and criminal shall as heretofore be held without a jury.<sup>(2)</sup>

Europeans charged with a capital offence to be tried before a jury.

2. Every male resident of Papua of European descent who is above the age of thirty years and who is a natural born or naturalized subject of His Majesty shall save as hereinafter provided be qualified to serve on a jury; but no person who is serving a sentence of imprisonment or who has either in Papua or elsewhere been convicted of an offence punishable with twelve months' imprisonment shall be so qualified.

Qualification of jurymen.

For the purposes of this and the last section no person shall be deemed of European descent who is partly of European descent and partly of descent other than European.

3. Clergy in Holy Orders Missionaries and Government Servants shall except as hereinafter provided be exempt from serving on juries.

Certain persons exempt.

4. It shall be lawful for the Lieutenant-Governor<sup>(3)</sup> with the advice of the Executive Council at any time by notice<sup>(4)</sup> in the *Gazette* to proclaim any town in the Territory "a Court Town" and thereupon the town so proclaimed shall be a Court Town within the meaning of this Ordinance.

Court Towns.

(1) *The Jury Ordinance of 1907* comprises *The Jury Ordinance of 1907*, as amended by the other Ordinance referred to in the following Table:—

### ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>The Jury Ordinance of 1907</i> (No. 7 of 1907)	8.5.1907	2.10.1907	1.1.1908 ( <i>Papua Govt. Gaz.</i> of 6.11.1907)
<i>The Jury Ordinance Amendment Ordinance of 1909</i> (No. 14 of 1909)	2.6.1909	(a)	2.6.1909 ( <i>Statute Law of Papua</i> , 1888 to 1916, Vol. II, p. 486)

(a) No notice of non-disallowance has been published in *Papua Govt. Gaz.*

(2) *Held*, by the High Court, that laws made for the government of the Territory of Papua are not restricted by the provision in Section 80 of the *Commonwealth Constitution* that the trial on indictment of any offence against any law of the Commonwealth shall be by jury, and that a person of European descent who was charged in Papua with an assault occasioning bodily harm, to which he pleaded not guilty, was properly tried without a jury: *The King v Bernasconi* (1915) 19 C.L.R. 629; 21 A.L.R. 86. *Held*, by the High Court, that this section impliedly amended, but did not repeal, Section 21 of *The Criminal Procedure Ordinance of 1889*: *Sutherland v The King* (1934) 52 C.L.R. 356; 41 A.L.R. 227; 8 A.L.J. 86.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) Pursuant to Section 4 of *The Jury Ordinance of 1907*, the Lieutenant-Governor, with the advice of the Executive Council, by Proclamation dated 12.8.1908 and published in *Papua Govt. Gaz.*, of 2.9.1908 declared "that Samarai and Port Moresby, situate in the Territory of Papua, shall be deemed 'Court Towns' within the meaning of the said Ordinance."

CRIMINAL LAW--

Jury Districts.

5. For every Court Town there shall be a Jury District which shall include all places within a distance of twenty miles; the distance to be calculated not in a straight line but according to the usual or most convenient route.

Jury lists.

Amended by  
No. 14 of 1909,  
s. 1.

6. Jury lists shall be drawn up at each Court Town in the manner following:—

The Resident Magistrate shall make out a list of all persons qualified to serve on a jury and not exempt under Section 3 resident within the Jury District; and shall before the thirty-first day of March<sup>(5)</sup> in each year cause the list to be posted up at the Court House and to be published in the *Gazette*. Any person who feels aggrieved at the fact that his name is either inserted in or omitted from the list may complain to the Resident Magistrate and the Resident Magistrate may if he think fit cause the list to be amended accordingly.

Panel of twelve  
to be summoned.

7. Upon receipt of notice from the Chief Judicial Officer<sup>(6)</sup> that a jury will be required at a Court Town at a certain date the Resident Magistrate shall write upon a card the name of each person on the list and shall place the cards in a box and draw out twelve cards in succession in such a way that he shall not have the means of knowing the names on the cards which he is drawing out until they are drawn out as aforesaid. He shall then make a list of the twelve names and shall summon the persons whose names appear on the list by causing to be served upon them a notice to the effect of the form in Schedule A.

Any person served with a notice who without reasonable excuse fails to attend accordingly shall be liable to a fine not exceeding Twenty pounds which may be imposed forthwith by the judge presiding at the court at which such person fails to attend and in default of payment within such time as the judge may order may by warrant under the hand of the judge be recovered by levy and distress of the goods of such person.

Formation of  
jury at the  
trial.

8. At the trial cards on which are written the names of the jurymen summoned shall be put in a box and a jury formed by drawing out cards in succession in the way provided in the last section and calling the names which appear thereon until a jury of four persons has been formed.

The accused shall be admitted to challenge peremptorily to the number of four; any further peremptory challenge shall be void.

(5) See Section 1 of *The Jury Ordinance Amendment Ordinance of 1909*.

(6) See Section 4 of the *Central Court Ordinance, 1925*.

*The Jury Ordinance of 1907.*

9. If at any time there is a deficiency of jurymen the presiding judge may make such order as is necessary either for summoning jurymen declared in Section 3 to be exempt or otherwise.

Deficiency of jurymen.

A jurymen who is summoned as aforesaid and fails without reasonable excuse to attend is liable as provided in Section 7.

10. Every jurymen attending upon summons shall be entitled to expenses and compensation according to Schedule B hereto.

Expenses of jurymen.

11. If a jury remains six or more hours in deliberation without agreeing on a verdict the jury may be discharged by the court from giving any verdict and proceedings may thereupon be taken anew as if no trial had been commenced before the jury so discharged.

Discharge of jury.

12. On the trial of any person charged with any offence the presiding judge may in his discretion permit the jury to separate before considering their verdict for such period during any adjournment of the trial as he may think fit.

Jury may separate by leave of the Judge.

13. It shall be lawful for the presiding judge to discharge in open court any person summoned as a jurymen from further attendance at the sittings of the court or to excuse him from attendance for any period during the sittings of the court.

Juror may be excused by the Judge.

14. In every case of trial by jury under this Ordinance when no other mode of proceeding is specially provided by this Ordinance the jury and jurymen and every trial by them shall so far as practicable be subject to the same rules and manner of proceeding as in Queensland.

Queensland rules.

15. This Ordinance may be cited as *The Jury Ordinance of 1907*<sup>(1)</sup> and shall come into force on a day to be proclaimed by the Lieutenant-Governor with the advice of the Executive Council by notice in the *Gazette*.<sup>(1)</sup>

Short title.

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SCHEDULES.

SCHEDULE A.

[Schedule A.]

SUMMONS TO JURYMEN.

*In the Central Court of Papua.*

You are hereby summoned to appear and serve as a jurymen in this Court at [name of Court Town] on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at the hour of \_\_\_\_\_ and so to attend from day to day until discharged.

In default you are liable to a fine not exceeding £20.

R.M.

To Mr. \_\_\_\_\_ of \_\_\_\_\_

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(1) See footnote (1) printed on p. 1411.

CRIMINAL LAW—

[Schedule B.]

SCHEDULE B.

	£	s.	d.	
If resident within five miles of the Court House ..	0	10	0	a day.
"          "      ten          "          "      " ..	0	15	0	"
"          "      ten or over ten miles from      "      " ..	1	0	0	"

A part of a day counts as a day.

And in addition in each case reasonable travelling expenses actually incurred.