

# PAPUA ACT 1905-1940.<sup>(1)</sup>

## An Act to provide for the acceptance of British New Guinea as a Territory under the authority of the Commonwealth and for the Government thereof.

WHEREAS by Letters Patent of Her late Majesty Queen Victoria bearing date the eighth day of June, One thousand eight hundred and eighty-eight, the Territories and Islands therein and herein described were, as and when the same should become part of Her Majesty's Dominions, constituted and erected into a separate Possession and Government by the name of British New Guinea; that is to say, the Southern and South-Eastern shores of New Guinea from the one hundred and forty-first meridian of East longitude Eastward as far as East Cape, and thence North-Westward as far as the eighth parallel of South latitude in the neighbourhood of Mitre Rock, together with the territory lying South of a line from Mitre Rock, proceeding along the said eighth parallel to the one hundred and forty-seventh degree of East longitude, then in a straight line in a North-Westerly direction to the point of intersection of the sixth parallel of South latitude and of the one hundred and forty-fourth degree of East longitude, and continuing in a West-North-Westerly direction to the point of intersection of the fifth parallel of South latitude and of the one hundred and forty-first degree of East longitude, together with the Trobriand, Woodlark, D'Entrecasteaux, and Louisiade Groups of Islands and all other Islands lying between the eighth and the twelfth parallels of South latitude and between the one hundred and forty-first and the one hundred and fifty-fifth degrees of East longitude and not forming part of the Colony of Queensland, and furthermore includ-

Letters Patent,  
8th June, 1888.

(1) The *Papua Act 1905-1940* comprises the *Papua Act 1905*, as amended by the other Acts referred to in the following Table:—

### ACTS OF THE COMMONWEALTH OF AUSTRALIA.

Short title, number and year.	Date of assent by Governor-General.	Date on which came into operation.
<i>Papua Act 1905</i> (No. 9 of 1905)	16.11.1905	1.9.1906 ( <i>Cwlth. Gaz.</i> of 1.9.1906)
<i>Papua Act 1920</i> (No. 32 of 1920)	11.10.1920	11.10.1920 ( <i>Cwlth. Acts</i> , Vol. XVIII, p. 101)
<i>Papua Act 1924</i> (No. 25 of 1924)	26.9.1924	26.9.1924 ( <i>Cwlth. Acts</i> , Vol. XXII, p. 65)
<i>Statute Law Revision Act 1934</i> (No. 45 of 1934)	6.8.1934	6.8.1934 ( <i>Cwlth. Acts</i> , Vol. XXXII, p. 110)
<i>Papua Act 1940</i> (No. 47 of 1940)	21.8.1940	The whole except Secs. 7 and 8 on 18.9.1940 ( <i>Cwlth. Acts</i> , Vol. XXXVIII, p. 82); Secs. 7 and 8 not yet proclaimed to commence

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ing all Islands and Reefs lying in the Gulf of Papua to the Northward of the eighth parallel of South latitude:

Annexation of  
British New  
Guinea, 4th  
September,  
1888.

And whereas on or about the fourth day of September, One thousand eight hundred and eighty-eight, the said Territory and Islands became part of Her Majesty's Dominions:

Order in Council,  
17th May, 1888.

And whereas by an Order of Her late Majesty Queen Victoria in Council, bearing date the seventeenth day of May, One thousand eight hundred and eighty-eight, made under the provisions of the *British Settlements Act 1887*, it was provided that an appeal should lie from any Court of the Possession of British New Guinea to the Supreme Court of Queensland at Brisbane in the matters and in the manner therein set out:

Order in Council,  
24th November,  
1891.

And whereas by a further Order of Her late Majesty in Council, bearing date the twenty-fourth day of November, One thousand eight hundred and ninety-one, made under the provisions of the *British Settlements Act 1887*, it was provided that in all Admiralty matters an appeal should lie from the Colonial Court of Admiralty of the Possession of British New Guinea to the Supreme Court of Queensland at Brisbane:

Order in Council,  
8th February,  
1896.

And whereas by a further Order of Her late Majesty in Council, bearing date the eighth day of February, One thousand eight hundred and ninety-six, made under the *British Settlements Act 1887* in pursuance of a convention made between Her Majesty and Her Majesty the Queen of the Netherlands and signed at the Hague on the sixteenth day of May, One thousand eight hundred and ninety-five, it was provided that the Western boundary of the Possession of British New Guinea should be a line starting from the Southern coast of the Island of New Guinea at the middle of the mouth of the Bensbach River, situated at about one hundred and forty-one degrees one minute forty-seven and nine-tenths seconds of East longitude, thence proceeding to the North, following the meridian which passes through the said mouth up to the point where that meridian meets the Fly River, thence along the waterway ("Thalweg") of the Fly River up to the one hundred and forty-first degree of East longitude, thence along the one hundred and forty-first degree of East longitude up to the point of intersection of the boundaries of the British, Netherland, and German Possessions, and that the laws of the Possession of British New Guinea should extend to and be in force up to that boundary:

Constitution,  
s. 122.

And whereas by the Constitution it is provided that the Parliament may make laws for the government of any territory placed by the King under the authority of and accepted by the Commonwealth:

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And whereas the Senate and the House of Representatives have respectively passed resolutions affirming that they are prepared to join in measures for the acceptance of British New Guinea as a territory of the Commonwealth if His Majesty is pleased to place it under Federal control:

Resolutions of  
Senate and  
House of  
Representatives,  
19th and 20th  
November, 1901.

And whereas by Letters Patent<sup>(2)</sup> of His Majesty the King bearing date the eighteenth day of March, One thousand nine hundred and two, the Possession of British New Guinea was placed under the authority of the Commonwealth, and it was thereby provided that the Governor-General should, so soon as the Parliament had made laws for the government of the Possession, issue a Proclamation<sup>(3)</sup> signifying and declaring that the Parliament has made laws for the government of the Possession and that from and after the date of such Proclamation (thereinafter referred to as the appointed day) the said Letters Patent of the eighth day of June, One thousand eight hundred and eighty-eight, and any instructions which might from time to time have been given to any officer administering the Government of British New Guinea with respect to the execution of any things that belong to the said office of Administrator should cease to have effect and should be revoked without prejudice to anything lawfully done thereunder; and it was thereby further provided that the powers and authorities conferred by the said Letters Patent of the eighth day of June, One thousand eight hundred and eighty-eight, and any instructions as aforesaid should, until the appointed day, be read and construed as though any powers authorities and duties thereby conferred or imposed upon the Governor of Queensland were conferred and imposed upon the Governor-General, and that the said Letters Patent and Instructions should be construed and take effect with the substitution of the Governor-General for the Governor of Queensland; and it was thereby further provided that the now recited Letters Patent should come into force forthwith:

Letters Patent,  
18th March,  
1902.

And whereas by an Order of His Majesty in Council<sup>(4)</sup> bearing date the sixth day of March, One thousand nine hundred and two, it was provided that the Governor-General, so soon as the Parliament had made laws providing for the hearing of appeals from the Courts of the Possession of British New Guinea, should issue a Proclamation<sup>(3)</sup> signifying and declaring that the Parliament has made such laws accordingly, and that thereupon the aforesaid Orders in Council of the seventeenth day of May, One thousand eight hundred and eighty-eight, and the twenty-fourth day of

Order in Council,  
6th March, 1902.

(2) These Letters Patent are printed on p. 69. For a discussion by the High Court of the constitutional position of the Possession of British New Guinea after the issue of the Letters Patent dated 18.3.1902, and before the enactment of the *Papua Act 1905*, see *Strachan v The Commonwealth* (1906) 4 C.L.R. 455; 13 A.L.R. 631. See also footnote (7) printed on page 7.

(3) Printed on p. 69.

(4) Printed on p. 71.

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November, One thousand eight hundred and ninety-one, should be revoked and should cease to have effect without prejudice to anything lawfully done thereunder, provided that any appeals from any Court of the said Possession to the Supreme Court of Queensland at Brisbane under the provisions of the said Orders in Council which should be pending at the date of such Proclamation should be heard and determined by the Supreme Court of Queensland at Brisbane in the same manner and in all respects as though the said Orders in Council had not been revoked:

Be it therefore enacted by the King's Most Excellent Majesty the Senate and the House of Representatives of the Commonwealth of Australia as follows:—

### PART I.—INTRODUCTORY.

Short title and citation.

1. This Act may be cited as the *Papua Act 1905-1940*.<sup>(1)</sup>

Commencement.

2. This Act, except Section Thirteen thereof, shall commence on the day on which a Proclamation<sup>(1)</sup> is issued by the Governor-General in pursuance of the hereinbefore recited Letters Patent of the eighteenth day of March, One thousand nine hundred and two, but Section Thirteen shall take effect on and from the passing of this Act.

Parts of Act.

3. This Act is divided into parts as follows:—

Part I.—Introductory.

Part II.—Acceptance of the Territory.

Part III.—The Government of the Territory.

Division 1.—The Executive Government.

Division 2.—The Legislative Council.

Division 3.—The Judiciary.

Division 4.—Finance.

Definitions.

Section 4 amended by No. 25 of 1924, s. 2, and by No. 47 of 1940, s. 3.

4. In this Act, unless the contrary intention appears—

“Ordinance” means an Ordinance made by the Legislative Council;

“the Administrator” means the Administrator of the Territory, and includes any person for the time being administering the government of the Territory;

“the Executive Council” means the Executive Council for the Territory;

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(1) See footnote (1) printed on p. 3.

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“the Legislative Council” means the Legislative Council for the Territory;

“the Territory” means the Territory of Papua.

PART II.—ACCEPTANCE OF THE TERRITORY.

5. The Possession of British New Guinea is hereby declared to be accepted by the Commonwealth as a Territory under the authority of the Commonwealth, by the name of the Territory of Papua.

Acceptance of the Territory.

6.<sup>(5)</sup>—(1.) Subject to this Act, the laws in force in the Possession of British New Guinea at the commencement of this Act shall continue in force in the Territory until other provision is made.

Continuance of laws. N.Z. 1901, No. 44, s. 2.

(2.) Every Ordinance of the said Possession, or Act or Statute of the State of Queensland adopted as an Ordinance of the Possession, relating to any of the matters enumerated in Section Forty-one of this Act, shall be forthwith submitted to the Governor-General, who may disallow any such Ordinance within three months from such submission, and such disallowance on being made known by the Administrator by Proclamation<sup>(6)</sup> or by notification<sup>(6)</sup> in the *Gazette* of the Territory shall annul the Ordinance from the day when the disallowance is so made known.

Sub-section (2) amended by No. 47 of 1940, s. 2.

7. Except as provided in this or any Act, the Acts of the Parliament of the Commonwealth shall not be in force in the Territory unless expressed to extend thereto.

Commonwealth laws not to be in force.

8. Subject to this Act, the Courts of Justice in existence in the Possession of British New Guinea at the commencement of this Act, and the jurisdiction, practice, and procedure thereof, shall continue in the Territory until other provision is made.

Continuance of Courts. Cf. N.Z. 1901, No. 44, s. 4.

9. All judges, magistrates, and other officers in the public service of the Possession of British New Guinea at the commencement of this Act shall continue in office as if appointed under this Act.<sup>(7)</sup>

Continuance of officers. Cf. N.Z. 1901, No. 44, s. 5 (5).

(5) This section operated only as a declaration of the law: *Per Griffith C.J. in The King v Bernasconi* (1915) 19 C.L.R. 629 at 633; 21 A.L.R. 86 at 87.

(6) No proclamation or notification has been published in *Papua Govt. Gaz.*

(7) *Held*, by the High Court, that, before the Parliament enacted the *Papua Act 1905* and before the Governor-General issued the proclamation mentioned in Section 2 thereof, officers of the government of British New Guinea were not in any way officers of the Commonwealth, and the relation of master and servant or principal and agent did not exist between the Commonwealth and officers of the government of British New Guinea. *Held*, accordingly, that the Commonwealth was not liable in tort for the wrongful acts of such officers: *Strachan v The Commonwealth* (1906) 4 C.L.R. 455; 13 A.L.R. 631. See now the *Claims by and against the Government Ordinance, 1911.*

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PART III.—THE GOVERNMENT OF THE TERRITORY.

DIVISION 1.—THE EXECUTIVE GOVERNMENT.

*The Administrator.*

Office of  
Administrator.  
Substituted by  
No. 47 of 1940,  
s. 4.

10. There shall be an Administrator of the Territory, who shall be charged with the duty of administering the government thereof on behalf of the Commonwealth.

Appointment of  
Administrator.  
Amended by  
No. 47 of 1940,  
s. 2.

11. The Administrator shall be appointed by the Governor-General by Commission<sup>(8)</sup> under the Seal of the Commonwealth, and shall hold office during the pleasure of the Governor-General.

Powers and  
functions of  
Administrator.  
Amended by  
No. 47 of 1940,  
s. 2.

12. The Administrator shall exercise and perform all powers and functions that belong to his office according to the tenor of his Commission and according to such instructions<sup>(9)</sup> as are given to him by the Governor-General.

Acting  
Administrator.

Section 13  
substituted by  
No. 25 of 1924, s.  
3; resubstituted  
by No. 47 of  
1940, s. 5.

13.—(1.) The Governor-General may, by Commission<sup>(8)</sup> under the Seal of the Commonwealth, appoint a person to act in the office of Administrator, and to administer the Government of the Territory, during any vacancy in the office of Administrator, or when the Administrator is absent from the Territory or unable by reason of illness or incapacity to perform his duties; and such person who so administers shall have and may exercise and perform all the powers and functions of the Administrator.

(2.) In default of such appointment, or in the event of the absence or inability of the person so appointed, the senior official member of the Executive Council present in the Territory shall have and may exercise and perform all the powers and functions of the Administrator.

(3.) The exercise and performance of the powers and functions of the Administrator, during his absence from the Territory, by any person appointed under Sub-section (1.) of this section, or by the senior official member of the Executive Council, acting under Sub-section (2.) of this section, shall not affect the exercise or performance by the Administrator himself of any power or function.

Power to  
authorize  
Administrator  
to appoint  
deputies.  
Sub-section (1)  
amended by  
No. 47 of 1940,  
ss. 2 and 6.

14.—(1.) The Governor-General may authorize the Administrator to appoint any person, or any persons jointly or severally, to be the deputy or deputies of the Administrator within the Territory or any part of the Territory, and in that capacity to exercise during the pleasure of the Administrator such powers and functions of the

(8) A Table containing particulars of Lieutenant-Governors and Administrators of the Possession of British New Guinea and of Lieutenant-Governors and Administrators of the Territory of Papua is printed on p. 59. The Table also contains particulars of Administrators and Acting Administrators appointed pursuant to Section 13(1).

(9) No instructions have been published in Papua *Govt. Gaz.*

*Papua Act 1905-1940.*

Administrator as he thinks fit to assign to such deputy or deputies, subject to any limitations expressed or directions given by the Governor-General.

(2.) The appointment of a deputy shall not affect the exercise or performance by the Administrator himself of any power or function.

Sub-section (2) amended by No. 47 of 1940, s. 2.

15. The Administrator shall, before entering on the duties of his office, take an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation for the due execution of his office and for the due and impartial administration of justice in the form in the Schedule to this Act.

Oaths to be taken by Administrator. Amended by No. 47 of 1940, s. 2.

16.—(1.) There shall be a Public Seal of the Territory, which shall be kept and used by the Administrator for sealing all things that pass the Public Seal.

Public Seal. Sub-section (1) amended by No. 47 of 1940, s. 2.

(2.) Until a Public Seal of the Territory is provided, the Public Seal of the Possession of British New Guinea in use before the commencement of this Act shall be used as the Public Seal of the Territory.

17.<sup>(10)</sup>—(1.) The Administrator may in the name of the Governor-General appoint all necessary judges, magistrates, and other officers of the Territory, who shall, unless otherwise provided by law,<sup>(11)</sup> hold their offices during the pleasure of the Governor-General.

Appointment of officers. Section 17 substituted by No. 47 of 1940, s. 7.

(2.) Every such appointment shall be temporary until approved by the Governor-General.

18.<sup>(12)</sup>—(1.) The Administrator may, upon sufficient cause to him appearing, suspend from office any officer of the Territory.<sup>(13)</sup>

Suspension of officers. Sub-section (1) amended by No. 47 of 1940, s. 2.

(10) See Section 7 of the *Papua Act 1940*, printed on p. 20.

(11) Held, by the High Court, that the *Public Service Regulations, 1926*, of the Territory of Papua do not "otherwise provide" within the meaning of this section, and that those Regulations do not restrict the power of the Governor-General to dismiss at pleasure an officer of the Public Service of the Territory of Papua: *Faithorn v. The Territory of Papua* (1938) 60 C.L.R. 772; 12 A.L.J. 260. (The regulation considered in this case, *viz.*, Regulation 53 of the *Public Service Regulations, 1926*, has been repealed, but its provisions have been re-enacted, with some amendments, in Regulation 57 of the *Public Service Regulations, 1941*).

An officer of the Public Service of the Territory of Papua brought an action against the Territory claiming a declaration that (*inter alia*) an Order in Council reducing him in rank was invalid. *Per Dixon J.*: The contention that, because the officer was appointed under this section in the name of the Governor-General, his cause of action is against the Commonwealth and not against the Territory, is fallacious. *Faithorn v. The Territory of Papua* (1938) 60 C.L.R. 772 at 792. See, also, footnote (2), printed on p. 255.

(12) See Section 8 of the *Papua Act 1940*, printed on p. 20.

(13) The *Public Service Ordinance of 1907* and the *Public Service Regulations, 1926*, of the Territory of Papua are not invalid for the reason that they contain provisions for the discipline of the Public Service additional to the provisions with respect to suspension contained in this Section: *Per Latham C.J. in Faithorn v. The Territory of Papua* (1938) 60 C.L.R. 772 at 783-4. (The regulation considered in this case, *viz.*, Regulation 53 of the *Public Service Regulations, 1926*, has been repealed, but its provisions have been re-enacted, with some amendments, in Regulation 57 of the *Public Service Regulations, 1941*).

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Sub-section (2)  
amended by  
No. 47 of 1940,  
s. 2.

(2.) The Administrator shall forthwith report every such suspension to the Governor-General, and the suspension shall continue only until the Governor-General's pleasure therein is signified to the Administrator.

Section 19  
repealed by  
No. 45 of 1934,  
s. 2 and Fourth  
Schedule.

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Power to grant  
land.

Sub-section (1)  
amended by  
No. 47 of 1940,  
s. 2.

20.—(1.) The Administrator may make and execute under the Public Seal of the Territory, in the name and on behalf of the King, grants and dispositions of any land within the Territory which may be lawfully granted or disposed of in the name of the King, but so that —

Paragraph (a)  
amended by  
No. 32 of 1920,  
s. 2.

- (a) no freehold estate in any such land shall be granted or disposed of except in pursuance of rights of purchase acquired under the law of British New Guinea before the commencement of this Act; and
- (b) the rental of all such land granted or disposed of by way of lease shall be assessed on the unimproved value of the land, and shall be subject to re-assessment at such periods and in such modes as are fixed by Ordinance. The periods and modes may be different for different classes of land and for different classes of lease.

Native lands.

Sub-section (2)  
added by No.  
25 of 1924, s. 4;  
amended by  
No. 47 of 1940,  
s. 2.

(2.) Notwithstanding anything contained in this section the Administrator may—

- (a) transfer Crown land to natives; and
- (b) accept transfers from natives of land in exchange for any land transferred to them under the last preceding paragraph.

Sub-section (3)  
added by No.  
25 of 1924, s. 4;  
amended by  
No. 47 of 1940,  
s. 2.

(3.) The Administrator may, by order<sup>(14)</sup> published in the *Gazette* of the Territory, cancel any lease or purchase of land from natives (where the lessee or purchaser has not transferred the land to any other person) and, upon the publication of the order, the land referred to therein shall revert in the persons entitled to the land immediately prior to the lease or purchase, for such estate as they then had in the land.

Regulation of  
sale of  
intoxicating  
liquor in the  
Territory.

21.—(1.) After the commencement of this Act, licences shall not be granted in the Territory in excess of the number of licences in existence at the commencement of this Act.

(14) A Table containing particulars of Orders made pursuant to Section 20(3) of the *Papua Act* 1905-1940, cancelling leases and purchases of land from natives, is printed on p. 65, and the Orders are printed immediately after the Table.



(2.) The number of licences in the Territory may be reduced or licences may be abolished in the Territory in accordance with this section, but so that no compensation shall be payable in respect of the loss or abolition of any licence hereunder.

(3.) A poll may be taken in the whole Territory or in any Division thereof, once in each year, for the purpose of obtaining the vote of the people on the question whether the number of licences for the sale of intoxicating liquors shall be reduced by any and what number.

(4.) Subject to Sub-section (3.), a poll under this section shall be taken in the Territory or a Division thereof when requested by petition to the Administrator signed by one-fourth of the people in the Territory or Division. Provided that the first poll under this section shall be taken at a period not later than nine months from the proclamation of this Act.

**Sub-section (4)  
amended by  
No. 47 of 1940,  
s. 2.**

(5.) The adult white people shall for the purposes of this section be deemed to be the people of the Territory or Division, as the case requires.

(6.) The times and manner of taking a poll and the manner of giving effect to the decision arrived at by the poll taken shall be as directed by Ordinance.<sup>(15)</sup>

(7.) No person shall supply to any native by sale gift or in any other way either directly or indirectly any intoxicating liquor and any person offending against the provisions of this sub-section shall be liable on conviction in a summary manner to a fine of not less than Twenty pounds and not exceeding Two hundred pounds and to imprisonment for any term not less than one month and not exceeding two years.

**Prohibition  
against supply  
of intoxicating  
liquor to natives.**

Provided that it shall not be an offence under this sub-section for any person, for any urgent cause or necessity (the burden of proof whereof shall rest upon him) to administer intoxicating liquor to a native for purely medical purposes and without recompense or remuneration.

(8.) It shall not be lawful for any native to have in his possession any intoxicating liquor in any Division in which licences have been abolished or (except for the sole purpose of carriage the burden of proof whereof for the purpose only of confiscation shall rest upon the owner of the liquor) in any Division in which a licence exists. If this sub-section is contravened the liquor may be seized by any officer exercising judicial functions, who shall in a summary manner direct that it be confiscated, and that it be disposed of according to his discretion, and the native shall be liable on conviction in a summary manner to imprisonment for any term not exceeding three months.

**Intoxicating  
liquor in  
possession of  
natives.**

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(15) See the *Liquor Ordinance, 1911-1940.*

## ADMINISTRATION AND GOVERNMENT—

(9.) In this section—

- (a) “licence” means a licence for the sale of intoxicating liquor;
- (b) “intoxicating liquor” means any spirituous or fermented liquor of an intoxicating nature used or intended to be used as a beverage;
- (c) “native” means any person in the Territory not of European descent.

### *The Executive Council.*

**Executive Council.**

**Sub-section (1) amended by No. 47 of 1940, s. 2.**

**Sub-section (2) substituted by No. 25 of 1924, s. 5; amended by No. 47 of 1940, s. 9.**

**Sub-section (3) added by No. 25 of 1924, s. 5; substituted by No. 47 of 1940, s. 9.**

**Sub-section (4) added by No. 25 of 1924, s. 5.**

**Sub-section (5) added by No. 25 of 1924, s. 5.**

**Sub-section (6) added by No. 47 of 1940, s. 9.**

**Sub-section (7) added by No. 47 of 1940, s. 9.**

22.—(1.) There shall be an Executive Council for the Territory, to advise and assist the Administrator.

(2.) The Executive Council shall consist of not more than nine and not less than five members who shall be appointed by the Governor-General and shall hold their places in the Council during his pleasure.

(3.) One member of the Executive Council shall be chosen by and from the non-official members of the Legislative Council and the other members (in this Act referred to as the “official members”) shall be officers of the Territory.

(4.) In the event of the non-official members of the Legislative Council failing to choose one of their number for appointment as a member of the Executive Council, the Governor-General may appoint a non-official member of the Legislative Council, or any other person, not being an officer of the Territory, to be a member of the Executive Council.

(5.) If the non-official member of the Executive Council becomes an officer of the Territory he shall thereupon vacate his place as a member of the Executive Council.

(6.) Where on account of absence from the Territory or illness any official member is unable to perform his duties as a member of the Executive Council, the Governor-General may appoint some other officer of the Territory to act as a member of the Executive Council in his stead, and the officer so appointed shall during such absence from the Territory or illness, exercise and perform all the powers and functions of a member of the Executive Council.

(7.) The non-official members of the Legislative Council may choose one of their number to act as the deputy of the non-official member of the Executive Council and forward to the Administrator a notification in writing of the name of the member chosen.

(8.) The Governor-General may appoint—

Sub-section (8)  
added by No. 47  
of 1940, s. 9.

(a) the non-official member chosen in pursuance of the last preceding sub-section; or

(b) if the Administrator has not received a notification in pursuance of that sub-section, any non-official member of the Legislative Council or any other person not being an officer of the Territory,

to be the deputy of the non-official member of the Executive Council.

(9.) Whenever, on account of absence from the Territory or illness, the non-official member of the Executive Council is unable to perform his duties as a member of the Executive Council, or when the non-official member has been exempted by the Administrator from attendance at any meeting of the Executive Council, the deputy of the non-official member may act as a member of the Executive Council in the place of the non-official member, and may, during such absence from the Territory or illness of the non-official member or in respect of any meeting from attendance at which he has been exempted, exercise and perform all the powers and functions of a member of the Executive Council.

Sub-section (9)  
added by No. 47  
of 1940, s. 9.

23. The members of the Executive Council shall have seniority as the Governor-General specially assigns, and in default of assignment according to the priority of their appointment, or, if appointed by the same instrument, according to the order in which they are named therein.

Seniority of  
members of  
Executive  
Council.

24.—(1.) The Executive Council shall not proceed to the despatch of business unless summoned by authority of the Administrator.

Meetings of  
Executive  
Council.

Sub-section (1)  
amended by  
No. 47 of 1940,  
s. 2.

(2.) The presence of at least three members (exclusive of the Administrator or the member presiding) shall be necessary to constitute a meeting of the Executive Council for the despatch of business.

Sub-section (2)  
amended by  
No. 25 of 1924,  
s. 6 and by No.  
47 of 1940, s. 2.

25.—(1.) The Administrator shall preside at all meetings of the Executive Council at which he is present.

President at  
meetings.

Sub-section (1)  
amended by  
No. 47 of 1940,  
s. 2.

(2.) In his absence, such member as he appoints, or, in default of such appointment or in the absence of that member, the senior official member of the Council who is present shall preside.

Sub-section (2)  
amended by  
No. 25 of 1924,  
s. 7.

ADMINISTRATION AND GOVERNMENT—

Minutes of Executive Council meetings.

Substituted by No. 47 of 1940, s. 10.

Submission of questions to Council.

Amended by No. 47 of 1940, s. 2.

Administrator may act in opposition to advice.

Sub-section (1) amended by No. 47 of 1940, s. 2.

26. Minutes of the proceedings at all meetings of the Executive Council shall be kept, and copies of the minutes relating to each meeting shall be transmitted by the Administrator to the Minister as soon as practicable after the meeting is held.

27. The Administrator only shall be entitled to submit questions to the Executive Council for advice or decision; but if the Administrator declines to submit any question to the Council when requested in writing by any member so to do, that member may require that his written request, together with the answer of the Administrator thereto, be recorded on the Minutes.

28.—(1.) The Administrator may in any case, if he thinks fit, act in opposition to the advice or decision of the Executive Council; but in that case he shall forthwith fully report the matter to the Minister with his reasons for his action.

(2.) In any case any member of the Executive Council may require that the grounds of advice or opinion which he gives upon any question be recorded at length.

DIVISION 2.—THE LEGISLATIVE COUNCIL.

Legislative Council.

Sub-section (2) substituted by No. 25 of 1924, s. 8; amended by No. 47 of 1940, ss. 2 and 11.

29.—(1.) There shall be a Legislative Council for the Territory.

(2.) The Legislative Council shall consist of—

(a) the Administrator;

(b) the official members of the Executive Council (including any officer appointed to act in place of an official member in pursuance of Sub-section (6.) of Section Twenty-two of this Act); and

(c) five non-official members who shall be nominated by the Administrator and appointed by the Governor-General.

Sub-section (3) amended by No. 47 of 1940, s. 2.

(3.) One of the non-official members of the Legislative Council shall be nominated by the Administrator as representing the interests of the Christian missions in the Territory.

Sub-section (4) amended by No. 47 of 1940, s. 11.

(4.) Every non-official member may be removed at any time by the Governor-General, and shall vacate his seat at the end of four<sup>(16)</sup> years from the date of his appointment, but may be re-appointed.

Sub-section (5) added by No. 47 of 1940, s. 11.

(5.) Whenever the Administrator wishes to obtain the views of any person within the Territory touching any matters about to be brought before the Council, he may, by writing under his hand,

(16) See Section 11(2) of the Papua Act 1940, printed on p. 20.

appoint that person to be an extraordinary member of the Council for the period or periods during which the Council is dealing with those matters.

(6.) An extraordinary member of the Council shall not be entitled to vote or be counted in any quorum. **Sub-section (6) added by No. 47 of 1940, s. 11.**

**29A.** The Administrator may, by notice published in the *Government Gazette* of the Territory, appoint such times for holding the sessions of the Legislative Council as he thinks fit, and may also, from time to time, in a similar manner, prorogue the Council. **Sessions and prorogation of Legislative Council. Inserted by No. 47 of 1940, s. 12.**

**30.** The presence of at least one-third of the members of the Legislative Council (including the Administrator or the member presiding) shall be necessary to constitute a meeting of the Council for the exercise of its powers. **Quorum. Amended by No. 47 of 1940, s. 2.**

**31.** The members of the Legislative Council shall have seniority as the Governor-General specially assigns, and in default of assignment according to the priority of their appointment, or if appointed by the same instrument according to the order in which they are named therein. **Seniority of members of Legislative Council.**

**32.—(1.)** The Administrator shall preside at all meetings of the Legislative Council at which he is present. **Presidency of Legislative Council. Sub-section (1) amended by No. 47 of 1940, s. 2.**

(2.) In his absence the senior official member of the Legislative Council who is present shall preside. **Sub-section (2) amended by No. 25 of 1924, s. 9.**

**33.—(1.)** Questions arising in the Legislative Council shall be determined by a majority of votes. **Voting in Legislative Council.**

(2.) The Administrator or member presiding shall in all cases be entitled to vote, and shall also if the numbers are equal have a casting vote. **Sub-section (2) amended by No. 47 of 1940, s. 2.**

**33A.—(1.)** The Legislative Council shall cause minutes of its meetings to be kept. **Minutes of meetings. Section 33A inserted by No. 25 of 1924, s. 10.**

(2.) As soon as practicable after each meeting of the Legislative Council, the Administrator shall forward to the Minister a copy of the minutes relating to that meeting. **Minutes of Legislative Council meetings. Sub-section (2) substituted by No. 47 of 1940, s. 13.**

## ADMINISTRATION AND GOVERNMENT—

Standing rules and orders.

34. The Legislative Council may make standing rules and orders<sup>(17)</sup> with respect to the order and conduct of its business and proceedings.

Provided that such rules and orders are not repugnant to any instructions from the Governor-General.

Proposal of money votes.

Amended by No. 47 of 1940, s. 2.

35. An Ordinance, vote, resolution, or question, the object or effect of which is to dispose of or charge any part of the revenue of the Territory, shall not be proposed in the Legislative Council except by the Administrator, unless its proposal has been expressly allowed or directed by him.

Legislative power.

36. Subject to this Act, the Legislative Council shall have power to make Ordinances for the peace, order, and good government of the Territory.<sup>(18)</sup>

Prohibition of import duties discriminating against the Commonwealth.

37. The Legislative Council shall not by any Ordinance impose higher duties upon the importation into the Territory of any goods produced or manufactured in or imported from Australia than are imposed on the importation into the Territory of the like goods produced or manufactured in or imported from other countries.

Assent to Ordinances.

38.—(1.) An Ordinance passed by the Legislative Council shall not have any force until it has been assented to as hereinafter provided.

Sub-section (2) amended by No. 47 of 1940, s. 2.

(2.) Every Ordinance passed by the Legislative Council shall be presented to the Administrator for assent.

Sub-section (3) amended by No. 47 of 1940, s. 2.

(3.) The Administrator shall thereupon declare, according to his discretion, but subject to this Act, and to the instructions of the Governor-General, that he assents thereto, or that he withholds assent, or that he reserves the Ordinance for the Governor-General's pleasure.

Disallowance of Ordinances assented to.

Amended by No. 47 of 1940, ss. 2 and 14.

39. Within six months from the Administrator's assent to any Ordinance the Governor-General may disallow the Ordinance, and the disallowance on being published by the Administrator within the Territory shall annul the Ordinance from the date of such publication.

Signification of pleasure on Ordinance reserved.

Amended by No. 47 of 1940, s. 2.

40. An Ordinance reserved for the Governor-General's pleasure shall not have any force unless and until within one year from the day on which it was presented to the Administrator for the Governor-General's assent, the Administrator publishes within the Terri-

(17) See the *Standing Orders of the Legislative Council*, printed on p. 47.

(18) *Held*, by the High Court, that laws made for the government of the Territory of Papua, whether made directly by the Commonwealth Parliament or through a subordinate legislature, 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: *The King v. Bernasconi* (1915) 19 C.L.R. 629; 21 A.L.R. 86.

tory a notification that it has received the Governor-General's assent.

41. The Administrator shall not assent to any Ordinance of any of the following classes, unless the Ordinance contains a clause suspending its operation until the signification of the Governor-General's pleasure thereon:—

Assent to certain Ordinances.  
Amended by No. 47 of 1940, s. 2.

- (1) Any Ordinance for divorce.
- (2) Any Ordinance dealing with the granting or disposal of Crown lands.
- (3) Any Ordinance whereby any lease or grant of land or money or any donation or gratuity is made to himself.
- (4) Any Ordinance which appears inconsistent with the treaty obligations of the United Kingdom or of the Commonwealth.
- (5) Any Ordinance interfering with the discipline or control of the naval or military forces of the King.
- (6) Any Ordinance of an extraordinary nature or importance, whereby the King's prerogative, or the rights or property of subjects of the King not residing in the Territory, or the trade or shipping of any part of the King's Dominions, may be prejudiced.
- (7) Any Ordinance relating to the sale or disposition of or dealing with lands by aboriginal natives of the Territory.
- (8) Any Ordinance relating to native labour, or providing for the deportation of aboriginal natives from the Territory, or from one part of the Territory to another.
- (9) Any Ordinance relating to the supply of arms, ammunition, explosives, intoxicants, or opium to natives.
- (10) Any Ordinance relating to the introduction or immigration of aboriginal natives of Australia, Asia, Africa, or any island of the Pacific.
- (11) Any Ordinance containing provisions from which the assent of the Sovereign or of the Governor-General has once been withheld, or which the Sovereign or the Governor-General has disallowed.

42. Every Ordinance assented to by the Administrator or by the Governor-General shall, as soon as may be after being assented to, be laid before both Houses of the Parliament.

Ordinances to be laid before Parliament.  
Amended by No. 47 of 1940, s. 2.

ADMINISTRATION AND GOVERNMENT—

DIVISION 3.—THE JUDICIARY.

Appeal to High Court.

Sub-section (1) amended by No. 47 of 1940, s. 15.

43.—(1.) The High Court shall have jurisdiction, with such exceptions and subject to such regulations as are prescribed by Ordinance,<sup>(19)</sup> to hear and determine appeals<sup>(20)</sup> from all judgments, decrees, orders, and sentences of the Supreme Court of the Territory, and the judgment of the High Court shall be final and conclusive.

N.Z. 1901, No. 44, s. 4.

(2.) Regulations under this section may provide, *inter alia*, that appeals to the High Court may be by case stated, with the legal argument, if any, attached thereto in writing, and that it shall not be necessary in any such case for the parties to appear either personally or by counsel.

Grant of pardon to accomplice.

Amended by No. 47 of 1940, s. 2.

44. When any offence has been committed within the Territory, or for which the offender may be tried therein, the Administrator may, in the name of the King, grant a pardon to any accomplice who gives information which leads to the conviction of the principal offender, or any of the principal offenders.

Grant of pardon or remission or respite of sentence to offenders.

Amended by No. 47 of 1940, s. 2.

45. The Administrator may, in the name of the King, grant to any offender convicted in any Court or before any Judge or Magistrate in the Territory, a pardon, either free or conditional, or any remission of sentence, or any respite, for such period as he thinks fit, of the execution of sentence, and may remit any fines, penalties, and forfeitures, due or accrued to the Crown within the Territory.

Provided that the Administrator shall not, except in the case of a political offence unaccompanied by any other grave crime, make it a condition of any pardon or remission of sentence that the offender shall be banished from, or shall absent himself or be removed from, the Territory.

DIVISION 4.—FINANCE.

Public revenues and moneys.

Cf. N.Z. 1901, No. 44, s. 14.

46. The revenues of the Territory shall be available for defraying the expenditure thereof, and the Governor-General may make such regulations<sup>(21)</sup> as he deems necessary for the receipt, expenditure, control, and audit of revenues and moneys of the Territory.

Issue and expenditure of public moneys.

Amended by No. 47 of 1940, s. 2.

47. No revenues or moneys of the Territory shall be issued or expended except under appropriation made by law, and except by warrant under the hand of the Administrator.

(19) See *The Appeal Ordinance of 1909*.

(20) Held, by the High Court, that Section 1 of *The Appeal Ordinance of 1909* does not impose any restriction on the general right of appeal to the High Court given by this section: *The King v Bernasconi* (1915) 19 C.L.R. 629; 21 A.L.R. 86.

(21) See the *Financial Regulations, 1923*, printed on p. 23.



48.—(1.) A sum equal to ten per centum of the territorial revenue arising out of the lease of Crown lands shall in each year be appropriated for the maintenance and welfare of infirm or destitute aboriginal natives (including half-castes) of the Territory.

Appropriation for infirm or destitute aboriginal natives.

(2.) The sum so obtained shall be vested in three trustees appointed by the Governor-General, who shall hold office during His Excellency's pleasure and furnish a report of their proceedings annually for presentation to Parliament.

(3.) If in any year the whole of the sum so obtained is not expended, the unexpended balance thereof shall be retained by the trustees and expended for the purpose aforesaid in any subsequent year.

\* \* \* \* \*

Section 49 amended by No. 25 of 1924, s. 11; repealed by No. 47 of 1940, s. 16.

50. There shall be paid out of the Consolidated Revenue Fund of the Commonwealth towards the revenues of the Territory in each financial year such sum, if any, as the Parliament appropriates for that purpose.

Grant from the Consolidated Revenue Fund. Amended by No. 45 of 1934, s. 2 and Fourth Schedule.

THE SCHEDULE.

FORM OF OATH OR AFFIRMATION.

I, *A.B.*, do swear that I will well and truly serve our Sovereign Lord the King in the office of Administrator of the Territory of Papua, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God.

Amended by No. 47 of 1940, s. 2.

or

I, *A.B.*, do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lord the King in the office of Administrator of the Territory of Papua, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

Amended by No. 47 of 1940, s. 2.