

PAPUA AND NEW GUINEA.

No. 9 of 1949.

An Act to approve the placing of the Territory of New Guinea under the International Trusteeship System, to provide for the Government of the Territory of Papua and the Territory of New Guinea, and for other purposes.

[Assented to 25th March, 1949.]

Preamble.

WHEREAS in accordance with the Covenant of the League of Nations a Mandate, in the terms of an instrument made on the seventeenth day of December, One thousand nine hundred and twenty, was conferred upon His Britannic Majesty for and on behalf of Australia under which Australia was empowered to administer certain territories and islands, being former German possessions, situated in the South Pacific Ocean :

AND WHEREAS those territories and islands have, in accordance with that Mandate, been administered by Australia as a Territory under the authority of the Commonwealth, by the name of the Territory of New Guinea, and in accordance with the *New Guinea Act 1920-1935* :

AND WHEREAS the Territory of Papua has been administered by Australia in accordance with the *Papua Act 1905-1940* as a Territory placed by His Majesty the King under the authority of the Commonwealth :

AND WHEREAS, since the twelfth day of February, One thousand nine hundred and forty-two, the provisions for the administration of the Territory of Papua and the Territory of New Guinea have been temporarily affected by regulations under the *National Security Act 1939-1946* and the *Defence (Transitional Provisions) Act 1946-1948* and by the *Papua-New Guinea Provisional Administration Act 1945-1946* :

AND WHEREAS, before the commencement of this Act, the Territory of Papua and the Territory of New Guinea were, for the time being, administered jointly in accordance with the *Papua-New Guinea Provisional Administration Act 1945-1946* :

AND WHEREAS the League of Nations ceased to exist (except for the purpose of certain measures of liquidation) from the nineteenth day of April, One thousand nine hundred and forty-six :

AND WHEREAS Australia is a member of the United Nations and the Charter of the United Nations was approved by the *Charter of the United Nations Act 1945* :

AND WHEREAS Chapter XI. of the Charter of the United Nations is applicable to Australia's administration of the Territory of Papua :

AND WHEREAS, in accordance with the provisions of Chapter XII. of the Charter of the United Nations, the General Assembly of the United Nations, on the thirteenth day of December, One thousand nine hundred and forty-six, approved the terms of a Trusteeship Agreement for the Territory of New Guinea, submitted to it by the Government of Australia for approval, in substitution for the terms of the Mandate, which agreement designates the Government of Australia as the sole authority to exercise the administration of the Territory of New Guinea :

AND WHEREAS Australia has undertaken to administer the Territory of New Guinea in accordance with the terms of the Trusteeship Agreement :

AND WHEREAS it is desirable that the Parliament should approve the placing of the Territory of New Guinea under the International Trusteeship System by means of, and upon the terms of trusteeship embodied in, the Trusteeship Agreement and should provide for the government of that Territory in accordance with the terms of the Trusteeship Agreement :

AND WHEREAS the Trusteeship Agreement recognizes that Australia has the same powers of legislation, administration and jurisdiction in and over the Territory of New Guinea as it would have if that Territory were an integral part of Australia, including power to bring that Territory into an administrative union with other dependent territories under its jurisdiction or control, if, in its opinion, it would be in the interests of that Territory and not inconsistent with the basic objectives of the trusteeship system to do so :

AND WHEREAS the Government of Australia is of opinion that it would be in the interests of the Territory of New Guinea, and not inconsistent with the basic objectives of the International Trusteeship System, to provide for the government of the Territory of Papua and the Territory of New Guinea in an administrative union, whilst maintaining the identity and status of the Territory of New Guinea as a Trust Territory and the identity and status of the Territory of Papua as a Possession of the Crown :

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.—PRELIMINARY.

1. This Act may be cited as the *Papua and New Guinea Act 1949.* Short title

2. This Act shall, except to the extent to which a contrary intention appears, come into operation on a date to be fixed by Proclamation (which date shall, for the purposes of any provision of this Act referring to the commencement of this Act, be deemed to be the date of commencement of this Act). Commencement

- Repeal.** 3. The Acts specified in the First Schedule to this Act are repealed.
- Parts.** 4. This Act is divided into Parts, as follows :—
- Part I.—Preliminary (Sections 1-5).
- Part II.—The Trusteeship Agreement for the Territory of New Guinea (Sections 6-7).
- Part III.—Administrative Union of the Territory of Papua and the Territory of New Guinea (Sections 8-12).
- Part IV.—Administration.
- Division 1.—The Administrator (Sections 13-18).
- Division 2.—The Executive Council (Sections 19-24).
- Division 3.—Advisory Councils for Native Matters, and Native Village Councils (Sections 25-29).
- Division 4.—The Public Service (Sections 30-31).
- Part V.—Legislation.
- Division 1.—Laws (Sections 33-34).
- Division 2.—The Legislative Council (Sections 35-53).
- Division 3.—Interim Legislative Powers of the Governor-General (Sections 54-57).
- Part VI.—The Judicial System (Sections 58-64).
- Part VII.—Welfare and Development (Section 65).
- Part VIII.—The Australian School of Pacific Administration (Sections 66-70).
- Part IX.—Miscellaneous (Sections 71-78).
- Definitions.** 5. In this Act, unless the contrary intention appears—
- “ Acting Administrator ” means a person appointed under section sixteen of this Act to act in the office of Administrator ;
- “ elector ” means a person qualified and enrolled as an elector of the Territory in accordance with Ordinance ;
- “ judge ” means a judge of the Supreme Court and includes the Chief Judge and an acting judge ;
- “ native ” means an aboriginal inhabitant of the Territory, and includes a person who follows, adheres to or adopts the customs, or who lives after the manner, of the aboriginal inhabitants of the Territory ;
- “ officer ” or “ officer of the Territory ” means a person appointed to the Public Service under sub-section (2.) of section thirty of this Act ;
- “ Ordinance ” means an Ordinance made under, or continued in force by, this Act ;
- “ the Administration ” means the Administration or Government of the Territory ;
- “ the Administrator ” means the Administrator of the Territory appointed under this Act and includes an Acting Administrator ;
- “ the Executive Council ” means the Executive Council for the Territory ;
- “ the Government Gazette ” means the Territory of Papua and New Guinea Government Gazette ;

- " the Legislative Council " means the Legislative Council for the Territory ;
- " the Public Service " means the Public Service of the Territory ;
- " the Supreme Court " means the Supreme Court of the Territory of Papua and New Guinea established by this Act ;
- " the Territory of New Guinea " means the Territory of New Guinea as described in the Second Schedule to this Act ;
- " the Territory of Papua " means the Territory of Papua as described in the Third Schedule to this Act ;
- " the Territory " means the Territory of Papua and New Guinea (being the Territory of Papua and the Territory of New Guinea together called by that name by virtue of section ten of this Act) ;
- " the Trusteeship Agreement " means the Trusteeship Agreement for the Territory of New Guinea approved by the General Assembly of the United Nations on the thirteenth day of December, One thousand nine hundred and forty-six (a copy of which Agreement is set out in the Fourth Schedule to this Act).

PART II.—THE TRUSTEESHIP AGREEMENT FOR THE TERRITORY OF NEW GUINEA.

6. Approval is given to the placing of the Territory of New Guinea under the International Trusteeship System by means of, and upon the terms of trusteeship embodied in, the Trusteeship Agreement.

Approval of placing of New Guinea under International Trusteeship System.

7. The Minister shall make to the General Assembly of the United Nations the annual report required by the Charter of the United Nations on the political, economic, social and educational advancement of the inhabitants of the Territory of New Guinea.

Report to the General Assembly of the United Nations.

PART III.—ADMINISTRATIVE UNION OF THE TERRITORY OF PAPUA AND THE TERRITORY OF NEW GUINEA.

8. It is hereby declared to be the intention of the Parliament that the Territory of Papua and the Territory of New Guinea shall continue to be Territories under the authority of the Commonwealth and the identity and status of the Territory of Papua as a Possession of the Crown and the identity and status of the Territory of New Guinea as a Trust Territory shall continue to be maintained.

Declaration respecting the Territory of Papua and the Territory of New Guinea.

9. The Territory of Papua and the Territory of New Guinea shall be governed in an administrative union to the extent and in the manner provided by or in pursuance of this Act.

Administrative union of the two Territories

10. For the purposes of this Act the Territory of Papua and the Territory of New Guinea shall be together called the Territory of Papua and New Guinea.

Name of Territories governed in administrative union.

Amount
to be expended
in respect of
the Territory
of New Guinea.

11. There shall be expended in each year, upon the administration, welfare and development of the Territory of New Guinea, an amount which is not less than the total amount of public revenue raised in that year in respect of the Territory of New Guinea.

References to
Territories in
other laws.

12. A reference in any other law of the Commonwealth (whether made before or after the commencement of this Act) to a Territory of the Commonwealth, a Territory under the control of the Commonwealth or a Territory under the authority of the Commonwealth shall, unless the contrary intention appears, be deemed to include a reference to—

- (a) the Territory of New Guinea ;
- (b) the Territory of Papua ; and
- (c) the Territory of Papua and New Guinea as administered under this Act.

PART IV.—ADMINISTRATION.

Division 1.—*The Administrator.*

Office of
Administrator.

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

Appointment of
Administrator.

14. The Administrator shall be appointed by the Governor-General by Commission under the Seal of the Commonwealth and shall hold office during the pleasure of the Governor-General.

Functions of
Administrator.

15. The Administrator shall exercise and perform all powers and functions that belong to his office in accordance with the tenor of his Commission and in accordance with such instructions as are given to him by the Governor-General.

Acting
Administrator.

16. (1.) The Governor-General may, by Commission 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 a person so appointed, while he is so administering the government of the Territory, shall have and may exercise and perform all the powers and functions of the Administrator.

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

(3.) The exercise and performance, by virtue of this section, by any person of the powers and functions of the Administrator during his absence from the Territory shall not affect the exercise or performance by the Administrator himself of any power or function.

17.—(1.) The Administrator may appoint a person, or any persons jointly or severally, to be the deputy or deputies of the Administrator within the Territory, or a part of the Territory, and in that capacity to exercise during the pleasure of the Administrator such powers and functions of the Administrator as he assigns to the deputy or deputies.

Deputies of
Administrator.

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

18.—(1.) The Administrator, every Acting Administrator and every deputy of the Administrator shall, before entering on the duties of his office, make and subscribe an oath or affirmation of allegiance, in the form in the Schedule to the Constitution, and also an oath or affirmation of office, in the form in the Fifth Schedule to this Act.

Oaths to be
taken by
Administrator,
&c.

(2.) An oath or affirmation under this section shall be made before the Governor-General, a judge or a person thereunto authorized by the Governor-General.

Division 2.—The Executive Council.

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

Executive
Council.

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

(3.) Whenever, on account of illness or absence from the Territory, a member of the Executive Council is unable to perform his duties as a member, the Governor-General may appoint an officer of the Territory to act as a member of the Executive Council in his stead, and the officer so appointed, during the illness or absence from the Territory of the member, shall have, and may exercise and perform, all the powers and functions of a member of the Executive Council.

(4.) The members of the Executive Council shall have such seniority as the Governor-General specifies, and, if the Governor-General has not specified their seniority, they shall have seniority according to the priority of their appointment, for which purpose members appointed by the same instrument shall be deemed to have been appointed in the order in which they are named therein.

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

Meetings of
Executive
Council.

(2.) The presence of at least five members shall be necessary to constitute a meeting of the Executive Council for the despatch of business.

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

President at
meetings.

(2.) In the absence of the Administrator, the senior member of the Council who is present shall preside.

Submission
of matters
to Executive
Council.

22. The Administrator only shall be entitled to submit matters to the Executive Council, but, if the Administrator declines to submit any matter to the Council when requested in writing by any member so to do, that member may require at a meeting of the Council that his written request, together with the answer of the Administrator thereto, be recorded in the minutes, and the request and answer shall be recorded accordingly.

Administrator
may act in
opposition
to advice.

23. The Administrator may, if he thinks fit, act in opposition to the advice of a majority of the members of the Executive Council present at the meeting at which it is decided to tender the advice, but in any such case the Administrator shall forthwith fully report the matter to the Minister with his reasons for his action.

Minutes of
Executive
Council
meetings.

24.—(1) Minutes of the proceedings at all meetings of the Executive Council shall be kept, and a copy 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.

(2) A member of the Executive Council may require that his views in respect of any matter duly submitted to the Council shall be adequately recorded in the minutes and those views shall be recorded accordingly.

Division 3.—Advisory Councils for Native Matters, and Native Village Councils.

Establishment
of Councils.

25. Subject to this Act, provision may be made by Ordinance for and in relation to the establishment of—

- (a) Advisory Councils for Native Matters; and
 - (b) Native Village Councils,
- in respect of areas defined by or under Ordinance.

Functions of
Advisory
Councils.

26.—(1) An Advisory Council may consider, and tender advice to the Administrator concerning, any matter affecting in any way the welfare of natives in the area in respect of which the Advisory Council is established.

(2) Any such matter may be brought before an Advisory Council by any member of the Council, by any native, by any Native Village Council or, with the permission of the Chairman of the Advisory Council, by any other person or institution.

(3) If any such matter is submitted to an Advisory Council by a Native Village Council, it shall be the duty of the Advisory Council to consider that matter and tender advice to the Administrator concerning it.

Membership.

27.—(1) An Advisory Council shall consist of such number of native members and such number of other members as is provided by Ordinance.

(2.) The number of native members shall be at least a majority of the total number of members.

(3.) The members of an Advisory Council shall be appointed by the Administrator and shall hold office during the Administrator's pleasure and subject to such conditions as the Administrator determines.

(4.) The native members of an Advisory Council shall, as far as practicable, be natives who have performed meritorious service as members of Native Village Councils.

28.—(1.) Minutes of each meeting of an Advisory Council shall be kept and copies thereof shall be forwarded to the Administrator.

Official minutes of meetings.

(2.) Copies of the minutes shall be transmitted to the Minister by the Administrator as soon as practicable after each meeting.

29. A Native Village Council shall have such functions as are provided by Ordinance in relation to the peace, order and welfare of natives in the area in respect of which it is established.

Functions of Native Village Councils.

Division 4.—The Public Service.

30.—(1.) There shall be a Public Service of the Territory, consisting of officers appointed in pursuance of this section and other persons employed in pursuance of Ordinances made under this Act.

The Public Service.

(2.) The Governor-General may appoint, or may delegate to the Minister or to the Administrator power to appoint, to the Public Service such officers as are necessary for the purposes of this Act and for the proper government of the Territory.

(3.) Any delegation under the last preceding sub-section shall be revocable at will, and no delegation shall prevent the exercise by the Governor-General of the power to appoint officers in pursuance of that sub-section.

(4.) Provision may be made by Ordinance for or in relation to the employment in the Public Service of persons other than officers (whether on a temporary basis or otherwise).

(5.) Subject to this Act, the terms and conditions of appointment to, and of employment and service in, the Public Service shall be as provided by or under Ordinance.

31. Without limiting the generality of the powers to make Ordinances conferred by this Act, Ordinances under this Act relating to the Public Service may make provision in respect of persons who, before becoming officers under this Act, have been officers appointed under any Act repealed by section three of this Act, for or in relation to the recognition or preservation, under or for the purposes of any Ordinance, of their service, rights, obligations or liabilities arising out of that previous appointment.

Officers holding office under repealed Acts.

PART V.—LEGISLATION.

Division 1.—Laws.

Continuance
of laws.

32.—(1) Notwithstanding the repeal of the Acts repealed by section three of this Act, but subject to this Act—

- (a) all other laws in force immediately before the commencement of this Act in or in relation to the Territory of Papua (except regulations in force under the *Papua Act 1905-1940*) shall continue in force in or in relation to that Territory ;
- (b) all other laws in force immediately before the commencement of this Act in or in relation to the Territory of New Guinea shall continue in force in or in relation to that Territory ; and
- (c) all other laws in force immediately before the commencement of this Act in or in relation to both the Territory of Papua and the Territory of New Guinea shall continue in force in or in relation to the Territory.

(2.) In this section, " laws " includes Ordinances made under an Act repealed by section three of this Act and laws made under any such Ordinance.

Application of
Commonwealth
Acts and
Imperial Acts.

33.—(1) An Act or a provision of an Act (whether passed before or after the commencement of this Act) shall not, except as otherwise provided by that Act or by any other Act, be in force as such in the Territory or any part thereof unless expressed to extend thereto.

(2.) The application, of its own force, in or in relation to the Territory or any part thereof, of any Act or Imperial Act or any provision of an Act or Imperial Act shall not be affected by any Ordinance.

Ordinances
may amend
or repeal
existing laws.

34. Subject to this Act, a law continued in force by this Act may be amended or repealed by an Ordinance made under this Act, or by a law made under any such Ordinance.

Division 2.—The Legislative Council.

Legislative
Council.

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

(2.) The Legislative Council shall commence to perform its powers and functions under this Act upon a date to be fixed by Proclamation.

(3.) The date to be fixed under the last preceding sub-section shall be as soon as practicable after the expiration of one year after the commencement of this Act.

Composition
of Legislative
Council.

36.—(1) The Legislative Council shall consist of twenty-nine members, namely :—

- (a) the Administrator ;
- (b) sixteen officers of the Territory (who shall be known as official members) ;

- (c) three non-official members possessing such qualifications as are provided by Ordinance and elected, as provided by Ordinance, by electors of the Territory ;
- (d) three non-official members representing the interests of the Christian missions in the Territory ;
- (e) three non-official native members ; and
- (f) three other non-official members.

(2.) A person appointed to or employed in the Public Service shall not be eligible to be or remain a member of the Legislative Council except (in the case of an officer) as an official member.

(3.) The members of the Legislative Council (other than the Administrator and the elected members) shall be appointed from time to time, as occasion requires, by the Governor-General, on the nomination of the Administrator.

(4.) The Administrator shall exercise his powers of nomination to ensure that not less than five non-official members are residents of the Territory of New Guinea.

(5.) Subject to this Act, an elected member shall hold office for a period commencing on the day of his election and ending on the day immediately preceding the day on which the next general election is held.

(6.) An official member shall hold office during the pleasure of the Governor-General.

(7.) A member of the Legislative Council shall, before taking his seat, make and subscribe before the Administrator, or a person thereunto authorized by the Administrator, an oath or affirmation in the form in the Sixth Schedule to this Act.

37.—(1.) A person shall not be qualified to be elected or appointed or to continue as a member of the Legislative Council if— *Disqualifications.*

- (a) he is an undischarged bankrupt or insolvent ;
- (b) he has been convicted and is under sentence, or subject to be sentenced, for any offence punishable under the law of the Commonwealth, or of a State or Territory of or under the authority of the Commonwealth, by imprisonment for one year or longer ; or
- (c) he, in any way otherwise than as a member, and in common with other members, of an incorporated company consisting of more than twenty-five members—
 - (i) is concerned or interested in any contract or agreement made by or on behalf of the Government of the Commonwealth or of the Territory ; or
 - (ii) participates, or claims to be entitled to participate, in the profit of any such contract or agreement or in any benefit or emolument arising therefrom.

(2.) A person shall not be qualified to continue as a member of the Legislative Council if—

- (a) he is absent from three consecutive meetings of the Council, except on leave granted by the Administrator (which leave the Administrator is hereby authorized to grant); or
- (b) except as authorized by Ordinance, he directly or indirectly takes or agrees to take any fee or honorarium for services rendered in the Council.

Vacancies.

38.—(1.) A member, other than the Administrator, an official member or an elected member—

- (a) may at any time be removed from office by the Governor-General; and
- (b) shall (unless re-appointed) vacate his seat at the end of three years from the date of his appointment.

(2.) A member, other than the Administrator or an official member, may at any time resign his seat by delivering a written resignation to the Administrator for transmission to the Governor-General.

(3.) In the event of the happening of a vacancy in the office of an elected member before the expiration of his term of office—

- (a) if the vacancy occurs within two years after the date of the last preceding general election—an election shall be held, at the time and in the manner provided by or under Ordinance, for the election of a member to fill the vacant office; or
- (b) in any other case—the Governor-General may appoint a person (being a person qualified to be an elected member) to hold the vacant office, and the person so appointed shall, for the purposes of this Act be deemed to be an elected member.

Elections.

39. Elections (in this Division referred to as general elections) for the election of the three elected members of the Legislative Council shall be held at intervals not exceeding three years and at the times and in the manner provided by or under Ordinance.

Sessions and Prorogation of Legislative Council.

40. The Administrator may, by notice published in the *Government Gazette*, 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.

Quorum.

41.—(1.) The presence of at least ten of the members of the Legislative Council shall be necessary to constitute a meeting of the Council for the exercise and performance of its powers and functions.

(2.) For the purposes of this section, the member presiding at a meeting (whether he is the Administrator or another member) shall be counted as a member present at the meeting.

42. The official members of the Legislative Council shall have such seniority as the Governor-General specially assigns and, if the Governor-General has not assigned seniority, then they shall have seniority according to the priority of their appointment, for which purpose members appointed by the same instrument shall be deemed to have been appointed in the order in which they are named therein.

Seniority of official members of Legislative Council.

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

Presidency of Legislative Council.

(2.) In his absence, the senior official member of the Legislative Council who is present shall preside.

44.—(1.) Matters 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 voting is equal, have a casting vote.

45.—(1.) The Legislative Council shall cause minutes of its meetings to be kept.

Minutes of meetings.

(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 the meeting.

46. The Legislative Council may make standing rules and orders in respect of the order and conduct of its business and proceedings.

Standing rules and orders.

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

Proposal of money votes.

48. Subject to this Act, the Legislative Council may make Ordinances for the peace, order and good government of the Territory.

Legislative power of Legislative Council.

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

Assent to Ordinances.

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

(3.) The Administrator shall thereupon declare, according to his discretion, to be exercised subject to this Act, 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.

50.—(1.) Within six months after the Administrator's assent to an Ordinance, the Governor-General may disallow the Ordinance or any part thereof.

(2.) The disallowance shall, upon publication of notice thereof in the *Government Gazette*, have the same effect as a repeal of the Ordinance, or of the part thereof, as the case may be, except that, if any provision of the Ordinance or of the part thereof, as the case may be, amended or repealed a law in force immediately before the coming into operation of that provision, the disallowance shall revive the previous law from the date of the publication of the notice of the disallowance as if the disallowed provision had not been made.

Reservations
of pleasure
on Ordinance
reserved.

51. An Ordinance reserved for the Governor-General's pleasure shall not have any force unless and until, within one year after the day on which it was presented to the Administrator for assent, the Administrator causes to be published in the *Government Gazette* a notification that the Ordinance has received the Governor-General's assent.

Assent to
certain
Ordinances.

52. The Administrator shall reserve for the Governor-General's pleasure an Ordinance of any of the following descriptions, namely:—

- (a) An Ordinance relating to divorce;
- (b) An Ordinance relating to the granting or disposal of lands of the Administration or of the Crown;
- (c) An Ordinance whereby a grant of money or of an interest in land is made to the Administrator;
- (d) An Ordinance which, in the opinion of the Administrator, may not be fully in accordance with Australia's treaty obligations or with Australia's obligations under the Trusteeship Agreement;
- (e) An Ordinance relating to naval, military or air forces;
- (f) An Ordinance relating to the sale or other disposition of, or other dealing with, lands by natives;
- (g) An Ordinance relating to the employment of natives;
- (h) An Ordinance relating to arms, ammunition, explosives, intoxicating liquor or opium;
- (i) An Ordinance relating to immigration, emigration or deportation;
- (j) An Ordinance relating to the Public Service;
- (k) An Ordinance containing provisions from which the assent of the Governor-General has once been withheld or which the Governor-General has disallowed.

53. Every Ordinance assented to by the Administrator or by the Governor-General shall, as soon as is practicable after that assent, be laid before both Houses of the Parliament.

Ordinances to be laid before Parliament.

Division 3.—Interim Legislative Powers of Governor-General.

54.—(1.) Until the date fixed by Proclamation under section thirty-five of this Act, the Governor-General may, subject to this Act, make Ordinances for the peace, order and good government of the Territory.

Legislative power of Governor-General.

(2.) Notice of the making of every Ordinance made under this section shall be published in the *Commonwealth of Australia Gazette*, and every such Ordinance shall, unless the contrary intention appears in the Ordinance, take effect from the date of publication of the notice.

55.—(1.) Every Ordinance made under this Division shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the Ordinance, and any such Ordinance which is not so laid before each House of the Parliament shall be void and of no effect.

Tabling of Ordinances in Parliament.

(2.) If either House of the Parliament passes a resolution (of which notice has been given at any time within fifteen sitting days after an Ordinance has been laid before that House) disallowing that Ordinance or any part thereof, the Ordinance or part so disallowed shall thereupon cease to have effect.

(3.) If, at the expiration of fifteen sitting days after notice of a resolution to disallow any such Ordinance or part of any such Ordinance has been given in either House of the Parliament in accordance with the last preceding sub-section, the resolution has not been withdrawn or otherwise disposed of, the Ordinance or part, as the case requires, shall thereupon be deemed to have been disallowed.

(4.) Where an Ordinance or part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, the disallowance shall have the same effect as a repeal of the Ordinance, or part, as the case may be, except that, if any provision of the Ordinance or part amended or repealed any law in force immediately before the coming into operation of that provision, the disallowance shall revive the previous law from the date of the disallowance as if the disallowed provision had not been made.

(5.) If an Ordinance or part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, and an Ordinance containing any provision being the same in substance as any provision so disallowed, or deemed to have been disallowed, is made within six months after the date of the disallowance, that provision shall be void and of no effect, unless—

- (a) in the case of an Ordinance, or part of an Ordinance, disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed; or

(b) in the case of an Ordinance, or part of an Ordinance, deemed to have been disallowed—the House of the Parliament in which notice of the resolution to disallow that Ordinance or part was given approves, by resolution, the making of a provision the same in substance as the provision deemed to have been disallowed.

Ordinances to continue in force.

56. All Ordinances made under this Division in force immediately before the date fixed by Proclamation under section thirty-five of this Act shall continue in force on and after that date, but may be amended or repealed by Ordinances made by the Legislative Council.

Commencement of Division.

57.—(1.) Without limiting the power to make Ordinances conferred by the *Papua-New Guinea Provisional Administration Act 1945-1946*, this Division shall come into operation on the day on which this Act receives the Royal Assent and shall, on and from that day, operate as if the whole of this Act were in operation.

(2.) Subject to section four of the *Acts Interpretation Act 1901-1948*, as applied by section forty-six of that Act, no Ordinance made under this Division shall come into operation before the date fixed by Proclamation under section two of this Act.

PART VI.—THE JUDICIAL SYSTEM.

Constitution of Supreme Court.

58.—(1.) There shall be, within the Territory, a Supreme Court of the Territory, which shall be known as the Supreme Court of the Territory of Papua and New Guinea.

(2.) The Supreme Court shall consist of a Chief Judge and such other judges as the Governor-General appoints.

(3.) The Supreme Court shall be a superior court of record.

(4.) The jurisdiction of the Supreme Court may be exercised—

(a) by a judge or judges sitting in court; and

(b) to the extent and in the cases provided by or under Ordinance, by a judge sitting in chambers,

and the jurisdiction of the Court may be so exercised notwithstanding that that jurisdiction is being exercised at the same time by another judge or judges.

(5.) The Chief Judge shall be the senior judge of the Supreme Court, and the other judges shall, unless otherwise stated in their Commissions, have seniority according to the dates of their Commissions.

(6.) During the absence on leave of the Chief Judge, or during a vacancy in the office of Chief Judge, the next senior judge who is available shall act as Chief Judge, and, while so acting, shall have, and may exercise and perform, all the powers, functions and duties of the Chief Judge.

Appointment and terms of Chief Judge and judges.

59.—(1.) The Chief Judge and each other judge of the Supreme Court—

(a) shall be appointed by the Governor-General by Commission under the Seal of the Commonwealth;

(b) may be removed from office by the Governor-General on the ground of proved misbehaviour or incapacity, but shall not otherwise be removed from office; and

(c) except in the case of an acting judge, shall, subject to this section, retire upon reaching the age of sixty-five years.

(2.) A judge shall, before proceeding to discharge the duties of his office, take before the Governor-General or a person thereunto authorized by the Governor-General an oath or affirmation in the form in the Seventh Schedule to this Act.

(3.) The remuneration of a judge shall not be diminished during his continuance in office.

(4.) A judge who has held office as a judge of the Supreme Court of the Territory of Papua-New Guinea may continue in office during the pleasure of the Governor-General after he has attained the age of sixty-five years.

60.—(1.) The Governor-General may appoint a person (being a person who is qualified to be a judge) to be an acting judge— Acting Judges.

(a) while a judge is absent on leave or is for any other reason unable for the time being to discharge the duties of his office; or

(b) until the appointment of a judge in place of a judge who has died or has otherwise ceased to hold office.

(2.) Where the Governor-General considers it necessary so to do by reason of a temporary increase in the business of the Court, he may appoint a person (being a person who is qualified to be a judge) to be an acting judge during a period specified by the Governor-General.

(3.) An acting judge shall have the jurisdiction and powers of, and may exercise all the authorities which are vested in, or may be exercised by, a judge.

(4.) The appointment of a person to be an acting judge during the absence, or inability to act, of a judge shall not be determined by the death or resignation of that judge, but shall, unless the Governor-General otherwise directs, continue, subject to this section, until a judge is appointed in place of the judge who has died or resigned.

(5.) An acting judge who holds office by virtue of paragraph (b) of sub-section (1.), or of sub-section (4.), of this section shall not so hold office for a period longer than twelve months.

61.—A person shall not be appointed to be a judge of the Supreme Court unless— Qualifications of Judges.

(a) he has been a judge of the Supreme Court of the Territory of Papua-New Guinea; or

(b) he is a barrister or solicitor of the High Court or of the Supreme Court of a State or Territory of the Commonwealth (including the Supreme Court of the Territory of Papua-New Guinea) of not less than five years' standing.

**Jurisdiction of
Supreme Court.**

62. The jurisdiction, practice and procedure of the Supreme Court shall be as provided by or under Ordinance.

**Establishment
of other
judicial
tribunals.**

63. Courts and tribunals, including native village courts and other tribunals in which natives may sit as adjudicating officers or assessors, may be established by or under Ordinance.

**Appeals to
High Court.**

64.—(1.) The High Court shall have jurisdiction, with such exceptions and subject to such conditions as are provided by Ordinance, to hear and determine appeals from all judgments, decrees, orders, and sentences of the Supreme Court of the Territory, and the decision of the High Court on any such appeal shall be final and conclusive.

(2.) It may be provided by Ordinance that an appeal to the High Court may be by case stated, with the legal argument, if any, attached to the case in writing, and that it shall not be necessary in any such case for the parties to appear either personally or by counsel.

(3.) Nothing in this Act shall affect any right of appeal to the High Court, any jurisdiction of the High Court to give leave to appeal to the High Court, or any jurisdiction of the High Court to hear and determine any appeal, from any judgment, decree, order or sentence of any court or judge given, made or pronounced before the commencement of this Act.

PART VII.—WELFARE AND DEVELOPMENT.

**Welfare and
development
projects.**

65. Without prejudice to the operation of any other provision of this Act or of any law of the Territory—

(a) the Minister may, with the concurrence of the Treasurer of the Commonwealth, make arrangements or agreements for any purpose likely to promote the development of the resources of the Territory or the welfare of its inhabitants, and any sums required by the Minister for the purpose of any such arrangement or agreement shall be paid out of moneys appropriated by the Parliament for that purpose ; and

(b) the regulations may provide for the establishment of boards, committees or authorities for the purpose of promoting and controlling the production of primary products of the Territory, and for the marketing thereof, and may define the powers and functions of any such board, committee or authority.

PART VIII.—THE AUSTRALIAN SCHOOL OF PACIFIC ADMINISTRATION.

**Establishment
and function
of the
School.**

66.—(1.) There shall be an institution under the name of the Australian School of Pacific Administration.

(2.) The function of the School shall be to provide special courses for the education of officers and prospective officers of the Territory and of such other persons as are prescribed.

67.—(1.) There shall be a Council of the School, which shall be constituted and appointed as prescribed. Council of the School.

(2.) The Council shall have such powers and functions (including powers of delegation) in relation to the School as are prescribed.

(3.) A member of the Council shall hold office on such terms and conditions as are prescribed.

(4.) A member of the Council shall not, by reason only of that membership, be subject to the *Commonwealth Public Service Act 1922-1948*.

68.—(1.) There shall be a Principal of the School, who shall have such powers, functions and duties in relation to the School as are prescribed. Principal and staff.

(2.) The Principal and all other persons required for the academic and other staff of the School shall be employed under the *Commonwealth Public Service Act 1922-1948*.

69. The regulations may make provision for or in relation to— Regulations.

- (a) the management, control and discipline of the School;
- (b) the eligibility, selection and admission of students of the School;
- (c) the fees and allowances payable to members of the Council of the School;
- (d) the fees to be charged to students of the School; and
- (e) all other matters necessary or convenient to be prescribed for carrying out or giving effect to this Part.

70. If at any time the Governor-General is satisfied that the School is no longer necessary, the Governor-General may, by Proclamation, declare that, on a date specified in the Proclamation, this Part shall cease to have effect, and this Part shall be deemed to be repealed on the date so specified. Duration of Part.

PART IX.—MISCELLANEOUS.

71.—(1.) The slave trade is prohibited in the Territory.

(2.) Forced labour is prohibited in the Territory except in such circumstances as are permitted by the Convention Concerning Forced or Compulsory Labour adopted by the International Labour Organization and approved by Australia on the second day of November, One thousand nine hundred and thirty-one, or any Convention replacing or amending that Convention. Prohibition of slave trade and forced labour.

72. Subject to such exceptions and exemptions as are provided by Ordinance, the supply of intoxicating liquor to natives is prohibited in the Territory. Prohibition of supply of liquor to natives.

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

73. The Administrator may, by warrant under his hand, grant to any offender convicted by a Court exercising criminal jurisdiction in the Territory a pardon, either free or conditional, or a remission or commutation of sentence, or a 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 Administration.

Vesting of
public funds
of former
Administration

74.—(1.) Subject to the next succeeding sub-section, all public funds, revenues and moneys of the Territory of Papua, the Territory of New Guinea or the Territory of Papua-New Guinea, and all investments and property representing those public funds, revenues or moneys, shall, from the commencement of this Act, be deemed to be public funds, revenue, moneys, investments or property of the Territory.

(2.) The Minister may give such directions as he thinks necessary in relation to the control, disposal and investment of the unexpended portion of the moneys which, on the twenty-ninth day of October, One thousand nine hundred and forty-five, stood to the credit of the public funds of the Territory of Papua and the Territory of New Guinea, and of any investments representing any such moneys, and any directions so given shall be complied with.

Public Funds.

75.—(1.) The revenues of the Territory shall be available for defraying the expenditure of the Territory.

(2.) The receipt, expenditure and control of revenues and moneys of the Territory shall be regulated as provided by Ordinance.

(3.) 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.

Audit.

76. The accounts of the Territory shall be subject to inspection and audit by the Auditor-General for the Commonwealth.

Inquiries, &c.,
for purposes of
Ordinances.

77. The regulations may make provision for or in relation to—

- (a) the holding of inquiries in the Commonwealth or in any Territory under the authority of the Commonwealth for the purposes of any Ordinance, including the summoning and examination of witnesses;
- (b) the requiring of statutory declarations for the purposes of any such inquiry; and
- (c) the imposition of penalties, not exceeding a fine of Fifty pounds or imprisonment for three months, for offences against the regulations made in pursuance of this section.

Regulations.

78. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which, by this Act, are required or permitted to be prescribed or provided by the regulations.

THE SCHEDULES.

Section 2.

FIRST SCHEDULE.

ACTS REPEALED.

Papua Act 1905.
Papua Act 1920.
Papua Act 1924.
Papua Act 1940.
New Guinea Act 1920.
New Guinea Act 1926.
New Guinea Act 1932.
New Guinea Act 1935.
Papua-New Guinea Provisional Administration Act 1945-1946.

SECOND SCHEDULE.

THE TERRITORY OF NEW GUINEA.

Section 3.

The north-eastern part of the island of New Guinea, the Bismarck Archipelago (comprising New Britain, New Ireland, New Hanover, the Admiralty Islands and outlying groups), the northern islands Buks and Bougainville, of the Solomons Group and all other islands, contained within an area bounded by a line commencing at the intersection of the meridian 141° east longitude with the parallel 5° south latitude, thence bearing north along the said meridian 141° east longitude to its intersection with the Equator, thence bearing east along the said Equator to its intersection with the meridian 160° east longitude, thence bearing south along the said meridian 160° east longitude to its point of intersection with the parallel 4° 50' south latitude, thence bearing west along the said parallel 4° 50' south latitude to its intersection with the meridian 159° east longitude, thence bearing generally south westerly to a point which lies 5 nautical miles north 42° east true from Cape Friendship thence bearing generally southerly to a point which lies 4 nautical miles north 70° 30' east true from Cape Friendship, thence bearing generally south westerly to a point which lies 3 nautical miles south true from the southern point of the Peninsula which bounds the harbour of Tondel on the east, thence bearing generally south westerly to a point which lies 3 nautical miles south true from Moila Point (previously shown as Komalei Point on German Admiralty Chart No. 100) thence bearing generally westerly to a point which lies 8 nautical miles south 69° west true from the aforesaid Moila Point, thence south westerly to the intersection of the meridian 154° east longitude with the parallel 8° south latitude, thence continuing westerly along the said parallel 8° south latitude to its intersection with the meridian 147° east longitude thence generally north westerly to the point of intersection of the meridian 144° east longitude with the parallel 6° south latitude thence north westerly to the point of commencement.

THIRD SCHEDULE.

THE TERRITORY OF PAPUA.

Section 4.

The southern and south-eastern shores of New Guinea from the middle of the mouth of the Bensbach River, situated at about one hundred and forty-one degrees one minute forty-seven point nine seconds 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, and then proceeding south along the one hundred and forty-first meridian of east longitude to the most northerly intersection of that meridian with the Fly River, then following the waterway of the Fly River to its most southerly intersection with the meridian one hundred and forty-one degrees one minute forty-seven point nine seconds of east longitude, then

THE SCHEDULES—continued.

proceeding along that meridian southerly to the point of commencement, 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 State of Queensland, and furthermore including all Islands and Reefs lying in the Gulf of Papua to the northward of the eighth parallel of south latitude.

Section 4.

FOURTH SCHEDULE.

TRUSTEESHIP AGREEMENT FOR THE MANDATED TERRITORY OF NEW GUINEA AS APPROVED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 18TH DECEMBER, 1946.

The Territory of New Guinea has been administered in accordance with Article 22 of the Covenant of the League of Nations and in pursuance of a Mandate conferred upon His Britannic Majesty and exercised on His behalf by the Government of the Commonwealth of Australia.

The Charter of the United Nations, signed at San Francisco on 26 June 1945, provides by Article 75 for the establishment of an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements.

The Government of Australia now undertakes to place the Territory of New Guinea under the trusteeship system, on the terms set forth in the present Trusteeship Agreement.

Therefore the General Assembly of the United Nations, acting in pursuance of Article 85 of the Charter, approves the following terms of trusteeship for the Territory of New Guinea, in substitution for the terms of the Mandate under which the Territory has been administered :

ARTICLE 1

The Territory to which this Trusteeship Agreement applies (hereinafter called the Territory) consists of that portion of the island of New Guinea and the groups of islands administered therewith under the Mandate dated 17 December 1920, conferred upon His Britannic Majesty and exercised by the Government of Australia.

ARTICLE 2

The Government of Australia (hereinafter called the Administering Authority) is hereby designated as the sole authority which will exercise the administration of the Territory.

ARTICLE 3

The Administering Authority undertakes to administer the Territory in accordance with the provisions of the Charter and in such a manner as to achieve in the Territory the basic objectives of the international trusteeship system, which are set forth in Article 76 of the Charter.

ARTICLE 4

The Administering Authority will be responsible for the peace, order, good government and defence of the Territory and for this purpose will have the same powers of legislation, administration and jurisdiction in and over the Territory as if it were an integral part of Australia, and will be entitled to apply to the Territory, subject to such modifications as it deems desirable, such laws of the Commonwealth of Australia as it deems appropriate to the needs and conditions of the Territory.

ARTICLE 5

It is agreed that the Administering Authority, in the exercise of its powers under Article 4, will be at liberty to bring the Territory into a customs, fiscal or administrative union or federation with other dependant territories under its jurisdiction or control, and to establish common services between the Territory and any or all of these territories, if in its opinion it would be in the interests of the Territory and not inconsistent with the basic objectives of the trusteeship system to do so.

THE SCHEDULES—continued.

ARTICLE 6

The Administering Authority further undertakes to apply in the Territory the provisions of such international agreements and such recommendations of the specialized agencies referred to in Article 57 of the Charter as are, in the opinion of the Administering Authority, suited to the needs and conditions of the Territory and conducive to the achievement of the basic objectives of the trusteeship system.

ARTICLE 7

The Administering Authority may take all measures in the Territory which it considers desirable to provide for the defence of the Territory and for maintenance of international peace and security.

ARTICLE 8

The Administering Authority undertakes that in the discharge of its obligations under Article 3 of this agreement:

1. it will co-operate with the Trusteeship Council in the discharge of all the Council's functions under Articles 87 and 88 of the Charter;
2. it will, in accordance with its established policy:
 - (a) take into consideration the customs and usages of the inhabitants of New Guinea and respect the rights and safeguard the interests both present and future of the indigenous inhabitants of the Territory; and in particular ensure that no rights over native land in favour of any person not an indigenous inhabitant of New Guinea may be created or transferred except with the consent of the competent public authority;
 - (b) promote, as may be appropriate to the circumstances of the Territory, the educational and cultural advancement of the inhabitants;
 - (c) assure to the inhabitants of the Territory, as may be appropriate to the particular circumstances of the Territory and its peoples a progressively increasing share in the administrative and other services of the Territory;
 - (d) guarantee to the inhabitants of the Territory, subject only to the requirements of public order, freedom of speech, of the press, of assembly and of petition, freedom of conscience and worship and freedom of religious teaching.

FIFTH SCHEDULE.

Section 18.

OATH.

I, A.B., do swear that I will well and truly serve our Sovereign Lord the King in the office of Administrator (or Acting Administrator, or Deputy Administrator) of the Territory of Papua and New Guinea, 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!

AFFIRMATION.

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 (or Acting Administrator) or Deputy Administrator) of the Territory of Papua and New Guinea, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will.

THE SCHEDULES—continued.

Section 37.

SIXTH SCHEDULE.

OATH.

I, A.B., do swear that I will render true and faithful service as a member of the Legislative Council of the Territory of Papua and New Guinea. So help me God!

AFFIRMATION.

I, A.B., do solemnly and sincerely promise and declare that I will render true and faithful service as a member of the Legislative Council of the Territory of Papua and New Guinea.

Section 54.

SEVENTH SCHEDULE.

OATH.

I, A.B., do swear that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His heirs and successors according to law, that I will well and truly serve Him in the office of Chief Judge (or Judge as the case may be) of the Supreme Court of the Territory of Papua and New Guinea and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God!

AFFIRMATION.

I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to His Majesty King George the Sixth, His heirs and successors according to law, that I will well and truly serve Him in the office of Chief Judge (or Judge as the case may be) of the Supreme Court of the Territory of Papua and New Guinea and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.