

Papua and New Guinea

No. 25 of 1968

An Act to amend the *Papua and New Guinea Act* 1949–1966.

[Assented to 27 May 1968]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

Short title
and citation.

1.—(1.) This Act may be cited as the *Papua and New Guinea Act* 1968.

(2.) The *Papua and New Guinea Act 1949–1966** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Papua and New Guinea Act 1949–1968*.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commence-
ment.

3. Section 4 of the Principal Act is amended by omitting the words— Parts.

“ Part IV.—Administration.

Division 1.—The Administrator (Sections 13–18).

Division 2.—The Administrator’s Council (Sections 19–21).

Division 4.—The Public Service (Sections 30–31).”

and inserting in their stead the words—

“ Part IV.—The Executive Government.

Division 1.—The Administrator (Sections 13–18).

Division 2.—The Administrator’s Executive Council (Sections 19–23).

Division 3.—Ministerial Offices (Sections 24–29A).

Division 4.—The Public Service (Sections 30–31).”

4. Section 5 of the Principal Act is amended—

Interpretation.

(a) by omitting from sub-section (1.) the definition of “ day of election ” and inserting in its stead the following definition:—

“ ‘ assistant ministerial member ’ means a person holding office as an assistant ministerial member of the House of Assembly; ” ;

(b) by inserting in that sub-section, after the definition of “ judge ”, the following definitions:—

“ ‘ ministerial member ’ means a person holding office as a ministerial member of the House of Assembly;

‘ ministerial office ’ means an office of ministerial member of the House of Assembly or of assistant ministerial member of the House of Assembly; ” ;

(c) by inserting in that sub-section, after the definition of “ the Administrator ”, the following definition:—

“ ‘ the Council ’ means the Administrator’s Executive Council of the Territory of Papua and New Guinea; ” ; and

(d) by omitting from sub-section (2.) the words “ an election, whether a general election or otherwise,” and inserting in their stead the words “ a general election ”.

* Act No. 9, 1949, as amended by No. 80, 1950; No. 41, 1954; No. 15, 1957; Nos. 4 and 47, 1960; No. 27, 1963; No. 103, 1964; and No. 84, 1966.

Heading.

5. The heading to Part IV. of the Principal Act is repealed and the following heading inserted in its stead:—

“ PART IV.—THE EXECUTIVE GOVERNMENT.”.

6.—(1.) Division 2 of Part IV. of the Principal Act is repealed and the following Divisions are inserted in its stead:—

“ *Division 2.—The Administrator's Executive Council.*

Administrator's
Executive
Council.

“ 19.—(1.) There shall be a Council to be known as the Administrator's Executive Council of the Territory of Papua and New Guinea.

“ (2.) The functions of the Council are to advise the Administrator—

- (a) on any matter referred to the Council by the Administrator; or
- (b) in accordance with an Ordinance, on any other matter.

“ (3.) Where he thinks it in the public interest to do so, the Administrator may introduce, or authorize the introduction, in the Council of any matter for discussion in the Council.

Constitution
of Council.

“ 20.—(1.) Subject to this section, the Council shall consist of—

- (a) the Administrator;
- (b) three official members of the House of Assembly appointed by the Minister on the nomination of the Administrator; and
- (c) the persons for the time being holding office as ministerial members.

“ (2.) The Minister may, on the nomination of the Administrator, appoint an additional member of the Council, being a person who is an elected member of the House of Assembly.

“ (3.) A member of the Council, other than the Administrator or a ministerial member, may be removed from office by the Minister.

“ (4.) A person appointed under paragraph (b) of sub-section (1.) of this section ceases to be a member of the Council if he ceases to be an official member of the House of Assembly.

“ (5.) A person appointed under sub-section (2.) of this section ceases to be a member of the Council if he ceases to be an elected member of the House of Assembly.

“ (6.) The performance of the functions of the Council is not affected by reason of a vacancy or vacancies in the membership of the Council.

Resignation.

“ 21. If a member of the Council appointed under paragraph (b) of sub-section (1.), or under sub-section (2.), of the last preceding section desires to resign his office as a member of the Council he shall deliver a written resignation to the Administrator for transmission to the Minister, but the resignation does not become effective unless and until it has been accepted by the Minister.

“ 22.—(1.) The Administrator shall preside at all meetings of the Council at which he is present. Proceedings of Council.

“ (2.) In the absence of the Administrator from a meeting of the Council, a member of the Council appointed by the Administrator to preside in such absences shall preside.

“ (3.) At a meeting of the Council, a quorum consists of the Administrator, or a member appointed in accordance with the last preceding sub-section, and three other members.

“ (4.) The regulations may prescribe the procedure of the Council and, subject to the regulations, the procedure shall be as the Council determines.

“ 23.—(1.) A member of the Council other than the Administrator shall, before entering on his duties as a member of the Council, make and subscribe an oath or affirmation in accordance with the form in the Eighth Schedule to this Act. Oath of members of Council.

“ (2.) The oath or affirmation shall be made before the Administrator or a person authorized by the Administrator to administer such oaths or affirmations.

“ *Division 3.—Ministerial Offices.*

“ 24.—(1.) There shall be—

- (a) seven offices of ministerial member of the House of Assembly, of such respective designations as the Minister from time to time determines; and
- (b) such number, being not more than ten, of offices of assistant ministerial member of the House of Assembly, and of such respective designations, as the Minister from time to time determines.

Ministerial offices.

“ (2.) In respect of each ministerial office, the Minister shall determine, from time to time, the matters in respect of which the holder of the office is to perform the functions of a ministerial member or assistant ministerial member, as the case requires, being all or any of the matters to which the functions of a specified department of the Public Service relate.

“ 25.—(1.) The functions of a ministerial member or assistant ministerial member are, in relation to the matters determined in relation to his office under the last preceding section, and to the extent and in the manner provided by arrangements approved by the Minister and applicable to his office, to assist in the administration of the government of the Territory and, in particular—

Functions of holder of ministerial office.

- (a) to take part in the formulation of policies and plans, and of proposals for expenditure, in relation to those matters and in the direction of the activities of the department of the Public Service dealing with those matters;

- (b) to represent, or assist in representing, the Administration in the House of Assembly; and
- (c) in the case of a ministerial member, to make recommendations to the Administrator's Executive Council in relation to those matters.

“(2.) Powers, functions or duties in relation to the government of the Territory shall not be conferred or imposed by Ordinance on the holder of a ministerial office in his capacity as the holder of such an office, but this sub-section does not operate so as to prevent the delegation to the holder of a ministerial office of powers or functions under an Ordinance.

Appointment
and removal of
holders of
ministerial
office.

“26.—(1.) Subject to this section, the Minister may appoint an elected member of the House of Assembly to a ministerial office, and may terminate any such appointment.

“(2.) An elected member shall not be appointed to a ministerial office unless, since the last preceding general election, he has, in accordance with the regulations, been nominated by the House of Assembly, with the concurrence of the Administrator, for appointment to a ministerial office.

“(3.) Subject to the next succeeding section, the Minister shall not terminate an appointment of a person to a ministerial office unless the House of Assembly has, in accordance with the regulations, resolved that the appointment should be terminated.

“(4.) Regulations for the purposes of this section may—

- (a) make provision with respect to the number of persons who are, in prescribed circumstances, to be nominated under sub-section (2.) of this section at the one time;
- (b) prescribe conditions subject to which, and the procedure in accordance with which, the House of Assembly may make nominations or adopt resolutions for the purposes of a provision of this section; and
- (c) provide for the appointment by the House of Assembly of a committee of that House for the purposes of the regulations, and make provision with respect to the manner of appointment of the committee and the functions and procedure of the committee.

“(5.) If the Governor-General, after report to the Minister by the Administrator, is satisfied that the public interest requires that a person holding a ministerial office should cease to be the holder of a ministerial office, the Governor-General may terminate the appointment of that person as the holder of a ministerial office.

Minister may
vary appoint-
ments.

“27. The Minister may, at any time, terminate the appointment of a person to a ministerial office and, at the same time, appoint that person to another ministerial office.

“ 28. The appointment of a person to a ministerial office takes effect on the day specified in the instrument of appointment and terminates when—

Tenure of office.

- (a) he ceases to be an elected member of the House of Assembly;
- (b) the appointment is terminated in accordance with this Division;
- (c) he resigns his office by writing under his hand delivered to the Administrator for transmission to the Minister and the resignation is accepted by the Minister; or
- (d) the House of Assembly first meets after a general election of that House that takes place after the appointment takes effect.

“ 29.—(1.) A person who is appointed to a ministerial office shall, before entering on the duties of the office, make and subscribe an oath or affirmation in accordance with the form in the Ninth Schedule to this Act.

Oath of office.

“ (2.) The oath or affirmation shall be made before the Administrator or a person authorized by the Administrator to administer such oaths or affirmations.

“ 29A. The Minister shall not exercise a power under this Division, or under the regulations made for the purposes of this Division, except upon a recommendation of, or after consultation with, the Administrator, but the validity of an act of the Minister shall not be called in question on the ground that the requirements of this section have not been complied with.”

Minister to consult with Administrator.

(2.) A reference in a law of the Territory in force at the commencement of this Act to the Administrator's Council for the Territory of Papua and New Guinea shall, after the commencement of this Act, be read as a reference to the Administrator's Executive Council of the Territory of Papua and New Guinea.

7.—(1.) Section 36 of the Principal Act is amended by omitting sub-section (4.) and inserting in its stead the following sub-sections:—

Composition of House of Assembly.

“ (4.) Subject to this Act, an elected member holds office for a period commencing—

- (a) in the case of a member elected at a general election—on the day next following the day of completion of that general election; or
- (b) in any other case—on the day next following the day on which he is, in accordance with Ordinance, declared to be elected,

and ending at the expiration of the day of completion of the next following general election.

“ (4A.) For the purposes of the last preceding sub-section, the day of completion of a general election is the day on which the member last declared, in accordance with Ordinance, to be elected at that election is so declared to be elected.”

(2.) Section 36 of the Principal Act as amended by this section applies for the purpose of determining the time of expiry of the term of office of elected members of the House of Assembly holding office at the commencement of this Act.

Vacancies.

8. Section 38 of the Principal Act is amended by omitting from paragraph (b) of sub-section (4.) the words " the day of election " and inserting in their stead the words " the day on which he was declared to be elected ".

Quorum.

9. Section 42 of the Principal Act is amended by omitting from sub-section (1.) the words " twenty-two members " and inserting in their stead the words " thirty-two members ".

10. After section 49 of the Principal Act the following section is inserted:—

Priority of
business of
Administration.

" 49A. The Administrator may, by message to the House of Assembly, declare that he is of opinion that the public interest requires special priority to be given to any specified business before the House (including business of which notice has been given in the House) and, where such a declaration is made, the Speaker shall, notwithstanding any rule, order or resolution of the House, cause that business to be given such priority in the proceedings of the House as an official member of the House requests."

11. Section 53 of the Principal Act is repealed and the following section inserted in its stead:—

Ordinances to
be assented to.

" 53. An Ordinance passed by the House of Assembly does not have any force or effect unless or until assent has been given to the Ordinance, or to a part of the Ordinance, in accordance with this Division, and any part of an Ordinance assent to which is withheld under section fifty-six of this Act does not have any force or effect."

Signification of
pleasure on
Ordinance
reserved.

12.—(1.) Section 56 of the Principal Act is amended—

(a) by omitting sub-section (1.) and inserting in its stead the following sub-section:—

" (1.) Where the Administrator reserves an Ordinance for the Governor-General's pleasure, the Governor-General shall, subject to this section, within six months after the day on which the Ordinance was presented to the Administrator for assent, declare—

- (a) that he assents to the Ordinance;
- (b) that he withholds assent to the Ordinance; or
- (c) that he withholds assent to part of the Ordinance and assents to the remainder of the Ordinance."

(b) by omitting sub-section (4.) and inserting in its stead the following sub-section:—

" (4.) As soon as practicable after the Governor-General has made a declaration in respect of an Ordinance in accordance with sub-section (1.) of this section, the Administrator shall publish in the *Government Gazette* a notification of the declaration."; and

- (c) by inserting in sub-section (5.), after the word "Ordinance", the words " , or to part of an Ordinance,".

(2.) Section 56 of the Principal Act, as amended by this Act, applies in relation to an Ordinance that was reserved by the Administrator for the Governor-General's pleasure before the date of commencement of this Act and in respect of which the Governor-General had not, before that date, made a declaration in accordance with sub-section (1.) of section 56 of the Principal Act.

13. Section 57A of the Principal Act is amended—

- (a) by inserting after sub-section (1.) the following sub-section:—

Ordinances to
be laid before
the Parliament.

" (1A.) The last preceding sub-section extends to an Ordinance to part only of which the Governor-General has assented and, in the case of such an Ordinance, there shall be indicated on the Ordinance, as laid before each House of the Parliament, the part of the Ordinance to which assent has been withheld." ; and

- (b) by omitting from sub-section (2.) all the words before the words "the Minister" and inserting in their stead the words "Where the Administrator withholds assent to an Ordinance, or the Governor-General withholds assent to an Ordinance or a part of an Ordinance or disallows an Ordinance or part of an Ordinance,".

14. The Eighth Schedule to the Principal Act is repealed and the following Schedules are inserted in its stead:—

Schedules.

" EIGHTH SCHEDULE.

Section 23.

OATH

I, A.B., do swear that, except as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my membership of the Administrator's Executive Council of the Territory of Papua and New Guinea, or anything said or done by myself or any other member of the Council at a meeting of the Council: So help me God!

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that, except as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my membership of the Administrator's Executive Council of the Territory of Papua and New Guinea or anything said or done by myself or any other member of the Council at a meeting of the Council.

" NINTH SCHEDULE.

Section 29.

OATH

I, A.B., do swear that, except in the course of my duties or as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my holding the office of (*designation of office*): So help me God!

AFFIRMATION

I, A.B., do solemnly and sincerely promise and declare that, except in the course of my duties or as may be required by law, I will not divulge any information (including the contents of any document) of which I have become aware by reason of my holding the office of (*designation of office*)."