

PAPUA-NEW GUINEA
PROVISIONAL ADMINISTRATION.

No. 20 of 1945.

An Act to provide for the provisional administration of the Territory of Papua and that portion of the Territory of New Guinea no longer in enemy occupation.

[Assented to 3rd August, 1945.]

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

Short title.

1. This Act may be cited as the *Papua-New Guinea Provisional Administration Act 1945*.

2. This Act shall commence on a date to be fixed by proclamation. Commencement.

3. This Act shall apply to and in relation to the Territory of Papua and such portions of the Territory of New Guinea as from time to time cease to be areas to which the National Security (Emergency Control) Regulations apply, and the whole of the area to and in relation to which this Act from time to time applies shall be called the Territory of Papua-New Guinea. Application.

4. In this Act, unless the contrary intention appears-- Definitions.

“ officer ” means officer appointed under this Act ;

“ Ordinance ” means Ordinance made under this Act ;

“ the Acting Administrator ” means the person having, for the time being, under section twelve of this Act, all the powers and functions of the Administrator ;

“ the Administrator ” means the Administrator appointed under this Act and includes the Acting Administrator ;

“ the Gazette ” means the *Government Gazette* of the Territory and, during any period specified by the Minister by notice published in the *Commonwealth of Australia Gazette*, includes the *Commonwealth of Australia Gazette* ;

“ the Territory ” means the Territory of Papua-New Guinea.

5. The operation of sections ten to fifteen, sections seventeen and eighteen, sections twenty-two to forty-three, sections forty-six and forty-seven and section fifty of the *Papua Act* 1905-1940, and sections six to thirty-four of the *New Guinea Act* 1920-1935, is suspended, but nothing in this section shall affect the operation of any laws under any of those sections. Suspension of certain provisions of the *Papua Act* 1905-1940 and the *New Guinea Act* 1920-1935.

6. Subject to this Act, any Ordinance under the *Papua Act* 1905, or under that Act as subsequently amended, and any Ordinance under the *New Guinea Act* 1920, or under that Act, as subsequently amended, in force immediately prior to the date of commencement of this Act, may be amended or repealed by Ordinance under this Act. Amendment of Ordinances.

7.—(1.) Where, by or under any law in force in any part of the Territory at the date of commencement of this Act, any powers, functions or duties are conferred on, vested in, or required to be performed by, the Administrator or any authority (other than a court) or officer of the Territory of Papua or of the Territory of New Guinea, those powers, functions and duties shall, until otherwise provided by Ordinance, be deemed to be conferred on, vested in, or required to be performed by, the Administrator appointed under this Act or the authority or officer appointed in pursuance of section fifteen of this Act to have and exercise those powers or functions or to perform those duties, as the case requires. Administrative powers under laws continued in force.

(2.) Any reference, in any law in force in any part of the Territory at the date of commencement of this Act, to the Administrator or an authority (other than a court) or officer of the Territory of Papua

or of the Territory of New Guinea shall, in relation to anything done or to be done after the commencement of this Act and until otherwise provided by Ordinance, be read as a reference to the Administrator appointed under this Act or the authority or officer appointed in pursuance of section fifteen of this Act to have and exercise the powers or functions, or to perform the duties, in relation to which the reference occurs.

Legislative
power.

8.—(1.) Subject to this Act, the Governor-General shall have power to make Ordinances for the peace, order and good government of the Territory.

(2.) Every Ordinance shall—

(a) be notified in the *Commonwealth of Australia Gazette*; and

(b) take effect—

(i) from such date as is fixed by the Administrator by notice in the *Gazette*; or

(ii) where another date (whether before or after the date of notification) is specified in the Ordinance, from the date so specified.

(3.) A notice in the *Commonwealth of Australia Gazette* of any such Ordinance having been made shall be sufficient compliance with the requirement of paragraph (a) of the last preceding sub-section.

(4.) Every Ordinance shall, after it takes effect, be in force according to its tenor in the area for the time being constituting the Territory.

(5.) Every Ordinance shall be laid before each House of the Parliament within fifteen sitting days of that House after the making of the Ordinance.

(6.) If any Ordinance is not laid before each House of the Parliament in accordance with the provisions of the last preceding sub-section, it shall be void and of no effect.

(7.) 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 of it, the Ordinance or part so disallowed shall cease to have effect.

(8.) If, at the expiration of fifteen sitting days after notice of a resolution to disallow any Ordinance or part of an 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.

(9.) 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 any such Ordinance or part amended or repealed any law in force immediately prior to 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.

(10.) If an Ordinance or part of an Ordinance is disallowed, or is deemed to have been disallowed, under this section, and any 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.

9. 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.

Office of Administrator.

10. 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.

Appointment of Administrator

11. The Administrator shall exercise and perform all the powers and functions that belong to his office according to the tenor of his Commission and according to such instructions as are from time to time given to him by the Minister.

Powers and functions of Administrator.

12.—(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 reasons 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.

Acting Administrator.

(2.) The exercise and performance of the powers and functions of the Administrator, during his absence from the Territory, by any person appointed under the last preceding sub-section, shall not affect the exercise or performance by the Administrator himself of any power or function.

13.—(1.) The Administrator may appoint any person to be a deputy 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 Administrator as he thinks fit to assign to such deputy.

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.

14. The Administrator and Acting Administrator and a deputy of the Administrator shall, before entering on the duties of their respective offices, take or make and subscribe, in the case of the

Oaths to be taken by Administrator, &c.

Administrator or Acting Administrator, before the Minister, or some person thereto authorized by the Minister, and, in the case of a deputy, before the Administrator or some person, thereto authorized by the Administrator, an oath or affirmation of allegiance in the form in the Schedule to the Constitution and also an oath or affirmation in the form in the Schedule to this Act.

Officers.

15.—(1.) The Governor-General may appoint, or may delegate to the Minister or to the Administrator power to appoint, such officers as are necessary for the administration of this Act and for the proper government of the Territory.

(2.) If any person appointed under this section was, immediately prior to that appointment, an officer of the Public Service of the Commonwealth, his services as an officer of the Territory shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth and the *Officers' Rights Declaration Act 1928-1940* shall apply as if this Act and this section had been specified in the Schedule to that Act.

**Establishment
of Supreme
Court:**

16.—(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-New Guinea.

(2.) The Supreme Court of the Territory of Papua-New Guinea shall be a superior court of record and shall consist of such Judges as are appointed by the Governor-General.

(3.) The Judges of the Supreme Court shall have seniority according to the precedence assigned to them by their commissions.

(4.) A Judge of the Supreme Court of the Territory of Papua-New Guinea shall hold office during the pleasure of the Governor-General.

(5.) The Supreme Court of the Territory of Papua-New Guinea, a Judge of that Court and any Judge of that Court sitting in Chambers, shall have—

- (a) until otherwise provided by Ordinance, the same original jurisdiction, both civil and criminal, the same jurisdiction to hear and determine appeals from all judgments, orders, decrees, convictions and sentences of inferior courts having jurisdiction in any part of the Territory and the same powers and authority to apply and give effect to the law of any part of the Territory as, immediately prior to the commencement of this Act, the Supreme Court of the Territory of Papua, the Supreme Court of the Territory of New Guinea, a Judge of either of those Territories and a Judge of either of those Territories sitting in Chambers had, respectively, in relation to the Territory of Papua or the Territory of New Guinea; and
- (b) such jurisdiction, both civil and criminal, whether original or appellate, as is from time to time conferred by Ordinance,

and during the period of the operation of this Act the Supreme Court of the Territory of Papua and the Supreme Court of the Territory of New Guinea and the Judges of those Courts shall cease to have or to exercise any jurisdiction, power or authority in or in relation to any part of the Territory.

(6.) Any action, suit, cause, matter or proceeding which, immediately prior to the commencement of this Act, was pending in the Supreme Court of the Territory of Papua, in the Supreme Court of the Territory of New Guinea or, by virtue of regulation 22 of the National Security (External Territories) Regulations, in the Supreme Court of the Australian Capital Territory shall, by force of this section, be transferred to the Supreme Court of the Territory of Papua-New Guinea, and may be continued in that court as if it had originated in that court, and the documents filed in connexion with the action, suit, cause, matter or proceeding shall be transmitted accordingly to the Registrar of the Supreme Court of the Territory of Papua-New Guinea.

(7.) Every rule of court or order made, commission issued, judgment, decree, sentence, or direction given, or act done, prior to the commencement of this Act, by the Supreme Court of the Territory of Papua, the Supreme Court of the Territory of New Guinea, or a Judge or officer of either of those Courts, or the Supreme Court of the Australian Capital Territory or the Judge or an officer of that Court, in the exercise of the jurisdiction, power or authority of that Court in relation to either the Territory of Papua or the Territory of New Guinea, shall be deemed to have been made, issued, given or done by the Supreme Court of the Territory of Papua-New Guinea or a Judge or officer of that Court, and all seals, stamps, registers, rolls and other records of the three Courts first mentioned in this sub-section shall be deemed to be the seals, stamps, registers, rolls or records of the Supreme Court of the Territory of Papua-New Guinea.

(8.) Any reference, in any law in force in any part of the Territory at the date of commencement of this Act, to the Supreme Court of the Territory of Papua or the Supreme Court of the Territory of New Guinea, or to a Judge, the Registrar or any other officer of either of those Courts shall, in relation to anything done or to be done after the commencement of this Act, be read as a reference to the Supreme Court of the Territory of Papua-New Guinea, Judge, Registrar or other officer, as the case requires, exercising the jurisdiction, power or authority conferred by or under this Act.

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

(10.) 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.

(11.) Nothing in this section shall affect any right of appeal existing immediately before the commencement of this Act from any judgment, decree, order or sentence of any Court or Judge or create any right of appeal which would not exist apart from this section.

(12.) Every barrister and solicitor of the Supreme Court of the Territory of Papua or of the Territory of New Guinea shall be deemed to be a barrister and solicitor of the Supreme Court of the Territory of Papua-New Guinea.

Duration
of Act.

17. This Act shall continue in operation until a date to be fixed by proclamation; and no longer, but in any event not longer than six months after His Majesty ceases to be engaged in war.

Section 14.

THE SCHEDULE.

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