

PAPUA AND NEW GUINEA.

No. 27 of 1963.

An Act to amend the *Papua and New Guinea Act* 1949-1960, and for purposes connected therewith.

[Assented to 30th May, 1963.]

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

1.—(1.) This Act may be cited as the *Papua and New Guinea Act* 1963. Short title and citation.

(2.) The *Papua and New Guinea Act* 1949-1960* 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* 1949-1963.

2.—(1.) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

(2.) Sections three, four, five, nine, twelve and thirteen of this Act shall come into operation on such date as is fixed by Proclamation.

(3.) Sections six and eight of this Act shall come into operation on such dates as are respectively fixed by Proclamation, but the date fixed in respect of section six shall be a date not earlier than the date fixed under the last preceding sub-section.

* Act No. 9, 1949, as amended by No. 80, 1950; No. 41, 1954; No. 15, 1957; and Nos. 4 and 47, 1960.

Parts.**3. Section four of the Principal Act is amended—**

(a) by omitting the word and figures “ Sections 19–22 ” and inserting in their stead the word and figures “ Sections 19–21 ”;

(b) by omitting the words—

“ Division 3.—Advisory Councils for Native Matters, and Native Local Government Councils (Sections 25–29).”; and

(c) by omitting the words—

“ Division 2.—The Legislative Council (Sections 35–53).”

and inserting in their stead the words—

“ Division 2.—The House of Assembly (Sections 35–57A).”.

Interpretation.**4. Section five of the Principal Act is amended—**

(a) by omitting the definition of “ elector ” and inserting in its stead the following definitions:—

“ ‘ day of election ’, in relation to an elected member of the House of Assembly, means—

(a) if the member was, at the election by virtue of which he is an elected member, declared to be elected without the taking of a poll—the day on which he was so declared to be elected; or

(b) in any other case—the polling day fixed for the purposes of the election by virtue of which he is an elected member;

‘ elector ’ or ‘ elector of the Territory ’ means a person qualified and enrolled as an elector of the Territory as provided by Ordinance;

‘ general election ’ means a general election of the elected members of the House of Assembly;

‘ indigenous inhabitant of the Territory ’ includes a person who follows, adheres to or adopts the customs, or lives after the manner, of any of the indigenous inhabitants of the Territory; ”;

(b) by omitting the definition of “ native ”;

(c) by omitting the definition of “ the Legislative Council ” and inserting in its stead the following definition:—

“ ‘ the House of Assembly ’ means the House of Assembly for the Territory; ”;

(d) by inserting after the definition of “ the Public Service ” the following definition:—

“ ‘ the Speaker ’ means the Speaker of the House of Assembly; ”; and

(e) by inserting at the end thereof the following sub-section:—

“ (2.) A reference in this Act to the polling day fixed for the purposes of an election, whether a general election or otherwise, shall, where more than one polling day is so fixed, be read as a reference to the later or latest polling day so fixed. ”.

5. Section sixteen of the Principal Act is amended by omitting from sub-section (2.) the words “ member of the Executive Council ” and inserting in their stead the words “ official member of the House of Assembly ”.

Acting
Administrator.

6.—(1.) Section nineteen of the Principal Act is amended—

(a) by omitting paragraphs (b) and (c) of sub-section (2.) and inserting in their stead the following paragraphs:—

“ (b) three persons who are official members of the House of Assembly; and

(c) seven persons who are elected members of the House of Assembly. ”; and

(b) by omitting from sub-sections (4.) and (6.) the words “ Legislative Council ” (wherever occurring) and inserting in their stead the words “ House of Assembly ”.

Administrator's
Council.

(2.) Upon the commencement of this section, all members of the Administrator's Council for the Territory of Papua and New Guinea, except the Administrator, shall, by force of this sub-section, cease to hold office.

7. Section twenty-two of the Principal Act is repealed.

Fees,
allowances and
travelling
expenses.

8. Division 3 of Part IV. of the Principal Act is repealed.

Repeal of
Division 3 of
Part IV.

9. Division 2 of Part V. of the Principal Act is repealed and the following Division inserted in its stead:—

“ *Division 2.—The House of Assembly.*

House of
Assembly.
Composition
of House of
Assembly.

“ 35. There shall be a House of Assembly for the Territory.

“ 36.—(1.) The House of Assembly shall consist of sixty-four members, as follows:—

- (a) ten persons, to be known as official members, appointed by the Governor-General on the nomination of the Administrator;
- (b) forty-four persons elected by electors of the Territory; and
- (c) ten persons, not being indigenous inhabitants of the Territory, elected by electors of the Territory.

“ (2.) The elected members of the House of Assembly shall be elected as provided by or under Ordinance, and a candidate for election shall possess such qualifications and be subject to such disqualifications as are provided by this Act or by Ordinance.

“ (3.) An Ordinance shall not disqualify a person on the ground of race—

- (a) from being enrolled as an elector of the Territory;
- (b) from participating as such an elector in an election of a member of the House of Assembly; or
- (c) from being elected as an elected member of the House of Assembly referred to in paragraph (b) of sub-section (1.) of this section.

“ (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 polling day fixed for the purposes of that general election; or
- (b) in any other case—on the day of election, and ending on the day before the polling day fixed for the purposes of the next general election.

“ (5.) Subject to this Act, an official member holds office during the pleasure of the Governor-General.

“ (6.) A member of the House of Assembly shall, before taking his seat, make and subscribe before the Administrator or a person authorized for the purpose by the Administrator an oath or affirmation in the form in the Sixth Schedule to this Act.

Disqualification
for membership
of, or voting in,
the House of
Assembly.

“ 37.—(1.) A person is not qualified to be appointed, or to continue, as an official member of the House of Assembly unless he is—

- (a) an officer of the Territory; or
- (b) a person who holds an office that—
 - (i) is constituted by Ordinance; and

(ii) is for the time being specified by the Minister, for the purposes of this sub-section, by notice in the *Government Gazette*.

“(2.) A person is not qualified to be elected, or to continue, as an elected member of the House of Assembly if he is not an elector or if—

- (a) he is a member of the Public Service of the Territory;
- (b) he holds an office that—
 - (i) is constituted by Ordinance; and
 - (ii) is for the time being specified by the Minister, for the purposes of this sub-section, by notice in the *Government Gazette*; or
- (c) he is employed in the Public Service of the Commonwealth.

“(3.) A person is not qualified to be elected or appointed, or to continue, as a member of the House of Assembly if—

- (a) he is an undischarged bankrupt or insolvent; or
- (b) he has been convicted of an offence punishable under a law of the Commonwealth, or of a State or Territory of the Commonwealth, by death or by imprisonment for one year or longer and, as a result of the conviction, is subject to be sentenced to death or imprisonment, is under sentence of death or is undergoing imprisonment.

“(4.) A person is not qualified to continue as a member of the House of Assembly if—

- (a) he is absent at all times during each of three consecutive meetings of the House of Assembly, and permission has not been granted to him by the House to be absent from any of those meetings; 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 House of Assembly.

“(5.) For the purposes of paragraph (a) of the last preceding sub-section, a meeting of the House of Assembly commences when the House first sits following a general election, a prorogation of the House or an adjournment of the House otherwise than for a period of less than seven days and ends when next the House is either prorogued or adjourned otherwise than for a period of less than seven days.

“(6.) A member of the House of Assembly who is a party to, or is directly or indirectly interested in, a contract made, or proposed to be made, by or on behalf of the Commonwealth or of the Administration under which goods or services are to be supplied to the Commonwealth or to the Administration shall not take part in a discussion of a matter, or vote on a question, in the House of Assembly if the matter or question relates directly or indirectly to that contract.

“(7.) All questions concerning the application of the last preceding sub-section shall be decided by the House of Assembly and a contravention of that sub-section does not affect the validity of anything done by the House of Assembly.

Vacancies.

“38.—(1.) A member of the House of Assembly who desires to resign his office shall deliver an instrument of resignation signed by him to the Speaker or, if there is no Speaker or the Speaker is absent from the Territory, to the Governor-General.

“(2.) Where the Speaker receives an instrument of resignation signed by an official member, he shall transmit the instrument to the Governor-General.

“(3.) The resignation of an elected member becomes effective when the instrument of resignation is received by the Speaker or, where it is delivered to the Governor-General, by the Governor-General, but the resignation of an official member is not effective until the resignation has been accepted by the Governor-General.

“(4.) 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 before the expiration of three years after the polling day fixed for the purposes of the last preceding general election and before the Administrator has directed the holding of the next 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 to hold the vacant office and the person so appointed shall, for the purposes of this Act and of any law of the Territory, be treated as if he had been elected to that office by electors of the Territory and as if the day of appointment were the day of election.

“(5.) The holding of an election as required by paragraph (a) of the last preceding sub-section shall not be proceeded with if, before the day on which a candidate is declared elected or the poll is taken, whichever first occurs, the Administrator directs the holding of a general election.

Determination of questions respecting qualifications or vacancies.

“39.—(1.) A question respecting the qualification of a member of the House of Assembly, or respecting a vacancy in the House of Assembly, not being a question of a disputed election or of a disputed return in connexion with an election, may be determined by the House of Assembly or may be referred by resolution of the House of Assembly to the Supreme Court, which shall thereupon hear and determine the question.

“(2.) When a question is referred to the Supreme Court under the last preceding sub-section, the Speaker or, if the Speaker is not present at the meeting of the House of Assembly at which the reference is made, the member presiding at the meeting in his absence shall transmit to the Supreme Court a statement of the question upon which the determination of the Court is desired together with any record of proceedings or any papers, reports or documents relating to the question in the possession of the House of Assembly.

“40.—(1.) The Administrator may, at any time, by notice in the *Government Gazette*, direct the holding of a general election. General elections.

“(2.) A general election shall be held, at the time and in the manner provided by or under Ordinance, whenever the holding of such an election is directed by the Administrator.

“(3.) The Administrator shall ensure that general elections are held at intervals not exceeding four years.

“41.—(1.) The Administrator may, by notice in the *Government Gazette*, appoint such times for holding sessions of the House of Assembly as he thinks fit, and may also, from time to time, in a similar manner, prorogue the House of Assembly. Sessions and prerogations of House of Assembly.

“(2.) After a general election, the House of Assembly shall be summoned to meet not later than six months after the polling day fixed for the purposes of the election.

“(3.) There shall be a session of the House of Assembly once at least in every year, so that twelve months shall not intervene between the last sitting of the House in one session and its first sitting in the next session.

“42.—(1.) The presence of at least twenty-two members of the House of Assembly is necessary to constitute a meeting of the House of Assembly for the exercise and performance of its powers and functions. Quorum.

“(2.) For the purposes of this section, the member presiding at a meeting shall be counted as a member present at the meeting.

“43. The official members of the House of Assembly shall have such seniority as the Governor-General 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 in the instrument. Seniority of official members.

“44.—(1.) The House of Assembly shall, before proceeding with the despatch of any other business, choose a member to be the Speaker of the House of Assembly and, as often as the office of Speaker becomes vacant, the House of Assembly shall again choose a member to be the Speaker. Election of Speaker.

“(2.) The Speaker ceases to hold his office if he ceases to be a member of the House of Assembly.

“(3.) The Speaker may be removed from office by vote of the House of Assembly or he may resign his office by delivering to the Governor-General an instrument of resignation signed by him.

Absence of Speaker.

“45. Before or during any absence of the Speaker, the House of Assembly may choose a member to perform his duties in his absence.

Voting.

“46.—(1.) Questions arising in the House of Assembly shall be determined by a majority of votes other than that of the Speaker or other member presiding.

“(2.) The Speaker or other member presiding shall not vote unless the numbers are equal, and then he shall have a casting vote.

Minutes of proceedings.

“47.—(1.) The House of Assembly shall cause minutes of its proceedings to be kept.

“(2.) A copy of any minutes kept in pursuance of the last preceding sub-section shall, on request made by any person, be made available for inspection by him or, on payment of such fee as is fixed by Ordinance, be supplied to him.

Powers, privileges and immunities of House of Assembly.

“48. The power of the House of Assembly to make Ordinances conferred by section fifty-two of this Act includes power to make Ordinances—

(a) declaring the powers (other than legislative powers), privileges and immunities of the House of Assembly, and of its members and committees, but so that the powers, privileges and immunities so declared do not exceed the powers, privileges and immunities of the House of Commons of the Parliament of the United Kingdom or of the members or committees of that House, respectively, at the establishment of the Commonwealth; and

(b) providing for the manner in which powers, privileges and immunities so declared may be exercised or upheld.

Rules and orders.

“49. The House of Assembly may make rules and orders in respect of the order and conduct of its business and proceedings.

Proposal of money votes.

“50. A vote, resolution or proposed law for the appropriation of revenue or moneys of the Territory shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Administrator to the House of Assembly.

“ 51. Where a person who has purported to sit or vote as a member of the House of Assembly at a meeting of the House of Assembly or of a committee of the House of Assembly—

Validation
of acts of
House of
Assembly.

- (a) was not duly qualified to be elected or appointed or to continue as a member of the House of Assembly; or
- (b) had vacated his office as a member of the House of Assembly,

all things done or purporting to have been done by the House of Assembly or by that committee, as the case may be, shall be deemed to have been as validly done as if that person had, when so sitting or voting, been duly qualified to be elected or appointed or to continue as a member of the House of Assembly or had not vacated his office, as the case may be.

“ 52. Subject to this Act, the House of Assembly may make Ordinances for the peace, order and good government of the Territory.

Legislative
power of
House of
Assembly.

“ 53. An Ordinance passed by the House of Assembly shall not have any force or effect until it has been assented to as provided in this Division.

Ordinances
to be assented
to.

“ 54.—(1.) Every Ordinance passed by the House of Assembly shall be presented to the Administrator for assent.

Presentation of
Ordinances to
Administrator.

“ (2.) Subject to the next succeeding sub-section, the Administrator shall thereupon declare, according to his discretion but subject to this Act—

- (a) that he assents to the Ordinance;
- (b) that he withholds assent; or
- (c) that he reserves the Ordinance for the Governor-General's pleasure.

“ (3.) The Administrator may return the Ordinance to the House of Assembly with amendments that he recommends.

“ (4.) The House of Assembly shall consider the amendments recommended by the Administrator and the Ordinance, with or without amendments, shall be again presented to the Administrator for assent.

“ 55. The Administrator shall reserve for the Governor-General's pleasure any Ordinance—

Certain
Ordinances
to be reserved.

- (a) that relates to divorce;
- (b) that relates to the granting or disposal of lands of the Crown or of the Administration;
- (c) whereby a grant of money or of an interest in land is made to the Administrator;

- (d) that may not, in the opinion of the Administrator, be fully in accordance with the treaty obligations of the Commonwealth or with the obligations of the Commonwealth under the Trusteeship Agreement;
- (e) that relates to naval, military or air forces;
- (f) that relates to the sale of, or other disposition of or dealing with, land;
- (g) that relates to the employment of persons;
- (h) that relates to arms, ammunition, explosives, intoxicating liquor or opium;
- (i) that relates to immigration, emigration or deportation;
- (j) that relates to the Public Service;
- (k) that contains a provision having substantially the same effect as a provision in an Ordinance, or in a part of an Ordinance, to which the Governor-General has withheld his assent or which the Governor-General has disallowed.

Signification of pleasure on Ordinance reserved.

“ 56.—(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 that he assents to the Ordinance or that he withholds assent.

“ (2.) The Governor-General may return the Ordinance to the Administrator with amendments that he recommends.

“ (3.) The House of Assembly shall consider the amendments recommended by the Governor-General and the Ordinance, with or without amendments, shall be again presented to the Administrator, who shall reserve it for the Governor-General’s pleasure.

“ (4.) As soon as practicable after the Governor-General has made a declaration that he assents to an Ordinance, or that he withholds assent, the Administrator shall publish in the *Government Gazette* a notification of the declaration.

“ (5.) The assent of the Governor-General to an Ordinance is of no effect until notification of the Governor-General’s declaration in respect of the Ordinance is published by the Administrator in the *Government Gazette*.

Disallowance of Ordinances assented to.

“ 57.—(1.) Subject to this section, the Governor-General may, within six months after the Administrator’s assent to an Ordinance, disallow the Ordinance or part of the Ordinance.

“(2.) The Governor-General may, within six months after the Administrator’s assent to an Ordinance, recommend to the Administrator any amendments of the laws of the Territory that the Governor-General considers to be desirable arising out of his consideration of the Ordinance.

“(3.) Where the Governor-General so recommends any amendments of the laws of the Territory, the time within which the Governor-General may disallow the Ordinance, or a part of the Ordinance, is extended until the expiration of six months after the date of the Governor-General’s recommendation.

“(4.) Upon publication of notice of the disallowance of an Ordinance, or part of an Ordinance, in the *Government Gazette*, the disallowance has, subject to the next succeeding sub-section, the same effect as a repeal of the Ordinance or part of the Ordinance.

“(5.) If a provision of a disallowed Ordinance, or a provision of a disallowed part of an Ordinance, amended or repealed a law in force immediately before the commencement of that provision, the disallowance revives the previous law from the date of publication of the notice of disallowance as if the disallowed provision had not been made.

“57A.—(1.) The Minister shall cause each Ordinance assented to by the Governor-General or the Administrator, or from which the Governor-General or the Administrator has withheld assent, to be laid before each House of the Parliament as soon as possible, but in any case within fifteen sitting days of that House, after the date of assent, or after the date on which assent was withheld, as the case may be.

Ordinances to
be laid before
the Parliament

“(2.) Where the Governor-General or the Administrator withholds assent from an Ordinance, or the Governor-General disallows an Ordinance in whole or in part, the Minister shall cause a statement of the reasons for withholding assent, or for disallowance, as the case may be, to be laid before each House of the Parliament as soon as possible, but in any case within fifteen sitting days of that House, after the date on which assent was withheld or the Ordinance was disallowed, as the case may be.”.

10. Section seventy of the Principal Act is amended by omitting the words “this Part shall be deemed to be repealed on the date so specified” and inserting in their stead the words “, on the date so specified, this Part shall be deemed to be repealed and the provisions of section eight of the *Acts Interpretation Act* 1901–1963 shall apply as if this Part had been repealed by an Act other than this Act”.

Duration of
Part.

Repeal of
section 72.

11. Section seventy-two of the Principal Act is repealed.

Sixth Schedule.

12. The Sixth Schedule to the Principal Act is amended by omitting the words “ Legislative Council of ” (wherever occurring) and inserting in their stead the words “ House of Assembly for ”.

Transitional
provisions.

13. Notwithstanding the repeal effected by section nine of this Act—

(a) the Legislative Council for the Territory, as constituted immediately before the commencement of this section, continues in being up to and including the day before the latest polling day fixed for the purposes of the first general election of the elected members of the House of Assembly; and

(b) sections forty-nine to fifty-three (inclusive) of the Principal Act continue to apply to and in relation to Ordinances passed by the Legislative Council for the Territory before the commencement of this section.

Ordinances
relating to
the House of
Assembly.

14. At any time after the date on which this Act receives the Royal Assent, Ordinances may be made for the purposes of the Principal Act as amended by the sections referred to in subsection (2.) of section two of this Act.
