

SUPREME COURT ORDINANCE 1949.⁽¹⁾

No. 2 of 1949.

An Ordinance to provide for the Jurisdiction, and regulate the Practice and Procedure, of the Supreme Court of the Territory, and for other purposes.

BE it ordained by the Governor-General in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Papua and New Guinea Act 1949*, as follows:—

PART I.—PRELIMINARY.

- Short title.** 1. This Ordinance may be cited as the *Supreme Court Ordinance 1949.*⁽¹⁾
- Commencement.** 2. This Ordinance shall come into operation on the date fixed under section two of the Act.⁽¹⁾
- Repeal.** 3. The Ordinances specified in the Schedule to this Ordinance are, to the extent indicated in that Schedule, repealed.
- Parts.** 4. This Ordinance is divided into Parts, as follows:—
 Part I.—Preliminary (Sections 1-5).
 Part II.—Jurisdiction (Sections 6-12).
 Part III.—Administration (Sections 13-18).
 Part IV.—Rules of Court (Section 19).
- Definitions.** 5. In this Ordinance, unless the contrary intention appears:—
 “part of the Territory” means the Territory of Papua or the Territory of New Guinea;
 “the Act” means the *Papua and New Guinea Act 1949*⁽²⁾; and
 “the Supreme Court” means the Supreme Court of the Territory of Papua and New Guinea established by the Act.

(1) Particulars of this Ordinance are as follows:—

Date on which made by Gov.-Gen. in Council.	Date on which notified in <i>Cwllth. Gaz.</i>	Date on which took effect.
29.6.1949	21.7.1949	1.7.1949 (<i>Cwllth. Gaz.</i> of 30.6.1949)

(2) Now the *Papua and New Guinea Act 1949-1950* printed in this Volume on pp. 52-76

PART II.—JURISDICTION.

6.—(1.) Subject to this Ordinance, the Supreme Court shall have the same jurisdiction (including appellate jurisdiction) in relation to the Territory, the Territory of Papua or the Territory of New Guinea, as was, immediately before the commencement of this Ordinance, exercisable in relation to the Territory of Papua-New Guinea, the Territory of Papua or the Territory of New Guinea by the Supreme Court of Papua-New Guinea, a Judge of that Court, or a Judge of that Court sitting in chambers.

Jurisdiction of
the Supreme
Court.

(2.) The jurisdiction of the Supreme Court in any matter may be exercised in either part of the Territory at any place appointed for sittings of the Supreme Court.

(3.) The jurisdiction of the Supreme Court may be exercised by a Judge sitting in chambers—

- (a) to the same extent as the jurisdiction of the Supreme Court of Papua-New Guinea was, immediately before the commencement of this Ordinance, exercisable by a Judge of that Court sitting in chambers; and
- (b) in all matters of practice and procedure.

7. In relation to anything done, or required or permitted to be done, after the commencement of this Ordinance, a reference in a law in force in the whole or in a part of the Territory to the Supreme Court of the Territory of Papua, the Supreme Court of the Territory of New Guinea or the Supreme Court of the Territory of Papua-New Guinea, or to a Judge, the Registrar or any other officer of any of those Courts, shall be read as a reference to the Supreme Court, or to a Judge, the Registrar or the corresponding officer of the Supreme Court, as the case requires.

References to
other Supreme
Courts.

8.—(1.) Subject to rules of court made under this Ordinance and except as otherwise directed by the Supreme Court at any stage of the matter, the practice and procedure in and in relation to a matter in the Supreme Court shall be—

Practice and
procedure.

- (a) in the case of a civil matter of any kind, other than a matter on appeal—the practice and procedure provided by law in relation to matters of that kind in the former Supreme Court of the part of the Territory in which is situated the registry of the Court in which the documents initiating the matter are filed;
- (b) in the case of a criminal matter of any kind, other than a matter on appeal—the practice and procedure provided by law in relation to matters of that kind in the former Supreme Court of the part of the Territory in which the offence is alleged to have been committed;

PART A : COURTS—

(c) in the case of a matter of any kind on appeal (whether the appeal be by case stated, by way of rehearing or otherwise)—the practice and procedure provided by law in relation to matters of that kind in the former Supreme Court of the part of the Territory in which the Court appealed from is situated.

(2.) For the purposes of this section, the laws in force in a part of the Territory immediately before the commencement of this Ordinance, prescribing the practice and procedure in relation to matters in the former Supreme Court of that part of the Territory, and those laws as amended from time to time, shall, notwithstanding the suspension, or cessation of existence, of that Supreme Court, be in force, subject to rules of court made under this Ordinance, in both parts of the Territory, and be applicable in relation to the Supreme Court in accordance with the last preceding sub-section or any direction of the Supreme Court.

(3.) In this section, “practice and procedure” includes matters relating to—

- (a) the attendance of witnesses;
- (b) the empanelling of a jury;
- (c) the appointment of assessors;
- (d) the custody or bail of accused or convicted persons; and
- (e) the enforcement and execution of judgments, orders, decrees, convictions and sentences.

Inferior courts
to continue.

9. All courts and tribunals (other than the Supreme Court of the Territory of Papua-New Guinea) in existence in either part of the Territory immediately before the commencement of this Ordinance shall continue to exist and function in that part of the Territory.

Transference of
pending
matters.

10. Any action, suit, cause, matter or proceeding which, immediately before the commencement of this Ordinance, was pending in the Supreme Court of the Territory of Papua-New Guinea shall, by force of this section, be transferred to the Supreme Court, 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.

Saving of
judgments, &c.

11. Every order made, commission issued, judgment, decree, sentence, or direction given or act done, and every order, commission, judgment, decree, sentence, direction or act deemed, by virtue of the *Papua-New Guinea Provisional Administration Act 1945-1946*,⁽³⁾ to have been made, issued, given or done, before the

(3) Printed in *The Laws of the Territory of Papua-New Guinea 1945-1949 (Annotated)*, on pp. 26-32. Repealed and replaced by the *Papua and New Guinea Act 1949-1950*, printed in this Volume on pp. 52-76.

commencement of this Ordinance, by the Supreme Court of the Territory of Papua-New Guinea, or a Judge or officer of that Court, shall be deemed to have been made, issued, given or done by the Supreme Court or a Judge or officer of the Supreme Court.

12.—(1.) The exercise of the jurisdiction of the High Court under section sixty-four of the Act to hear and determine appeals from judgments, decrees, orders and sentences of the Supreme Court shall be subject to the following conditions:—

Appeals to
High Court.

(a) an appeal shall lie only with the leave of the Full Court of the High Court; and

(b) any such appeal shall be heard and determined by the Full Court of the High Court.

(2.) When an order granting leave to appeal is made, the Registrar of the Supreme Court shall forward certified copies of the proceedings and evidence in the case to the Principal Registrar of the High Court.

(3.) If the High Court sees fit so to permit, an appeal from the Supreme Court may be by case stated, with the legal argument (if any) attached thereto in writing, and in that case it shall not be necessary for the parties to appear on the hearing of the appeal either personally or by counsel.

(4.) The order of the High Court on an appeal shall have effect in the Territory as if it were a judgment, order, decree, conviction or sentence of the Supreme Court, and may be enforced by the Supreme Court accordingly.

(5.) The Justices of the High Court or a majority of them may make Rules of Court for regulating the practice and procedure in regard to appeals from the Supreme Court.

PART III.—ADMINISTRATION.

13.—(1.) The Principal Seat of the Supreme Court shall be at Port Moresby, in the Territory.

Principal
seat of the
Supreme Court.
and sittings.

(2.) Sittings of the Supreme Court shall be held at the Principal Seat of the Court from time to time as is required, and at such places other than the Principal Seat of the Court as the Administrator, by notice⁽⁴⁾ published in the *Gazette*, appoints, at such times as are so appointed.

(3.) If a sitting of the Court is not held at any place on the day appointed by the Administrator for the purpose, a sitting may be held at that place on any subsequent day.

(4.) Notwithstanding the preceding provisions of this section, the Court may, at any stage of any proceedings, order that the proceedings shall be continued at a place and time specified in the order, and may from time to time vary any such order.

(4) From time to time notices appointing places and times for Criminal and Civil Sittings of the Supreme Court have been published in Papua and N.G. *Govt. Gaz.*

PART A : COURTS—

Registries. **14.** The Administrator may establish such registries of the Supreme Court as he thinks fit and shall notify⁽⁵⁾ in the *Gazette* the establishment of any such registry.

Appointment of Registrar and other officers. **15.** The Governor-General may appoint a Registrar and other officers of the Supreme Court.

Seal. **16.**—(1.) The Supreme Court shall have a seal of the Court, for the sealing of all writs and other instruments or documents issued out of the Court and requiring to be sealed.

(2.) The Court shall also, for the purpose of authentication, have a seal or stamp with which summonses, office copies, certificates, reports, and other documents requiring authentication may be sealed or stamped.

Seals, &c., of other Supreme Courts. **17.** All seals, stamps, registers, rolls and other records of the Supreme Court of the Territory of Papua-New Guinea, or deemed, by virtue of the *Papua-New Guinea Provisional Administration Act 1945-1946*,⁽³⁾ to be seals, stamps, registers, rolls or records of that Supreme Court, shall be deemed to be seals, stamps, registers, rolls or records of the Supreme Court of the Territory.

Supreme Court to supervise inferior courts. **18.**—(1.) The Chief Judge of the Supreme Court may exercise a general supervision over all inferior courts in the Territory, and shall have the right to inspect and call for the production of the records of any such court or to authorize an officer of the Administration to inspect the records of any such court and to report to him thereon.

(2.) The right of supervision conferred by this section shall not confer any power to affect any judgment, order, decree, conviction or sentence given by, or any proceedings pending before, an inferior court.

PART IV.—RULES OF COURT.

Power to make rules. **19.**—(1.) The Judges of the Supreme Court may make rules of court^(5A) for regulating and prescribing the practice and procedure (including the method of pleading and the means by which particular facts may be proved) to be followed in the Supreme Court and in the offices of the Court, and for regulating and prescribing all matters incidental to or relating to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the Court.

(2.) The power conferred by this section shall extend to the making of rules of court repealing or amending any rules of court continued in force by this Ordinance or by the Act.

(3) See footnote (3) printed in this Volume on p. 292.

(5) Pursuant to Section 14 the Administrator, by notice dated 1.7.1949 and published in Papua and N.G. *Govt. Gaz.* of 1.7.1949, appointed a Registry of the Supreme Court to be situate at the Supreme Court House, Port Moresby.

(5A.) No rules of court were published in Papua and N.G. *Govt. Gaz.* before 1.1.1951.

(3.) Rules of court made under this section shall have effect notwithstanding anything inconsistent therewith in any Ordinance made before the commencement of this Ordinance, or in any regulations made under any such Ordinance before that commencement.

(4.) Copies of all rules of court shall, within twenty-one days after the date of publication thereof, be forwarded by the Chief Judge to the Minister through the Administrator.

(5.) The Minister may, by notification in the *Gazette*,⁽⁶⁾ disallow any rule of court, and thereupon the rule of court so disallowed shall cease to have effect.

THE SCHEDULE.

Section 3.

Ordinance.	Extent of Repeal.
<i>Judiciary Ordinance 1921-1938 of the Territory of New Guinea</i> ⁽⁷⁾	The whole, except sections 23 and 23a
<i>The Appeal Ordinance of 1909 of the Territory of Papua</i> ⁽⁸⁾	The whole
<i>The Courts and Laws Adopting Ordinance of 1888 of the Territory of Papua</i> ⁽⁹⁾	The whole
An Ordinance to Amend " <i>The Courts and Laws Adopting Ordinance of 1888</i> " of the Territory of Papua (No. 1 of 1889) ⁽¹⁰⁾	The whole
<i>Central Court Ordinance, 1925 of the Territory of Papua</i> ⁽¹¹⁾	The whole
<i>Judiciary Ordinance 1946 of the Territory of Papua-New Guinea</i> ⁽¹²⁾	The whole

(6) No notice disallowing a rule of court has been published in the *Papua and N.G. Govt. Gaz.* before 1.1.1952.

(7) Printed in *The Laws of the Territory of New Guinea 1921-1945 (Annotated)*, Vol. I., on pp. 607-615.

(8) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. I., on pp. 567-569.

(9) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. I., on pp. 571-574.

(10) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. I., on p. 575.

(11) Printed in *The Laws of the Territory of Papua 1888-1945 (Annotated)*, Vol. I., on pp. 577-579.

(12) Printed in *The Laws of the Territory of Papua-New Guinea 1945-1949 (Annotated)*, on pp. 147-148.