

CLAIMS BY AND AGAINST THE GOVERNMENT ORDINANCE, 1911.⁽¹⁾

No. 12 of 1911.

An Ordinance to consolidate and amend the Law relating to Claims by and against the Government of the Territory of Papua.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the “*Claims by and against the Government Ordinance, 1911.*”⁽¹⁾ Short title.

It shall come into operation on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette*.⁽¹⁾

2. The following Ordinances Adopted Ordinances or Acts are hereby repealed namely:— Repeal.

“*The Crown Remedies Ordinance of 1902.*”

“*Costs in Crown Suits Act of 1856*” (*Queensland adopted*), 20 Vic. No. 3.

“*Claims against Government Act, 1866*” (*Queensland adopted*), 29 Vic. No. 23.

“*Crown Remedies Act of 1874*” (*Queensland adopted*), 38 Vic. No. 13.

3. In this Ordinance, unless the contrary intention appears, “*suit*” includes any action or original proceeding between parties in any court of competent jurisdiction. Interpretation.

4. Any person making any claim against the Territory whether in contract or in tort may in respect of the claim bring a suit against the Territory in any court of the Territory in which such suit might be brought between subject and subject.⁽²⁾ Suits against Territory.
Cwlth. No. 8 of 1907, s. 56; Q. 29 Vic. No. 23, s. 5.

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

Date of assent by Lieut.-Gov.	Date notified in Papua Govt. Gaz. as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
16.5.1911	6.12.1911	1.1.1912 (Papua Govt. Gaz. of 6.12.1911)

(2) *Held*, by the High Court, that the Territory of Papua and not the Commonwealth was the proper defendant in an action brought by a member of the Public Service of that Territory claiming a declaration that an Order in Council reducing him in rank was invalid and that he was still entitled to his former office and salary: *Faithorn v. The Territory of Papua* (1938) 60 C.L.R. 772; 12 A.L.J. 260. *Quære*, whether a suit might also be brought under Part IX of the *Judiciary Act*: Per Dixon J. in *Faithorn v The Territory of Papua* (1938) 60 C.L.R. 772 at 792.

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Suits by
Territory.

Cwltb. No. 8
of 1907, s. 61;
Q. 38 Vic. No.
13, s. 6 *et seq.*

5. Suits on behalf of the Territory may be brought in like manner in the name of the Territory by the Treasurer of the Territory or by some other person appointed by the Lieutenant-Governor in Council⁽³⁾ in that behalf.

Service of
process when
Territory is a
party.

Cwltb. *Ib.* s. 63.

6. Where the Territory is a party to a suit all process in the suit required to be served upon that party shall be served upon the Treasurer of the Territory or upon such other person as may be appointed by the Lieutenant-Governor in Council⁽³⁾ to receive service.

Right of
parties.

Cwltb. *Ib.* s. 64.
Q. 20 Vic. No.
3, ss. 1 and 2.
Q. 29 Vic.
No. 23,
ss. 5 and 7.

7. In any suit to which the Territory is a party the rights of parties shall as nearly as possible be the same, and judgment may be given and costs awarded on either side as in a suit between subject and subject.

No execution
against
Territory.

Cwltb. *Ib.* s. 65.

8. No execution or attachment or process in the nature thereof shall be issued against the property or revenue of the Territory in any such suit; but when any judgment is given against the Territory the registrar clerk or other officer of the Court by which such judgment is pronounced shall give to the party in whose favour such judgment is given a certificate in the form of the First Schedule to this Ordinance or to the like effect.

First Schedule.

Performance
by Territory.

Cwltb. *Ib.* s. 66.
See Q. 20 Vic.
No. 3, s. 2.

9. On receipt of the certificate of a judgment against the Territory the Treasurer of the Territory shall satisfy the judgment out of moneys legally available.

Execution by
the Territory.

Cwltb. *Ib.* s. 67.

10. When in any such suit a judgment is given in favour of the Territory and against any person the Territory may enforce that judgment against that person by process of extent or by execution attachment or other process as could be had in a suit between subject and subject.

Certain fines
how
recoverable.

Q. 38 Vic.
No. 13, s. 3.

11.—(1.) When any fine is imposed upon any person otherwise than by a judgment or conviction of some court magistrate or justice some Judge of the court by which or the magistrate or justice by whom such fine is imposed if the same be not immediately paid shall by certificate under his hand in the form of the Second Schedule hereto or to the like effect certify that fact together with the name and place of abode or business of the person on whom such fine is imposed and the cause and amount of such fine and deliver or send by post such certificate to the Treasurer of the Territory.

Second Schedule.

(2.) Upon receipt of the certificate the Treasurer shall cause

(3) *See* Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940.*

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a final judgment to be signed in the Central Court⁽³⁾ for the amount of such fine together with one pound for costs.

(3.) Every such judgment may be in the form of the Third Schedule to this Ordinance and may be enforced in the same manner as any other judgment of the Central Court.⁽³⁾

Third
Schedule.

12.—(1.) When any person has entered into any recognizance to His Majesty and such recognizance is forfeited some Judge of the court before which or the magistrate or justice before whom the same is forfeited may cause such recognizance to be estreated; in such case such Judge magistrate or justice shall by a certificate under his hand in the form of the Fourth Schedule hereto or to the like effect certify that such forfeiture has taken place and shall cause to be delivered or sent by post to the Treasurer of the Territory the said recognizance and certificate.

Debts due by
recognizance
to be
recovered by
judgment.
Q. 38 Vic.
No. 13, s. 4.

Fourth
Schedule.

(2.) Upon receipt of such recognizance and certificate the Treasurer shall cause a final judgment to be signed in the Central Court⁽³⁾ for the amount of such recognizance and one pound for costs.

(3.) Every such judgment may be in the form of the Fifth Schedule to this Ordinance and may be enforced in the same manner as any other judgment of the Central Court.⁽³⁾

Fifth
Schedule.

13. When any final judgment is signed under the provisions of the two last preceding sections the Central Court⁽³⁾ or a judge thereof whether execution shall have been issued thereon or not may order satisfaction to be entered upon such judgment:

Judgments on
fines and
recognizances
may be
vacated by
court or
Judge.

Q. 1b. s. 5.

Provided that no such order shall be made except upon a rule *nisi* or summons calling upon the Treasurer of the Territory to show cause or unless it shall be proved by affidavit to the satisfaction of such court or Judge either that the judgment has been satisfied or that according to equity and good conscience and the real merits of the case the person against whom such judgment has been signed ought not to be required to satisfy the same.

FIRST SCHEDULE.

Section 8

A.B. v. Territory of Papua.

I hereby certify that A.B., of _____, &c., did, on the _____ day of _____, 19____, obtain a judgment of the [name of Court] in his favour, and that by such judgment the sum of £ _____ was awarded to him.

Dated this _____ day of _____, 19____.
Registrar [or Clerk].
(Name of Court.)

(3) See Section 19(2) of the Ordinance Interpretation Ordinance, 1911-1940.

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Section 11.

SECOND SCHEDULE.

I hereby certify that at the _____, held at _____, on the day of _____, 19____, C.D., of [place of abode or business and occupation] was fined the sum of £ _____ for [cause of fine].

Dated at _____ this _____ day of _____, 19____.
Judge [Magistrate or Justice].

Section 11 (3).

THIRD SCHEDULE.

In the Central Court
Territory of Papua.

On the application of A.B., Esquire, Treasurer of the said Territory, who gives the Court to understand and be informed that at the _____, held at _____ on the _____ day of _____, 19____, before C.D., a fine of _____ pounds was imposed upon E.F. for that he [state cause of fine] as by the certificate of the said C.D. now filed of record appears: It is adjudged that our Lord the King do recover against the said E.F. the said sum of £ _____, and one pound for costs, making together the sum of £ _____.

Section 12 (1).

FOURTH SCHEDULE.

I hereby certify that at the _____, held at _____ on _____, 19____, the recognizances hereto annexed were forfeited, and were then and there caused to be estreated.

Dated at _____ this _____ day of _____, 19____.
Judge [Magistrate or Justice].

Section 12 (3).

FIFTH SCHEDULE.

In the Central Court
Territory of Papua.

On the application of A.B., Esquire, Treasurer of the said Territory, who gives the Court to understand and be informed that at the _____, held at _____, on the _____ day of _____, 19____, before C.D., the recognizance of one E.F., by which he acknowledged to owe our Lord the King the sum of _____ pounds was forfeited and estreated as by the said recognizance and the certificate of the said C.D. now filed of record appears: It is adjudged that our Lord the King do recover against the said E.F., the said sum of £ _____, and one pound for costs, making together the sum of £ _____.