

# THE CRIMINAL CODE ORDINANCE OF 1902.<sup>(1)</sup>

No. 7 of 1902.

## An Ordinance to establish a Code of Criminal Law.

**B**E it enacted by the Administrator of British New Guinea with the advice and consent of the Legislative Council thereof as follows:—

1. On and from the first day of July One thousand nine hundred and three the provisions contained in the Criminal Code of Queensland set forth in the First Schedule to "*The Criminal Code Act, 1899*" of Queensland as it is amended by the Queensland Act 64 Victoria No. 7 (hereinafter called "the Code") is hereby adopted<sup>(2)</sup> as and shall be the law of British New Guinea with respect to the several matters therein dealt with.

Adopting the Criminal Code of Queensland as the law of British New Guinea.

Any references in the Code to Queensland or to persons places or subjects in Queensland shall be taken as references to the Possession or corresponding or analogous persons places or subjects in the Possession.

The said Code may be cited as "The Criminal Code."

2. On and from the coming into operation of the Code—

(1) The several Statutes of the Realm mentioned in the Second Schedule to "*The Criminal Code Act, 1899*"<sup>(2)</sup> aforesaid shall be repealed so far as they are in force in British New Guinea to the extent in the said Schedule indicated;

Repeal.

(2) The several adopted Statutes of New South Wales and Queensland mentioned in the First Schedule to this Ordinance shall be repealed to the extent in the said Schedule indicated;

[Schedule I.]

(1) Particulars of this Ordinance of British New Guinea (which was continued in force in the Territory of Papua by Section 6(1) of the *Papua Act 1905*) are as follows:—

Date of Assent by Administrator.	Date on which published in British N.G. <i>Govt. Gaz.</i>	Date on which took effect.
15.12.1902	20.12.1902	20.12.1902 (Supplement to British N.G. <i>Govt. Gaz.</i> of 20.12.1902)

(2) See *The Criminal Code* (Queensland, adopted), printed on p. 1031.

[Schedule II.]

- (3) The several adopted Statutes of New South Wales and Queensland mentioned in the Second Schedule to this Ordinance shall be amended in the manner in the said Schedule indicated and shall be read and construed as being so amended accordingly :

Saving.

Provided as follows:—

- (1) The repeal of any Statute or part of a Statute set forth in the said Schedules shall not affect the construction of any other Statute or of any other part of the same Statute whether as regards the past or the future ;
- (2) When any enactment not mentioned in the said Schedules has been repealed confirmed revived or perpetuated by any enactment hereby repealed such repeal confirmation revivor or perpetuation shall not be affected by the repeal effected by this Ordinance ;
- (3) This Ordinance shall not affect the validity invalidity effect or consequences of anything already done or suffered or any existing status or capacity or any right title obligation or liability Civil or Criminal already acquired accrued or incurred or any remedy or proceeding in respect thereof or any release or discharge of or from any debt penalty obligation liability claim or demand or any indemnity or the proof of any past act or thing and any action prosecution or other proceeding begun before the coming into operation of the Code may subject to the provisions of the Code be continued as if this Ordinance had not been passed and any action prosecution or other proceeding in respect of anything done or omitted to be done before the coming into operation of the Code may subject to the provisions of the Code be brought taken and prosecuted in the same manner as if this Ordinance had not been passed ;
- (4) This Ordinance shall not except as expressly therein declared affect any principle or rule of law or equity or established jurisdiction or form or course of pleading practice or procedure notwithstanding that the same respectively may have been in any manner affirmed recognised or derived by in or from any enactment hereby repealed ;
- (5) This Ordinance shall not revive or restore any jurisdiction duty liability right title privilege restriction exemption usage practice procedure form of punishment or other matter or thing not now existing or in force.

3. From and after the coming into operation of the Code the following rules shall unless the context otherwise indicates apply with respect to the Construction of Statutes Statutory Rules By-laws and other instruments that is to say—

Construction of  
Statutes  
Statutory Rules  
and other  
instruments.

- (1) When in any Statute Statutory Rule By-law or other instrument public or private the term “felony” is used or reference is made to an offence by the name of felony it shall be taken that reference is intended to an offence which is a crime under the provisions of the Code;
- (2) When in any Statute Statutory Rule By-law or other instrument public or private the term “murder” is used it shall be taken that reference is intended to the crimes of wilful murder and murder and each of them;
- (3) When in any Statute Statutory Rule By-law or other instrument public or private the term “larceny” is used it shall be taken that reference is intended to the crime of stealing;
- (4) When in any Statute Statutory Rule By-law or other instrument public or private reference is made to any offence by any specific name it shall be taken that reference is intended to the offence which under the provisions of the Code is constituted by the act or omission that would heretofore have constituted the offence referred to;
- (5) When in any Statute Statutory Rule By-law or other instrument public or private reference is made to any of the Statutory provisions hereby repealed it shall be taken that reference is intended to the corresponding provisions or substituted provisions of the Code.

4. From and after the coming into operation of the Code no person shall be liable to be tried or punished in British New Guinea as for an indictable offence except under the express provisions of the Code or some other Statute law of British New Guinea or under the express provisions of some Statute of the United Kingdom which is expressly applied to British New Guinea or which is in force in all parts of His Majesty's Dominions not expressly excepted from its operation or which authorises the trial and punishment in British New Guinea of offenders who have at places not in British New Guinea committed offences against the laws of the United Kingdom.

Provisions of  
Code exclusive  
with certain  
exceptions.

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Civil remedies.

5. When by the Code any act is declared to be lawful no action can be brought in respect thereof.

Saving.

Except as aforesaid the provisions of this Ordinance shall not affect any right of action which any person would have had against another if this Ordinance had not been passed nor shall the omission from the Code of any penal provision in respect of any act or omission which before the time of the coming into operation of the Code constituted an actionable wrong affect any right of action in respect thereof.

Offender may be prosecuted under Code or other Statute.

6. When an offender is punishable under the provisions of the Code and also under the provisions of some other Statute he may be prosecuted and convicted under the provisions either of the Code or of such other Statute so that he is not twice punished for the same offence.

Contempt of Court.

7. Nothing in this Ordinance or in the Code shall affect the authority of Courts of Record to punish a person summarily for the offence commonly known as "Contempt of Court" but so that a person cannot be so punished and also punished under the provisions of the Code for the same act or omission.

Printing of amendments.

8. Whenever any amendment is made in the Code all copies of the Code printed by the Government Printer after the amendment shall be so printed as to set forth the actual provisions of the Code after omitting all repealed provisions or words and embodying all newly enacted or substituted provisions or words.

General Rules.

9. At any time after the passing of this Ordinance the Judge or if there be more than one the Judges of the Central Court<sup>(3)</sup> may make General Rules<sup>(4)</sup> to take effect on the coming into operation of the Code with respect to the several matters specified in the Code as matters with respect to which they may make General Rules.

Short title.

10. This Ordinance may be cited as "*The Criminal Code Ordinance of 1902.*"<sup>(1)</sup>

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(1) See footnote (1) printed on p. 1287.

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

(4) See the *Criminal Forms Rules*, 1922, printed on p. 1303.

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SCHEDULES.

THE FIRST SCHEDULE.(3)

ADOPTED STATUTES OF NEW SOUTH WALES AND QUEENSLAND REPEALED.

Year and No. of Act.	Title or Short Title of Act.	Extent of Repeal.
5 Wm. IV. No. 1	An Act for regulating the Slaughtering of Cattle.	Section 12.
2 Vic. No. 10	An Act for adopting certain Acts of Parliament passed in the First Year of the Reign of Her Majesty Queen Victoria in the Administration of Justice in New South Wales in like manner as other Laws of England are applied therein.	The whole not already repealed.
4 Vic. No. 5	An Act to provide for the Maintenance of Deserted Wives and Children.	Section 5.
11 Vic. No. 56	An Act to enable any Joint Stock Company to sue any of its own Members and to enable any Member of any such Joint Stock Company to sue any such Company and for other purposes.	Section 3.
13 Vic. No. 18	An Act to abolish Deodands.	Section 3.
13 Vic. No. 26	An Act to Prevent Unlawful Distillation and to provide for the Protection of the Revenue arising from the Duties on Spirits.	So much of Section 31 as is contained in the provision beginning with the words "and every person who shall be convicted" and ending at the end of the section.
13 Vic. No. 27	<i>"The Distilleries Act of 1849"</i>	So much of Section 117 as is contained in the provision beginning with the words "and every person who shall be convicted" and ending at the end of the section.
13 Vic. No. 36	An Act to repeal the Law relating to Hawkers and Pedlers in the Colony of New South Wales, and to substitute other provisions in lieu thereof.	Section 17.
13 Vic. No. 37	An Act for regulating the trade or business of Pawn-brokers in New South Wales.	Sections 14, 19, 20, 31, and 37.

(3) In addition to printing the First and Second Schedules in full, the amendments contained therein have been incorporated in the text of such adopted Acts as are still in force.

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THE FIRST SCHEDULE—*continued*:

Year and No. of Act.	Title or Short Title of Act.	Extent of Repeal.
14 Vic. No. 4	An Act to prevent the Adulteration of Malt Liquors.	Sections 1 and 2.
14 Vic. No. 9	An Act to amend the Law concerning Games and Wagers.	Sections 2 and 3.
14 Vic. No. 13	An Act for Legalising Art Unions.	The whole.
15 Vic. No. 13	An Act to amend the Laws for the Slaughtering of Cattle and to secure the Immediate Destruction of Animals Dying of Disease.	Sections 5 and 7.
17 Vic. No. 3	An Act for the better Prevention of Cattle Stealing and the Sale of Stolen Cattle.	Sections 5, 6, 7, 8, and 11.
17 Vic. No. 36	An Act to amend the Laws relating to the Engagement Discharge and Desertion of Seamen and for the regulation of Seamen's Lodging-houses and for the better management of the Water Police Department.	So much of Section 44 as is contained in the words "and every person who shall falsely and fraudulently forge or alter or procure to be forged or altered or assist in forging or altering any register ticket certificate discharge or other document which is by this Act required to be obtained or used for any purpose or who shall fraudulently utter or make use of any register ticket certificate discharge or other document which shall have been so forged or altered or which does not belong to him shall be deemed guilty of a misdemeanour and may be committed to take his trial for such misdemeanour before the Supreme Court or a Circuit Court or some other Court of general or quarter sessions and may be tried and sentenced to fine or imprisonment at the discretion of the Court or such offender."
19 Vic. No. 19	An Act to prevent the Adulteration of Spirituous and Fermented Liquors.	Section 1.
19 Vic. No. 34	An Act for Registering Births, Deaths, and Marriages.	Sections 34 and 35.

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THE FIRST SCHEDULE—continued:

Year and No. of Act.	Title or Short Title of Act.	Extent of Repeal.
22 Vic. No. 6	An Act to amend the Act for the Maintenance of Deserted Wives and Children.	Section 9.
25 Vic. No. 11	" <i>Masters and Servants Act of 1861</i> "	Section 8.
25 Vic. No. 14	" <i>Real Property Act of 1861</i> "	The first enactment of Section 10 ending with the words "twelve calendar months." So much of Section 142 as is not already repealed.
27 Vic. No. 4	" <i>The Companies Act, 1863</i> "	Sections 167 and 170.
28 Vic. No. 5	" <i>The Trade Marks Act, 1864</i> "	Sections 8, 9, 11, 16, 18, 19, and 20.
28 Vic. No. 15	" <i>The Marriage Act of 1864</i> "	Sections 8, 25, 26, 27, and 28.
29 Vic. No. 3	" <i>Forgery Act of 1865</i> "	The whole.
29 Vic. No. 4	" <i>Coinage Offences Act of 1865</i> "	The whole, except the definition in Section 1 of the term "the Queen's current gold or silver coin," and Sections 26 and 41.
29 Vic. No. 5	" <i>Injuries to Property Act of 1865</i> "	The whole.
29 Vic. No. 6	" <i>Larceny Act of 1865</i> "	The whole.
29 Vic. No. 7	" <i>Accessories Act of 1865</i> "	The whole.
29 Vic. No. 11	" <i>Offences against the Person Act of 1865</i> "	The whole.
29 Vic. No. 13	" <i>Criminal Practice Act of 1865</i> "	The whole.
30 Vic. No. 6	An Act to regulate the Trial of Offences committed within the jurisdiction of the Admiralty.	The whole.
30 Vic. No. 20	" <i>Arson Act of 1866</i> "	The whole.
30 Vic. No. 21	" <i>Distillation from Sugar Act</i> "	Section 11. So much of Section 41 as is contained in the provision beginning with the words "and every person who shall be convicted" and ending at the end of the section.

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THE FIRST SCHEDULE—*continued*:

Year and No. of Act.	Title or Short Title of Act.	Extent of Repeal.
31 Vic. No. 6	“ <i>Acts Shortening Act of 1867</i> ”	Section 22.
31 Vic. No. 7	“ <i>The Amended Registration Act of 1867</i> ”	So much of Section 3 as is contained in the words “subject in the case of wilful falsehood therein to the penalties of perjury.”
31 Vic. No. 11	“ <i>Interdict Act of 1867</i> ”	So much of Section 6 as is contained in the provision beginning with the words “and if upon such oath or affirmation” and ending at the end of the section.
31 Vic. No. 12	“ <i>Oaths Act of 1867</i> ”	<p>Sections 11 and 12.</p> <p>So much of Section 13 as is contained in the words “and if any declaration so made shall be false or untrue in any material particular the person wilfully making such false declaration shall be deemed guilty of a misdemeanour.”</p> <p>Section 16.</p> <p>So much of Section 18 as is contained in the provision beginning with the words “and if any such person making such solemn affirmation” and ending with the words “to the contrary notwithstanding.”</p> <p>Section 20.</p> <p>Section 33.</p>
31 Vic. No. 13	“ <i>Evidence and Discovery Act of 1867</i> ”	<p>Section 44.</p> <p>So much of Section 68 as is contained in the words “and if convicted of any wilful perjury in such evidence shall suffer all the punishments penalties forfeitures and disabilities which by any law or Statute are or may be inflicted upon persons convicted of wilful perjury.”</p> <p>Section 75.</p> <p>So much of Section 76 as is contained in the provision beginning with the words “and every person charged” and ending at the end of the section.</p>

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THE FIRST SCHEDULE—continued:

Year and No. of Act.	Title or Short Title of Act.	Extent of Repeal.
31 Vic. No. 19	<i>“Trustees and Incapacitated Persons, Act of 1867”</i>	So much of Section 27 as is contained in the words “be guilty of a misdemeanour and being found guilty shall be liable at the discretion of the Court to suffer such punishment by fine or imprisonment for any term not exceeding two years with or without hard labour or by both as the Court shall award and shall also.”
31 Vic. No. 35	<i>“Diseases in Sheep Act of 1867”</i>	Sections 55 and 68.
31 Vic. No. 36	<i>“The Mercantile Act of 1867”</i>	Sections 35 and 42. So much of Sections 47 and 49 respectively as is contained in the words “and also being thereof lawfully convicted shall suffer imprisonment for one-half year without bail or main-prize.” So much of Section 66 as is contained in the words “and shall also be liable to an indictment for a misdemeanour punishable by fine or imprisonment or both in the discretion of the Court by which he shall be tried.”
34 Vic. No. 12	An Act to Extend the Operation of Preferable Liens upon certain Crops.	Sections 3 and 5.
36 Vic. No. 8	An Act to amend the Law relating to Larceny and Embezzlement.	The whole.
37 Vic. No. 1	<i>“The Customs Act, 1873”</i>	Sections 192, 193, 197, 198, 199, 200, and 232.
38 Vic. No. 5	<i>“The Insolvency Act of 1874”</i>	Sections 206 to 214 inclusive. Section 216. Section 219.
40 Vic. No. 2	<i>“The Criminal Practice Act Amendment Act of 1876”</i>	The whole.
41 Vic. No. 3	<i>“The Navigation Act of 1876”</i>	Section 42. Section 77. So much of Section 89 as is contained in the enactment beginning with the words

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THE FIRST SCHEDULE—*continued*:

Year and No. of Act.	Title or Short Title of Act.	Extent of Repeal.
		<p>“If an undue weight is placed upon the safety valve” and ending at the end of the section.</p> <p>Section 99. Section 103.</p> <p>So much of Section 105 as is contained in the words “Any person who knowingly sends or attempts to send by or carries or attempts to carry in any vessel any dangerous goods as aforesaid under a false description or falsely describes the sender thereof shall be guilty of a misdemeanour and.”</p> <p>The second paragraph of Section 165 beginning with the words “And if any person shall so deliver,” and ending at the end of the section.</p>
41 Vic. No. 4	“ <i>The Religious Worship Act of 1877</i> ”	The whole.
41 Vic. No. 24	“ <i>The Intestacy Act of 1877</i> ”	Section 54.
45 Vic. No. 13	“ <i>The Sale of Food and Drugs Act of 1881</i> ”	Section 36.
48 Vic. No. 8	“ <i>The Insanity Act of 1884</i> ”	<p>So much of Section 22 as is contained in the words “and any person offending against this provision shall be guilty of a misdemeanour.”</p> <p>So much of Section 33 as is contained in the words “If any practitioner wilfully and falsely certifies in writing that a person is insane knowing him not to be insane, he shall be guilty of a misdemeanour.”</p> <p>So much of Section 48 as is contained in the words “the Court before which he is brought to be tried shall direct such finding shall be recorded, and may thereupon order him to be kept in strict custody, in such place and in such manner as to the Court seems fit, until he is dealt with as next hereinafter</p>

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THE FIRST SCHEDULE—continued:

Year and No. of Act.	Title or Short Title of Act.	Extent of Repeal.
		provided. In any such case.” The last paragraph of the same section. Section 49. Section 163. So much of Section 168 as is contained in the enactment beginning with the words “Every such superintendent or other officer,” and ending at the end of the section. Section 170.
48 Vic. No. 13	<i>“The Patents, Designs, and Trade Marks Act of 1884”</i>	Section 91.
48 Vic. No. 19	<i>“The Oaths Act Amendment Act of 1884”</i>	So much of Section 2 as is contained in the words “And if any such person wilfully and corruptly gives false evidence he may be indicted and tried for perjury, and upon conviction thereof shall be liable to the same punishment as if he had taken an oath.”
50 Vic. No. 14	<i>“The Offenders Probation Act of 1886”</i>	The whole.
50 Vic. No. 17	<i>“The Justices Act of 1886”</i>	Sections 41, 44, 45, and 64. The last paragraph of Section 113 beginning with the words “When a defendant” and ending at the end of the section. Sections 130 and 131. Sections 179 to 196 inclusive.
50 Vic. No. 25	<i>“The Quarantine Act of 1886”</i>	The second paragraph of Section 11 beginning with the words “If the master,” and ending at the end of the section. The second paragraph of Section 12 beginning with the words “If any such surgeon,” and ending at the end of the section. Section 28.
51 Vic. No. 2	<i>“The Copyright Registration Act (Queensland), 1887”</i>	Section 11.

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THE FIRST SCHEDULE—*continued*:

Year and No. of Act.	Title or Short Title of Act.	Extent of Repeal.
55 Vic. No. 15	<i>“The Post and Telegraph Act, 1891”</i>	<p>So much of Section 43 as is contained in the words “Any officer who acts contrary to the declaration shall be guilty of a misdemeanour.”</p> <p>So much of Section 58 as is contained in the provision beginning with the words “Any master who (except as aforesaid)” and ending at the end of the section.</p> <p>So much of Section 59 as is contained in the provision beginning with the words “Any master who fails” and ending at the end of the section.</p> <p>So much of Section 60 as is contained in the provision beginning with the words “Any person in any respect offending” and ending at the end of the section.</p> <p>So much of Section 63 as is contained in the provision beginning with the words “Any master who refuses” and ending at the end of the section.</p> <p>So much of Section 64 as is contained in the provision beginning with the words “Any person offending” and ending at the end of the section.</p> <p>So much of Section 65 as is contained in the provision beginning with the words “Any master who refuses” and ending at the end of the section.</p> <p>Section 69.</p> <p>Sections 85 and 86.</p> <p>Sections 88 to 126 inclusive.</p> <p>Section 128.</p>
62 Vic. No. 24	<i>“The Mining Act of 1898”</i>	<p>Section 163.</p> <p>So much of Section 164 as is contained in the words “or shall adjudicate on any matter in which he shall have any pecuniary interest.”</p> <p>Sections 165 and 194.</p>

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THE SECOND SCHEDULE.<sup>(3)</sup>

Year and No. of Act.	Title or Short Title of Act.	Extent of Amendment.
31 Vic. No. 35	"Diseases in Sheep Act of 1867"	<p>Section 63:—                      At the beginning of the Section <i>omit</i> the words "Any owner who" and <i>insert</i> the words "If any owner":  <i>Omit</i> the words "shall be guilty of a misdemeanour and be liable at the discretion of the Court to be imprisoned for any term not exceeding two years and."</p>
37 Vic. No. 1	"The Customs Act, 1873"	<p>Section 95:—  <i>Omit</i> the word "Every" at the beginning of the second enactment of the section, and <i>insert</i> the words "If any":                      In the same and the following enactment <i>omit</i> the words "shall be deemed guilty of a misdemeanour and shall upon conviction suffer the punishment by law inflicted in cases of misdemeanour. But if such person."</p>
48 Vic. No. 8	"The Insanity Act of 1884"	<p>Section 50:—                      In the first line of the section <i>omit</i> the word "so."</p>
50 Vic. No. 17	"The Justices Act of 1886"	<p>Section 197:—  <i>Omit</i> the words "this Part of this Act," and <i>insert</i> the words "the provisions of Chapters XLIII. and XLVII. of the Criminal Code."</p>

(3) In addition to printing the First and Second Schedules in full, the amendments contained therein have been incorporated in the text of such adopted Acts as are still in force.