

*Organic Law on immediate and transitional constitutional provisions.*



## CHAPTER NO. 1.

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##### **SCHEDULE 1. - References in pre-Independence Laws.**



## CHAPTER NO. 1.

### *Organic Law on immediate and transitional constitutional provisions,*

Being a Provisional Organic Law to provide, in accordance with Section 277<sup>1</sup> (*transitional laws*) of the **Constitution**, for immediate and transitional matters related to the **Constitution**,

MADE by the Constituent Assembly to come into operation on Independence Day<sup>2</sup>.

### **PART I. - INTRODUCTORY.**

#### **1. INTERPRETATION.**

In this Law, a reference to -

- (a) a pre-Independence law shall be read as a reference to a law adopted by Section Sch.2.6 (*adoption of pre-Independence laws*) of the **Constitution** as in force immediately before the relevant time in relation to that law; and
- (b) a pre-Independence office, institution, instrumentality or body established by or under a pre-Independence law shall be read as a reference to that office, institution, instrumentality or body as in existence immediately before the relevant time in relation to the law by or under which it was established; and
- (c) the relevant time in relation to a pre-Independence law shall be read as a reference<sup>3</sup> -
  - (i) in the case of a law repealed by the **Laws Repeal Act 1975**<sup>4</sup>-the time at which that Act came into operation<sup>5</sup>; and
  - (ii) in the case of the **Papua New Guinea Act 1949-1974**<sup>6</sup> of Australia - the time at which the **Papua New Guinea Independence Act 1975** of Australia came into operation; and
  - (iii) in the case of any other law of Australia or any law of England - Independence Day.

### **PART II. - CONTINUATION OF ALL ACTS, MATTERS AND THINGS.**

#### *Division 1. - General Principles.*

#### **2. CONTINUING EFFECT OF PRE-INDEPENDENCE LAWS.**

(1) All acts, matters and things done or suffered and all institutions and bodies established by, under or for the purposes of a pre-Independence law before Independence Day have the same effect and the same consequences as they had immediately before Independence Day.

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<sup>1</sup> This reference is incorrect. It seems that the correct reference is to Section 267, and "277" was the numbering in the draft Constitution debated and amended by the National Constituent Assembly.

<sup>2</sup> "Adopted" on 20 August 1975, after the adoption of the **Constitution**.

<sup>3</sup> *Seemle*, "to" was omitted.

<sup>4</sup> Act No. 93 of 1975, made by the pre- Independence House of Assembly and not adopted by the **Constitution** (*see Constitution*, Section Sch.2.6).

<sup>5</sup> This Act came into force "immediately before the expiry of 15 September 1975".

<sup>6</sup> After this Provisional Organic Law was made, the **Papua New Guinea Act 1975** of Australia came into operation.

- (2) The effect of Subsection (1) extends to -
- (a) all rights, privileges, obligations, liabilities, penalties, forfeitures and punishments acquired accrued or incurred before Independence Day; and
  - (b) all investigations, legal proceedings and remedies in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment,

and any such investigation or legal proceedings may be instituted or continued and any such remedy, right, privilege, obligation or liability may be enforced, and any such penalty, forfeiture or punishment may be imposed, in the same way, and subject to the same conditions, limitations and restrictions that applied, immediately before Independence Day.

### **3. DECLARATIONS, AFFIRMATIONS, ETC.**

- (1) Subject to Subsections (2) and (3), where -
- (a) a person who occupied a pre-Independence office or position is by a Constitutional Law or this Law appointed or deemed to have been appointed on Independence Day to the corresponding office or position under a Constitutional Law; and
  - (b) but for this subsection, he would be required to make a Declaration of Loyalty, Judicial Declaration or Declaration of Office before taking up his duties,

it is not necessary for him to make that Declaration.

- (2) Subsection (1) does not apply to the making by the Judges of the Judicial Declaration.

(3) Subject to Subsection (4)<sup>7</sup>, the National Executive Council may at any time require a person, or members of a class of persons, to whom Subsection (1) applies to make the Declaration of Loyalty, Judicial Declaration or Declaration of Office before a person appointed by the National Executive Council for the purpose, and if a person so required fails to do so he may be suspended from office and dealt with for misconduct in office under the *Constitution* or any relevant law.

### *Division 2. - Special Provisions.*

### **4. EFFECT OF PART III<sup>8</sup>.**

Nothing in this Division derogates the generality of Section 3 but its provisions are designed to remove doubts and to clarify and expand the application of that section in a limited number of cases.

### **5. FORMER INSTRUMENTALITIES, ETC.**

Except where the contrary intention appears, nothing in the *Constitution* affects the status or identity of any institution, instrumentality or body established under a pre-Independence law before the relevant time.

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<sup>7</sup> There was no Subsection (4).

<sup>8</sup> *Semble*, Division II.2 was intended.

**6. FORMER OFFICERS, ETC.**

A person who, immediately before the relevant time in relation to the pre- Independence law under which he was appointed, was -

- (a) the holder of an office under a pre-Independence law; or
- (b) a member, officer or employee of an institution, instrumentality or body established by or under a pre-Independence law; or
- (c) an officer or employee of the pre-Independence Public Service; or
- (d) a member of the pre-Independence Police Force; or
- (e) a member of the pre-Independence Defence Force; or
- (f) a member, associate or auxiliary member of the pre-Independence Teaching Service; or
- (g) a member of the pre-Independence Correctional Service,

holds, on Independence Day, the equivalent office or position under the *Constitution*, the laws made under and for the purposes of the *Constitution* or the laws adopted by the *Constitution*, as the case may be, for the balance of his term of office remaining unexpired immediately before the relevant time, and on the same terms and conditions that were applicable to him immediately before that time.

**7. FIRST SECRETARY TO THE NATIONAL EXECUTIVE COUNCIL.**

(1) Notwithstanding anything in any other law, the pre-Independence Secretary to the Cabinet in office immediately before Independence Day is the first Secretary to the National Executive Council for the period ending on the date -

- (a) on which<sup>9</sup> a Secretary to the National Executive Council is formally appointed; or
- (b) he resigns; or
- (c) is dismissed from office by the Head of State, acting with, and in accordance with, the advice of the National Executive Council for inefficiency, gross inability or misconduct in office,

whichever first occurs, in<sup>10</sup> the same terms and conditions as were applicable to him immediately before Independence Day.

(2) Nothing in this section prevents the first Secretary from being appointed as the Secretary to the National Executive Council.

**8. FIRST MAGISTRATES.**

(1) All Magistrates of District Courts (other than Stipendiary and Resident Magistrates), Local Courts (other than full-time Magistrates), Children's Courts, Local Land Courts, District Land Courts and village courts in office immediately before the relevant time in relation to the pre-Independence law under which they were appointed become on Independence Day, Magistrates of District Courts, Local Courts, Children's Courts, Local Land Courts, District Land Courts and Village Courts, respectively on the same terms and conditions that were applicable to them immediately before the relevant time.

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<sup>9</sup> Presumably the words "on which" were intended to follow immediately after "ending on the date" in introductory words to Subsection (1).

<sup>10</sup> *Seemle*, "on"

(2) All Stipendiary Magistrates, Resident Magistrates and Local Court Magistrates full-time in office immediately before the relevant time in relation to the pre-Independence law under which they were appointed become on Independence Day -

- (a) the first members of the Magisterial Service; and
- (b) Senior District Magistrates - Magistrates Grade IV, District Magistrates - Magistrates Grade III, and Local Court Magistrates - Magistrates Grade I, respectively,

on the same terms and conditions that were applicable to them immediately before the relevant time.

## **9. FIRST SUBORDINATE COURTS.**

All District Courts, Local Courts, Children's Courts, Local Land Courts, District Land Courts and village courts established and in existence before the relevant time in relation to the pre-Independence law under which they were established are, on Independence Day, re-established as District Courts, Local Courts, Children's Courts, Local Land Courts, District Land Courts or Village Courts, as the case may be, of Papua New Guinea.

## **10. PENDING LEGAL PROCEEDINGS.**

Subject to the *Supreme Court Act 1975*<sup>11</sup> and the *National Court Act 1975*<sup>12</sup>, any action, suit, cause, matter or proceeding which was pending in any pre-Independence court or tribunal immediately before the relevant time in relation to the law by or under which the court or tribunal was established is, by force of this section, transferred to, and shall be continued before, the corresponding court or tribunal of Papua New Guinea as if it had originated in that court or tribunal.

## **11. SAVING OF JUDGEMENTS, ETC.**

Every order made, or judgement, decree, sentence or direction given or act done by a pre-Independence District Court, Local Court, Children's Court, Local Land Court, District Land Court or Village Court or by a Magistrate of such a court shall be deemed to have been made, given or done by the District Court, Local Court, Children's Court, Local Land Court, District Land Court or Village Court or a Magistrate of such a Court, as the case requires, re-established by Section 9.

## **12. FORMER PROVINCIAL GOVERNMENT BODIES.**

All provincial government bodies established under the pre-Independence law entitled the *Provincial Government (Preparatory Arrangements) Act 1974*<sup>13</sup> and in existence immediately before the relevant time are, on Independence Day, re-established as provincial government bodies, without otherwise affecting their respective memberships, constitutions, powers, functions, status or identities.

<sup>11</sup> Printed in the Revised Edition as the *Supreme Court Act*.

<sup>12</sup> Printed in the Revised Edition as the *National Court Act*.

<sup>13</sup> Printed in the Revised Edition as the *Provincial Government (Preparatory Arrangements) Act*. Note, the *Provincial Government (Preparatory Arrangements) Act 1974* has been repealed by Section 107 of the *Organic Law on Provincial Government*. See, *Provincial Government Elections* (Chapter 56).

**13. FORMER LOCAL GOVERNMENT BODIES.**

All pre-Independence Local Government Councils and Local Government Authorities established under or continued in operation by the pre-Independence law known as the *Local Government Act 1963*<sup>14</sup> and in existence immediately before the relevant time are, on Independence Day re-established as Local Government Councils or Local Government Authorities, as the case may be, of Papua New Guinea, without otherwise affecting their respective memberships, constitutions, powers, functions, status or identities.

**14. POWER OF MERCY.**

The powers conferred by Section 151 (*grant of pardon*<sup>15</sup>) of the *Constitution* extends to the granting of a pardon, remission, commutation or respect<sup>16</sup> in respect of an offence against, or a sentence imposed under, any pre-Independence law in force in Papua New Guinea immediately before the relevant time.

**PART III. - INTERPRETATION OF PRE-INDEPENDENCE LAWS.**

**15. APPLICATION**<sup>17</sup>.

(1) Notwithstanding anything contained in this Law, this Part shall not come into operation if, on or before Independence Day the pre-Independence law known as the *Ordinances Interpretation Act 1949* is repealed by another pre-Independence law relating to the interpretation of legislation.

(2) Subject to Subsection (1), this Law expires if the pre-Independence law known as the *Ordinances Interpretation Act 1949* is repealed by an Act of the Parliament relating to the interpretation of legislation.

**16. REFERENCES IN PRE-INDEPENDENCE LAWS.**

A reference, direct or indirect, in a pre-Independence law to an institution, office or thing set out in Column 1 of Schedule shall be read as a reference to the institution, office or thing set out in Column 2 of the Schedule in relation to it.

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<sup>14</sup> Printed in the Revised Edition as the *Local Government Act*. Note, *Local Government Act* (Chapter 57) repealed by No. 33 of 1997, *Local-level Governments Administration Act 1997*. See, *Local-level Governments Administration Act 1997*, Local Government Councils or Authorities are now referred to as Local-level Government.

<sup>15</sup> “Grant of pardon, etc.” in the *Constitution* as adopted.

<sup>16</sup> *Semble*, “respite” was intended – compare *Constitution*, Section 151(1)(c).

<sup>17</sup> The *Ordinances Interpretation Act 1949* was repealed by the *Interpretation (Interim Provisions) Act 1975*, the relevant provisions of which came into operation on 16 September 1975, and therefore Part III, of this Act did not come into operation.

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 SCHEDULE.
 

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Sec., 2<sup>18</sup>.**REFERENCES IN PRE-INDEPENDENCE LAWS.**

Column 1. <i>Pre-Independence Reference.</i>	Column 2. <i>Corresponding Independence References.</i>
Executive Council	National Executive Council
Auditor-General	Auditor-General of Papua New Guinea
Chief Minister	Prime Minister
Clerk of the House of Assembly	Clerk of the National Parliament
Crown Law Officer	(a) In relation to the prosecution function- the Public Prosecutor.
	(b) In any other case - the principal legal adviser to the National Executive.
Defence Force of Australia	Defence Force
District (other than in relation to the National Capital District)	Province
Full Court of the Supreme Court	Supreme Court
<i>Government Gazette</i>	National Gazette
High Commissioner	(a) In relation to fixing a date or dates for the commencement of pre-Independence laws - the Head of State.
	(b) In any other case - the Minister.
High Commissioner in Council	Head of State, acting with, and in accordance with, the advice of the National Executive Council
Holder of a ministerial office	Minister
House of Assembly	The National Parliament
Judge	Judge of the Supreme Court or of the National Court (as the case requires)
Ministerial Office	Office of Minister
Minister of the House of Assembly	Minister
Oath of Allegiance	Declaration of Loyalty
Public Account	Consolidated Fund
Public Service Board	Public Services Commission
Royal Papua New Guinea Constabulary	Police Force
Rules of Court, in relation to Supreme Court (otherwise than to a Full Court)	Rules of Court of the National Court

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<sup>18</sup> *Seemle*, see also Section 16.

**REFERENCES IN PRE-INDEPENDENCE LAWS. - *continued.***

Column 1. <i>Pre-Independence Reference.</i>	Column 2. <i>Corresponding Independence References.</i>
Senior puisne judge	Deputy Chief Justice
Standing Committee of the House of Assembly	Permanent Parliamentary Committee
Standing Committee on Public Accounts	Public Accounts Committee
Standing Orders of the House of Assembly	Standing Orders of the National Parliament
Supreme Court	National Court

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