CORRIGENDA.

Page 5—New Guinea Act 1920-1935.

In the heading to the second column of the table in note (1), for "Governor-General in Council" read "Governor-General".

NEW GUINEA ACT 1920-1935.(1)

An Act to make provision for the Acceptance Mandate for the Government of of certain Territories and Islands in the Pacific Ocean, and to make immediate provision for the Civil Government of the said Territories and Islands, and for other purposes. (2)

THEREAS on the seventeenth day of September, 1914, the Preamble. Territories and Islands hereinafter mentioned (then being possessions of the German Empire) were conquered by and surrendered to the Naval and Military Forces of the Commonwealth:

And whereas by the Treaty of Peace with Germany signed at Versailles on the twenty-eighth day of June, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights and titles over the said Territories and Islands:

And whereas the said Territories and Islands are now occupied by the Commonwealth:

And whereas it has been agreed by the representatives of the Principal Allied and Associated Powers that a Mandate for the Government of the said Territories and Islands should be conferred on the Commonwealth of Australia:

And whereas under the Covenant of the League of Nations contained in the said Treaty a Mandate is to be issued to the Commonwealth of Australia for the Government of the Territories and Islands formerly constituting German New Guinea (in which

ACTS OF THE COMMONWEALTH OF AUSTRALIA.

Short title, number and year.	Date of assent by Governor- General in Council.	Date on which came into operation.
New Guinea Act 1920 (No. 25 of 1920) New Guinea Act 1926 (No. 15 of 1926) New Guinea Act 1932 (No. 51 of 1932)	30.9.1920 4.6.1926 28.11.1932 9.12.1935	9.5.1921 (Cwith. Gaz. of 7.4.1921) 4.6.1926 (Cwith. Acts, Vol. XXIV., p. 40) 2.5.1933 (Cwith. Gaz. of 1.5.1933) 9.12.1935 (Cwith. Acts, Vol. XXXIII., p. 62)

⁽²⁾ As to the legislative power of the Commonwealth with respect to the Mandated Territory of New Guinea, see Mainka v. The Custodian of Expropriated Property, (1924) 34 C.L.R. 297; 31 A.L.R. 1, Jolley v. Mainka, (1933) 49 C.L.R. 242; 39 A.L.R. 506; 7 A.L.J. 214, and Ffrost v. Stevenson, (1937) 58 C.L.R. 528; 43 A.L.R. 533; 11 A.L.J. 205.

⁽¹⁾ The New Guinea Act 1920-1935 comprises the New Guinea Act 1920, as amended by the other Acts referred to in the following Table:—

ADMINISTRATION AND GOVERNMENT-

expression are included Kaiser Wilhelm's Land, the Bismarck Archipelago, the German Solomon Islands, the Admiralty Group, and all other German Pacific Possessions south of the Equator other than the German Samoan Islands and the Island of Nauru), with full power to administer the same, subject to the terms of the Mandate, as an integral part of the Territory of the Commonwealth:

And whereas it is expedient to make provision for the acceptance of the Mandate so to be issued:

And whereas it is also expedient to make immediate provision for the Civil Government of the said Territories and Islands:

Be it therefore enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:-

Preliminary.

Short title. Amended by No. 32, 1918, s. 2.

Commencement.

- 1. This Act may be cited as the New Guinea Act 1920-1935. (1)
- 2. This Act shall commence on a date to be fixed by Proclamation. (1)

Definitions. Section 3 amended by No. 51, 1932, 8. 3.

- 3. In this Act, unless the contrary intention appears—
 - "Ordinance" means an Ordinance made by the Legislative Council;
 - "The Executive Council" means the Executive Council for the Territory:
 - "The Legislative Council" means the Legislative Council for the Territory:
 - "The Territory" means the Territory of New Guinea;
 - "The Administrator" means the Administrator of the Territory; and
 - "The Minister" means the Minister administering this Act.

THE TERRITORY.

The Territory of New Guinea.

4. The Territories and Islands formerly constituting German New Guinea, as specified in the Preamble to this Act, are hereby declared to be a Territory under the authority of the Commonwealth, by the name of the Territory of New Guinea.

Authority to accept mandate.

5. The Governor-General is hereby authorized to accept the Mandate for the Government of the Territory when issued to the Commonwealth under the Covenant of the League of Nations.

THE ADMINISTRATOR.

Office of Administrator

6. There shall be an Administrator of the Territory, who shall be charged with the duty of administering the Government thereof on behalf of the Commonwealth.

⁽¹⁾ See footnote (1) printed on p. 5.

7. The Administrator (3) shall be appointed by the Governor-General under the seal of the Commonwealth, and shall until the Parliament otherwise provides hold office during the pleasure of the Governor-General.

Appointment of Administrator.

8. The Administrator shall exercise and perform all powers and functions that belong to his office according to the tenor of his Commission (3) and according to such instructions (4) as are given to him by the Governor-General.

Functions of Administrator.

9.—(1.) The Governor-General may, by Commission under the seal of the Commonwealth, appoint (3) a person to act in the office of Administrator, and to administer the Government of the Territory, during any vacancy in the office of Administrator, or when the Administrator is absent from the Territory or unable by reasons of illness or incapacity to perform his duties; and such person who so administers shall have and may exercise and perform all the powers and functions of the Administrator.

Acting Administrator.

(2.) In default of such appointment, or in the event of the absence or inability of the person so appointed the senior officer of the Territory present in the Territory shall have and may exercise and perform all the powers and functions of the Administrator.

(3) Pursuant to Sections 7 and 9, the Governor-General has appointed the persons set out in the Table below to be Administrators or Acting Administrators of the Territory of New Guinea:—

	Period of Office.	
Name of Administrator or Acting Administrator.	From.	To.
Brigadier-General E. A. Wisdom, C.B., C.M.G., D.S.O., V.D., A.D.C. (a) Brigadier-General T. Griffiths, C.M.G., C.B.E., D.S.O. (c) (d) Brigadier-General T. Griffiths, C.M.G., C.B.E., D.S.O. (c) Brigadier-General W. R. McNicoll, C.B., C.M.G., D.S.O., V.D. (c) H. H. Page, Esquire, D.S.O., M.C. (f)	9.5.1921 11.7.1932 1.7.1933 13.9.1934 22.9.1938 24.2.1940 27.7.1940	12.6.1933(b) 30.6.1933 12.9.1934 (e) 21.1.1939 23.3.1940 24.8.1940

⁽a) Commission published in Cwith. Gaz. of 24th February, 1921.

(b) Left the Territory for twelve months' leave of absence on 13th June, 1932.

(c) Commission not published in Cwith. Gaz. or N.G. Gaz.

(d) Appointed Acting Administrator during leave-of absence of Brigadier-General E. A. Wisdom.

(e) Brigadier-General W. R. McNicoll was Administrator on 27th April, 1942, on which date Regulation 5 of the National Security (External Territories) Regulations took effect. This Regulation prescribed that "the person for the time being holding the office of Administrator of the Territory of New Guinea shall not exercise any of the powers or functions appertaining to his office". He had in fact ceased to exercise his powers and functions on 12th February, 1942, the date on which civil administration was replaced by a military administration under the National Security (Emergency Control) Regulations.

administration was replaced by a military administration under the National Security (Emergency Control) Regulations.

(f) On the three occasions noted in the Table, H. H. Page, Esquire, acted as Administrator, pursuant to Commission dated 11th November, 1937, and published in N.G. Gaz. of 30th November, 1937, which appointed him. while holding "the office of Government-Secretary of the Territory of New Guinea, to act in the office of Administrator of the Territory of New Guinea, and to administer the Government of that Territory, during any vacancy in the office of Administrator, or when the Administrator is absent from the Territory or unable by reason of illness or incapacity to perform his duries."

⁽⁴⁾ No instructions have been published in Cutth. Gaz. or N.G. Gaz.

ADMINISTRATION AND GOVERNMENT-

Sub-section (3.) added by No. 15, 1926, s. 2. (3.) The exercise and performance of the powers and functions of the Administrator, during his absence from the Territory, by any person appointed under sub-section (1.) of this section, or by the senior officer of the Territory, acting under sub-section (2.) of this section, shall not affect the exercise or performance by the Administrator himself of any power or function.

Deputies of Administrator.

- 10.—(1.) The Governor-General may authorize⁽⁵⁾ the Administrator to appoint any person, or any persons jointly or severally, to be the deputy or deputies of the Administrator within any part of the Territory, and in that capacity to exercise during the pleasure of the Administrator such powers and functions of the Administrator as he thinks fit to assign to such deputy or deputies subject to any limitations expressed or directions given by the Governor-General.
- (2.) The appointment of a deputy shall not affect the exercise or performance by the Administrator himself of any power or function.

Oaths to be taken by Administrator. 11. The Administrator shall, before entering on the duties of his office, take an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation in the form in the Schedule to this Act.

Heading inserted by No. 51, 1932, s. 4.

Executive Council. Section 12 inserted by No. 51, 1932, s. 4.

THE EXECUTIVE COUNCIL.

- 12.—(1.) There shall be an Executive Council for the Territory, to advise and assist the Administrator.
- (2.) The Executive Council shall consist of nine members who shall be appointed by the Governor-General and shall hold their places in the Council during his pleasure.
- (3.) Eight of the members of the Executive Council (in this Act referred to as "official members") shall be officers of the Territory and one member shall be chosen by and from the non-official members of the Legislative Council.
- (4.) In the event of the non-official members of the Legislative Council failing to choose one of their number for appointment as a member of the Executive Council, the Governor-General may appoint a non-official member of the Legislative Council, or any other person, not being an officer of the Territory, to be a member of the Executive Council.
- (5.) If the non-official member of the Executive Council becomes an officer of the Territory he shall thereupon vacate his place as a member of the Executive Council.

⁽⁵⁾ An Order (made pursuant to Section 10) dated 22nd September, 1932, and published in N.G Gaz. of 10th October, 1932, is printed on p. 17.

- (6.) Where on account of illness or absence from the Territory any official member is unable to perform his duties as a member of the Executive Council, the Governor-General may appoint some other officer of the Territory to act as a member of the Executive Council in his stead, and the officer so appointed shall during such illness or absence from the Territory, exercise and perform all the powers and functions of a member of the Executive Council.
- (7.) The non-official members of the Legislative Council may Sub-section (7.) choose one of their number to act as the deputy of the non-official No. 63, 1935, member of the Executive Council and forward to the Administrator a notification in writing of the name of the member chosen.

Sub-section (8.)

- (8.) The Governor-General may appoint—
 - (a) the non-official member chosen in pursuance of the No. 63, 1935, last preceding sub-section; or
 - (b) if the Administrator has not received a notification in pursuance of that sub-section, any non-official member of the Legislative Council or any other person not being an officer of the Territory,

to be the deputy of the non-official member of the Executive Council.

(9.) Whenever, on account of illness or absence from the sub-section (9.) Territory, the non-official member of the Executive Council is No. 63, 1935, unable to perform his duties as a member of the Executive Council. unable to perform his duties as a member of the Executive Council, or when the non-official member has been exempted by the Administrator from attendance at any meeting of the Executive Council, the deputy of the non-official member may act as a member of the Executive Council in the place of the non-official member, and may, during such illness or absence from the Territory of the non-official member or in respect of any meeting from attendance at which he has been exempted, exercise and perform all the powers and functions of a member of the Executive Council.

13. The members of the Executive Council shall have seniority seniority of as the Governor-General specially assigns, and, in default of members of Executive such assignment of seniority, according to the priority of their Council. appointment, or, if appointed by the same instrument, according No. 51, 1932, to the order in which they are named therein.

14.(6)—(1.) The Executive Council shall not proceed to the Meetings of despatch of business unless summoned by authority of the Council. Administrator.

Section 14

⁽⁶⁾ See Section 7 of the New Guinea Act 1932, printed on p. 16.

ADMINISTRATION AND GOVERNMENT---

(2.) The presence of at least three members (exclusive of the Administrator or the member presiding) shall be necessary to constitute a meeting of the Executive Council for the despatch of business.

President at meetings.
Section 15 inserted by No. 51, 1932,

- 15.—(1.) The Administrator shall preside at all meetings of the Executive Council at which he is present.
- (2.) In his absence, such member as he appoints, or, in default of such appointment or in the absence of that member, the senior official member of the Council who is present, shall preside.

Minutes of Executive Council meetings. Inserted by

16. Minutes of the proceedings at all meetings of the Executive Council shall be kept, and copies of the minutes relating to each meeting shall be transmitted by the Administrator to the Minister as soon as practicable after the meeting is held.

No. 51, 1932, s. 4. Submission of questions to Council.

- questions to Council. Inserted by No. 51, 1932, s. 4.
- 17. The Administrator only shall be entitled to submit questions to the Executive Council for advice or decision; but if the Administrator declines to submit any question to the Council when requested in writing by any member so to do, that member may require that his written request, together with the answer of the Administrator thereto, be recorded on the minutes.

Administrator may act in opposition to advice. Section 18 inserted by No. 51, 1932,

- 18.—(1.) The Administrator may in any case, if he thinks fit, act in opposition to the advice or decision of the Executive Council; but in that case he shall forthwith fully report the matter to the Minister with his reasons for his action.
- (2.) In any case any member of the Executive Council may require that the grounds of advice or opinion which he gives upon any question be recorded at length.

Heading inserted by No. 51, 1932, s. 4.

THE LEGISLATIVE COUNCIL.

Legislative Council. Section 19 inserted by No. 51, 1932,

- 19.—(1.) There shall be a Legislative Council for the Territory.
 - (2.) The Legislative Council shall consist of—
 - (a) the Administrator;
 - (b) the official members of the Executive Council (including any officer appointed to act in place of an official member in pursuance of sub-section (6.) of section twelve of this Act); and
 - (c) seven non-official members who shall be nominated by the Administrator and appointed by the Governor-General.
- (3.) Every non-official member may be removed at any time by the Governor-General, and shall vacate his seat at the end of four years from the date of his appointment, but may be re-appointed.

- (4.) Whenever the Administrator wishes to obtain the views of any person within the Territory touching any matters about to be brought before the Council, he may by writing under his hand appoint that person to be an extraordinary member of the Council for the period or periods during which the Council is dealing with those matters.
- (5.) An extraordinary member shall not be entitled to vote at any meeting of the Council.
- 19A. The Administrator may, by notice published in the New Guinea Gazette, appoint such times for holding the sessions of the Legislative Council as he thinks fit, and may also, from time to time, in a similar manner, prorogue the Council.

Sessions and prorogation of Legislative Council. Inserted by

No. 63, 1935, s. 3.

20. The presence of at least one-third of the members (other than extraordinary members) of the Legislative Council (including the Administrator or the member presiding) shall be necessary to constitute a meeting of the Council for the exercise of its powers.

Inserted by

21. The members of the Legislative Council shall have seniority as the Governor-General specially assigns, and, in default of such assignment of seniority, according to the priority of their appointment, or, if appointed by the same instrument, according to the order in which they are named therein.

Council. Inserted by No. 51, 1932, s. 4.

22.—(1.) The Administrator shall preside at all meetings of the Legislative Council at which he is present.

Presidency of Council.

(2.) In his absence the senior official member of the Legislative Council who is present shall preside.

Section 22 inserted by No. 51, 1932, s. 4.

23.—(1.) Questions arising in the Legislative Council shall be determined by a majority of votes.

Voting in Legislative Council.

(2.) The Administrator or member presiding shall in all cases be entitled to vote, and shall also, if the numbers are equal, have a casting vote.

Section 23 inserted by No. 51, 1932, s. 4.

24.—(1.) The Legislative Council shall cause minutes of its minutes of meetings to be kept.

meetings.

(2.) As soon as practicable after each meeting of the Legislative Council, the Administrator shall forward to the Minister a copy of the minutes relating to the meeting.

Section 24 inserted by No. 51, 1932, s. 4.

25. The Legislative Council may make standing rules and Standing rules orders⁽⁷⁾ with respect to the order and conduct of its business and proceedings:

Inserted by No. 51, 1932, s. 4.

Provided that such rules and orders shall not be repugnant to any instructions(8) from the Governor-General.

⁽⁷⁾ See the Standing Orders of the Legislative Council, printed on p. 19.
(8) No instructions have been published in Culth. Gaz. or N.G. Gaz.

ADMINISTRATION AND GOVERNMENT-

Proposal of money votes. inserted by No. 51, 1932, s. 4.

26. An ordinance, vote, resolution, or question, the object or effect of which is to dispose of or charge any part of the revenue of the Territory, shall not be proposed in the Legislative Council except by the Administrator, unless this proposal has been expressly allowed or directed by him.

Legislative power.
Inserted by No. 51, 1932, s. 4.

27. Subject to this Act, the Legislative Council shall have power to make Ordinances for the peace, order, and good government of the Territory.

Prohibition of import duties discriminating against the Commonwealth. Inserted by No. 51, 1932, s. 4.

28. The Legislative Council shall not by any Ordinance impose higher duties upon the importation into the Territory of any goods produced or manufactured in or imported from Australia than are imposed on the importation into the Territory of the like goods produced or manufactured in or imported from other countries.

Assent to Ordinances. Section 29 Inserted by No. 51, 1932, s. 4.

- 29.—(1.) An Ordinance passed by the Legislative Council shall not have any force until it has been assented to as hereinafter provided.
- (2.) Every Ordinance passed by the Legislative Council shall be presented to the Administrator for assent.
- (3.) The Administrator shall thereupon declare, according to his discretion, but subject to this Act, and to the instructions of the Governor-General, that he assents thereto, or that he withholds assent, or that he reserves the Ordinance for the Governor-General's pleasure.

Disallowance of Ordinances assented to. Inserted by No. 51, 1932, s. 4.

30. Within six months from the Administrator's assent to any Ordinance the Governor-General may disallow the Ordinance, and the disallowance on being published by the Administrator within the Territory shall annul the Ordinance from the date of such publication.

Signification of pleasure on Ordinance reserved. Inserted by No. 51, 1932,

31. An Ordinance reserved for the Governor-General's pleasure shall not have any force unless and until within one year from the day on which it was presented to the Administrator for the Governor-General's assent the Administrator publishes within the Territory a notification that it has received the Governor-General's assent.

Assent to certain Ordinances. Inserted by No. 51, 1932, s. 4.

- **32.** The Administrator shall not assent to any Ordinance of any of the following classes, unless the Ordinance contains a clause suspending its operation until the signification of the Governor-General's pleasure thereon:—
 - (a) Any Ordinance for divorce;
 - (b) Any Ordinance dealing with the granting or disposal of Crown Lands;

- (c) Any Ordinance whereby any lease or grant of land or money or any donation or gratuity is made to himself;
- (d) Any Ordinance which appears inconsistent with the treaty obligations of the United Kingdom or of the Commonwealth;
- (e) Any Ordinance interfering with the discipline or control of the naval, military or air forces of the King:
- (f) Any Ordinance of an extraordinary nature or importance, whereby the King's prerogative, or the rights or property of subjects of the King not residing in the Territory, or the trade or shipping of any part of the King's Dominions, may be prejudiced;
- (g) Any Ordinance relating to the sale or disposition of or dealing with lands by aboriginal natives of the Territory:
- (h) Any Ordinance relating to native labour, or providing for the deportation of aboriginal natives from the Territory, or from one part of the Territory to another:
- (i) Any Ordinance relating to the supply of arms, ammunition, explosives, intoxicants or opium to natives;
- (j) Any Ordinance relating to the introduction or immigration of aboriginal natives of Australia, Asia, Africa or any island of the Pacific;
- (k) Any Ordinance containing provisions from which the assent of the Sovereign or of the Governor-General has once been withheld, or which the Sovereign or the Governor-General has disallowed; and
- (1) Any Ordinance relating to any matter specified in section thirty-six of this Act.
- 33. Every Ordinance assented to by the Administrator or by ordinances to the Governor-General shall, as soon as may be after being assented be laid before Parliament. to, be laid before both Houses of the Parliament.

Inserted by No. 51, 1932, s. 4.

Officers.

34. (9) The Governor-General may appoint, or may delegate to Appointment of officers. the Minister or to the Administrator power to appoint such officers as are necessary for the administration of this Act or for No. 51, 1932, s. 9. the proper government of the Territory.

Renumbered by

⁽⁹⁾ Before being renumbered by Section 9 of the New Guinea Act 1932, Section 34 was numbered Section 12.

ADMINISTRATION AND GOVERNMENT—

Heading substituted by No. 51, 1932, s. 5.

Application of Commonwealth laws.

Amended by No. 51, 1932, s. 6 and renumbered by No: 51, 1932,

APPLICATION OF COMMONWEALTH ACTS.

35. (10) Except as provided in this or any Act, the Acts of the Parliament of the Commonwealth shall not be in force in the Territory unless expressed to extend thereto, or unless applied to the Territory by Ordinance made under this Act. (11)

GUARANTEES.

Guarantees. Section 36 renumbered by No. 51, 1932, s. 9.

- **36**. (12)—(1.) The slave trade is prohibited in the Territory. (13)
- (2.) No forced labour shall be permitted in the Territory. (14)
- (3.) The traffic in arms and ammunition shall be controlled in the Territory in accordance with the principles contained in the Convention signed at Brussels on the second day of July, 1890, and known as the General Act of the Brussels Conference, or any Convention amending the same. (14)
- (4.) The supply of intoxicating spirits and beverages to the natives of the Territory is prohibited. (13)
- (5.) The military training of the natives of the Territory, otherwise than for purposes of internal police and the local defence of the Territory, is prohibited. (15)
- (6.) No military or naval base shall be established or fortifications erected in the Territory. (15)
- (7.) Freedom of conscience, and subject to the provisions of any Ordinance for the maintenance of public order and morals, the free exercise of all forms of worship, shall be allowed in the Territory. (16)

REPORT TO THE LEAGUE OF NATIONS.

Report to Council of League.

Amended by No. 51, 1932. s. 8 and renumbered by No. 51, 1932,

37.(17) The Minister shall make an annual report (18) to the Council of the League of Nations containing full information as to the measures taken to carry out the requirements of the last preceding section, and as to the well-being and progress of the native inhabitants of the Territory.

⁽¹⁰⁾ Before being renumbered by Section 9 of the New Guinea Act 1932, Section 35 was numbered

⁽¹¹⁾ Held, by the High Court, that Section 60H (1) (b) of the Commonwealth Bank Act 1911-1932, which is expressed to extend to "all Territories under the control of the Commonwealth", extends to the Territory of New Guinea, notwithstanding that it was passed prior to the issue of the Mandate, and prior to the insertion of the definition of "Territory of the Commonwealth" in Section 17 of the Acts Interpretation Act 1901-1932: Jolley v. Mainka, (1933) 49 C.L.R. 242; 39 A.L.R. 506; 7

A.L.J. 214.
(12) Before being renumbered by Section 9 of the New Guinea Act 1932 Section 36 was numbered

⁽¹²⁾ Before being renumbered by Section 15.
(13) See Article 3 of The Mandate.
(14) Cf. Article 3 of The Mandate.
(15) See Article 4 of The Mandate.
(16) See Article 5 of The Mandate.
(17) Before being renumbered by Section 9 of the New Guinea Act 1932, Section 37 was numbered

⁽¹⁸⁾ See Article 6 of The Mandate.

THE SCHEDULE.

FORM OF OATH OR AFFIRMATION.

I, A.B., do swear that I will well and truly serve our Sovereign Lord the King in the office of Administrator of the Territory of New Guinea, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will: So help me God.

Or,

I, A.B., do solemnly and sincerely promise and declare that I will well and truly serve our Sovereign Lord the King in the office of Administrator of the Territory of New Guinea, and I will do right to all manner of people according to law, without fear or favour, affection or ill-will.